



**APPROVED MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
April 28, 2010**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, April 28, 2010 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, A2, MI

The meeting was called to order at 6:00 p.m. by Chairperson Carol Kuhnke

ROLL CALL

Members Present: (9) J. Carlberg, C. Briere, K. Loomis
C. Kuhnke, A. Pilat, D. Tope, S. Briere (arr. 6:05), D.
Gregorka (arr. 6:10) and W. Carman (arr. 6:25).

Members Absent: (0)

Staff Present: (1) M. Kowalski

A – APPROVAL OF AGENDA

A-1 Request to postpone the April Organizational Meeting.

C. Kuhnke - The April Organizational meeting was originally postponed to the May 2010 meeting, but we currently don't have any petitions for the month of May. The question is, do we hold the May meeting solely for the purpose of having the yearly Organizational meeting or do we postpone it to the next Regular Session in which there will be an active petition?

Moved by D. Tope, Seconded by K. Loomis ***"To move the April 2010 Organizational Meeting to the next regularly scheduled meeting of the board in which an active petition is to be heard."***

On a VOICE VOTE – MOTION TO POSTPONE – PASSED – UNANIMOUSLY

Agenda **Item D-1** – Objected to the Agenda as shown by D. Tope (Item D-1 as listed on the Agenda follows). She asked the Chair to entertain a motion to object to this item.

OLD BUSINESS

D-1 ZBA10-001 – 509 N. Ashley Street

*David Crouse is requesting one variance from **Chapter 55 (Zoning) Section 5:28**, of 2 feet 6 inches for expansion of an existing residential structure into the side setback (5 feet is required by Code.)*

C. Kuhnke – You're objecting to this item appearing on the agenda, regardless of the possible discussion that may take place when we reach this item? (D. Tope – Yes).

C. Kuhnke stated that board member Tope was free to voice her objection to the Agenda item and/or make a motion in regard to that item and that discussion would be allowed after that statement.

D. Tope – Made the following statement:

53 *“In regard to Agenda Item D-1, I have reviewed all of the paperwork that was submitted for this*
 54 *item at the March 24th, 2010 meeting. Based on public policy, the rules and regulations of the*
 55 *ZBA and government mandate, that this item is exactly the same as what was submitted at the*
 56 *March 24, 2010 Regular Session.*

57

58 *A public notice was properly noticed and published and a public hearing was held. It was the*
 59 *only item of business on March 24, 2010. The petition was discussed on the record and the*
 60 *petition was dismissed at that meeting per the rules governing the ZBA. The rules governing*
 61 *dismissed petitions were discussed at that time. A dismissed petition can only be re-heard*
 62 *four months after it was originally dismissed. It is now on the agenda for a re-hearing. Re-*
 63 *hearings are covered under our Zoning Ordinance, Section 5:99(3) (‘An Application for a re-*
 64 *hearing shall be made in the same manner as an original hearing’). The dismissed petitioners*
 65 *email entreaty does not meet that standard.’*

66

67 *I understand the Chair’s determination that the Chair sets the Agenda; however, it’s my opinion*
 68 *that the Agenda setting responsibilities do not include changing state mandated ZBA*
 69 *regulations without proper notice, hearing and action at a properly convened ZBA meeting and*
 70 *that pursuant to the Open Meetings Act, for the ZBA, all discussion of a ZBA matter involving a*
 71 *majority of ZBA members must occur only at a properly noticed public hearing. The issue of a*
 72 *re-hearing for the dismissed petition as an old business agenda item at this meeting has not*
 73 *occurred in this state mandated manner.*

74

75 **MOTION**

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77 *“Moved by D. Tope, Seconded by J. Carlberg, **“That Agenda Item D-1, placed on the***
 78 ***Agenda as “Old Business” be removed from the Agenda.”***

79

80 C. Kuhnke – Discussion?

81

82 J. Carlberg – I was looking through the documents that would indicate what the procedure was
 83 for the ZBA, and the only thing I find is that we have no By-Laws, we have only Rules – so the
 84 Rules in effect become the By-Laws. It would seem that from Roberts Rules of Order that you
 85 cannot suspend By-Laws unless you’ve made a provision within the By-Laws to do that.

