



City of Ann Arbor

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

Wednesday, June 27, 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: 8 - Candice Briere, Wendy Carman, Chair Carol A. Kuhnke, Erica Briggs, Alex Milshteyn, Perry Zielak, Ben Carlisle, and Maureen Sertich

Absent: 1 - Sabra Briere

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

D-1 [12-0884](#) Zoning Board of Appeals Meeting Minutes of May 23, 2012

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

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

Nays: 0

Absent: 1 - Councilmember Briere

E APPEALS AND ACTIONS

E-1 [12-0732](#) ZBA12-008; 984 Broadway Street Detroit Edison (DTE Energy) is requesting one variance from Chapter 62 (Landscape and Screening) Section 5:603 (C). A proposal to provide an 8 foot wide (15 feet required) Conflicting Land Use Buffer on the subject site with the remaining 7 feet and required vegetation to be provided on the adjacent Public Park property.

Cheng gave the staff report.

DESCRIPTION:

The parcel is zoned C3 (Fringe Commercial) and is located on the south side of Broadway between the Huron River and Wall Street and adjacent to Riverside Park. The brick building on the western edge of the site was constructed around 1905. A site plan was approved in 1999 to construct a 39,192 square foot truck shelter. As part of that site plan approval, the ZBA granted a variance in January 1999 to allow the storm water detention basin to be located in a 100 year floodplain. The truck shelter was completed in 2000.

The petitioner proposes to construct a new electrical substation at its service center facility to address increased demand for electric power in downtown Ann Arbor. The substation addition will be located at the northeast corner of the site in an area now occupied by a service drive. The source of power will be through underground sub-transmission cable in an existing manhole and conduit system. The distribution circuits will exit the site underground as well. Due to the code requirements for clearance, fencing and safety, and the placement of existing infrastructure, the proposed location is the only feasible option for construction of the new facility.

The drive connection to Canal Street at this corner will be closed to accommodate the addition. The substation will consist of two 15.5-foot tall electrical transformers and related electrical equipment on raised concrete pads and a new Power Delivery Center (PDC), a 630 square foot, 12.5' ft tall steel structure. The project also will include a new six-foot tall perimeter chain link fence with one foot of barb wire.

On June 5, 2012 the Planning Commission granted approval of the site plan for this project contingent upon variances being granted by the ZBA for providing required storm water detention on the site and from the requirement to provide a conflicting land use buffer adjacent to the park.

*STANDARDS FOR APPROVAL:**Chapter 62 (Landscape and Screening) 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 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 noted above, the location proposed for the substation is dependent on many restrictive variables. Due to these restrictions, the petitioner has stated that there are no other feasible locations at this site. Given the size of the installation and clearance required, they are unable to provide the entire 15 foot wide conflicting land use buffer, which is required along the east side property line abutting Riverside Park. The petitioner is requesting a variance of 8 feet from this requirement and the ability to plant all required landscaping (33 trees and 38 shrubs) along the far western side of Riverside Park instead.

Due to the involvement of City parkland, The City of Ann Arbor's Parks Advisory Commission has reviewed the variance and request for plantings on public park property and approved the request at its February 2012 meeting.

Chapter 63 (Storm Water Management and Soil Erosion Control and Sedimentation Control) 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 63, Section 5:566. The following criteria shall apply:

The Zoning Board of Appeals shall have the authority to interpret this chapter and may in specific cases grant variances to these requirements providing such variance 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. In addition to the procedures of Chapter 55, when variances are requested from the storm water management system section of this chapter, the applicant shall show that storm water management systems have been provided to the maximum extent feasible with the goals of meeting the rules of the WCWRC (Washtenaw County Water Resources Commissioner).

The petitioner is able to accommodate first flush and bankfull storm water storage on the south side of the site by modifying the outlet structure in the existing basin. The previous site plan received a variance in January 1999 to allow this detention basin to be located in a 100-year floodplain. It appears that the variance was intended to waive the requirement to provide detention for the 100-year event. However, that variance was not specifically requested or provided, and the variance language was somewhat vague. As a result, staff has recommended that the petitioner go to the Zoning Board of Appeals to specifically request a variance from the 100-year detention requirement.

This variance request has been reviewed and is supported by staff responsible for flood plain and storm water review because the request meets the general purpose and intent of the storm water section and storm water is being provided to the maximum extent possible according to the rules of the WCWRC.

