



City of Ann Arbor

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

Wednesday, December 19, 2012

6:00 PM

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

A CALL TO ORDER

Chair Kuhnke called the meeting to order at 6:01 pm.

B ROLL CALL

Chair Kuhnke called the roll, and welcomed new members, Sally Petersen [City Council Representative] and Nick Buonodono to the ZBA.

Present: 6 - Candice Briere, Chair Carol A. Kuhnke, Alex Milshteyn, Perry Zielak, Ben Carlisle, and Sally Petersen

Absent: 3 - Wendy Carman, Maureen Sertich, and Nickolas Buonodono

C APPROVAL OF AGENDA

The agenda was unanimously Approved as presented. On a voice vote, the Chair declared the motion carried.

D APPROVAL OF MINUTES

[12-1623](#)

October 24, 2012 ZBA Meeting Minutes

A motion was made by Zielak, seconded by Briere, that the Minutes be Approved. On a voice vote, the Chair declared the motion carried.

E APPEALS AND ACTIONS

Present: 8 - Candice Briere, Wendy Carman, Chair Carol A. Kuhnke, Alex Milshteyn, Perry Zielak, Ben Carlisle, Maureen Sertich, and Sally Petersen

Absent: 1 - Nickolas Buonodono

E-1 [12-1624](#)

ZBA12-019; 2196 West Stadium Boulevard
Calvert and Lasalle, LLC is requesting three variances from Chapter 47 (Streets), Section 4:20:

1. A variance of 35 feet in order to permit a driveway turning radius of 50 feet, 15 feet is required.
2. A variance of 4 feet 6 inches in order to permit a driveway opening 0 feet from the property line, 4 feet 6 inches is required.
3. A variance of 6 feet in order to permit a driveway opening of 36 feet, 30 feet is maximum required.

Matt Kowalski presented the staff report.

DESCRIPTION AND DISCUSSION:

The site is located on the east side of Stadium near the southeast corner of Liberty. The site is currently occupied by a 23,000 square foot retail building and has frontage on two roads, Liberty and Stadium. The site has three curb cuts, one on Stadium and two on Liberty. The building currently has three tenant spaces, two of which are occupied (O'Reilly Auto Parts and Dollar Tree). The applicant is proposing to sell the third space to Gordon Food Services, which has a need for large truck deliveries.

The existing curb cut from Stadium is a one way in entrance only. The petitioner is requesting the variances in order to reconstruct and enlarge the drive entrance from West Stadium. The modifications are needed to allow larger delivery trucks to enter from Stadium and use the drive along the rear of the building. This will allow for more direct access to the existing loading area in the rear of the building and will decrease truck traffic on Liberty and through the site where vehicle and pedestrian conflicts could occur. Utilizing the existing curb cuts will result in trucks entering and exiting from Liberty. This would require backing up and significant turning movements onsite to avoid backing onto Liberty.

The proposed driveway modifications require site plan approval and Administrative Amendment has been submitted and is currently under review.

The variances proposed have been reviewed and accepted by the City's traffic engineer as a safe and efficient design for the site.

Standards for Approval

Chapter 47 (Streets) 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 47(Streets), Section 4:20(9). The following criteria shall apply:

The Zoning Board of Appeals shall have the authority to interpret this Chapter and may, in specific cases involving practical difficulty or unnecessary hardship, grant variances or exceptions from the requirements of this Chapter providing such a variance or exception is in harmony with the general purpose and intent of this Chapter.

All of the variances requested will be in harmony with the general purpose and intent of Chapter 47 because they will allow for safer access to and from the site. The modifications proposed will assist delivery vehicles as well as large emergency vehicles navigate the site efficiently and minimize potential conflicts with passenger vehicles.

The proposed drive configuration will allow for more direct access to the existing loading area in the rear of the building and will decrease truck traffic on Liberty. Utilizing the existing curb cuts will result in greater impact to the general public by requiring that trucks both enter and exit from Liberty and will require numerous backing and turning movements onsite to avoid backing onto Liberty. Given the existing layout of the site and surrounding land uses, all of the requested variances are reasonable.

The City's Traffic Engineer has reviewed and supports the variance requests as

proposed.

Arrival of M. Sertich at 6:05 pm.

PRESENTATION BY PETITIONER:

John Walsh, P.E. LEED AP Associate at Paradigm Design, Inc, 550 Three Mile Road NW, Grand Rapids, MI, was present on behalf of the property owner, and explained the application.

Arrival of W. Carman at 6:13 pm.