86

87 As much as I find the particular rule not helpful for doing business in an orderly way, I think
 88 we’re stuck with needing to amend our own rules in the way called for within those rules which
 89 is to amend those at one meeting and to vote on it at the next meeting, so that is why I support
 90 the motion.

91

92 K. Loomis (To J. Carlberg) – Can you read the portion of Roberts Rules that state that we can’t
 93 suspend our internal rules?

94

95 D. Tope – While Jean is looking for that, I would only comment that no matter what the rule is
 96 for suspending our own rules (which we can do), that can only happen at a properly noticed
 97 public hearing.

98

99 C. Kuhnke – The only action taken is that has been taken is with respect to the agenda. It is
 100 within my authority as the Chair to place this on the Agenda for discussion of what we may do
 101 with it. There was notice given to the public so that we may be free to act on the appeal itself
 102 or take some other action, but notice has been given to the public that we are considering 509
 103 North Ashley. (D. Tope) But it’s a re-hearing.

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105 C. Kuhnke – We haven’t gotten to that point yet.

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J. Carlberg – On page 17 of the 1990 Edition of Roberts Rules, it states “....Rules placed within the by-laws can also be suspended by a two-thirds vote; but, by-laws cannot be suspended unless provided for within the by-laws.”

C. Kuhnke – Asked for clarification.

(More discussion amongst the Board on the rules of the ZBA and Roberts Rules of Order).

C. Kuhnke – Asked if there was further discussion regarding the motion to remove 509 North Ashley from the Agenda.

K. Loomis – It was my understanding that we would be discussing later in the meeting under old business whether we wanted to suspend our rules and go from there, but given Jean’s reference to the rules that that is not a possibility, unless I hear another argument that changes that, I would have to support it although I’m not particularly inclined to do so.

S. Briere – Would like the City Attorney to make a decision on this.

D. Gregorka – I was assuming that we had already had a staff reading of the rules or the attorney’s office when this packet came out, so I was expecting to have an interpretation. Without that, I’m inclined to support the motion. (Motion and vote are repeated here for information).

MOTION

“Moved by D. Tope, Seconded by J. Carlberg, “That Agenda Item D-1, placed on the Agenda as “Old Business” be removed from the Agenda.”

On a VOICE VOTE – MOTION TO REMOVE ITEM D-1 – PASSED – 7 YEA, 1 NAY
YEA (7) - J. Carlberg, C. Briere, K. Loomis, A. Pilat, D. Tope, D. Gregorka & S. Briere
NAY (1) – C. Kuhnke

B - APPROVAL OF MINUTES

B-1 Draft Minutes of the 2010-01-27 Regular Session *(Moved in the agenda following C-2).*

C - APPEALS & ACTION

C-1 ZBA10-003 – 310 Second Street
(THIS ITEM WAS REMOVED FROM AGENDA PRIOR TO THE MEETING)

C-2 ZBA10-002 – 3555 Washtenaw Avenue

Mark Yaldo is requesting two variances from Chapter 55 (Zoning) Section 5:46 (C3-Fringe Commercial)

Variance #1 - A variance of 12 feet 7 inches for construction of a canopy structure into the required front setback (30 feet is required by Code).

Variance #2 - A variance of 4 feet 6 inches for construction of a canopy structure into the required rear setback. (20 feet is required by Code).

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Description and Discussion

The subject parcel is located on Washtenaw Ave, adjacent to Arborland Mall, just west of US-23. The parcel is zoned C3 (Fringe Commercial District) and is currently vacant. It has been recently used as a gas station and small convenience store. A total of three gasoline pumps exist on the site, two of the pumps are covered by a 24 foot by 34 foot canopy. The existing canopy is non-conforming and is located 4 feet from the front property line.