QUESTIONS TO STAFF BY THE BOARD:

Enter Carman.

B. Carlisle asked who would be maintaining the landscaping that is proposed to be on park property.

Cheng deferred the enquiry to the applicant.

Scott Trowbridge, DTE Manager, stated that they would be furnishing the trees and landscaping that would be planted in the buffer zone. He said the landscaping would become park property after a one (1) year warranty time period.

PRESENTATION BY THE PETITIONER:

Trowbridge thanked staff for their assistance and said the staff report covered their petition.

P. Zielak asked what type of landscaping would be going in the buffer zone.

Gordon Yee, DTE Landscape Architect was present and reviewed the species list with the Board. He explained that they are proposing 23 trees along the park side, 11 of which are evergreen, and 12 deciduous, flowering crabs. Along Canal Street they

are proposed 39 shrubs, with the ones in the rear reaching 6-10 feet in height.

W. Carman asked about the landscaping along the park side, noting that the plan indicated landscaping only on the park property without anything on the DTE side. She asked staff if a retaining wall meets the code requirement.

Trowbridge explained that currently there is a fence along the property line between DTE's service site and the park, and the fence will be moved back eight (8) feet and located on a retaining wall, and the landscape area into Riverside Park will probably extend more than seven (7) feet. He noted that the retaining wall is necessary due to the higher elevation of the substation.

C. Cheng showed the site plan with landscaping being planted on the park property. He explained that the conflicting land use buffer code requires a landscape buffer to be fifteen (15) feet wide, along with a hedge berm, wall or fence. He said the applicant is meeting that requirement with the fence and the landscaping. The landscaping doesn't need to be split between the park property and the DTE site, as long as the landscaping would be on the park property they would be meeting the intent of the conflicting land use buffer.

AUDIENCE PARTICIPATION:

None

BOARD DISCUSSION:

C. Kuhnke noted that the Board had not received any correspondence from neighbors related to the request.

E. Briggs asked for buffer requirements for the remainder of the site.

C. Cheng explained that parking lots are required to be screened from parks or residential neighborhoods, with a fifteen (15) foot wide conflicting land use buffer.

C. Kuhnke asked if all of the landscaping buffer would be provided on the park property.

C. Cheng said, no, seven (7) feet of the buffer would be on the park property and eight (8) feet on the DTE property, and the variance was to allow them to put seven (7) feet of the buffer on the park property, thereby splitting the total required width. He said all of the vegetation would be on the park side, which has been addressed and approved by the City's Park Advisory Commission, back in February 2012.

A. Milshteyn asked why there would not be any vegetation on the DTE property.

C. Cheng responded that the site is very tight and due to a lot of underground utilities, and safety issues DTE was forced to locate the substation on the proposed corner of the site as opposed to the parking lot area or on the northern part of the site.

A. Milshteyn asked where the proposed retaining wall would be located, and how high it would be elevated.

Yee indicated on the site plan where the retaining wall would be located, noting it would be five (5) feet above the existing elevation.

W. Carman asked how wide the retaining wall structure would be.

Yee said there would be five (5) feet of gravel along the property line and then the retaining wall with a fence constructed on top of the wall. He said there would be a grounding wire loop that needs to be within three (3) feet of the fence and no vegetation can be planted in that area, noting that they usually keep 5-6 feet of vegetation clearance from their fences.

W. Carman asked if all required vegetation would still be provided, but it would be moved over to the neighboring property.

C. Cheng said, yes.

E. Briggs asked if the fence style would be the same as what is currently on the site.

Yee said yes, it is a standard design for DTE.

W. Carman asked about the requested variance from Chapter 63, that the applicant was asking for relief from providing storm water detention on site for a 100-year storm event.

C. Cheng said, yes, according to the rules of the Washtenaw County Water Resources Commissioner when structures are built in the floodplain they would want it this way. He said staff believe that as part of the 1999 site plan approval, the ZBA granted a variance in January 1999 to allow the storm water detention basin to be located in a 100 year floodplain, however, staff felt the language of the 1999 variance was a bit unclear so the applicant is coming back for clarification on the issue.

