



City of Ann Arbor

Formal Minutes

Zoning Board of Appeals

301 E. Huron St.
Ann Arbor, MI 48104
<http://a2gov.legistar.com/Calendar.aspx>

Wednesday, June 25, 2014

6:00 PM

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

A **CALL TO ORDER**

Chair Milshteyn called the meeting to order at 7:05 p.m.

B **ROLL CALL**

Chair Milshteyn called the roll.

Present: 6 - Alex Milshteyn, Perry Zielak, Ben Carlisle, Sally Petersen, Nickolas Buonodono, and Evan Nichols

Absent: 3 - Candice Briere, Wendy Carman, and Heather Lewis

C **APPROVAL OF AGENDA**

A motion was made by Zielak, seconded by Councilmember Petersen, that the Agenda be Approved as presented. On a voice vote, the Chair declared the motion carried.

D **APPROVAL OF MINUTES**

14-0863 Zoning Board of Appeals Meeting Minutes of April 23, 2014

A motion was made by Zielak, seconded by Councilmember Petersen, that the Minutes be Approved by the Commission and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.

E **APPEALS AND HEARINGS**

E-1 **14-0865** ZBA14-006; 207 East Kingsley Street
Brad Moore is requesting 2 variances from Chapter 55 (Zoning) in order to construct a single-family structure:

1. Front yard setback variance (Section 5:57) of 14 feet 6 inches to allow a 10 foot front setback along North Fourth, 24 feet 6 inches required (Averaged Front Setback).

2. Maximum height variance (Section 5:34) of 1 foot 7 inches, to allow a 31 foot, 7 inch high structure; 30 feet is the maximum height permitted in the R4C district.

Matt Kowalski presented the following staff report:

June 25, 2014 Staff Correction: Requested variance is actually 1 foot 7 inches and not 2 feet as stated in original report. Staff had originally used the highest point of the structure for the maximum height determination, however Chapter 55 (Zoning) defines building height using the average elevation and not the maximum height at any one point. See revised report below for more information.

SUMMARY:

Brad Moore, Petitioner's Agent, is requesting 2 variances from Chapter 55 (Zoning) in order to construct a single-family structure:

1. *Front yard setback variance (Section 5:57) of 14 feet 1 inch to allow a 10 foot 5 inch front setback along North Fourth, 24 feet 6 inches required (Averaged Front Setback).*
2. *Maximum height variance (Section 5:34) of 1 foot 7 inches to allow a 31 foot 7 inch high structure, 30 feet is the maximum height permitted in the R4C district.*

DESCRIPTION AND BACKGROUND:

The subject parcel is a corner lot located at 207 Kingsley, and is zoned R4C (Multiple-Family). It is located on the corner of Kingsley and North Fourth Ave, just east of the North Main Street.

The request is discussed in detail below:

The petitioner is proposing to construct a 2,750 square foot three-story house with an attached two car garage. The third floor is smaller than the lower floors and set back from the front line of the house. The house will be located 10 feet 5 inches (averaged setback equals 24 feet 6 inches) from the front property line along North Fourth, at its closest point, and 10 feet (averaged setback equals 7 feet) from the front property line along Kingsley.

The required front setback is 25 feet for the R4C district. However, Chapter 55, Section 5:57 requires averaging with adjacent properties within 100 feet of the property line of the subject property. The subject parcel is located on a 'short' block of North Fourth with only two adjacent

properties to average. The house immediately adjacent to the north is located 10 feet from the front property line. The next house is located on a triangular corner parcel that narrows to less than 15 feet in width and is set back 39 feet from front property line. As a result, the averaged setback results in a required front setback of 24 feet 6 inches along North Fourth. The petitioner would like to construct the house to be consistent with the adjacent house at 10 feet 5 inches requiring a variance as noted above.

The averaged setback along Kingsley is 7 feet, but Section 5:57 only permits reduction of front setback to a minimum of 10 feet. The proposed house is set back 10 feet from the front property line along Kingsley, no variance is required for this setback.

