



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, November 19, 2014

6:00 PM

City Hall, 301 E. Huron Street,
Basement Conference Rooms

A CALL TO ORDER

Chair Milshteyn called the meeting to order at 6:03 p.m.

B ROLL CALL

Chair Milshteyn called the roll.

Present: 6 - Candice Briere, Alex Milshteyn, Ben Carlisle, Nickolas Buonodono, Evan Nichols, and David DeVarti

Absent: 2 - Perry Zielak, and Heather Lewis

C APPROVAL OF AGENDA

Chair Milshteyn noted that a submitted ZBA application for 3600 Plymouth Road had been advertised for tonight's agenda but had been postponed, and since the public hearing had been noticed, the Board would hold the hearing.

The agenda was unanimously approved with the 3600 Plymouth Rd Public Hearing being added as agenda Item E-1 with listed hearings to follow. On a voice vote, the Chair declared the motion carried.

D APPROVAL OF MINUTES

[14-1655](#) September 24, 2014 ZBA Minutes with Live Links

Milshteyn noted that the meeting start time was 6:01 p.m.

The Minutes were unanimously Approved by the Board and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.

E APPEALS AND HEARINGS

E-1 ZBA14-012; 3600 Plymouth Road

PUBLIC HEARING:

Chair Milshteyn opened the public hearing for 3600 Plymouth Road.

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

ROLL CALL

Arrival of Zielak at 6:13 p.m.

Present: 7 - Candice Briere, Alex Milshteyn, Perry Zielak, Ben Carlisle, Nickolas Buonodono, Evan Nichols, and David DeVarti

Absent: 1 - Heather Lewis

E-2 14-1656

ZBA14-013; 436 Third Street

Ed Smith is requesting Permission to Alter a Non-Conforming Structure and 1 variance in order to modify the existing non-conforming structure in order to add two residential units to the rear structure for a total of four units in two structures on the site:

- 1) Off-Street Parking variance (Chapter 59, Section 5:167) of 5 spaces; 6 spaces are required; one space is provided on site.

Matt Kowalski presented the following staff report:

DESCRIPTION AND DISCUSSION:

The subject parcel is located in the Old West Side Historic District at 436 Third Street, north of Jefferson. The parcel is zoned R4C (Multiple-Family Residential District). There are two primary structures located on the parcel, a 3,200 square foot residential structure containing four rental units in the front and a 3,600 square foot commercial industrial structure used as a workshop in the rear. The residential structure was built in 1869 as a single-family house. The majority of the commercial structure in the rear was constructed as a carriage house with a cinder block addition constructed in approximately 1940. It has been in continuous use as commercial/industrial use since that time.

The residential structure in the front is proposed to be converted from 4 units to a duplex at this time. The petitioner has stated the ultimate plan is to convert the structure to a single-family house, as originally constructed. The rear commercial structure is proposed to be converted from the existing non-residential use to a residential use as a duplex. There is only one legal parking space located on the site. Existing tenants park on the street or 'stack' cars in the drive. After completion of

proposed construction, there will be four residential units on the site; currently there are 5 units on the site, one commercial unit and four residential units. There will be 6 parking spaces required for four residential units on the site. The petitioner is requesting a variance from Chapter 59(off-street parking) for 5 of the required parking spaces.

There is no new building floor area proposed, the footprints of the existing buildings will not change. All modifications will involve the reconfiguration of interior floor spaces. The rear building is currently non-conforming for side and rear setbacks and also exceeds the minimum 35% maximum coverage for buildings in the rear open space.

The petitioner is required to have Historic District Commission(HDC) approval prior to proceeding with modifications to the existing structure. The petition is scheduled for the November 13 HDC meeting. A summary of HDC action will be provided at the November 19 ZBA meeting.

