



City of Ann Arbor

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

Wednesday, August 22, 2012

6:00 PM

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

A CALL TO ORDER

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

B ROLL CALL

Chair Kuhnke called the roll.

Present: 5 - Candice Briere, Wendy Carman, Chair Carol A. Kuhnke, Perry Zielak, and Maureen Sertich

Absent: 3 - Sabra Briere, Alex Milshteyn, and Ben Carlisle

C APPROVAL OF AGENDA

The Agenda was unanimously approved as presented.

D APPROVAL OF MINUTES

D-1 [12-1052](#) Zoning Board of Appeals Meeting Minutes of July 25, 2012

A motion was made by Zielak, seconded by C. Briere, that the Minutes be Approved as amended by the Commission and forwarded to the City Council and should be returned by 9/17/2012. On a voice vote, the Chair declared the motion carried.

E APPEALS AND ACTIONS

E-1 [12-1054](#) ZBA12-015; 922-926 Catherine Street
Huron Development LLC, is requesting a variance from Chapter 62 (Landscape and Screening) Section 5:603: A variance of 11 feet from the required 15 foot wide conflicting land use buffer, in order to provide a 4 foot wide buffer with hedge row and no trees.

Matt Kowalski gave the staff report.

Arrival of S. Briere.

DESCRIPTION:

The petitioner seeks to construct a three-story townhouse building housing 5 dwelling units. Five garages containing nine parking spaces and bicycle storage will be located below the units. The petitioner is also requesting rezoning from Planned Unit

Development (PUD) to Multiple-family Dwelling (R4C).

Parcels zoned R4C and adjacent to parcels principally zoned or used for residential uses require conflicting land use buffers. This site requires conflicting land use buffers, which are 15 feet wide and contain landscaping trees every 15 feet, along the south, east and west property lines. The petitioner is requesting variances from the Zoning Board of Appeals to reduce the eastern conflicting land use buffer from 15 feet to 4 feet and eliminate the required trees. The petitioner proposes to provide a hedge in this strip to screen from the eastern neighbor.

The site plan for the project was recommended for approval by the Planning Commission on July 17, 2012, contingent upon the approval of the variance noted above. If the variance is granted, the plan will proceed to City Council for final approval.

The petitioner held a public meeting in May before submission of the proposed site plan to the Planning Commission. The summary of questions and answers is attached with the Planning Commission staff report.

STANDARDS FOR APPROVAL:

Chapter 62 (Landscape and Screening) 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 and Chapter 62, Section 5:609. The following criteria shall apply:

Upon an appeal filed to the zoning board of appeals in accordance with the procedures of Chapter 55, a variance may be granted from the strict application of the provisions of this chapter in cases involving practical difficulties or hardships when the evidence supports that the public benefit intended to be secured by this chapter will exist with less than the required landscaping or screening.

As previously mentioned, the petitioner is proposing to construct a 5 unit townhome building with parking provided under the building. Although the adjacent properties are all zoned R4C, the proposed multiple-family use, requires a 15 foot wide conflicting land use buffer along the two sides and the rear of the parcel. The conflicting land use buffer width is met on the south and west sides of the site. However, a variance is requested on the east side to reduce this width down to 4 feet and install a hedge row, but not the required trees. The adjacent property to the east is of similar design and density as the proposed project and was not required to provide a buffer at the time of approval. A recent code change in 2011 added the requirements for landscaped buffers between R4C zoned properties. The two required conflicting land use buffers along the side property lines utilize more than one-third of the width of this site (each lot is 44 feet wide and will be combined if the project is approved). The total area required for buffers makes multiple-family residential development challenging on most R4C lots. It should be noted that all required parking for the proposed development will be enclosed and the not visible to the development to the east. A reduction in this buffer width next to a development of similar intensity to the east and the addition of the continuous hedge row in this strip to will help meet the intent of the Landscape Ordinance

The variance request has been reviewed and is supported by staff responsible for landscape plan review.