PUBLIC HEARING:

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

Chair Kuhnke noted that no correspondence had been received in support or opposition of the application.

BOARD DISCUSSION

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

DECISION:

A motion was made by Zielak, seconded by Briere, that in the Case ZBA12-019, 2196 West Stadium Blvd., that the Zoning Board of Appeals hereby grants the following variances from Chapter 47 (Streets), Section 4:20:

- 1. A variance of 35 feet in order to permit a driveway turning radius of 50 feet, 15 feet is required.**
- 2. A variance of 4 feet 6 inches in order to permit a driveway opening 0 feet from the property line, 4 feet 6 inches is required.**
- 3. A variance of 6 feet in order to permit a driveway opening of 36 feet, 30 feet is the maximum required,**

based on the following findings of fact:

- a) The Zoning Board of Appeals has the authority to interpret Chapter 47 and may, in specific cases involving practical difficulty or unnecessary hardship, grant variances or exceptions from the requirements of this Chapter providing such a variance or exception is in harmony with the general purpose and intent of this Chapter.**
- b) That the variances will allow for safer access to and from the the site.**
- c) That the variances will assist delivery vehicles as well as large emergency vehicles to navigate the site efficiently.**
- d) That the variances will allow for more direct access to the existing loading area in the rear of the building.**
- e) That the City's Traffic Engineer has reviewed and supports the variance requests as proposed, per submitted plans.**

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

Variances granted.

Yeas: 7 - Briere, Carman, Chair Kuhnke, Zielak, Carlisle, Sertich, and Councilmember Petersen

Nays: 1 - Chair Milshteyn

Absent: 1 - Buonodono

E-2 [12-1625](#)

ZBA12-021; 1619 South University Avenue
Scott Klaassen (representing Administrative Holdings III, LLC) is requesting one variance from Chapter 55 (Zoning), Section 5:86 (Use Non-conformance), a variance to expand the existing non-conforming use by adding one bedroom to the existing structure. The number of occupants will not be increased.

Matt Kowalski presented the staff report.

SUMMARY:

Administrative Holdings LLC, represented by Scott Klaassen, is requesting one variance from Chapter 55 Section 5:86 (Use Nonconformance) in order to expand the existing non-conforming use (rooming house) by adding a bedroom to the existing structure. Residential occupancy will not be increased from a maximum of 10 people.

Chapter 55, ARTICLE VII

NONCONFORMANCE

5:85 - Statement of intent.

(1) It is the intent of this Chapter to recognize that the eventual elimination, as expeditiously as is reasonable, or existing uses or structures that are not in conformity with the provisions of this Chapter is as much a subject of health, safety, and welfare as is the prevention of the establishment of new uses that would violate the provisions of this Chapter. It is also the intent of this Chapter that any elimination of nonconforming uses or nonconforming structures shall be effected so as to avoid any unreasonable invasion of established private property rights.

5:86 Use Nonconformance

(1) A non-conforming use may be continued and shall be maintained in good condition, but it shall not be:

(c) Expanded or increased in intensity of use (for example, such as by the addition of 1 or more dwelling units, by providing additional manufacturing or selling area, or the addition of facilities which would allow the establishment of another use or other uses).

DESCRIPTION AND DISCUSSION:

The subject parcel is located on South University Avenue, south of Geddes Avenue

and just east of Oxford Road. The parcel is 9,000 square feet in size and zoned R2B (Two-Family Residential District). The structure was built in 1908 and is 2,887 square feet. The rear of the site contains a paved parking area of less than 1,200 square feet that can accommodate four vehicles.

History:

Records indicate that the structure was used as a rooming house dating back to at least 1958, and a Certificate of Occupancy from that time listed it is a single-family with 11 roomers. In 1984, at the direction of the Building Official the occupancy was reduced to comply with zoning occupancy limits of 4 unrelated people in the R2B zone.

In 1988, a new owner of the property appealed to the Zoning Board of Appeals (ZBA) in order to permit a maximum of 10 unrelated people to occupy the building. Citing affidavits from previous owners and historical occupancy records, the petitioner claimed that the use of the building by 10 unrelated people was a legal non-conforming use and was established before the occupancy limits in the R2B zone. Presenting at the ZBA, the petitioner said the previous owner did not reduce occupancy to four people voluntarily, but was misinformed by City staff, and therefore the occupancy should be restored to the historical limit of 10.

In conclusion, the ZBA determined that the occupancy limit of 10 people was permitted and the use constituted a legal non-conforming use.