Permission to Alter a Non-Conforming Structure

Standards for Approval

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:

(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 petitioner is asking to modify an existing non-conforming structure located in the rear of the parcel. The existing use of this structure as a workshop and commercial is a non-conforming use in the R4C District. After construction, the structure will be used as a two-family home (duplex). There are currently five units on the site; four units of residential in the front structure and one unit of commercial in the rear structure. The footprint of all existing structures will not be expanded; no part of any structures will be built closer to the property line than currently existing. Conversion of the rear building to residential will bring the use of the structure into conformance, however the building will remaining non-conforming for side and rear setbacks. After the proposed modifications, the parcel will contain a total of four residential units, same as current residential number. The petitioner has indicated that in the future they would like to reduce the number of units to a total of three with the front structure being converted from a duplex to an owner-occupied single-family home. The conversion to all residential

use will be more consistent with surrounding residential uses. The adjacent property to the west is an eight unit apartment building with other multiple-family uses located in the adjacent neighborhood.

The conversion of uses and planned modifications will allow the petitioner to improve their property while respecting the intent of the Zoning Ordinance. Staff does not feel that the requested alterations would negatively affect any surrounding property.

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 parcel currently contains five units; four units of residential in the front and one unit of commercial in the rear structure. The petitioner is proposing to eliminate the commercial workshop and convert the rear structure to two units of residential and convert the front structure from 4 residential units to two, and possibly one in the future. After modifications there will be the same number of residential units (four) on the site that exist currently and no commercial workshop.

Parking code requires a minimum of 1.5 parking spaces per unit for a total of 6. There is currently only one legal space provided on the site, however as many as three cars could fit in the drive in a 'stacked' configuration. This does not meet code requirements because all of the cars cannot be moved without moving the remaining cars in the drive. The existing drive was primarily used for parking and loading/unloading for the commercial workshop in the rear building. There is public parking available on-street and this is currently where the residential tenants park their cars. All current and future tenants will be aware of the parking situation and will have to plan accordingly. The site is in close proximity to downtown and easily accessible by walking or biking. The petitioner will construct four bicycle lockers in the backyard to encourage

non-motorized transportation.

QUESTIONS BY BOARD TO STAFF:

Milshteyn asked if the petitioner could convert the back and sides and not the front structure.

Kowalski said yes, since the front is a conforming structure, but they wouldn't be able to keep the existing 4 units in the front and create a duplex in the rear structure.

Carlisle asked about the parking requirement; if it is currently greater than what would be required if the variance is granted.

Kowalski said, yes, they currently need 6 parking spaces.

Nichols asked what would be the change in occupancy.

Kowalski said currently the front building is certified for 14 occupants, and with 4 units, the zoning allows 6 occupants per unit; however, the housing code restricts occupants as well based on square footage. He noted that the more restrictive code would be applicable. He deferred to the petitioner as to the proposed occupancy.

PRESENTATION BY PETITIONER:

Damian Farrell Design Group, 359 Metty Drive 4A, Ann Arbor, Architect for the project, was present and explained the application. He said they propose to soften the use of the site to have the front duplex unit owner occupied on the one side and the other as a 1-unit rental with the rear structure as a duplex rented. He said currently they have 4 bedrooms and 1 studio, and propose to go to 8 bedrooms in total.

DeVarti asked about the bedroom count, commenting that the petitioner is essentially doubling the bedroom count.

Ed Smith, co-owner, 436 Third Street, Ann Arbor, was also present to respond to questions.

Milshteyn asked about the plan for working on the structures.

Smith said, if approved, their plan is to begin construction on the rear building in February and in June or July they would begin working on the front building.

PUBLIC HEARING:

Ethel Potts, 1014 Elder Blvd, Ann Arbor, asked if the R4C zoning district has a minimum open space requirement, and if this lot met that requirement.

Jonathan Lurie, 437 Fourth Street, Ann Arbor, said he lives behind the site and his garage is also used for commercial purposes, and having residential use on the neighboring parcel only 3 feet from his garage would cause problems for him to work in his garage. He said the 436 Third Street rear structure has been used for commercial use for as long as he has resided as neighbor, which is 22 years. He said he also has concerns with the limited available parking in the neighborhood, noting that there is currently not enough off-street parking. He said the proposed dormer will be overlooking his backyard, and he enjoys the open space and lot sizes of the neighborhood and doesn't want to see a window overlooking his backyard area.