QUESTIONS TO STAFF BY THE BOARD:

W. Carman asked if Catherine Commons currently own the existing trees on the site or if they belonged to the 922-926 Catherine parcel.

Kowalski said he believes they belong to Catherine Commons.

S. Briere noted that there is quite a bit of landscaping on the west side of the proposed development.

Kowalski said that he estimated approximately 16 feet of landscape buffer on that side, with the developer preserving the trees along that property line.

S. Briere asked how tall the proposed bushes would be.

Kowalski said he believed they would be 2 to 4 feet in height, and deferred the question to the applicant.

PRESENTATION BY THE PETITIONER:

Tom Fitzsimmons, Huron Development, 408 N. First Street, owner of the parcel, along with landscape designer and architect were present to respond to the Board's questions. He explained that they have worked with their neighbors in developing the plan and they will be working jointly with their neighbor to the east to implement the landscape plan, adding that they plan to save the trees, along with adding a fence and walkway. He said they have also met with their Catherine Commons neighbors in planning the landscaping, and came up with a solid row of evergreen shrubs, that upon planting will be about 6 feet tall. He said they believe they have a great project and have spent much time in the planning process with the City and neighbors.

W. Carman asked if they had submitted their plans to the City before the conflicting land use buffer ordinance changed.

Fitzsimmons said he couldn't say. He deferred timing questions to staff.

Kowalski said he didn't believe the plans had been submitted prior to July 2011, when the ordinance changed; however noted that originally staff had thought that the request could be handled as a landscape modification, which would have allowed the City Planning Commission to review and approved the request. He said upon review staff discovered that the project would require a variance from the Zoning Board of Appeals.

Chet Hill, Johnson Hill Land Ethics Studio, Ann Arbor, was present.

W. Carman asked about the proposed grade changes, and plantings on the retaining wall.

Hill said that from the road entrance the pitch would be going down about 4 feet towards the below grade parking of the development. He said from south to north there is a drop in grade. He said with the recessed drive it will allow for the plantings on top of the retaining wall to have more of an impact. Hill explained that they had proposed to add more planting to the Catherine Commons parcel, but they preferred to keep the plantings on the 922-926 Catherine site. He said the trees on the Catherine Commons neighboring property will remain.

W. Carman asked if it would be possible to plant on top of the retaining wall, and how wide the wall would be.

Hill said, it would be kind of behind the wall, given the 4 foot slope and the retaining wall would be approximately 1 foot wide.

W. Carman asked if the retaining wall would add height to the shrubs.

Hill said, not if you are on the Catherine Commons side, but if you are standing on the driveway, it would. He added that the biggest advantage of the recessed driveway is that the building itself will be down and the garage doors will be down and any vehicular maneuvering would be down, and if you are standing on the Catherine Commons property you would see the 8-10 foot tall evergreen hedge, once the plantings mature.

W. Carman asked how high the retaining wall would be from the Catherine Commons side.

Hill said 4 feet at the highest point, and going to grade [zero] by the road because they will be going down as it slopes away from the road.

He explained that there is a 16 feet, 6 inches setback on the west side and all the existing large trees will be retained. He said the proposed plantings, over-all for this project, far exceed the requirements for projects of this nature. He said they were led to believe this was a non-issue when they began their project.

AUDIENCE PARTICIPATION:

None

BOARD DISCUSSION:

C. Kuhnke noted that the Board had not received any written communications in support or opposition of the request.

W. Carman said that she felt this case illustrates some central issues of the R4C problem. She said this problem results from previous zoning decisions in the areas of the campus and central business district, adding that originally when the land was platted, there was no zoning classification. She said there are many narrow lots in the R4C district and as time went on, many of the lots became home to boarding houses that served the student population, and in 1963 the City endorsed a plan to give it the zoning of R4C which encouraged moderate density and anticipated that whole sections of R4C lots would be razed and apartment building built on them. She said not many apartment buildings were built and the City became stuck with a zoning that makes people anticipate that they can put a lot of stuff on a lot, but because of the narrow lots they can not.

