



City of Ann Arbor

301 E. Huron St.
Ann Arbor, MI 48104
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Meeting Minutes Zoning Board of Appeals

Wednesday, May 22, 2013

6:00 PM

City Hall, 301 E. Huron Street, 2nd Flr.

A CALL TO ORDER

Chair Milshteyn called the meeting to order at 6:00 p.m.

B ROLL CALL

Chair Milshteyn called the roll.

Present: 7 - Candice Briere, Alex Milshteyn, Perry Zielak, Ben Carlisle, Sally Petersen, Nickolas Buonodono, and VACANT POSITION 1

Absent: 2 - Wendy Carman, and Maureen Sertich

C APPROVAL OF AGENDA

The agenda was unanimously approved as presented. On a voice vote, the Chair declared the motion carried.

D APPROVAL OF MINUTES

D-1 [13-0605](#) Zoning Board of Appeals Meeting Minutes of March 27, 2013

Chair Milshteyn requested that his name be removed from the vote on item ZBA13-004, since he had recused himself and was not present.

A motion was made by Zielak, seconded by Buonodono, that the Minutes be Approved by the Board with changes and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.

E APPEALS AND HEARINGS

ROLL CALL

Arrival of M. Sertich at 6:07 p.m.

Arrival of W. Carman at 6:08 p.m.

Present: 9 - Candice Briere, Wendy Carman, Alex Milshteyn, Perry Zielak, Ben Carlisle, Maureen Sertich, Sally Petersen, Nickolas Buonodono, and VACANT POSITION 1

E-1 [13-0598](#) ZBA13-009; 215 Packard Street Stephen Kaplan is requesting permission to alter a non-conforming structure to expand the non-conforming structure by constructing a building addition and modifying the roof in order to add additional

bedrooms to the existing duplex.

Matt Kowalski provided the following staff report;

SUMMARY:

Stephen Kaplan is requesting permission to alter a non-conforming structure in order to convert the existing office use to residential, add bedrooms, and expand the non-conforming structure by constructing a building addition 10 feet 6 inches from the front property line; the existing structure is 2 feet from front property line, and the averaged required setback is 4 feet 4 inches.

BACKGROUND:

The subject parcel is zoned R4C (Multiple-Family Residential District) and located on Packard Avenue, east of Fourth Avenue. The parcel is non-conforming for front setback and required lot size: subject parcel is 8,276 square feet; minimum lot size is 8,500 square feet. The structure was built in 1894, per City Polk Directory, and is 1,010 square feet.

DESCRIPTION AND DISCUSSION:

The petitioner is proposing to convert an existing office use(non-conforming) on the first floor to a residential use(conforming) containing three bedrooms. There is a currently one residential unit on the second floor containing three bedrooms, which will be remodeled to include additional living space on the third floor and a total of four bedrooms. After construction the structure will contain a total of 7 bedrooms in two units.

The petitioner is also proposing to remove an existing one story addition, construct a new addition in the same location on the west side of the house and raise the roof of the third floor in order to add 2 bedrooms. The house is setback approximately 2 feet from the front property line. The proposed addition will be setback 10 feet 6 inches from the front property line and 12 feet 6 inches from the side property line. The required front setback is based on averaging of existing properties which is 4 feet 4 inches, however averaged setbacks can only be reduced to a minimum of 10 feet per Chapter 55, Section 5:57. A variance is not required because the new addition will not encroach any further into the front setback than the existing house. The addition will be 30 feet by 12 feet (360 sq ft) on the first floor and 12 feet by 12 feet (144 sq ft) on the second floor, the second floor addition will have outdoor patio space provided on the remaining roof area. While the 12 foot by 12 foot addition will extend to the height of the third floor, the area inside the building will remain open to the second floor, there will be no third floor within the addition. However, as noted above, the roof of the structure will be raised in order to allow the addition of two bedrooms and bathrooms to the existing third floor.

Standards for Approval - Permission to Alter a Non-Conforming Structure

The Zoning Board of Appeals has all the power granted by State law and by Section 5:98, from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

The alteration complies as nearly as practicable with the requirements of the Zoning Chapter and will not have a detrimental effect on neighboring property.