M. Sertich asked if the reason for the elevated construction was due to the floodplain.

C. Cheng said, yes.

Motion made by W. Carman, seconded by C. Briere, in the case of ZBA12-008, 984 Broadway Street, that the Zoning Board of Appeals grant a variance from Chapter 62, Landscape and Screening Ordinance, Section 5:603(C) to allow the provision of an eight (8) foot wide conflicting land use buffer on the site with the remaining seven (7) feet on the public park property where all required vegetation will be planted, and a variance from Chapter 63, Storm Water Management and Sedimentation Control Ordinance, from providing detention for a 100-year storm event, based on the location of the subject property within the floodplain, per submitted plans, based on the following findings of fact:

- a. Given that a variance may be granted from the strict application of these two provisions in cases involving practical difficulties or hardships when evidence supports the public benefit intended to be secured by the chapter will exist with less than the required landscaping or screening,
- b. Given that strict compliance would unreasonably prevent the property from providing the substation,
- c. Given the sited needs they have, the national electric safety code,
- d. The need to minimize the impact on the floodplain,
- e. The need to be near the Argo substation,
- f. The need to utilize the existing cable conduits,

g. The variance will provide substantial justice for the applicant and no lesser variance will be more consistent with justice for others as the impact on the neighboring parkland will be mitigated by the plantings on park property.

h. This plight is unique in the circumstances and,

i. The situation is not self created.

COMMISSION DISCUSSION:

A. Milshteyn asked if it is really safe to have a substation so close to the river.

Trowbridge stated while no site is perfectly ideal, the reason for the elevation is to bring it above a 500 year floodplain and that would be even with the bottom of all the equipment. He said it was the best site they could locate in the area, adding that they had also received a floodplain permit from the State.

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

Variances granted.

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

Nays: 0

Absent: 1 - Councilmember Briere

E-2 [12-0885](#)

ZBA12-009; 2842 Leslie Park Circle

Alan Burg and Kenneth Hillenburg are requesting one variance from Chapter 55(Zoning) Section 5:28 (Single-family, R1C), of 5 feet for expansion of an existing residential structure into the rear setback; 30 feet is required.

Chris Cheng gave the staff report.

DESCRIPTION:

The subject parcel is located on Leslie Park Circle, just south of Dhu Varren Road. The parcel is zoned R4A (Multiple-Family Residential District), however per City Code, single-family homes within the R4A zone are subject to the R1C zoning regulations. The parcel is 7,840 square feet (7,200 square feet is required for R1C). The house was built in 1998 and is 2,676 square feet.

The request is discussed in detail below:

The petitioner is proposing to construct a 144 square foot enclosed sunroom attached to the rear of the house. The addition measures approximately 12 feet by 12 feet and will be constructed over a portion of an existing unenclosed elevated deck. The new sunroom will be 25 feet from the rear property line (requires rear setback is 30 feet) and completely behind the rear of the house. It will not be located in any side setback. The existing deck will remain and at its closest point is approximately 20 feet from the rear property line. Although the existing deck encroaches into the rear setback, the house is currently conforming to zoning codes. Decks are permitted within the rear open space as long as they are not covered or

enclosed.

The screened porch would be attached to the family room and will be designed to match the architectural form and roof lines of the existing house. There is also an existing door wall that provides access to the deck.

STANDARDS FOR APPROVAL:

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 of lot size (7,840 sf). The parcel has a slope to the rear of the site and is has significant mature trees in the rear yard. There is a protected natural area immediately adjacent to the rear 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 an enclosed sunroom addition to the rear of the existing house aligning with an existing rear door wall. The sunroom will be constructed over an existing elevated deck. Due to the location of the original house, any enclosed addition to the rear could extend a maximum of 7 feet from the rear of the house.

(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 existing house will be enlarged, but the structure will not get any closer to the side or front property lines. The new addition structure will be 25 feet from the rear line which abuts open space and will be over 20 feet from the closest side property line. The proposed addition will not be visible from the front of the parcel and there is a similar enclosed porch in the neighborhood. A letter of support signed by neighbors and a letter of approval from the neighborhood association have been submitted.

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

A unenclosed deck currently exists in the location of the proposed addition, a new porch could be constructed in this location, but it could not be covered. Any addition to the rear of the house would require a variance.

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

The proposed 12 foot by 12 foot (144 sq ft) addition will encroach 5 feet into the required rear open space and will be over 20 feet from the adjacent side property

line. The enclosed sunroom will add approximately 60 square feet of building area in the required rear open space.

QUESTIONS TO STAFF BY THE BOARD:

M. Sertich asked what the reason is for having a thirty (30) foot setback in this type of situation.

C. Cheng responded that the R1C standards call for a thirty (30) foot rear setback, and the deck can go into the rear yard setback when it is an accessory structure, but when it is being covered or enclosed it would need a variance.