W. Carman noted that in this case, even with combining two lots that make an 84 foot wide lot they still have problems, because the lot is too narrow and small to provide all the setbacks that the City would like to see, and the driveway they need, and the parking spaces they need for 5 units, the storm water control, the landscaping and screening and meet the historic district requirements. She said the only thing she finds troubling is that no one said this proposed building needs to be a 43 foot wide building, except for the wishes of the developer. She said while the plan and proposed project looks lovely on paper and the neighbors are supportive of it, she asked if the Board can meet the intent of the zoning ordinance and the intent of the landscape ordinance by giving the variance requested.

S. Briere asked staff about rezoning the parcel from PUD [Planned Unit Development] to R4C, and under what definition of R4C does the project fit. She

asked how many bedrooms each unit would have.

Kowalski said that under the R4C, each unit is required to have 2,175 square feet of living space, so the project meets the minimal lot requirements as well as the minimal lot area requirements since it is a 5 unit project. He added that the height requirements would also be met, and they could have up to 6 bedrooms in each unit, although he didn't believe that was the developer's plan.

W. Carman commented that the plans showed there was 4 bedrooms plus a den/dining room/bedroom.

S. Briere asked how many units could be placed on the lot according to the R4C requirements.

Kowalski said it depended on the lot area.

W. Carman said she had done the math and they are allowed to have 5 units, but that doesn't mean they will have the space to fit all the things they are proposing.

S. Briere asked if they met all the requirements except for the landscape buffer.

Kowalski said, yes, adding that they needed to fit a 20 foot wide driveway on the lot as well.

W. Carman commented that there had been a few amendments made to the original PUD that involved rear yard setbacks, but that the side setbacks were met. She noted that driveways were allowed in front setbacks.

S. Briere asked why the project couldn't be built under the existing PUD zoning.

Kowalski said that the developer couldn't do the project under the existing PUD regulations that were approved 30 years ago, adding that the PUD for the parcel is so old that the City does not have detailed supplemental regulations that the City now requires. He said any site plan that was attached to the original PUD has long since expired.

S. Briere asked why the parcel had retained its PUD zoning.

Kowalski explained that no one requested the vacant parcel to be rezoned and the City doesn't randomly pick parcels and start the rezoning process.

S. Briere said that is something that should probably change.

W. Carman asked staff if the variance was a request strictly from Chapter 62 Landscaping and Screening, or from Chapter 55 Zoning, as well.

Kowalski responded that the request is only a variance from Chapter 62 Landscaping and Screening.

W. Carman said the Board needs to decide if they agree with Kowalski, but it would make the request much simpler.

A motion was made by Carman, seconded by Zielak, that in the case of ZBA12-015; 922-926 Catherine Street, that the ZBA grant a variance from Chapter 62 (Landscape and Screening) to allow a 4 foot wide buffer, instead of the 15 foot wide conflicting land use buffer in order to provide a 4 foot wide buffer and eliminate the required trees, per submitted plans, given that;

a. The public benefit intended to be secured by chapter 62 will exist with less than the required landscaping buffer width.

BOARD DISCUSSION:

C. Kuhnke asked staff to explain why the applicant didn't need a variance from Chapter 55 as well.

Kowalski explained that the language indicates a variance follows the procedures of Chapter 55 and not the standards, since the standards for Landscaping variances are in Chapter 62.

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

Variance granted.

Yeas: 6 - Briere, Carman, Chair Kuhnke, Councilmember Briere, Zielak, and Sertich

Nays: 0

Absent: 2 - Milshteyn, and Carlisle

E-2 [12-1055](#)

ZBA12-016; 1231 Creal Crescent
Charles Bultman has filed an Administrative Appeal of the Planning Staff interpretation of the definition of a Rooming Unit. Petitioner is proposing to add a rooming unit above a detached garage on a parcel zoned R1C (single-family), Chapter 55 (Zoning) prohibits rooming units in single-family zoned districts.