According to Chapter 55 (Zoning), building height is defined as, "The vertical distance of a building measured from the average elevation of the finished grade within 20 feet of the building to the highest point of the roof for a flat roof, to the deck line of a mansard roof, or to the midpoint elevation between eaves and ridge for a gable, hip or gambrel roof of a building." The maximum height in the R4C district is 30 feet. The proposed building will have a flat roof with a maximum height of 32 feet 4 inches and a minimum height of 30 feet 10 inches due to the slight slope of the land. Calculating the height of the building from the average elevations, as noted above, results in a building height of 31 feet 7 inches. As such, a variance is required to exceed the 30 foot height limit. If the building had a gabled roof or peak, the maximum height of the peak could exceed 30 feet as long as the midpoint of the peak was 30 feet or less.

Standards for Approval - Variance

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. The following criteria shall apply:

(a). That the alleged hardships or practical difficulties, or both, are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City.

The lot is located at a corner and is a non-conforming lot for area, subject parcel is 4,401 square feet and the required lot area is 8,500 square feet. The small lot size in combination with the required setbacks for front and rear makes approximately 70% of the parcel unbuildable for a principal structure. The 30 foot maximum height limit is applicable for all new structures constructed in the R4C zoning district.

(b). That the alleged hardships or practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

The variance is being requested for construction of a single-family home and attached garage. The parcel is an original platted lot and application of the required zoning setbacks leaves approximately 30% of the parcel remaining for principal structures. Application of required setback along North Fourth would result in a large setback inconsistent with the surrounding neighborhood. A structure could be constructed that would comply with the maximum height of the R4C district.

(c). That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

The parcel is located on a 'short' block of North Fourth, containing only two other properties adjacent to the north. The requested 10 foot 5 inch setback will be consistent with the house directly adjacent. The majority of houses along Kingsley and Fourth have houses at or near a 10 foot setback. A reduced setback is consistent with the overall neighborhood. While the petitioner is requesting a maximum height 1 foot 7 inches over the maximum height of 30 feet, it will be a flat roof structure. All other houses in the neighborhood have gabled or sloped roofs. Due to the fact that maximum height is measured to the midpoint of the roof for a sloped roof, many of the adjacent roofs actually have roof peaks higher than 31 feet 7 inches. The petitioner has submitted massing elevations (attached) illustrating that the proposed structure will be consistent in height with the adjacent structures.

(d). That the conditions and circumstances on which the variance request is based shall not be a self imposed hardship or practical difficulty.

The total size of the site is not a self imposed hardship; it is an original platted lot. Reducing the building envelope by utilizing the averaged setback for North Fourth will result in a structure placement inconsistent with the surrounding neighborhood. However, a small house could be constructed without the need for any variance.

(e). A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure

The variance, if approved, will permit construction of a single-family house 10 feet from the front property lines along Fourth and Kingsley, which is consistent with adjacent structures. While the proposed maximum height of 31 feet 7 inches for the flat roof would be consistent with adjacent peaked roof structures, a house could be constructed within a 30 foot height limit.

QUESTIONS BY BOARD TO STAFF:

Nichols asked if the peaked roof illustration in the plans was intended as an alternative to the flat roof design.

Kowalski responded, no, that he believed the petitioner wanted to show that they could have a gabled roof design at 40 feet and still meet the height requirement, but with a flat roof the height restriction is 30 feet.

Milshteyn asked if the petitioner could have a full third floor built into a pitched [gabled] roofline that would be much taller than the proposed flat roof.

Kowalski said, yes, they would be able to have habitable space in that area.

PRESENTATION BY PETITIONER:

Bradley Moore, 4844 Jackson Road, Suite 150, Ann Arbor, Petitioner and Architect for the project was present and explained the request and application.

John Hilton, 701 N Fourth Avenue, North Central Area Neighborhood Association, spoke in support of the side yard setback variance and in opposition to the height variance.

Arrival of Wendy Carman.

Lisa Stelter, 3130 Cottontail Court, Ann Arbor, Owner, explained their proposed plans.

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

LIST OF EXHIBITS PRESENTED:

Chair Milshteyn noted that the Board had received the following communications in support of the request:

Andrew O'Neal, President of Kerrytown Shops of Ann Arbor, 407 North Fifth Avenue, Ann Arbor.