The home was constructed before current zoning standards were in effect and the placement of the house near the front property line limits the area available for an addition to the house without removing required parking area. The proposed addition

will be set back a minimum of 10 feet 6 inches from the front property line and 12 feet 6 inches from the closest side property line. It will replace an existing smaller addition constructed as a lobby for the office use. The addition is a 360 square feet on the first floor, 144 square feet on the second floor and will be consistent with the existing architecture of the house.

The first floor of the house has been used as a medical office for over 30 years. Conversion of this space from a non-conforming office use to a residential use is consistent with the intent of the Zoning code. The conversion to a residential duplex structure is consistent with neighboring properties and residential uses should present less impact on neighbors than an office use. The expansion will allow the petitioner to improve their property while respecting the intent of the Zoning Ordinance. Staff does not feel that the requested variance would negatively affect any surrounding property. The subject house is located in an area of multiple-family structures with similar density and scale.

PRESENTATION BY PETITIONER:

Rob Burroughs, Base Studios, 308 1/2 South State Street, Ann Arbor, Arcgitect, was present on behalf of the property owner, and explained the application.

PUBLIC HEARING:

Ethel Potts, 1014 Elder Blvd. Ann Arbor, spoke in opposition to the increased density and the lack of required parking on the site plan.

Deanna Relyea, 441 South Fourth Avenue, Ann Arbor owners of the neighboring house, 209 Packard Street, spoke in support of the application/request, while bringing concerns about possible noise coming from the decks. She had questions about the proposed landscaping and possible screening.

Burroughs said the petitioner will be sensitive to any and all comments and concerns brought at the meeting.

Noting no further public speakers, the Chair declared the public hearing closed.

LIST OF EXHIBITS:

Chair Milshiteyn noted that no correspondence had been received in support or opposition of the application.

Motion made by Zielak, Seconded by Carman, in petition ZBA13-009, 215 Packard Street, that the Zoning Board of Appeals grants permission to alter a nonconforming structure, to add bedrooms and construct a building addition, per submitted plans, based on the following findings of fact;

a) The alteration complies as nearly as practicable with the requirements of the Zoning Chapter and will not have a detrimental effect on neighboring property.

The members of the Board took into consideration the presented petition and discussed the matter.

Friendly amendment offerd by Carman, seconded by Petersen, to add the following condition to the motion:

Conditioned [Subject] to removal of the excess asphalt [parking lot] in the rear yard so as to provide the minimal parking, if such removal does not trigger a site plan process. On a roll call vote, the vote was as follows with the Chair

declaring the amendment defeated.

Amendment failed; 2-6.

Yeas: 2 - Carman, and Councilmember Petersen

Nays: 6 - Briere, Chair Milshteyn, Zielak, Carlisle, Sertich, and Buonodono

Main Motion:

On a voice vote, the vote was as follows, with the Chair declared the motion carried.

Approved: 7-1. Permission Granted.

Yeas: 7 - Briere, Chair Milshteyn, Zielak, Carlisle, Sertich, Councilmember Petersen, and Buonodono

Nays: 1 - Carman

E-2 [13-0599](#)

ZBA13-010; 2300 Traverwood Drive
First Martin Corporation is requesting two variances:

1) A variance from Chapter 59(Off-Street Parking) Section 5:167 (Required Parking): A request to exceed the maximum number of parking spaces permitted by constructing 231 spaces to the site for a total of 525 parking spaces.

2) A variance from Chapter 60 (Wetlands) Section 5:204(1): A proposal to fill 6,787 square feet of wetland without obtaining the required Wetland Use Permit.

Matt Kowalski provided the following staff report:

SUMMARY:

First Martin Corporation is requesting two variances:

1) A variance from Chapter 60(Wetlands) Section 5:204 (1) A proposal to fill 6,787 square feet of wetland without obtaining the required Wetland Use Permit.

2) A variance from Chapter 59(Off-Street Parking) Section 5:167 (Required Parking) of 231 parking spaces in order to exceed the maximum number of parking spaces permitted. A maximum of 268 parking spaces is permitted.

