



City of Ann Arbor

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

Wednesday, March 28, 2012

6:00 PM

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

1 **CALL TO ORDER**

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

2 **ROLL CALL**

Chair Kuhnke called the roll.

Present: 6 - Candice Briere, Chair Carol A. Kuhnke, Sabra Briere, Erica Briggs, Perry Zielak, and Ben Carlisle

Absent: 2 - Wendy Carman, and Alex Milshteyn

3 **APPROVAL OF AGENDA**

The agenda was unanimously approved as presented.

4 **APPROVAL OF MINUTES**

4-a 12-0116 Zoning Board of Appeals Meeting Minutes of December 7, 2011

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

4-b 12-0246 Zoning Board of Appeals Meeting Minutes of January 25, 2012

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

4-c 12-0445 Zoning Board of Appeals Meeting Minutes of February 22, 2012

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

5 **APPEALS AND ACTIONS**

5-a 12-0446 ZBA12-003 - 2309 Brockman Boulevard
Jerome Winegarden is Requesting One Variance from Chapter 55(Zoning) Section 5:27 (Single-family, R1B), of 7 feet for Expansion of an Existing Residential Structure into the Rear Setback, 40 feet is Required.

Matt Kowalski gave the staff report.

BACKGROUND:

At the Zoning Board of Appeals meeting on February 22, the subject property was granted Permission to Alter a Non-Conforming Structure based on the same plans as presented below. However, during the meeting a Building Permit from 1985 was presented. It was subsequently confirmed by staff, that the section of the house (enclosed porch) that is non-conforming was not approved by Zoning. It was noted on the building permit that the screened porch "May not be enclosed". However, this screened porch area was enclosed and finished without required permission (by the former homeowner) from the City of Ann Arbor. The now-enclosed porch is considered an addition to the structure. Since the addition was not constructed legally, and a variance was not previously granted, a variance must now be granted in order to permit the 7 foot encroachment into the rear open space which includes the existing enclosed porch and the proposed addition to the rear of the garage.

DESCRIPTION :

The subject parcel is located on Brockman, just north of E. Stadium and contains a 2,414-square foot, single-family dwelling constructed in 1940. The parcel is conforming for lot size (11,645 sf; required is 10,000 sf) and zoned R1B (Single-Family). The existing house encroaches into the required rear setback 7 feet. The required rear setback is 40 feet, and the house is set back 33 feet from the rear property line.

The petitioner is proposing to construct a 6 foot 4 inch by 20 foot 4 inch, 130-square foot addition to the existing house. The proposed addition will be located behind the existing garage and will not be built any closer to the rear property line than the existing enclosed porch along the rear of the house. The new addition will be 33 feet (required setback is 40 feet) from the rear property line and 6 feet from the side property line (required setback is 5 feet) and will match the roofline of the existing house.

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 not exceptional or peculiar. It is a regular rectangle and conforms to the minimum lot area and width requirements of the R1B Zoning District. One noteworthy issue is that the slope and drainage pattern on the parcel creates a flooding issue along the rear of the existing garage.

(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 the proposed 130 sq ft addition, as well as

the existing enclosed porch. The addition will not encroach closer to the rear property line than the existing enclosed porch. If the variance is not granted, the porch will remain as an illegal non-conforming addition.

(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.

Allowing the variance will result in an addition to the existing structure that will not encroach any further into the rear open space than currently occurs. If the variance is approved, the structure will not have a negative impact on surrounding structures. The Tappan School parking lot is located immediately adjacent to the rear, and the property owner that would be most affected to the north has signed a letter of support for the project. The addition and existing porch are not visible from a public street.

If the variances are approved and the addition is constructed, the proposed work will include re-grading of the rear of the lot which will correct improper drainage issues that were previously created, thus benefitting the subject site as well as the immediately surrounding lots.

(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 addition that encroaches into the required rear setback area was completed by the previous homeowner.

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

The requested variance for the proposed addition is the same as the existing addition and is the minimum necessary to enable the desired improvements to the structure.

QUESTIONS TO STAFF BY THE BOARD:

S. Briere asked if the petitioner was required to pay a fee for their re-hearing request.

M. Kowalski responded, no.

PRESENTATION BY THE PETITIONER:

Jerome Winegarden, 2309 Brockman, owner of the parcel, stated that M. Kowalski had done a great job at explaining his request. He added that since the rehearing was for a variance he had contacted the neighbor to the north, whom the variance would impact the most. He passed around a copy of the letter of support from neighbor, Jane Wood, at 2307 Brockman.