Kowalski gave the staff report.

DESCRIPTION:

The subject parcel is zoned R1C (Single-Family) and currently contains one single-family house and a detached garage. The petitioner originally planned to file an application for a building permit in order to construct a bedroom with bathroom and kitchen above the existing detached garage. Planning staff informed the applicant that this would constitute an Accessory Apartment, which is not permitted in the R1C zone without Special Exception Use approval by the City Planning Commission. The applicant subsequently offered to revise the plans in order to remove the kitchen or the bathroom, but still construct the other with a bedroom and living space above the garage. The petitioner indicated a family member would be living in the finished space. As a result, this arrangement would be classified as detached habitable rooming unit, which is not permitted in single-family residential zoning districts.

The definition of a rooming unit from Chapter 55, 5:1;

(47) Rooming unit. Any room or group of rooms forming a single habitable unit, but which does not contain cooking facilities.

DISCUSSION:

The property owner has stated that this living space would be used only by an immediate family member and they would be willing to deed restrict the property to

prevent the unit from being rented in the future. Planning staff acknowledges that condition; however the city does not monitor the transfer of property and does not have a role in enforcing deed restrictions on private property.

The single family zoning districts do not permit sleeping space in detached structures; the plan as proposed would violate the R1C standards by providing living space with a bathroom and distinct means of ingress/egress above a detached accessory structure. As mentioned, Staff informed the applicant that the proposed use (with bathroom and kitchen) could be approved by the Planning Commission as an accessory apartment special exception use. However, this method would also require a variance because accessory apartments are required to be integrated into the principal structure and not permitted in accessory buildings.

QUESTIONS TO STAFF BY THE BOARD:

S. Briere asked if staff knew what the unlabeled area on the second floor layout plan would be used for, since there was no door leading to it.

Kowalski said he didn't know, and deferred the question to the applicant. Kowalski said they could have as many rooms as they liked.

S. Briere asked if the single unit would count as a unit if the garage was closer to the main house and linked through a connector.

Kowalski said it would still be a detached structure with separate means of ingress and egress to the building, and in the R1C Single Family zoning district it is not allowed.

S. Briere asked if one could have an office with a kitchenette.

Kowalski said, yes, an office or study would be allowed above the garage, but they are not allowed to live in them.

PRESENTATION BY THE PETITIONER:

Chuck Bultman, Charles Bultman Architect, architect for the project was present and reviewed the project with the Board. He noted that they had received a letter of support for their project and handed out copies to the Board. He said the area that was not labeled on the application should have been labeled, as 'Open to Below'. He said the property will be deed restricted so that no future owner of the property will be able to use the space as living space or as a separate unit. He said the owners are not interested in stepping into the slippery slope of creating a future rental unit. Bultman said they would not be changing the grade.

BOARD DISCUSSION:

C. Kuhnke noted that the architect had provided the following correspondence in support of the application:

Daniel Erikson, 960 Miller Avenue; letter of support of the project,

and the following letters in opposition of the application:

*Steven and Chera Tramontin, 1225 Creal Crescent,
Ms. M.L. Nykiel, 1251 Creal Crescent,*

and an email with enquires regarding the project from:

The Szczepanskis, 1916 Miller Avenue.

Steven and Chera Tramontin, 1225 Creal Crescent, spoke in opposition of the proposed structure; that it would interfere with the neighborhood. They requested that their written statements be taken into consideration as the Board deliberate the application request.

BOARD DISCUSSION:

W. Carman stated that she wanted to clarify that the Board is not discussing a variance or the pros and cons of the uses of the garage, but to review a determination that the City already made, which was that the requested proposed use would be illegal. She said if they concur with that decision, they will need to make a motion in the affirmative, to overturn the staffs decision, because that would be a motion in the affirmative for the petitioner.