Background:

The parcel is zoned ORL (office, research, limited industrial district) and is located on the southeast corner of Traverwood and Huron Parkway. The parcel is 13.2 acres and contains a large linear wetland through the center of the site. This large wetland is regulated by the City of Ann Arbor and will not be affected by the proposed construction of the parking lot or future building. There is one 66,878 square foot office building existing which was constructed in 1999. There is a valid site plan approved for a second 66,878 square foot building, as well as the corresponding required parking, to be constructed on the site. The petitioner has recently submitted an Administrative Amendment in order to extend the expiration date of the site plan and install only the parking (without the corresponding building) approved for Phase II

at this time. Installation of that parking would exceed the maximum number of spaces permitted for the existing building. After construction of the parking, the site will have 525 parking spaces, there are currently 294 parking spaces on the site. The maximum permitted by code is 268; however the existing building was constructed before the maximum parking requirement was adopted.

In 1996-97 the site was mass graded in preparation for construction of the existing office building. This grading did create an area that has evolved into a wetland as categorized by the City of Ann Arbor. The previous site plan approved for the exiting building did not designate this area as a wetland. In preparation for the current Administrative Amendment, the petitioner enlisted a wetland consultant to verify existing wetland boundaries. During this process, the consultant flagged this additional area as a wetland. The new wetland area is approximately 6,787 square feet and would be considered a low quality wetland per the Land Development Regulations of Chapter 57, however due to its proximity to an inland, lake or stream as defined by the State of Michigan, it may be regulated by the MDEQ. City wetland regulations are independent of MDEQ wetland regulations; and approval by one entity does not constitute approval by the other. The petitioner must submit an application to the MDEQ for disturbance to the new wetland; if the MDEQ determines a wetland permit is required, this permit will need to be obtained and provided to the City before construction is allowed to proceed. If MDEQ determines that a state wetland permit is not required, than the MDEQ's determination letter must be provided to the City.

The petitioner is proposing to remove this wetland in order to construct a new parking lot, the petitioner has indicated that protection of the wetland will result in approximately 70 less parking spaces. According to Chapter 60 (Wetlands), a wetland use permit is required to fill the wetland.

5:204. - Activities which require a use permit.

Except as otherwise provided by this chapter or by a use permit obtained from the city, a person shall not:

- (1) Deposit or permit the placing of fill material in a wetland. (emphasis added by staff)
- (2) Dredge, remove, or permit the removal of soil or minerals from a wetland.
- (3) Construct, operate, or maintain any use or development in a wetland including draining or directing water from an upland activity into a wetland.
- (4) Drain surface water from a wetland.

The petitioner could construct all improvements shown on the existing site plan without the need for a wetland use permit (due to the fact the wetlands were not identified at the last plan review). However, the building and parking would have to be constructed, as approved previously, in order to avoid exceeding the maximum parking permitted.

Variance #1:

Chapter 60 (Wetlands) Variance - Standards for Approval

The ZBA has the power to grant a variance from the Wetland Use Permit requirement according to Chapter 60 Section 5:220:

- (1) A decision by an administrative official of the City regarding a use permit may be appealed to the Zoning Board of Appeals, in accordance with procedures established

in Chapter 55. Except as provided for in section (2), the zoning board of appeals will have the same powers and limitations as provided in Chapter 55

(2) A variance may be granted from the provisions of this chapter when evidence supports at least one of the following affirmative findings:

(a) That the public benefit intended to be served by this chapter will be retained, despite more disruption of the wetland than permitted.

(b) That the topographical features or special characteristics of the site create conditions such that strict application of the provisions of this chapter will result in less protection of the wetland.

(c) That the application of this chapter would deny all reasonable use of the property.

(d) That practical difficulties or unnecessary hardship exist or will occur as specified in Chapter 55, Section 5:99 of the City Code.