W. Carman asked if staff is certain that no part of the deck projects out past the curve.

C. Cheng said he didn't believe it would project past the ark and if so, very slightly.

PRESENTATION BY THE PETITIONER:

Robert Clark, Four Seasons Sunroom, presented the project. He said they would not be going out past the ark, looking from south to north of the diagram.

He handed out a packet of information to the Board, pointing out the wetland area as well as the setback issue as it relates to the homes throughout the neighborhood. Clark provided approval from the Neighborhood Association.

M. Sertich asked if the porch included sliding doors or windows.

Clark said it would be a glass knee-wall, and the only door would lead to the remaining section of deck.

He said the deck would go out approximately four (4) feet beyond the room.

B. Carlisle asked if they would be doing any structural improvement below the deck, given the steeper slope and potential erosion issues.

Clark responded that he would be adding three (3) posthole footings, close to the existing posts, to meet the City and State building code for load bearing requirements.

B. Carlisle asked if there would be any exterior lighting.

Clark said per State building code there would have to be a porch light from the sunroom out to the deck.

AUDIENCE PARTICIPATION:

None

BOARD DISCUSSION:

W. Carman said she didn't believe there was a unique circumstance on the property that made the need to build within the five (5) feet, a hardship, adding that it did not make their property unusable not to have the enclosed deck. She didn't believe it met the standards.

C. Kuhnke noted that the Board had not received any correspondence from

neighbors related to the request.

A. Milshteyn asked what the parcel is zoned.

C. Cheng said it is zoned R4A (Multiple-Family Residential District), however, if parcels are used as single-family homes within the R4C districts they become subject to the R1C zoning regulations.

A. Milshteyn asked what setback requirements are for the R4A zoning district.

C. Cheng said front setback would be a range from 15-40 feet, side setbacks are 20 feet, and rear yard setbacks are 30 feet.

Motion made by P. Zielak, seconded by B. Carlisle , in the case of ZBA12-009; 2842 Leslie Park Circle, based on the following findings of fact and accordance with the established standards of approval, the Zoning Board of Appeals hereby grants a variance from Chapter 55 (Zoning) Section 5:28 (Single-family, R1C), of five (5) feet from the required rear setback of thirty (30) feet, in order to permit a building addition of twenty-five (25) feet from the rear property line,

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

b. 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 effect surrounding properties,

d. The circumstances of the variance request are not self imposed.

e. The variance request is the minimum request to achieve reasonable use of the structure, per submitted plans.

COMMISSION DISCUSSION:

B. Carlisle said he supports the motion because he feels there is unique hardships; the twenty-five (25) foot easement in the front of the property which dictates the placement of the main house, and there is significant slope in the rear of the property which would limit the location of the sunroom in any other potential location, and there is already an existing deck that has some impact which makes the sunroom a minimal impact on the adjacent property owners.

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

Variance granted.

Yeas: 7 - Briere, Chair Kuhnke, Briggs, Milshteyn, Zielak, Carlisle, and Sertich

Nays: 1 - Carman

Absent: 1 - Councilmember Briere

E-3 [12-0886](#)

ZBA12-010; 2411 Londonderry Road
Paul and Ruth Hays are requesting one variance from Chapter 55(Zoning) Section 5:57 (Averaging an Existing front setback line), of

3 feet for expansion of an existing residential structure into the front setback; 40 feet is required (Averaged Front Setback).

Chris Cheng gave the staff report.

DESCRIPTION:

The subject parcel is zoned R1B (Single-Family) and is located northeast of Washtenaw Avenue.

The petitioner is proposing to construct a 8 foot by 20 foot addition to the front of this single-family house. The house was built in 1959 and is 1,770 square feet in size. Currently the house is setback 45 feet from the front property line, and the required averaged front setback is 40 feet. Although the average front setback is larger in this area, 40 feet is the maximum setback required under Averaging of Existing Front Setbacks section of City Code. The petitioner is proposing to add an addition to the house that extends out 8 feet from the existing house, which will result in a front setback of 37 feet. Since the required setback is 40 feet, the petitioner is requesting a front setback variance of 3 feet. The R1B zoning district requires a 30 foot front setback without averaging.