C. Kuhnke noted the following list of exhibits presented to the Board:

*Property owner, Wood, 2307 Brockman, in support of project.
Property owner, Shipan, 2300 Brockman, in support of project.
Property owner, Schoch, 2311 Brockman, in support of project.*

AUDIENCE PARTICIPATION:

None

BOARD DISCUSSION:

B. Carlisle asked staff if the variance would cover the enclosed porch as well as the new addition with encroachment of seven (7) feet into the required forty (40) feet rear yard setback

M. Kowalski responded, yes.

A motion was made by Briggs, seconded by Zielak, in the petition ZBA12-003; 2309 Brockman Boulevard, in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS a variance from Chapter 55, Section 5:27 (R1B, Single-Family) of 7 feet from the required rear setback of 40 feet in order to permit a building addition 33 feet from the rear property line, per submitted plans, based on the following findings of fact:

- a) **The alleged hardships are peculiar to the property and results from conditions which do not exist generally throughout the City**
- 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.**
- 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 voice vote, the Chair declared the motion carried.

Petition granted.

Yeas: 6 - Briere, Chair Kuhnke, Councilmember Briere, Briggs, Zielak, and Carlisle

Nays: 0

Absent: 2 - Carman, and Milshteyn

5-b 12-0447

ZBA12-004 - 200 West Summit Street
Panos Tharouniatis is Requesting One Variance from Chapter 55(Zoning) Section 5:57 (Averaging an Existing Front Setback Line), of 20 feet for Expansion of an Existing Residential Structure into the Front Setback, 40 feet is Required (Averaged Front Setback).

Matt Kowalski gave the staff report.

DESCRIPTION:

The subject parcel is located at 200 West Summit and is zoned R4C (Multiple-Family) and is located on the corner of Wildt and Summit, just west of the railroad tracks.

The petitioner is proposing to demolish the existing 800 square foot house and construct a 4,000 square foot duplex. Each duplex unit will be approximately 1,950 square feet and contain 3 bedrooms above a two car garage. The garages will share a single drive accessed from Wildt Street. The pedestrian entrances will also face

Wildt Street. Each unit will have a small patio in the side yard (west side of parcel) and an elevated uncovered porch. The variance is being requested for construction of the structure and an attached uncovered porch 20 feet from the front property line of Summit. The main structure will be located 25 feet from the front property line at its closest point, and the elevated uncovered porch will extend to 20 feet and will not be enclosed.

The required front setback is 25 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 with only one adjacent property to average. That parcel is 800 Edward Street, which is approximately 50 feet from the property line along Summit. As a result, the calculated results in a required front setback of 40 feet (the maximum required averaged front setback).

While Section 5:57(Averaged Front Setback) does not permit including parcels across streets, the petitioner has provided averaged calculations to provide context to the proposed variance request. The petitioner has calculated the averaged setbacks along Summit to the west across Edward Street as 15 feet 9 inches and the averaged front setback to the east across Summit and the railroad tracks as 4 feet. The existing house that will be demolished is 6 feet 9 inches from the front property line.

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 an unusual shape with a curved front property line along Wildt Street. While the required setback for R4C is 25 feet, the averaging of only one adjacent parcel (set back over 50 feet) moves the required setback to 40 feet. There is a significant slope rising over 20 feet toward the northwest corner of the parcel.

(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 duplex and attached uncovered porch 20 feet from the front property line. The main structure will be located 25 feet from the front property line at its closest point. The elevated uncovered porch will extend to 20 feet and will not be enclosed. The required averaged setback of 40 feet reduces the allowable building envelope significantly and could result in greater impact to the slope in the rear resulting in construction of large retaining walls and an extensive storm water management system.

(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 Summit, containing only one other property adjacent to the west. The house on this parcel is located over 50 feet from Summit and has a functional front yard, including access, along Edward Street. The owner (and resident) of this house has signed a letter of support for the variance request. The petitioner has also submitted materials (attached) illustrating that the proposed structure will be consistent with the majority of structures along the north side of Summit Street.

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

The significant slope of the site is not a self imposed hardship. Reducing the building envelope by utilizing the averaged setback for 40 feet will result in a redesign of the project that could impact the topography of the site significantly. This would result in extensive retaining walls and storm water management systems on the site.

(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 structure 25 feet front the front property line, which is the required front setback for R4C before the averaged setback calculation. The uncovered porch extending into the front setback of Summit extends the encroachment to 20 feet from the front property line. The impact will be minimal given that the porch will be unclosed above and below the floor, and the proposed front setback will be consistent with the majority of structures along Summit.

QUESTIONS TO STAFF BY THE BOARD:

B. Carlisle asked what the required setback is for the zoning district, and if they would still need a variance for the front porch with the averaging setbacks removed.

M. Kowalski responded that the setback is 25 feet and yes, even without the averaging they would need a variance, since it is not being built at grade [which would be considered a patio] but a porch, since it is a suspended structure. He explained that there is a significant grade change [approx 20 feet] on the parcel from front to rear, and if the petitioner were to infill the area under the porch and create retaining walls, it would make them exempt and they would be allowed to have patios.