The petitioner is seeking a variance from the requirement for a wetland use permit based on the fact the wetland has evolved after the re-grading of the site from previous construction activity. A Wetland Use Permit is required by Chapter 60 and must be approved by City Council after a recommendation by the City Planning Commission. If the variance is approved, no action by Planning Commission or City Council will be required. However, the approval from the MDEQ may still be required. City staff will review the Administrative Amendment and grading plans to ensure no impact to the larger linear wetland will occur.

Variance #2:

Chapter 59 (Off-Street Parking) Variance - Standards for Approval

The Zoning Board of Appeals has all the power granted by State law and by Section 5:99, Application of the Variance Power, from the City of Ann Arbor Zoning Ordinance and Chapter 59, Section 5:566. The following criteria shall apply:

The Zoning Board of Appeals shall have authority to interpret this chapter and may in specific cases and after public notice and hearings in accordance with Chapter 55 of this Code grant variances and exceptions to these requirements, providing such variance or exception is in harmony with the general purpose and intent of the requirements. The procedural requirements for appeals under Chapter 55 shall be applicable to appeals under this chapter.

The petitioner is seeking to exceed the maximum number of parking spaces by 231 spaces. The parking maximum was established in 2000 and was intended to help limit unnecessary impervious surfaces and prevent new developments from providing parking far in excess of what is needed on a daily basis. The existing office building was constructed in 1999 before a maximum parking standard was adopted. While Chapter 59 limits the amount of parking that can be provided, the general purpose and intent is to ensure all developments have sufficient parking for customers and employees. The new parking area will be designed using code requirements for depressed bio-retention islands in order to minimize storm water impacts. The proposed parking is not visible from a public street and not adjacent to any residential uses. The petitioner has provided additional bicycle parking on-site and will provide additional data at the ZBA meeting, such as parking counts and methods use to encourage alternative transportation.

PRESENTATION BY PETITIONER:

Mike Martin, 115 Depot Street, Ann Arbor, property owner, was present to explain the application/request.

Earl Ophoff, Midwestern Consulting, 3815 Plaza Drive, Ann Arbor, Project Manager, was also present to explain the project and answer enquiries.

Don Tilton, 2200 Commonwealth Blvd, Ann Arbor, Vice President of Environmental Consulting and Technology, was present to explain the wetland assessment.

PUBLIC HEARING:

Nidhal Bouazizi, 2341 Sandalwood Circle, Ann Arbor, spoke in objection to the application/request.

LIST OF EXHIBITS PRESENTED:

Chair Milshiteyn noted that the Board had received the following communication in opposition to the request:

Nidhal Bouazizi, 2341 Sandalwood Circle, Ann Arbor.

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

Motion made by Zielak, Seconded by Carman, in petition ZBA13-010, 2300 Traverwood Drive, the Zoning Board of Appeals grants a variance from Chapter 60 (Wetlands) Section 5:204 (1) A proposal to fill 6,787 square feet of wetland without obtaining the required Wetland Use Permit, per submitted plans. This variance may be granted when the evidence supports at least one of the following affirmative findings:

- (a) That the public benefit intended to be served by this chapter will be retained, despite more disruption of the wetland than permitted.**
- (b) That the topographical features or special characteristics of the site create conditions such that strict application of the provisions of this chapter will result in less protection of the wetland.**
- (c) That the application of this chapter would deny all reasonable use of the property.**
- (d) That practical difficulties or unnecessary hardship exist or will occur as specified in Chapter 55, Section 5:99 of the City Code.**

Friendly Amendment offered by Carman, and accepted by Zielak, that the findings read as follows:

- (a) That the public benefit intended to be served by this chapter will be retained, despite more disruption of the wetland than permitted, because the proposed redirection of the water into the appropriate detention pond will serve the mitigation purpose.**

On a roll call vote, the vote was as follows, with the Chair declared the motion carried.

Approved: 7-1. Variance Granted.

Yeas: 7 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, Sertich, and Councilmember Petersen

Nays: 1 - Buonodono

Motion made by Zielak, Seconded by Briere, in petition ZBA13-010, 2300 Traverwood Drive, that the Zoning Board of Appeals grants a variance from Chapter 59 (Off-Street Parking) Section 5:167 (Required Parking) allowing them to exceed the maximum number of parking spaces by 231 spaces, providing the variance requested is in harmony with the general purpose and intent of the requirements of this Chapter, per submitted plans.