Description:

The existing structure is a registered rental unit with 9 bedrooms and a maximum of 10 occupants. It is zoned R2B, which only permits a maximum of 4 unrelated people or boarding houses as a special exception use approved by the Planning Commission. The petitioner would like to continue to use the building as a rooming house and provide each resident with a private room and allow use of a basement room for sleeping. This will result in the expansion of floor area being used for occupancy. The petitioner has indicated there will be no increase in the building occupancy of 10 people. As noted above, Chapter 55, Section 5:86 (1)(c) states that a nonconforming use cannot be, "expanded or increased in the intensity of use". With the addition of a room in the basement, it is expanding the floor area fit for occupancy.

City records indicate that the room was been repeatedly used and cited by City housing inspectors as an illegal bedroom in the past. The petitioner submitted a building permit application to correct this in September 2012, which prompted this zoning review. If the variance is approved, the basement bedroom will be inspected and will be required to meet all housing and building codes for health and safety, including an egress window. If the variance is not approved, the petitioner will be required to remove the bedroom.

The property owner was also recently issued a violation for clearing the vegetation in the rear yard and expansion of the parking area without permits. City staff issued a violation letter indicating that this area must be restored. The violation was corrected and the cleared area has been reseeded.

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 conforming for lot size (9,000 sf). As determined by the ZBA in 1988, the rooming house use was legally established before the city code and occupancy limits were adopted.

(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 to allow the addition of one bedroom to the basement. Permitting a legal sleeping room in the basement will not allow the structure to be rented to more than 10 people. If the variance is not granted, the occupancy will remain at 10 with 9 sleeping rooms.

(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 footprint of the existing house will not be increased, however approval of the variance will allow the expansion of habitable space in the basement. The house currently is permitted to have 10 occupants and that limit will remain if the variance is granted or denied. The addition of the egress window will not have affect on adjacent neighbors and other modifications will be interior only.

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

The house has been certified to have 10 occupants in a maximum of 9 bedrooms since 1988. There are no records of any room in the basement being used as a legal bedroom. The variance is the result of the petitioner's interest to provide a private bedroom for each resident.

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

A room does already exist in the basement and rental inspection records indicate that it has been used as a bedroom in the past. However, there are 9 legal bedrooms existing, many of which can legally be occupied by two people (greater than 130 square feet) under the Housing Code regulations. Granting the variance will not increase occupancy of the structure, but will permit the owner to add an egress window and consider the room a legal bedroom. Other than the outside appearance of the egress window there will be no change in outside appearance or function of the structure. The parking requirement of four parking space can be met in the existing parking area behind the building.

PRESENTATION BY PETITIONER:

Scott Klaassen, 3003 Washtenaw Ave., 1E, was present on behalf of the property owner, and explained the application.

Ron White, 606 Church St, was present to respond to the Board's enquiries.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

Chair Kuhnke noted that the Board had received the following letters in objection to the request:

Kathleen Faller, 1613 South University, Ann Arbor.

Katarina Borer, 1724 South University, Ann Arbor.

BOARD DISCUSSION:

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

DECISION:

A motion was made by Zielak, seconded by Milshteyn, that in the Case ZBA12-021, 1619 South University Avenue, that the Zoning Board of Appeals hereby grants a variance from Chapter 55 Section 5:86 (Use Nonconformance) in order to expand the existing non-conforming use (rooming house) by adding a bedroom to the existing structure. Residential occupancy will not be increased from a maximum of 10 people,

based on the following standards:

- 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. That there have been at least 10 persons living in this house since 1988 or potentially even longer, before City code and City occupancy limits were adopted.**
- 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. Even though the variance will allow an additional bedroom to be built the structure will remain at 10 person occupancy.**
- 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 footprint of the existing house will not be increased. The addition of the egress window will not have affect on the exterior of the building.**
- d) That the conditions and circumstances on which the variance request is based shall not be a self imposed hardship or practical difficulty. There have been have 10 occupants in this building since 1988, or potentially even longer.**
- e) The variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure. A room already exist in the**

basement and the variance will make it a legal space vs an illegal space and it will not increase the occupancy of the structure, per submitted plans.

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

Variance Request Denied.

Yeas: 3 - Chair Milshteyn, Zielak, and Carlisle

Nays: 5 - Briere, Carman, Chair Kuhnke, Sertich, and Councilmember Petersen

Absent: 1 - Buonodono

E-3 [12-1626](#)

ZBA12-022; 501 Manor Drive

Robert D Carroll is requesting one variance from Chapter 55(Zoning) Section 5:28 (R1C, Single-Family), of 3 feet for construction of an attached carport in the side setback; 5 feet is required.