B. Carlisle asked if the proposed rear and side patios were allowed.

M. Kowalski answered that the rear and side patios are at grade and are allowed.

S. Briere noted that the lot configuration was very difficult and asked if there was any other way that the porches might have been designed so not to encroach into the front setbacks.

M. Kowalski reiterated that they had discussed the possible option of infilling the area under the porch and adding retaining walls or making the porches smaller. He noted that the proposed porches are quite small.

M. Kowalski added that the City had received a letter of support from the neighbor located immediately to the west of the site. He noted that he had also spoken to a

neighbor further down on Summit Street, who was in support of the project and had stated that she would submit a letter of support, but had not.

C. Kuhnke noted the following exhibit presented to the Board:

Property owner, Marlow, 800 Edward, in support of project.

PRESENTATION BY THE PETITIONER:

Nathan Doud, Urban Energy Works, 2453 Bunker Hill Road, representing the petitioner, explained the project. He stated that they had gone through several iterations on the design but because of the topography with over twenty (20) feet difference in elevation and the location of two (2) gas vent pipes from an underground gas vault located on Wildt Street, they felt they had limited options available. One of those options was the added retaining walls which would have created a thin strip of land between the neighbors retaining wall and the proposed site's retaining wall; thereby creating stormwater and drainage issues. He said with the submitted design they have a plan that would retain a 100-year storm event, which would hopefully take care of any and all storm water issues.

S. Briere said that she thought they could have built a retaining wall on the Summit Street frontage, and kept the plan as proposed without encroaching into the front setback.

Doud responded that they had considered creating a retaining wall with built up patios, but the sheer mass of it would create a much larger impact with the frontage on Summit Street being mostly retaining wall and less the house itself; so they felt a much lighter impact would be the open porch with columns underneath.

B. Carlisle asked if the petitioner had considered options of keeping the deck the way it is and have it moved back to the required 25 feet setback.

Doud answered that they had looked at minimizing the footprint of the house, somewhat, but the existing floorplan is fairly tight.

B. Carlisle asked staff if the zoning allowed for single-family dwellings as well as duplex.

M. Kowalski responded, yes.

Doud said they felt making the house a duplex was a better use of the land in the existing environment.

AUDIENCE PARTICIPATION:

None.

BOARD DISCUSSION:

S. Briere stated that while it wasn't the Board's purview to say if a proposed project was good design or bad design or good use of space or bad, she said the Board's task was to say how far they would allow an encroachment into the front setback. She noted that while the lot was a corner lot they needed to consider both sides as frontages. She felt that the proposed design called for the review of all the buildings along Wildt Street and their allowed different setbacks and configurations. She said that she didn't feel that the type of infill would be terrible but she expressed concern

about the way the design didn't fit the neighborhood. She asked the petitioner to consider reconfiguring the layout of the duplex so that it would fit the lot and the entrances would have less of an impact on the front setback, adding that she didn't feel that the required 25 feet setback was irrational.

E. Briggs said that she felt a nice part about that neighborhood was the different stock and design of housing. She found it helpful to see the setbacks in the area, noting that there is quite a variation and the proposed project didn't seem to push the setbacks anywhere close to the other setbacks in the neighborhood. She said she was comfortable with the design and was glad to see that the project took into consideration the sustainability aspect in design with limiting the impact on the land, adding that this was in line with the City's goals in what they would like to see in projects.

S. Briere said the sustainable design was interesting but she had concerns with the raingarden being located at the top of the slope, rather than the bottom. She said there would be issues at the bottom southern slope. She said she wasn't bothered by the location of the parking and found it delightful not to have garage doors fronting the street, but she was hesitant.

The petitioner requested to approach the Board to address the raingarden comments.

No objection from the Board.

Doud said that the reason they located the raingarden in the proposed corner was in an attempt to absorb some of the run-off from the 1250 square foot parking lot to the north, that currently runs into the street. He said the slope runs south-east so there would be some run-off that wouldn't be captured by the raingarden. Doud said they felt that run-off would be minimal compared to capturing the run-off from the parking lot to the north.

C. Kuhnke stated that she had concerns with the proposal since a single-family home would fit nicely within the buildable envelope of the parcel, and she was also aware that they are encouraging density in the areas around the downtown and that a duplex is preferable in the area. She said they have seen other instances where people are impacted by averaging when one house is set dramatically further back from the street than it needs to be, while in this case the petitioner is looking to go five (5) feet into the setback.

P. Zielak agreed with Briggs and stated that the proposed project is much better than what is currently at the site, and he agreed with Kuhnke regarding the density in the area, while adding that he didn't feel that the five (5) foot variance request was extreme in comparison to setbacks of other houses in the area that were very minimal. He felt there was enough open greenspace between Summit Street and the proposed uncovered porches which lead him to be in support of the request.