On a roll call vote, the vote was as follows, with the Chair declared the motion carried.

Approved: 5-3. Variance Granted.

Yeas: 5 - Briere, Carman, Zielak, Carlisle, and Councilmember Petersen

Nays: 3 - Chair Milshteyn, Sertich, and Buonodono

E-3 [13-0600](#)

ZBA13-011; 1207 South State Street
Michael Soltis is requesting permission to alter a non-conforming structure to expand the non-conforming structure by modifying the roof and basement in order to add additional bedrooms to the existing duplex.

Matt Kowalski provided the following staff report:

SUMMARY:

Michael Soltis, is requesting permission to alter this non-conforming structure by modifying the roof in order to add two bedrooms to the existing third floor and three bedrooms to the basement.

Background:

The subject parcel is zoned R4C (Multiple-Family Residential District) and located on South State Street, south of McKinley Street. The parcel is non-conforming for required lot size: subject parcel is 4,400 square feet; minimum lot size is 8,500 square feet. The structure was built in 1900 and is 1,885 square feet (2,388 sq ft after additions).

DESCRIPTION AND DISCUSSION:

The petitioner would like to add two bedrooms to the third floor, which will result in the expansion of floor area being used for occupancy, but will not change the footprint of the structure. The existing structure is a registered 2 unit rental with a total of 4 bedrooms. It is zoned R4C, which permits a maximum occupancy of 6 unrelated people per unit. The property is currently permitted a maximum of 6 occupants based on Rental Housing code and unit configuration. Due to the fact that the lot does not meet the minimum lot area requirement of 8,500 square feet, the existing structure is a legal non-conforming structure with two units (City Code requires 2,175 square feet per unit). The proposed plan would keep the total number of units at two and raise the maximum number of occupants to 10. The number of bedrooms will be increased by five, resulting in one 4 bedroom and one 6 bedroom unit, for a total of 10

bedrooms.

In Spring 2012, a building permit was approved that allowed the petitioner to raise the roof and re-build the foundation. The foundation and roof structural work was completed in Summer of 2012, the modifications raised the ceiling height in a section of the third floor as well as the basement. A new contractor was hired, and when new permits were submitted to complete interior work, the additional floor area was noted as needing ZBA approval for a non-conforming structure. The new interior area has not been finished and the Building permit for finish work is on hold pending ZBA action. The petitioner was allowed to complete the foundation work due to structural issues. The petitioner would like to add bedrooms, to the modified third floor and basement, which will result in the expansion of floor area being used for occupancy. As noted above, Chapter 55, Section 5:86 (1)(c) states that a nonconforming use cannot be, "expanded or increased in the intensity of use". With the addition of a room, it is expanding the floor area fit for occupancy.

If the variance is approved, the new bedrooms (and all other planned improvements) will be inspected and will be required to meet all housing and building codes for health and safety, including emergency egress. If the variance is not approved, the petitioner will not be able to use the area gained by the roof reconfiguration or basement as a living space.

Standards for Approval- Permission to Alter a Non-Conforming Structure

The Zoning Board of Appeals has all the power granted by State law and by Section 5:98, from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

The alteration complies as nearly as practicable with the requirements of the Zoning Chapter and will not have a detrimental effect on neighboring property.

Permission is being requested in order to add two bedrooms to the existing third floor and three bedrooms to the basement. The addition of bedrooms will not expand the footprint or maximum height (30 feet) of the structure. The total number of units will remain at two. While the roofline has changed, the structure is no closer to any property line and the occupancy will be increased to a maximum of 10. The two-family use is consistent with the surrounding uses and the addition of bedrooms to the structure should not have a detrimental effect on adjacent property.

PRESENTATION BY PETITIONER:

Michael Soltis, 1910 Hill Street, Ann Arbor, property owner was present to explain the application.

PUBLIC HEARING:

Ethel Potts, 1014 Elder Blvd. Ann Arbor, spoke in opposition to the application/request.