Michael Smothers, Elephant Ears, 415 N. Fifth Avenue, in Kerrytown, Ann Arbor

Robert Sparrow, Sparrow Meat Market, in Kerrytown, Ann Arbor

Mary Campbell, Everyday Wines, 407 N. Fifth Avenue, in Kerrytown, Ann Arbor

Phillis Engelberg, The Lunchroom, 407 N. Fifth Avenue, in Kerrytown, Ann Arbor

Susan Diehl, 652 North Fourth Avenue, Ann Arbor

Todd and Sharlina Irwin, 617 North Fourth Avenue, Ann Arbor

Claudia Baker, 651 North Fourth Avenue, Ann Arbor

Mike Monahan, 407 North Fifth Avenue, Ann Arbor

Thomas Richardson, Liberty Title Agency, 111 North Main Street, Ann Arbor

Albert Berriz, GPR McKinley and McKinley Inc., 320 North Main, Ann Arbor

Sharon Hall, POA, and daughter at 209 East Kingsley, Ann Arbor

Deborah Renner, 705 North Fifth Avenue, Ann Arbor

Maria Grupe Bertram, 702 North Fifth Avenue, Ann Arbor

North Central Neighborhood Association, 771 North Fifth Avenue, Ann Arbor, supported the side yard setback variance and opposed the height variance.

BOARD DISCUSSION:

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

Front Yard setback variance:

Motion made by Zielak, Seconded by Nichols, in the Case ZBA14-006; 207 East Kingsley Street, based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals GRANTS a variances from Chapter 55 (Zoning) Section 5:57 (Averaging Existing Front Setback) of 14 feet 6 inches from the required front setback of 24 feet 6 inches, per submitted plans:

a) The alleged practical difficulties are peculiar to the property and result from conditions which do not exist generally throughout the City.

b) That the practical difficulties, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

- c) The variance, if granted, will not significantly affect surrounding properties.
- d) The circumstances of the variance request are not self-imposed.
- e) The variance request is the minimum necessary to achieve reasonable use of the structure.

ROLLCALL

Chair Milshteyn noted for the record that Candice Briere and Wendy Carman had arrived.

REVISED ROLLCALL:

Present: 8 - Candice Briere, Wendy Carman, Alex Milshteyn, Perry Zielak, Ben Carlisle, Sally Petersen, Nickolas Buonodono, and Evan Nichols

Absent: 1 - Heather Lewis

14-0865

ZBA14-006; 207 East Kingsley Street

Brad Moore is requesting 2 variances from Chapter 55 (Zoning) in order to construct a single-family structure:

1. Front yard setback variance (Section 5:57) of 14 feet 6 inches to allow a 10 foot front setback along North Fourth, 24 feet 6 inches required (Averaged Front Setback).
2. Maximum height variance (Section 5:34) of 1 foot 7 inches, to allow a 31 foot, 7 inch high structure; 30 feet is the maximum height permitted in the R4C district.

Vote on Front Yard setback variance:

On a voice vote, the vote was as follows with the Chair declaring the motion carried. Approved 8-0.

Setback Variance Granted.

Yeas: 8 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, Councilmember Petersen, Buonodono, and Nichols

Nays: 0

Absent: 1 - Lewis

Maximum height variance:

Motion made by Zielak, Seconded by Carman, in the Case

ZBA14-006; 207 East Kingsley Street, based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals GRANTS a variances from Chapter 55 (Zoning) Section 5:34 (R4C) of 1 foot 7 inches from the maximum permitted height of 30 feet, in order to permit a flat-roofed structure with a maximum height of 31 feet 7 inches, per submitted plans.

- a) **The alleged practical difficulties are peculiar to the property and result from conditions which do not exist generally throughout the City.**
- b) **That the practical difficulties, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.**
- c) **The variance, if granted, will not significantly affect surrounding properties.**
- d) **The circumstances of the variance request are not self-imposed.**
- e) **The variance request is the minimum necessary to achieve reasonable use of the structure.**

Vote on Maximum height variance:

On a roll call, the vote was as follows with the Chair declaring the motion defeated. Vote: 3-5.

Height variance Denied.