The proposed one-story addition contains the front of an attached garage that will be shifted to the front. The rear portion of the existing garage will be converted to living space in order to allow for an expanded kitchen area. The new garage will be 22 feet long by 20 feet wide, resulting in an encroachment of 3 feet into the averaged front setback.

STANDARDS FOR APPROVAL:

Standards for Approval- Variance

The Zoning Board of Appeals have 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 a conforming lot in the R1B Zoning District (required is 10,000 square feet, subject parcel is 15,939 square feet). The parcel is located on a curve in Londonderry Road and has a curved front lot line. There is a large tree and mature landscaping located directly to the rear of the existing house.

(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 addition to an attached garage 8 feet closer to the front property line. There is no room for expansion to the side of the house and expansion to the rear would require removal of a large tree and mature landscaping.

(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.

If the front variance is approved, the size of the structure will be consistent with some houses in the neighborhood. Although the proposed addition would extend into the averaged front setback, the parcel is located on a curve in the road which may minimize visual impact to the neighborhood and existing vegetation should help minimize the impact to the surrounding neighborhood. The petitioner has submitted a signed letter of support from several neighborhood residents.

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

The 40 foot front setback requirement is based on the averaged front setback of adjacent properties, which exceeds 40 feet. However, the front setback is only averaged to a maximum of 40 feet. There is very limited room to construct an addition to the sides of the house and the petitioner has stated a desire to preserve the mature tree and landscaping along the rear of the house. An addition of less than 5 feet could be constructed in the front.

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

After completion of the addition, the house will be 37 feet from the front property line, 7 feet behind the 30 foot front setback required before averaging. The variance will permit construction of an 8 foot by 20 foot single story garage addition extending into the averaged front setback three feet. If approved, a total of 60 square feet of structure will be constructed within the front setback.

QUESTIONS TO STAFF BY THE BOARD:

None

PRESENTATION BY THE PETITIONER:

Robert Chizek, representing the owners, presented the project, pointing out the front setbacks in the neighborhood range from 19 to 70 feet, with their proposed project being set back at 37 feet. He said one of the key issues for not building the addition in the back yard is not to disturb the drip line of the landmark tree in the rear yard. He explained that the addition is necessary to accomplish some of the 'aging in place' design criteria that was not considered in the original construction, such as wider hallways, landings on both ends of a stairway, and wider stairways.

AUDIENCE PARTICIPATION:

None

BOARD DISCUSSION:

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

*Property owner, Lyon, 2417 Londonderry Road, in support of project.
Property owner, Cooper, 2405 Londonderry Road, in support of project.*

B. Carlisle asked if the averaging of neighborhood setbacks [within 100 ft of the parcel] included the applicant's parcel.

C. Cheng responded that the average setback came to 45 feet, and it excluded the

applicant's parcel.

A. Milshteyn said it is always helpful to see the surrounding neighborhood setbacks, noting that the houses across the street are setback at 34, 35 and even 19 feet, so the proposed setback wouldn't seem out of line with the neighborhood.

P. Zielak agreed with Milshteyn, adding that the main reason was to protect a landmark tree.

E. Briggs noted that the proposed setback would be allowed if the setbacks weren't averaged.

W. Carman commented that the neighborhood would be at a greater loss without the tree than by the reduction of a three (3) foot setback requirement.

Motion made by E. Briggs, seconded by P. Zielak , in the case of ZBA12-010; 2411 Londonderry Road, 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 5:57 (Averaging Existing Front Setback) of 3 feet from the required front setback of 40 feet in order to permit a building addition 37 feet from the front property line.

- a) **The alleged hardships are peculiar to the property, particularly the location of a landmark tree 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, since a number of trees in the area have lesser setbacks.**
- 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, per submitted plans.**

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

Variance granted.

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

Nays: 0

Absent: 1 - Councilmember Briere

E-4 [12-0887](#)

ZBA12-011; 306-310 Spring Street & 418 Miller Avenue
Raymond Knight is requesting permission to alter a non-conforming structure and one variance from Chapter 63 (Storm Water Management and Soil Erosion and Sedimentation Control). If granted, the alteration and variance will permit expansion of an existing commercial building without providing additional onsite storm water

management system as required by City Code.

Chris Cheng gave the staff report.