S. Briere commented that while Zielak and Briggs were correct on density, she wanted to point out that across the street on Summit Street there were three (3) duplexes that she felt would comfortably fit on the parcel in question, without encroaching on the setbacks with parking in the back. She said the duplexes took advantage of the terrain and were located close together. She reiterated that she felt if the design was different it could still incorporate the raingarden and not have to encroach into the setbacks. She said in this area there could be several of these 'one-of' in the potential future.

Briggs asked if the petitioner could explain, to the Board, design options they have explored.

Doud said they had explored designs similar to the townhouses across the street, with parking located behind, but the access would have been off Wildt Street and the entire northern area of the parcel property would become the driveway and garage access which would eliminate nearly all of the greenspace. He said given the design they didn't feel that was the best use of the space. He said regarding the design of the house, they didn't want to stick out like a sore thumb, but they are trying to advance the design and construction process beyond the standard, minimal code requirements, adding that the house rooftop has almost 14 kW of photovoltaic array [solar panels] which drove the shape of the units as well as the shape of the roofline. He said these panels will be enough to power all appliances and outlets in the house and still send energy back to DTE. He said they will be using thicker walls with much heavier insulation products on the building as they want the building to be a signpost for sustainable and renewable developments.

B. Carlisle asked what the square footage of the units were and their width.

Doud said each unit was approximately 1,950 - 2,000 square feet per unit, and 31 feet wide.

B. Carlisle said that the variance was necessary because they wanted to build a duplex and asked if there was any possibility that they could reduce the width of the units to 25-26 feet and thereby meet the setbacks.

Doud said they had tried that option, but would then lose the minimum parking requirement space for each unit per the code. He added that by reducing the interior footage they would also lose the necessary rooftop space that is needed to house the solar panels to maintain the level of proposed sustainability of the project.

S. Briere asked what the setback was on Wildt Street.

Doud said it was the minimum ten (10) feet.

E. Briggs commented that it was evident from the petitioner's explanation that there had been much consideration into attempting to fit the design and development of the project into the setbacks, given the existing location of utilities. She said that she felt the location of the garages would be beneficial to the neighborhood and the variance seemed very reasonable for this location given that the project includes many of the goals that the City is trying to achieve.

C. Kuhkne asked staff about the proposed framing material around the porches, noting that they were intended to be open in design. She asked if such a structure would be allowed on a patio.

M. Kowalski responded that he believed it was a beam intended for the use of attaching hanging plants and the plans did not call for a covered porch. He said such a structure would be allowed on a patio.

A motion was made by S. Briere, seconded by P. Zielak, the petition ZBA21-004; 200 Summit Street, that in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS a variance from Chapter 55, Section 5:57 (Averaging Existing Front Setback) of 20 feet from the required front setback of 40 feet in order to permit construction of a new building 20 feet from the front property line per submitted plans, based on the following findings of fact:

- a) The alleged hardships are peculiar to the property and results from conditions which do not exist generally throughout the City
- 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.
- 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.

C. Briere added that she would like to add to the findings of fact that;

(f) The lot is awkwardly shaped and has a significant slope change which makes it unique in its characteristics.

(g) That five (5) feet of the variance is for the uncovered porch, while the proposed building is within the envelope of the buildable lot.

Friendly Amendment accepted by S. Briere and P. Zielak to add:

(f) The lot is awkwardly shaped and has a significant slope change which makes it unique in its characteristics.

(g) That five (5) feet of the variance is for the uncovered porch, while the proposed building is within the envelope of the buildable lot.

S. Briere asked staff, if under the current code, front porches were not allowed to be enclosed.

M. Kowalski said, that was correct.

S. Briere commented that she had issues with alleged hardship item (e) The variance request is the minimum necessary to achieve reasonable use of the structure.

B. Carlisle echoed those concerns.

C. Kuhnke said she was convinced the open patio was the best compromise for the slope of the property and in trying to preserve the openspace and the sightlines along the street.

A motion was made that the Variance request be granted as Amended. On a roll call, the vote was as follows with the Chair declaring the motion carried.

Petition granted.

Yeas: 5 - Briere, Chair Kuhnke, Councilmember Briere, Briggs, and Zielak

Nays: 1 - Carlisle

Absent: 2 - Carman, and Milshteyn

None

7 **NEW BUSINESS**

None

8 **REPORTS AND COMMUNICATIONS**

None

9 **AUDIENCE PARTICIPATION - (3 Minutes per Speaker)**

None

10 **ADJOURNMENT**

A motion was made by Zielak, seconded by Briere, that the meeting be Adjourned. On a voice vote, the Chair declared the motion carried. Meeting adjourned at 6:59 p.m.

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