The petitioner has submitted an Administrative Amendment in order upgrade the existing building and reconfigure and relocate the existing gas pumps and canopy. The new canopy will be 17 feet 5 inches from the front property line, more conforming than the existing canopy (4 foot existing setback as was approved from a previous variance approval); however the new canopy will still encroach 22 feet 7 inches into the required front setback of 40 feet. Due to the reorganization of the gas pumps, the proposed canopy will be 76 feet long by 22 feet wide and connect with the existing building in the center of the site. In addition, the new canopy will also encroach 4 feet 6 inches into the required rear setback of 20 feet. This canopy will not increase impervious surface on the site.

Questions to Staff by the Board

D. Gregorka (To M. Kowalski) – So if you look at the existing canopy, it's in the front setback, so essentially we're getting a bigger canopy but the bulk of its more within the setback. (Yes.)

Questions to the Petitioner by the Board

Mr. Chester Stampien, architect for the project reiterated on the information outlined in the staff report. He stated that the renovations taking place on the building itself coupled with this request, if granted, will improve the site as a whole.

J. Carlberg – Asked about site lighting within the canopy. (Petitioner – LED lighting which will be shielded.) What is the canopy height? (16 ft., lights are recessed into the canopy which meets with the city requirement for lumens).

S. Briere – I'm familiar with the current traffic flow to this site, can you describe how the traffic will flow through after these changes?

Petitioner – You will be directed to chose to go onto Washtenaw Avenue or head into the Arborland parking lot.

(Further discussion between the Board and Petitioner regarding traffic flow).

D. Tope – You stated that the lighting in the canopy would be flush, but the canopy would be 16 feet above grade, so the traffic on Washtenaw would be affected in their direct line of vision? When it is raining, this is especially problematic. (Petitioner – The canopy is inset and the lights are not as bright, which will prevent that).

D. Gregorka – The lighting meets all the city standards. Has the city looked at that for standards? (No, it hasn't been looked at as there is no adjoining residential so there are no standards).

Petitioner – Some cities have a 'foot candle' requirement.

211 D. Gregorka – To support this, I would want to be certain that the ‘wash’ of light onto
 212 Washtenaw Avenue is consistent with residential standards. (The Petitioner stated that they
 213 had submitted a lumens report). We could include that in the motion.
 214

215 C. Kuhnke – So you’re saying that although there is no light requirement here, we should
 216 impose a residential lighting standard in a non-residential area? (D. Gregorka – No, that would
 217 be what I would require in order to support this).
 218

219 J. Carlberg – I think we need additional information for what that means for visibility and
 220 sidewalk. Having zero foot candles at the edge of your lot can mean pretty dark conditions as I
 221 don’t know where the streetlights are along there, so I would want additional information. I
 222 don’t know how reasonable that is in a retail area.
 223

224 K. Loomis – I agree that without additional information I couldn’t support requiring a residential
 225 standard in this area. I don’t think that it’s appropriate in this case.
 226

227 *(Further discussion between the Board and Petitioner regarding lighting).*
 228

229 S. Briere – If the canopy area in that area had the ‘lip’ lifted, would that satisfy my colleagues?
 230 I’m certainly willing to err on the side of caution.
 231

232 D. Gregorka – (To Petitioner) – You stated that you submitted a lumens plan? (Yes, and it
 233 passed all city standards).
 234

235 *The Board recessed for five minutes to allow staff to retrieve the lumens plan. (6:38 p.m.)*
 236

237 *Board returned from recess at 6:41 p.m.*
 238

239 *M. Kowalski – This is the photometric plan from the Administrative Amendment.*
 240

241 C. Kuhnke – While the Board reviews these, were there any further statements from the
 242 Petitioners? (No).
 243

244 **Public Comment** - None.
 245

246 **Discussion by the Board**

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 248 D. Tope – Having reviewed the photometric plan, I’m satisfied that my concern has no merit.
 249

250 **MOTION**

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 252 Moved by D. Gregorka, Seconded by S. Briere, **“In the case of ZBA10-002, 3555**
 253 **Washtenaw Avenue, the Zoning Board of Appeals grants the following variances:**
 254