Ethel Potts commented that she hoped the Board was using the old regular Zoning code and not ZORO as ZORO contains changes.

Noting no further 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 and opposition to the request;

*Chris LeMessurier, 443 Third Street, Ann Arbor; Support
Jim Cantrell, 431 Fourth Street, Ann Arbor; Opposed
Karen Wallis, 430 Third Street, Ann Arbor; Opposed
Maureen Jenkins, 427 Third Street, Ann Arbor; Opposed
Dan Rubenstein, 429 Third Street, Ann Arbor; Opposed*

BOARD DISCUSSION:

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

DeVarti said he supports the change in use from commercial to residential but felt that they should find a way to meet the parking requirement since parking was limited in the neighborhood.

Carlisle asked the petitioner if they had looked at finding alternative parking arrangements in the neighborhood.

Smith said to their knowledge there are no alternatives, but they had

spoken with the Historic District Commission about the possibility of converting the rear structure to include several parking garages which he said was a non-starter.

Milshteyn said he lives a block away so he knows the limited available parking in this area and given that there is no grocery store in the downtown and that people living downtown decide to keep a vehicle adds to the parking problems in this area.

Zielak asked about the parking permits in this district.

Kowalski said this site would be entitled to 5 parking permits, but those permits do not guarantee the holders a parking place.

DeVarti said his fear was that there could be 6 cars on the street just from the occupants in the rear structure.

Carlisle asked the petitioner if they had considered reconfiguring the bedroom sizes to make them larger and fewer and thereby lowering the parking needs.

Smith responded that the proposed units are large and intended for families and their intent is not to have a lot of people coming and going in these units.

DeVarti said given the bedroom sizes he believed the housing code could potentially allow up to 3 people in the large bedrooms. He said the petitioner could currently fit 3 vehicles on site without permission.

Kowalski said, the site currently only allows for 1 legal vehicle parking, noting that if additional vehicles might fit, they would be considered illegal parking. He said the petitioner would need other variances to allow for additional parking.

Moved by Zielak, seconded by Briere, in Petition ZBA14-013; Third Street, Permission to Alter a Non-conforming Structure, Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS Permission to alter a non-conforming structure, and off-street parking variance (Chapter 59, Section 5:167) of 5 parking spaces when the current requirement is 6 spaces, per submitted plans:

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.

On a roll call, the vote was as follows with the Chair declaring the motion defeated. Denied: 4-3 (5 affirmative votes required for approval)

Permission to Alter a Non-conforming Structure Denied.

Yeas: 4 - Briere, Chair Milshteyn, Zielak, and Carlisle

Nays: 3 - Buonodono, Nichols, and DeVarti

Absent: 1 - Lewis

Moved by Zielak, seconded by DeVarti, in Petition ZBA14-013; Third Street, Chapter 59 Variance: Off-street parking variance (Chapter 59, Section 5:167) of 5 parking spaces when the current requirement is 6 spaces, per submitted plans;

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.

a) The variance requested is in harmony with the general purpose and intent of the requirements of this Chapter.

On a roll call, the vote was as follows with the Chair declaring the motion defeated. Denied: 7-0

Variance Denied.

Yeas: 0

Nays: 7 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, Nichols, and DeVarti

Absent: 1 - Lewis

E-3 [14-1657](#)

ZBA14-014; 1230 Olivia Avenue
Charles Braham, is requesting one variance from Chapter 55 (Zoning) Section 5:59 (Accessory Buildings), of 2 feet 6 inches for construction of a detached garage in the side setback; 3 feet is required.