C. Kuhnke agreed, adding that they will need five votes to pass the motion.

W. Carman confirmed that the staff decision was that the definition of a Rooming Unit was not allowed above a detached garage on a parcel located in the R1C zoning district.

Kowalski said yes.

W. Carman asked what could be considered as cooking facilities.

Kowalski said they wouldn't approve plans that showed a full kitchen with a sink.

W. Carman said she was looking at the zoning restrictions more so that a rooming unit would give the R1C parcel a second unit, which isn't allowed. She said when the City came up with the accessory apartment definition or mother-in-law apartment, approximately 30 years ago, the final decision was that they needed to be integrated into the main house.

S. Briere asked if the architect were to build a 2-car garage with a workroom and an addition to the house that included a bathroom, a kitchen, a studio type apartment, with a separate entrance, would that be considered an accessory unit, and would that require some agreement from Planning staff.

Kowalski said, yes. He explained that such a proposal would require a Special Exception Use approval from the City Planning Commission.

S. Briere asked if the applicant's rationale is that it is not in the same building because it would block light into the existing rooms.

Kowalski said that is what the applicant has stated. He said that the Planning Commission recently approved an accessory apartment that was fully integrated into the main house.

S. Briere asked architect, Bultman, if he was aware of the restrictions on apartments when he began his proposal.

Bultman said, yes.

S. Briere asked Bultman to explain why the solution to the problem, he found, does

not fit the City's zoning.

Bultman said the existing house, given the lot size, there is not a lot of choices to add a simple bedroom and bathroom. He said he would not be able to use the existing interior space with an addition, but would be forced to cut out rooms. He said mathematically he would have to use two square feet for every square foot of addition.

S. Briere asked if this additional unit were built as part of the structure but did not have an opening to the interior of the house, would he still have had the same restraint with needing to change the circulation pattern.

Bultman said he would need to rework a lot of the egress conditions because of the bedrooms on the back of the house. He said his proposal would be adding the smallest carbon footprint possible in order to pull the project off.

S. Briere asked if that was one of his criteria.

Bultman said that is always his criteria.

S. Briere asked if a garage vs a dwelling unit was placed on the lot why doesn't it affect the setback. She asked if the whole structure would be counted.

Kowalski said that once there is habitable space, the setback requirements change. He said the proposed plan shows a five foot side setback, which is allowable. He explained that as long as there is no habitable space within the 30 foot setback, accessory structures are allowed.

Motion made by Carman, seconded by C. Briere that in case ZBA12-016; 1231 Creal Crescent, that the Zoning Board of Appeals overrules the Planning and Development Services interpretation, that what is proposed over the garage is a rooming unit.

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

Staff decision upheld. Appeal denied.

Yeas: 0

Nays: 6 - Briere, Carman, Chair Kuhnke, Councilmember Briere, Zielak, and Sertich

Absent: 2 - Milshteyn, and Carlisle

W. Carman stated that the Board's decision doesn't mean that the applicant could not come back and ask for a variance or for an accessory apartment.

E-3 [12-1053](#)

ZBA12-014; 1912 Geddes Avenue - Item Withdrawn
Annged House Corporation is requesting one variance from Chapter 55 (Zoning), Section 5:86 (Use Nonconformance), a variance to expand the existing non-conforming use by adding bedrooms to the existing structure. The number of occupants will not be increased.

Item Withdrawn by Petitioner.

F **OLD BUSINESS**

G **NEW BUSINESS****H** **REPORTS AND COMMUNICATIONS**

W. Carman gave an update on the ZORO project, noting that in the end the undertaking and final document will be a fabulous improvement over the existing document.

I **PUBLIC COMMENTARY - (Items not on the Agenda - 3 Minutes per Speaker)**

Marilyn Bush, 512 Oswega Street, brought concerns regarding noise, garbage and urinating students from the nearby fraternity and sorority houses that use her property without permission.

J **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.

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