255 **Variance #1** - A variance of 12 feet 7 inches for construction of a canopy structure into
 256 the required front setback (30 feet is required by Code) per attached
 257 plans.
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259 **Variance #2** - A variance of 4 feet 6 inches for construction of a canopy structure into
 260 the required rear setback. (20 feet is required by Code) per the attached
 261 plans and the following finding of fact:
 262

- 263 a. There is less canopy encroaching into the setbacks under this plan than in the
 264 current situation;
 265 b. Given the nature of the surrounding property which is all commercial, there is
 266 no adverse impact on the surrounding properties;
 267 c. The current plan is less intrusive than the older plan;
 268 d. The site is limited in size and there is a hardship in terms of meeting the new
 269 standards for canopies
 270 e. This is very similar with other gas stations in the area and would be a hardship
 271 on the owners not to grant this variance; and,
 272 f. Further, this is consistent with U.S. EPA guidelines for gas stations with
 273 coverings.”

274
 275 **On a VOICE VOTE – MOTION TO APPROVE – PASSED - UNANIMOUS**

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 277 **ITEM B – APPROVAL OF MINUTES – Moved to this point of the agenda:**

278
 279 **B-1** Draft Minutes of the 2010-01-27 Regular Session

280
 281 **MOTION**

282
 283 Moved by J. Carlberg, Seconded by D. Gregorka, “**To Approve the January 27, 2010**
 284 **Regular Session Minutes as presented.**”

285
 286 **On a VOICE VOTE – MOTION TO APPROVE – PASSED - UNANIMOUS**

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 289 **D. OLD BUSINESS**

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 291 **D-1 ZBA10-001 – 509 N. Ashley Street**
 292 *(THIS ITEM WAS REMOVED FROM THE AGENDA PER AMENDED ACTION)*

293
 294 **E. NEW BUSINESS**

295
 296 **E-1** Discussion by the Board on proceeding with proposed changes to the Rules of
 297 the ZBA.

298
 299 J. Carlberg stated that she wasn't on the Board when the rule of waiting for four months to
 300 have a re-hearing on a petition was put in place, but proposed that next month the Board get
 301 an opportunity to suspend that rule and then amend the normal rules through the regular
 302 process.

303
 304 C. Kuhnke – That is something that we normally propose at the Organizational Meeting. We
 305 don't have a Regular Meeting scheduled for May, so this would have to wait until the next
 306 active meeting.

307
 308 W. Carman – I would say that we wouldn't be able to do an amendment without the
 309 Organizational Meeting.

310 J. Carlberg – I think that you can amend those at any time. (J. Carlberg has agreed to draft
 311 an amendment to that particular rule in the ZBA rules for consideration at the next meeting.)

312
 313 K. Loomis – Did we want to get an interpretation from the Attorney's office about suspending
 314 our rules?
 315

316 D. Gregorka – Yes – Ask them what procedure we use to suspend a rule – what the timing is,
317 whether it needs to be noticed, etc.

318
319 D. Tope – That would be something that Jean could put into her amendment.
320

321 J. Carlberg – The rules have a procedure for amendment.
322

323 C. Kuhnke – So, we need an opinion from the Attorney’s office about what procedure we use
324 in the future.

325
326 *(Further discussion on this subject).*
327

328 S. Briere – Asked if the Board if they would like her to make this request to the City Attorney’s
329 office? (The Board stated “Yes”)

330
331 Other Business –
332

333 W. Carman – Mentioned that she had been appointed to the ZORO committee, but that she
334 has not be included in any meetings? (M. Kowalski stated that the committee is moving
335 forward but not having committee meetings as such right now. Nothing has taken place that
336 has not included Ms. Carman).

337
338 **F. REPORTS & COMMUNICATIONS – None.**
339

340 **AUDIENCE PARTICIPATION – GENERAL – None.**
341

342 **ADJOURNMENT**

343
344 Moved by D. Tope, Seconded by C. Briere, **“that the meeting be adjourned.”**
345

346 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**
347

348 Adjournment - 6:55 p.m. **(Submitted by: Brenda Acquaviva, Administrative Support**
349 **Specialist V – Zoning Board of Appeals)**

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352 _____
353 Carol Kuhnke, Chairperson

7-28-10

Dated ZBA Minutes