Matt Kowalski presented the following staff report:

DESCRIPTION AND DISCUSSION:

The subject parcel is located at 1230 Olivia, south of Wells and north of Granger. The parcel is zoned R2A (Two-Family Residential District). The house was built in 1925 and had a covered, but not enclosed, structure in the rear yard with a solid wall adjacent to the property line. That structure was located 6 inches from the property line at the closest point and was recently demolished. The applicant would like to build an enclosed structure while utilizing the existing footings from the previous structure. There is no driveway serving the rear yard. There is a single-car drive that ends at the front of the house. There is less than 8 feet from the house to the property line, 10 feet is required for a driveway. The petitioner is not planning on using the structure as a vehicle garage, only for storage.

The petitioner is proposing to construct a 394 square foot enclosed accessory building. The structure will be 12 feet tall (measured to the midpoint of the roof pitch) and will measure 16 feet by 24 feet 8 inches. According to Chapter 55, 5:59, an accessory building is not permitted within 3 feet of the side property line, reusing the existing footings would place the new structure 6 inches from the side property line. There is no structure directly adjacent on the neighboring property.

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 subject parcel is 6,403 sq ft and is 50 feet wide by approximately 127 feet deep. The lot is a non-conforming R2A lot for both lot width required (60 feet) and lot area required (8,500 square feet).

(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 accessory building on top of existing footings from a carport structure. If the variance is not granted, the structure could not be constructed at the proposed location and would need to be moved 2 feet 6 inches over or reduced in width in order to comply with the 3 foot required setback.

(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 structure will place a wall six inches from the side property line. The previous carport structure also had a wall at this same location. The house on the adjacent property is not located next to the proposed structure and expansion in this area is unlikely given the required setbacks and width of the lot. The visual impact to the surrounding properties will be similar to the previous structure, but will significant aesthetic upgrade. The petitioner has submitted two letters of support from surrounding neighbors.

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

The petitioner would like to re-use the foundation and footings from the recently demolished structure. It is unclear when that structure was constructed, but it is visible in the 1947 aerial photo and was constructed prior to zoning setback standards. The foundation could be removed or altered in order to comply with the required 3 foot setback.

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

The petitioner would like to construct a new enclosed accessory building in the same location as a partially enclosed structure that was constructed before zoning standards were enacted. The proposed structure is 394 square feet, located entirely in the rear yard and should have minimal visual impact to the neighborhood. 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 6 inch variance from the three foot side setback requirement in order to allow placement of a wall and roof within the required setback.

QUESTIONS BY BOARD TO STAFF:

None

PRESENTATION BY PETITIONER:

Charles Braham and Michelle Adams, 1230 Olivia Avenue, were available to respond to the Board's enquiries and explain the application.

PUBLIC HEARING:

Noting no further 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 to the request;

*Jack Fishstrom, 1313 S. Forest Avenue, Ann Arbor; Support
Karen Svendsen, 1302 Olivia Avenue, Ann Arbor; Support
John and Jen Teeter, 1231 Olivia Avenue, Ann Arbor; Support
David Klein, 1228 Olivia Avenue, Ann Arbor; Support
Pat Taft, 1306 Olivia Avenue, Ann Arbor; Support*

BOARD DISCUSSION:

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

Moved by Zielak, seconded by Nichols in Petition ZBA14-014; 1230 Olivia, 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 6 inches from the required 3 foot side setback, 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: 7-0
Setback Variance Granted.**

Yeas: 7 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, Nichols, and DeVarti

Nays: 0

Absent: 1 - Lewis

E-4 **14-1658**

ZBA14-015; 1600 Brooklyn Avenue

Carl O. Hueter is requesting permission to alter a non-conforming structure in order to expand the non-conforming structure by constructing a second floor addition over an existing structure which is located 2 feet 6 inches from the side property line; property line; required setback is 5 feet.