DESCRIPTION:

The subject site includes three contiguous parcels under the same ownership at the northeast corner of Miller Avenue and Spring Street, having a total of 17,812 square feet. One parcel, address 418 Miller Avenue, contains a small neighborhood grocery store and is zoned C1 (Local Business) and M1 (Light Industrial). One parcel contains two single-family dwellings, addresses 306 and 308 Spring Street, and approximately half of the 14-space parking lot of the store in its rear yard, and is zoned R2A (Two-Family Dwelling) and M1. One parcel, address 310 Spring Street, has no building but has the other half of the stores parking lot, and is zoned R2A and M1. All three parcels are entirely within the 100-year floodplain of Allen Creek.

The petitioner is requesting City Council approval of a rezoning of 306-308 and 310 Spring Street from R2A and M1 to C1 so that the building at 306 Spring Street can be converted into a bakery, as well as approval to construct a 1,200-square foot addition to the existing grocery store and expansion, reconfiguration, and improvement of the existing parking lot. The portion of 418 Miller Avenue currently zoned M1 is requested to be rezoned to C1.

A 1,200 square foot addition is proposed to be constructed to the east side of the commercial structure at 418 Miller, to match the 0 foot setback of the existing structure. The required setback for the proposed C1 district is 10 feet, therefore permission to alter a non-conforming structure is required from the Zoning Board of Appeals.

As part of the site plan that was submitted with the rezoning, the petitioner will make improvements to the parking lot, including right-of-way screening and a conflicting land use buffer. Rain gardens and oversized pipes are being provided to handle the full requirement for storm water management of the first flush and bankfull storm volume. However, storm water detention is prohibited from being located within the floodplain. The variance is required in order to allow this detention within the floodplain.

On June 19, 2012 the Planning Commission recommended approval of the site plan and rezoning for this project, contingent upon a permission to alter a non-conforming structure and a variance being granted by the ZBA for providing required storm water detention in the floodplain.

STANDARDS FOR APPROVAL:

Standards for Approval - Permission to Alter a Non-Conforming Structure:

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:

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 proposing to construct a 1,200 square foot addition to the existing commercial building. The 16-foot long addition would be constructed in between the existing building which is located directly on the front property line along Miller Road (0 foot setback) and the adjacent railroad bridge, which is also located directly on the property line (0 foot setback). If the addition is setback 10 feet, it would create a 10 foot by 16 foot 'inset' in the streetscape along Miller. This 'inset' will not meet the

intention of the zoning ordinance and would only serve to create a 'dead zone' wedge in between neighboring structures. The proposed addition is not visible from any residential structures. Maintaining the 0 foot setback along Miller complies as nearly as practicable with the zoning ordinance and will not have a detrimental effect on neighboring property.

Since the area to be occupied by the addition currently is zoned M1, this action should be conditioned upon Council approval of the proposed C1 zoning.

Standards for Approval – Variance from Chapter 63 (Storm Water Management and Soil Erosion Control and Sedimentation Control):

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 63, Section 5:566. The following criteria shall apply:

The Zoning Board of Appeals shall have the authority to interpret this chapter and may in specific cases grant variances to these requirements providing such variance is in harmony with the general purpose and intent of the requirements. The procedural requirements for appeals under Chapter 55H shall be applicable to appeals under this chapter. In addition to the procedures of Chapter 55H, when variances are requested from the storm water management system section of this chapter, the applicant shall show that storm water management systems have been provided to the maximum extent feasible with the goals of meeting the rules of the WCWRC (Washtenaw County Water Resources Commissioner).

The proposed rain gardens and pipes to provide storm water management are located within the 100-year floodplain, which is prohibited by City Code. A variance must be granted from Chapter 63 (Storm Water Management and Soil Erosion and Sedimentation Control), Section 5:653 and 5:654(2)(a) of the Ann Arbor City Code and Part 2, Section III, #13 of the Rules of the Washtenaw Water Resources Commissioner. This variance request has been reviewed and is supported by staff responsible for floodplain and storm water review because 1) the entire site is within the 100-year floodplain and there is no other option for locating the proposed rain gardens or any other type of storm water management system; and 2) the request meets the general purpose and intent of the storm water section as storm water management is being provided to the maximum extent possible according to the rules of the WCWRC.

It should be noted that this variance request from Chapter 63 of the Ann Arbor City Code is not a variance from flood resistant construction standards, found in the Michigan Building Code, which City staff strongly oppose out of concerns for jeopardizing the City's standing in the National Flood Insurance Program.