Yeas: 3 - Chair Milshteyn, Zielak, and Councilmember Petersen

Nays: 5 - Briere, Carman, Carlisle, Buonodono, and Nichols

Absent: 1 - Lewis

E-2 [14-0864](#)

**ZBA14-007; 1113 Pontiac Trail
Gary Murphy, is requesting one variance from Chapter 55(Zoning) Section 5:59 (Accessory Buildings), of 2 feet for construction of a detached garage in the side setback; 3 feet is required.**

SUMMARY:

Gary Murphy, property owner, is requesting one variance from Chapter 55 (Zoning) Section 5:59 (Accessory Buildings), of 2 feet for construction of a detached garage in the side setback; 3 feet is required.

DESCRIPTION AND DISCUSSION:

The subject parcel is located at 1113 Pontiac Trail, just north of Long Shore Drive. The parcel is zoned R2A (Two-Family Residential). The single-family house was built in 1920 and is 1,944 square feet in floor area. The house does not have a garage or carport.

The request is discussed in detail below:

The petitioner is proposing to construct a 16 foot wide by 18 foot deep detached single-car garage, narrowing to 12 feet wide at the front. The garage will be 17 feet tall at the roof peak and total 260 square feet. It will be constructed 7 feet from the south rear corner of the house and 1 foot from the south property line. At the closest spot there is 16 feet between the house and the side property line. There is no garage currently on the site.

According to Chapter 55, 5:59, a garage is an accessory building and is permitted within the required side open space: "Accessory buildings may occupy required side open space provided that such buildings are more distant from the street than any part of the principal building on the same lot and any part of the principal building on any lot abutting said required side open space; provided, however, that such accessory buildings are not closer than 3 feet to any lot line."

The proposed garage will be constructed one foot from the side property line, requiring a variance of two feet from the side setback requirement of 3 feet, there will be no overhang of eaves into the 1 foot setback.

Standards for Approval - Variance

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. The following criteria shall apply:

(a). That the alleged hardships or practical difficulties, or both, are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City.

The parcel is 6,600 square feet and 58 feet wide at the front (narrows to 50 feet where garage is proposed) by approximately 132 feet deep. The parcel is a non-conforming R2A lot for both lot width required (60 feet) and lot area required (8,500 square feet). There is a shared driveway that runs along the property line that leads to a small gravel parking area. There is no covered parking area on the parcel. There is also

significant vegetation and a small landscape pond in the rear yard.

(b). That the alleged hardships or practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

The variance is being requested for construction of a detached garage 7 feet from the side of the existing house and 1 foot from the property line. If the variance is not granted, the garage could be constructed at a different location, but may require removal of significant landscaping and/or reduction in total size.

(c). That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

The proposed garage structure will be one foot from the side property line. According to the Michigan Residential Building code the wall running parallel to the property line is required to have a 1 hour fire rating in order to protect adjacent structures. Similar structures exist in the neighborhood, but the side setback distances cannot be verified by staff. The garage will allow vehicles and solid waste containers to be screened from adjacent neighbors. Neighbors directly adjacent to the south have submitted a letter of support for the variance request.

(d). That the conditions and circumstances on which the variance request is based shall not be a self imposed hardship or practical difficulty.

The placement of the existing house, configuration of the lot and the extensive vegetation, limit the area available to construct a garage in the rear yard. The proposed location of the garage is at the end of a shared driveway with the adjacent property. The house has historically been used without the benefit of a carport or covered parking/storage area.

(e). A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.

The requested variance is minimal in area and dimensions however, it would place a structure wall 1 foot from the side property line. The requested size of 16 feet wide by 18 feet deep narrows to 12 feet wide near the front of the garage. This size permits minimal area for covered ingress and egress from a vehicle and storage. In addition, Chapter 55,

Section 5:54(c) does permit certain architectural features such as eaves to project two feet into the required open space. The petitioner is requesting a 2 foot variance from the 3 foot side setback requirement in order to allow placement of the garage walls within the required side setback.

QUESTIONS BY BOARD TO STAFF:

Nichols asked about the fire-rating.

Kowalski said they would be required to use specific drywall material due to the proximity of the proposed structure to the property line, and if another structure were to be constructed on the adjacent parcel; such material would help slow the spread of a fire, if one were to occur.

PRESENTATION BY PETITIONER:

Gary Murphy, 1113 Pontiac Trail, Ann Arbor, owner of the parcel was present and explained the application.

Carman asked if Murphy had a recorded easement to use the shared driveway.