Matt Kowalski presented the following staff report:

DESCRIPTION AND DISCUSSION:

The subject parcel is located at 1600 Brooklyn, on the corner of Brooklyn and Baldwin. The parcel is zoned R1C (Single-Family Residential District). The single-family house was built in 1922 and is 1,860 square feet. The house is non-conforming for front (Baldwin) and side setbacks; two parking space exist on the site and one space is required. The existing house has a second story which extends over the majority of the house except for a 12 foot by 15 foot covered rear porch. The existing covered porch encroaches 2 feet 6 inches into the required side setback of 5 feet. It is unknown when the covered porch was constructed, it is not visible in the 1947 aerials, but does appear in the 1966 aerial photo of the property. There were no Building permits found.

The petitioner is proposing to extend the second story over the covered rear porch with an addition containing 225 square feet for a total floor area of 2,085 square feet. There will be no expansion of the existing footprint of the house; the proposed addition will not extend any closer to the property lines than the existing house. The interior of the house will be re-configured to include a Master Bedroom in the proposed addition. The maximum occupancy of the house is 4 unrelated people and will not be increased if the addition is constructed.

Standards for Approval

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:

(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 petitioner is asking to modify an existing non-conforming structure. After construction, the structure will continue to be used as a single-family home and is generally consistent in size and placement with other surrounding structures. The footprint of the existing house will not be expanded; no part of the structure will be built closer to the property line than currently existing. An existing single-story addition 2 ½ feet from the property line will become a two story structure and this will match the roof lines and height of the existing house. Staff considers this request to be minimal in context of the surrounding land uses. 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 alteration would negatively affect any surrounding property. A letter of support from an adjacent neighbor has been submitted.

QUESTIONS BY BOARD TO STAFF:

Nichols asked if the slight overhang would necessitate a variance.

Kowalski said no.

PRESENTATION BY PETITIONER:

Carl Hueter, 1321 Franklin Blvd. Ann Arbor, Architect for the application was present to respond to the Board's enquiries.

PUBLIC HEARING:

Noting no further 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 to the request;

David Grand, 1604 Brooklyn Avenue, Ann Arbor; support

BOARD DISCUSSION:

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

Moved by Zielak, seconded Briere, by in Petition ZBA14-015; 1600 Brooklyn Avenue, Permission to alter a nonconforming structure; Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS permission to alter a non-conforming structure, per submitted plans:

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.

On a roll call, the vote was as follows with the Chair declaring the motion carried. Approved: 7-0

Permission to Alter a Non-conforming Structure Granted.

Yeas: 7 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, Nichols, and DeVarti

Nays: 0

Absent: 1 - Lewis

E-5 **14-1659**

ZBA14-016; 215 Beakes Street

David Esau is requesting 4 variances from Chapter 55 (Zoning) Section 5:34 (R4C) in order to re-construct and existing non-conforming structure. Structure will be a single-family dwelling upon completion.

- 1) Front yard setback variance of 25 feet to allow a 0 foot front setback along Beakes.
- 2) Side yard setback (east) variance of 1 foot to allow a 4 foot side setback.
- 3) Side yard setback (west) variance of 5 feet to allow a 0 foot side setback.
- 4) Rear yard setback variance of 27 feet to allow a 3 foot side setback.

Matt Kowalski presented the following staff report:

DESCRIPTION AND DISCUSSION:

The subject 3,680-square foot building is located at 215 Beakes Street and is zoned R4C (Multiple-Family Residential). The subject parcel is nonconforming for lot area, subject parcel is 4,227 square feet and the minimum conforming parcel size for R4C is 8,500 square feet. The building was built in approximately 1930 and is currently used for storage. It was recently operated as a garage for repair, storage, parking of vehicles, as well as some use as a warehouse for storage of files and documents. Historical records indicate the building has been used for

vehicle repair and storage for at least 40 years. As indicated above, the property is zoned R4C and all current and documented uses of the building are not permitted uses within the R4C zoning district.

In May 2011, the Zoning Board of Appeals (ZBA) granted permission for the previous owner to substitute one non-conforming use (warehouse/storage) for another less detrimental use (limited office). That owner sold the property and the current owner intends to use the site for residential, not limited office.