QUESTIONS TO STAFF BY THE BOARD:

C. Kuhnke asked why the City wouldn't require storm water detention in the floodplain.

C. Cheng said that according to the City's floodplain coordinator, it is like a highway, where you want to keep the water flowing and in the event of a 100-year storm event you don't want to keep the water stored on site, which makes the situation worse, but you want it to keep flowing off site.

C. Cheng noted that this site doesn't require a 100-year storm event detention, as it doesn't have more than 15,000 sq feet of impervious surface so it is only required to

have first flush and bank full, which the Washtenaw County Water Resources Commissioner recommends not having at the site, however the petitioner is requesting it and City staff is supporting the request.

PRESENTATION BY THE PETITIONER:

Dick Fry, Architect for the project, presented the project. He showed a facade rendering of the proposed changes to the Knight's Market, adding that the drawings were ideas, at this stage and hadn't been approved by the applicant.

Fry stated that he was confused by a comment in the staff report, regarding the storm water issue, that they are not asking for a floodplain variance, but it is a variance from the storm water management. He explained that the building is currently located in the required setback, and an expansion of an existing non-conforming structure wouldn't require a front setback variance, only permission to alter a non-conforming structure. Fry noted that the addition would be getting additional storm water detention.

W. Carman asked if the applicant is getting a variance so they can provide something that they don't need to provide.

C. Cheng said, yes, because the parcel is in a floodplain. He explained that the City has two conflicting ordinances; the storm water ordinance says they need to have first flush and bank full and if this was outside of the floodplain they meet that requirement, but because the applicant is located in the floodplain, Washtenaw County Water Resources Commissioner says they really don't want to have storm water detention in there. Cheng said the applicant is meeting the code and he is putting the addition there because there is no other place because they are located in the floodplain.

W. Carman asked why the applicant would want to have a storm water detention when the County doesn't want to have one installed.

C. Cheng said the applicant does meet the intent of the code but because he has to put it in the floodplain the County prefers not to have one there.

W. Carman said a storm water detention will be good for collecting rainwater on site. She asked how deep the system would be.

Fry said it would be about three (3) feet deep, and they would be using eighteen (18) inch diameter pipes, noting that the design will allow them to plant shrubs and flowers on top of the system instead of having an open ditch. Fry said during their citizen participation meeting they only had one person who objected to the proposed rezoning request [which is a separate request].

B. Carlisle said he liked the idea of raingardens and felt the City should be encouraging these types of green infrastructure systems. He asked staff if the application was approved by the ZBA, would the applicant still have to submit plans to the City showing the installation and would the City inspect the system to make sure it is kept in working condition. He asked if the applicant would need to provide landscaping information on the plans.

C. Cheng said the applicant would need site plan approval of the project by City Council, where they would need to show all approved plantings on the landscape plan. Upon approval of the site plan they would then have to apply for grading and building permits before construction, and it will then be up to the applicant to keep

that raingarden clean and operable, after construction. Cheng said staff will verify through site inspections that the approved site plan was followed.

Fry commented that a landscaping plan was submitted as part of the site plan and was approved by the City Planning Commission. He said the Knight family lives on the site so it is easy for them to keep maintaining the site.

C. Cheng pointed out to the Board that their motion needed to specify that any ZBA action would be conditioned upon Council approval of the proposed C1 rezoning of the parcel which is currently zoned M1, noting that setback requirements are different.

W. Carman asked if the proposed addition would be built on the parcel that is currently zoned M1.

C. Cheng said yes.

Discussion on setbacks pursued.

AUDIENCE PARTICIPATION:

Eric Cazepis, property owner directly across from Knight's Market, on the north west side, stated concerns for his bakery building, floodplain issues and parking. He said parking is very tight and he is against the request because the approval would help one business while hurting another. He said he was concerned about future encroachment on the neighborhood and that a tall building could be build in that location in the future. He said he remembers when Allen Creek was located above ground before the City installed the underground pipes and how you could see the flooding whenever it rained. He said he is concerned for his property and the neighborhood because it is located in the floodplain.

BOARD DISCUSSION:

Procedural discussion pursued.

E. Briggs asked if the tree along the embankment would be removed.

Fry said they might need to trim it, but he didn't have the specifics yet. He said they will be adding additional street trees.

E. Briggs asked how the Board could word a motion regarding the project when they didn't have final facade drawings/plans submitted.