Murphy said, yes, that he owns most of the driveway.

Carman asked how they would maintain the side of the garage facing the neighbor, where there would only be a 1 foot setback.

Murphy said that his neighbor was in full support of his project and he didn't foresee any problems.

Nichols asked if the proposed garage could be moved 2 feet and would then no longer require a variance.

Murphy said that they would then lose a 32 inch diameter walnut tree.

Nichols asked if Murphy had invested in all of the landscaping on the parcel.

Murphy responded, yes, that his landscaping venture began when they lost a massive elm tree.

Carlisle asked about the fence-line location and for safety reasons how would they see when backing in.

Murphy said it would essentially be the same way as currently, and

would not be a problem. Plans were reviewed by the Board.

Petersen asked how the shared driveway is used.

Murphy reviewed the aerial layout of the parcels showing the driveway and turning areas.

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

LIST OF EXHIBITS PRESENTED:

Chair Milshteyn noted that the Board had received the following communications in support of the request:

Jeff Kupperman & Susanna Hapgood, 1205 Pontiac Trail, Ann Arbor

Chris Fraleigh, 1113 Pontiac Trail, Ann Arbor

BOARD DISCUSSION:

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

Carlisle asked Murphy about the possibility of moving the garage further away from the fence or further into the rearyard.

Murphy responded that it would be less than optimal and place the garage too close to his house and into his small rearyard.

Briere asked if there was a minimum distance that needed to be maintained between the house and garage.

Kowalski said not per the zoning code, but per building code.

Petersen asked what the proposed distance the garage would be from the house.

Kowalski said the current proposed distance is 7 feet and if they were to move it closer, it would be 5 feet, depending on the angle.

Motion made by Zielak, Seconded by Briere, in the Case ZBA14-007; 207 East Kingsley Street, based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS a variance from Chapter 55, Section 5:59 (Accessory Buildings) of 2 feet from the required side setback of 3 feet, in order to permit construction of a detached garage 1 foot from the side property line, per submitted plans:

- a) The alleged practical difficulties are peculiar to the property and result from conditions which do not exist generally throughout the City.
- b) That the practical difficulties, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.
- c) The variance, if granted, will not significantly affect surrounding properties.
- d) The circumstances of the variance request are not self-imposed.
- e) The variance request is the minimum necessary to achieve reasonable use of the structure.

On a roll call, the vote was as follows with the Chair declaring the motion carried. Approved: 7-1. Variance Granted.

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

Nays: 1 - Nichols

Absent: 1 - Lewis

F **UNFINISHED BUSINESS**

G **NEW BUSINESS**

H **REPORTS AND COMMUNICATIONS**

14-0880 Various Correspondences to the ZBA - June 2014

Carlisle asked if the averaging of the setback could be added to the amendments to the zoning ordinance for consideration, since it seemed that it never worked for applying for variances that come before the ZBA, He asked if the Board could propose changes, such as having at least 4 houses to have an average, not the 1-3 houses or 100 feet. He added that he didn't see the practicality of just having 1-3 houses included for the averaging and changing the code would eliminate many setback variance requests.

Kowalski said that he would like to have more discussion and direction from the Zoning Board of Appeals on the subject and suggested bringing the item back as a discussion item on next month's agenda.

The Board agreed.

Received and Filed

I PUBLIC COMMENTARY - (3 Minutes per Speaker)

J ADJOURNMENT

A motion was made by Zielak, seconded by Briere, that the Meeting be Adjourned at 7:10 p.m. On a voice vote, the Chair declared the motion carried.

Community Television Network Channel 16 live televised public meetings are also available to watch live online from CTN's website, www.a2gov.org/ctn, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>).

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- *Video on Demand: Replay public meetings at your convenience online at www.a2gov.org/government/city_administration/communicationsoffice/ctn/Pages/VideoOnDemand.aspx*
- *Cable: Watch CTN Channel 16 public meeting programming via Comcast Cable channel 16.*

The complete record of this meeting is available in video format at www.a2gov.org/ctn, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>), or is available for a nominal fee by contacting CTN at (734) 794-6150.

*Alex Milshteyn
Chairperson of the Zoning Board of Appeals*

*Mia Gale
Recording Secretary*