In February 2014, the ZBA granted the same dimensional variances that are currently being requested, with the condition of, "per submitted plans" stated in the official motion. After ZBA approval, further analysis of the structural integrity of the building revealed that entire building would need to be demolished and replaced. In light of this news, the property owner modified the plans in order to increase the square footage of the second floor addition to create a more livable space. There will be no change in the first floor footprint; therefore the dimensional parameters of the current zoning variance request are the same as they were for the February 2014 plan. However, the plans have changed to increase the overall size and massing of the structure and therefore do not match the plans that the February 2014 ZBA reviewed and approved. The February staff report is attached.

If the ZBA approves the current variance requests, then the previous variances would be voided. If the ZBA denies the current requests, the petitioner does still have approved variances and can construct the additions as shown on the previously approved plans.

The petitioner still intends to use the structure as a single-family residence, which is a conforming use in the R4C District. In order to use the property as single-family, the petitioner will need to re-construct the majority of the existing building and would like to add a second-story addition. The building would be re-constructed on the exact same footprint as the existing building. A kitchen, living area and a bathroom will be constructed in 900 square feet of the first floor space which is a total of 3,680 square feet; the remainder of the first floor will be used for parking and storage. The 3,185 square foot second story will contain living area, two bedrooms, bathrooms and a small outdoor deck area. The first floor is setback just over three feet from the property line. The second story will be setback three feet from the northern edge of the first floor of the building, for a total second story setback of approximately six feet. The second story will be built to the edge of the west and south sides of the building which are constructed at the property line of Beakes(south) and an alley(west).

The existing single-story building is non-conforming for all required setbacks as the building occupies the majority of the triangular-shaped parcel. The small size and unusual shape of the parcel limits the buildable area to approximately 52 square feet. There is currently zero setback for the front (Beakes) and west side and 4 foot setback for the east side and three foot setback for the rear. There is a slight encroachment of about four inches into the Beakes Street Right-of-Way (ROW). Since this wall will be removed, it will be built back along the property line which will remove any encroachment into the ROW. Since the structure will be entirely replaced it will exceed the changes permitted under Chapter 55, Section 5:87 (Structure non-conformance) and the petitioner is required to seek variances in order to re-construct and expand the building in the exact same footprint as existing.

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 practical difficulties 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 structure is legal non-conforming and was constructed in 1930 before the current zoning regulations were adopted. It was built as an auto-service and storage building. The structure was constructed occupying the majority of the parcel with little or no minimum setbacks to the property line. The subject parcel is non-conforming for lot size (4,227 square feet, minimum R4C lot size is 8,500 square feet) and is triangular shaped. The small size and unusual shape result in a buildable area of approximately 52 square feet.

(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.

The existing structure is need of restoration and replacement of many structural elements. Any re-use of the building will likely require extensive restoration and ZBA permission. The small size, unusual shape, and limited buildable area of approximately 52 square feet would trigger the need for variances on any structure that was constructed on this parcel. If the structure was demolished, no building could be constructed without zoning variances being granted.

If the variances are not granted, the petitioner does have previously

approved variances and could construct additions based on the previously approved plan.

(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.

Approval of the variances will result in the re-construction of an existing non-conforming structure and an addition of 3,185 square feet to the second story. The structure was constructed in 1930 before any zoning standards were established and has been an established part of the neighborhood street presence since that time. The proposed single-family use is a conforming use in the R4C district and should be less detrimental to surrounding properties than the previous non-conforming uses. The first floor is setback approximately three feet four inches from the north property line and the second-story addition will be constructed just over six feet from the north property line, with the majority of the building will be placed along the front line of Beakes Street and alley to the west.

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

The existing building is a legal non-conforming structure and was constructed before zoning standards were established. The building is non-conforming for all required setbacks as the building occupies the majority of the triangular-shaped parcel. The small size and unusual shape of the parcel limits the buildable area to approximately 52 square feet.