Matt Kowalski presented the staff report.

DESCRIPTION AND DISCUSSION:

The subject parcel is located at 501 Manor, just west of Pontiac Trail. The parcel is zoned R1C (Single-Family Residential). The house was built in 1964 and is 920 square feet in floor area. The house does not have a garage or carport.

The request is discussed in detail below:

The petitioner is proposing to construct a 9 by 18 foot, 162 square foot carport. The carport will be 9 feet tall attached to the house on one side, and will be enclosed on the rear and other side adjacent to the property line. The structure will be supported by 4 posts at the corners. It will not extend farther into the front setback than the existing house. The carport will provide cover to the side door of the house.

According to Chapter 55, 5:59, a carport is an accessory building and is not permitted within the required side open space. The proposed carport will extend 9 feet from the side of the house and will result in a two foot side setback, requiring a variance of three feet from the site setback requirement of 5 feet. There is 11 feet between the house and the side 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 parcel is 0.18 acre (7,622 sq ft) and 60 feet wide by approximately 120 feet deep. The parcel is a conforming R1C lot for both lot width required (60 feet) and lot area required (7,200 square feet). There is an approximately 8 foot decrease in elevation from the front yard to the rear.

(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 an attached carport on the side of the existing house. If the variance is not granted, the carport could be constructed to a maximum of 6 feet wide at the proposed location. There is no covered parking area on the parcel.

(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 carport structure will place two posts and a solid wall two feet from the side property line. According to the Michigan Residential Building code the wall running parallel to the property line is required to have a 1 hour fire rating in order to protect adjacent structures. Similar structures exist in the neighborhood, but the side setback distances cannot be verified by staff. The carport may also allow vehicles and solid waste containers to be screened from adjacent 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 placement of the existing house and the side entrance limit the area available to construct a carport in the side yard. In addition, the slope of the parcel to the rear would require significant grading modifications to construct a structure in the rear yard. The house has historically been used without the benefit of a carport or covered parking/storage area.

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

The requested variance is minimal in area and dimensions however, it would place a structure wall 2 feet from the side property line. The requested size of 9 feet by 18 feet is the size of a standard parking space required by code. This size permits minimal area for covered ingress and egress from a vehicle. 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 3 foot variance from the five foot side setback requirement in order to allow placement of the walls and posts within the required side setback.

PRESENTATION BY PETITIONER:

Robert Carroll, property owner was present and explained the application.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

Chair Kuhnke noted that the Board had received the following letter in support of the request:

Jonathan Plummer, 515 Manor Street, Ann Arbor.

BOARD DISCUSSION:

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

DECISION:

A motion was made by Carman, seconded by Milshteyn, that in the Case ZBA12-022, 5012 Manor Drive, that the Zoning Board of Appeals grant a variance of 3 feet from the side setback requirement of 5 feet to permit construction of an attached carport addition of 9 feet x 20 feet, subject to allowing for trash storage in the carport and leaving the wall adjacent to the neighbor [side property line] open, given the following findings of fact:

- a) That the variance being requested, if not granted, the carport could be built smaller, but would not provide sufficient space for a car.
- b) The variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter. The structure will place two posts and an open wall 2 feet from the property line.
- c) That the conditions and circumstances on which the variance request is based shall not be a self imposed.
- d) This variance shall be the minimum variance possible to provide a covered parking space on the lot.

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

Amended variance request granted.

Yeas: 8 - Briere, Carman, Chair Kuhnke, Chair Milshteyn, Zielak, Carlisle, Sertich, and Councilmember Petersen

Nays: 0

Absent: 1 - Buonodono

F OLD BUSINESS**G NEW BUSINESS**

Chair Kuhnke informed the Board that the Mayor had appointed Milshteyn to replace her as the Chair of the Zoning Board of Appeals.

Briere thanked Kuhnke for her 13 years of service on the Zoning Board of Appeals.

Matt Kowalski presented Kuhnke with a Certificate of Appreciation.

H REPORTS AND COMMUNICATIONS

A motion was made by Carman, seconded by Zielak, that the Minutes be Unapproved to allow corrections to be made, and returned to the January ZBA meeting for approval. On a voice vote, the Chair declared the motion carried.

Approval of Minutes postponed.

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

J ADJOURNMENT

A motion was made by Milshteyn, seconded by Zielak, that the Meeting be Adjourned. On a voice vote, the Chair declared the motion carried.

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