LIST OF EXHIBITS PRESENTED:

Chair Milshteyn noted that the Board had received the following communication in opposition to the request:

Ray Martini and William Mitchell, 1230 White Street, Ann Arbor.

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

Petersen asked staff if the existing parking spaces were non-conforming.

Kowalski responded yes.

Buonodono recused himself from voting on the application/request.

Carlisle asked if staff had reviewed the proposed 3 parking spaces in the rear yard and if they met code requirements.

Kowalski said if the ZBA approved the request contingent upon the installation of the parking spaces, City staff would need to review a formal plan showing all dimensions to determine the adequacy for ingress and egress access to the proposed non-conforming parking spaces. He noted that the additional parking would take up the entire rear yard, that currently has no parking but is all grass.

Motion made by Zielak, Seconded by Briere, in petition ZBA13-011; 1207 South State Street, the Zoning Board of Appeals grants permission to alter a non-conforming structure to allow additions of bedrooms, per submitted plans, based on the established standards of approval, that the alteration complies as nearly as practicable with the requirements of the Zoning Chapter and will not have a detrimental effect on neighboring property.

BOARD DISCUSSION:

Carman noted that this lot does not meet lot size, lot width, side setbacks, parking or open space. She stated that the zoning ordinance would say it should be single-family if it does not meet the requirements. She said it does not have the 8,500 square feet as required for a duplex, adding that with the R4C zoning the allowable use is as a single-family which would allow for 6 occupants. She said the circumstances surrounding the request with the approved building permit is a separate issue and the proposed project sounds wonderful, but the project does not meet the zoning criteria.

Petersen reminded the ZBA members that back in November 2012, the ZBA had a similar request come before them, for 1619 South University Avenue, to put an additional bedroom in a basement to add more occupants, and that request was denied.

Milshteyn stated that in situations like this he is always concerns with setting a precedence, since the neighbor next door might decide to add a third floor or convert their attic to additional bedrooms and a bathroom. He said the concern of setting a precedence weighs heavy, noting that he asks himself if they are setting the City up for a precedent of, "hey, who cares about zoning, lets just approve this". He said he had mixed feelings about the request.

On a roll call vote, the vote was as follows with the Chair declaring the motion defeated.

Request Denied; 3-4.

Yeas: 3 - Briere, Zielak, and Sertich

Nays: 4 - Carman, Chair Milshteyn, Carlisle, and Councilmember Petersen

Recused: 1 - Buonodono

F **YEARLY ORGANIZATIONAL MEETING**

- F-1** [13-0601](#) Election of Vice Chairperson for the Zoning Board of Appeals
- Perry Zielak was unanimously nominated to the position of Vice Chair to the Zoning Board of Appeals.**
- Perry Zielak graciously accepted.**
- F-2** [13-0603](#) Review of the ZBA Rules and Procedures
- Motion made by Carman, Seconded by Zielak to approve the ZBA Rules and Procedures as presented. On a voice vote the vote was as follows with the Chair declaring the motion carried.**
- Yeas: 8 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, Sertich, Councilmember Petersen, and Buonodono**
- Nays: 0**
- F-3** [13-0604](#) Zoning Board of Appeals Annual Report (2012)
- Received and Filed**
- F-4** [13-0602](#) July 2013 - June 2014 Zoning Board of Appeals Meeting Schedule
- Motion made by Briere, Seconded by Carman to approve the amended 2013-2014 FY Meeting Schedule as presented.**
- The November meeting was moved from Nov 27th to Nov 20th. On a voice vote the vote was as follows with the Chair declaring the motion carried.**
- Yeas: 8 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, Sertich, Councilmember Petersen, and Buonodono**
- Nays: 0**

G **UNFINISHED BUSINESS****H** **NEW BUSINESS****I** **REPORTS AND COMMUNICATIONS****J** **PUBLIC COMMENTARY - (3 Minutes per Speaker)****K** **ADJOURNMENT**

A motion was made by Councilmember Petersen, seconded by Zielak, that the Meeting be Adjourned. On a voice vote, the Chair declared the motion carried.

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