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

The variances are being requested in order to re-construct and add on to a non-conforming structure. The petitioner was previously granted variances in February of 2014 to construct a smaller addition to the second floor. The variances are still active and the petitioner could construct an addition based on the previously approved plan. While the structure could be reduced in size, which could minimize variances needed, any building constructed would require variances due to the size and shape of the parcel.

QUESTIONS BY BOARD TO STAFF:

Zielak asked about the previously approved ZBA request.

PRESENTATION BY PETITIONER:

David Esau, 310 Depot Street, Suite 2, Ann Arbor, petitioner, was available to respond to the Board's enquiries and explain the application.

Michael Potter, 101 N. Main Street, # 903, Ann Arbor, owner, was also available to explain the application.

Carlisle asked the owner what had happened since the previously granted variance on this parcel, noting that the owner had proven to the ZBA that they could do something with the parcel given their first variance and from the owner's presentation the only hardship presented was a higher financial return which was not an acceptable hardship per ZBA standards.

Potter said they discovered that the building and footings are dangerous and needs to be demolished and a new structure needs to replace them. He said he is hoping to make this site his home.

PUBLIC HEARING:

David Santacroce, 601 N. Fifth Avenue, Ann Arbor, spoke in opposition to the application and provided written communication to the Board (see packet communication).

Mike Appel, 613 N. Fifth Avenue, Ann Arbor, spoke in opposition to the application.

Eleanor Pollack, 515 Detroit Street, Ann Arbor, spoke in opposition to the application.

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

Steve Kaplan, 406 N. Division Street, Ann Arbor, spoke in opposition to the application.

Ray Detter, 120 N. Division Street, Ann Arbor, spoke in opposition to the application.

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

LIST OF EXHIBITS PRESENTED:

Chair Milshteyn noted that the Board had received the following communications in opposition to the request;

David Santacroce, 601 N. Fifth Avenue, Ann Arbor: Opposed

Michael Bielby and Lisa Profera, 605 N. Fifth Avenue, Ann Arbor; Opposed

North Central Neighborhood Association, Ann Arbor; Opposed

Ovide Pomerleau, 637 N. Fourth Avenue, Ann Arbor; Opposed

Carol Shepherd, 333 Beakes Street, Ann Arbor; Opposed

Eleanor Pollack, 515 Detroit Street, Ann Arbor; Opposed

BOARD DISCUSSION:

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

Zielak said he felt the previously granted variance was sufficient for this parcel and the neighbors supported that variance, and this request was excessive.

Nichols agreed that the previously granted variance was appropriate and suggested that if the owner needed more living space that they take living space from the proposed first floor garage as it was quite extensive in size.

Moved by Zielak, seconded by Buonodono, in Petition ZBA14-016; 215 Beakes, Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS the following variances from Chapter 55, Section 5:34 (R4C) per submitted plans:

- 1) Front yard setback variance of 25 feet to allow a 0 foot front setback along Beakes.**
- 2) Side yard setback (east) variance of 1 foot to allow a 4 foot side setback.**
- 3) Side yard setback (west) variance of 5 feet to allow a 0 foot side setback.**

4) Rear yard setback variance of 27 feet to allow a 3 foot side setback.

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 defeated. Denied: 7-0

Variances Denied.

Yeas: 0

Nays: 7 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, Nichols, and DeVarti

Absent: 1 - Lewis

F UNFINISHED BUSINESS

G NEW BUSINESS

H REPORTS AND COMMUNICATIONS

[14-1660](#) Various Correspondences to the ZBA

Received and Filed

I PUBLIC COMMENTARY - (3 Minutes per Speaker)

J **ADJOURNMENT**

A motion was made by Zielak, seconded by Buonodono, that the meeting be Adjourned at 8:09 p.m. On a voice vote, the Chair declared the motion carried.

Alex Milshteyn
Chairperson of the Zoning Board of Appeals

Mia Gale
Recording Secretary

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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.