C. Kuhnke said the Board could state per submitted plans with the exception of the facade.

W. Carman asked if the Board's motion usually includes exterior facade.

C. Cheng said no, with the exception when there is a Development Agreement between the owner and the City.

E. Briggs said she felt the submitted plans, that were part of their packets, was quite unacceptable and would not like to see an expansion of Knight's Market in its' current form. She said she liked the proposed facade rendering that was passed around to the Board.

A. Milshtyne asked if the changes would negatively affect the railroad and the overpass in any way.

C. Cheng said he didn't believe so.

M. Sertich asked how many raingardens they were proposing and if the arrows on the plan indicated water flow. She asked if there was a ridge along the zoning boundaries on the site that would make the water flow in different directions.

It was determined that the north arrow on the plans was incorrectly marked.

Fry said there is one raingarden and the arrows indicate the natural flow of the water, which is towards the back corner. He said there is a ridge and trench drains on both parcels that collect the water, and the parking lot was designed thirty (30) years ago.

A. Milshtyne asked if the applicant would be rezoning all three (3) lots and if they could add onto the back of the Knight's Market building, instead of the side, and not need permission to alter a non-conforming structure.

C. Cheng said yes, they were proposing to rezone all three (3) lots and an addition on the back would cut off their access to the site, and they would still need permission to alter a non-conforming structure. He read from the Planning Commission Staff Report and addressed concerns that a tall building could be built on the site in the future. He said only 3-story buildings are allowed in the C1 zoning district with 8,000 sq ft limited business uses, and with any new buildings, parking requirements would need to be met, which would force the applicant to come before the ZBA requesting a variance because they wouldn't meet the requirements.

Motion made by W. Carman, seconded by A. Milshteyn, in the case of ZBA12-011, 306-310 Spring Street, 418 Miller Road, that the Zoning Board of Appeals grant permission to alter a non-conforming structure in order to allow expansion of an existing non-conforming structure per submitted plan based on the following findings of fact:

a. Given that the addition does not increase the dimension of the setback non-conformance along Miller Road, and

b. Will not have a detrimental effect on the neighboring property, and

Conditioned on rezoning all M1 parts of the parcels to C1.

COMMISSION DISCUSSION:

A. Milshteyn asked if the Board could approve the project with the stipulation that the facade come back to the Board for final approval.

C. Kuhnke said that design elements are not under the purview of the Board.

A. Milshteyn said that would make any facade specifications mute.

C. Kuhnke said he believed E. Briggs was suggesting that she wasn't willing to support the extension of the non-conformity as presented in the packet plans unless the facade will be improved, because they showed the building in its existing condition.

Fry offered to add the facade rendering to the packet if that is what the Board needed to move forward, noting that the owners have specified that they plan on making

improvements to the facade.

E. Briggs said if Fry and the owners were comfortable with adding the facade 'idea' rendering to the record, she would feel comfortable referencing the submitted plans in the motion.

C. Cheng said that staff wouldn't feel comfortable with the Board approving a rendering that could change before the final design was nailed down, because it would mean that the applicant would need to come back to the ZBA for permission on any changes.

W. Carman stated that the Board could add any condition that is reasonable, onto their approval because the applicant is asking to do something that is otherwise not legal; however, the Board is not in the position of knowing what the final plan will be. She said she believed the Board would be comfortable knowing that the expansion will have larger windows and look better than what is existing, and staff could work administratively with the applicant on any changes or modifications to the submitted plan/rendering.

C. Kuhnke said she was comfortable allowing staff to work with the applicant on possible modifications to the added submitted plan.

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

Permission granted.

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

Nays: 0

Absent: 1 - Councilmember Briere

Motion made by C. Briere, seconded by P. Zielak, in the case of ZBA12-011, 306-310 Spring Street, 418 Miller Road, that the Zoning Board of Appeals grant a variance from Chapter 63 (Storm Water Management and Sedimentation Control) in order to provide first flush and bank full detention on the subject property within the floodplain, in accordance with the following findings of facts:

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

b) The applicant has provided a storm water management system to the maximum extent feasible, per submitted plans.

Friendly amendment made by W. Carman to add:

Approval on the condition upon rezoning to C1 Zoning District. Approved.

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

Variance granted.

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

Nays: 0

Absent: 1 - Councilmember Briere

F **OLD BUSINESS**

F-1 [12-0589](#) Review of the ZBA Rules and Procedures

Kevin McDonald, City Attorney, reviewed the suggested revised Zoning Board of Appeals Bylaws with the Board.

The Commission agreed to bring the Bylaws back before the Board as a Discussion Item at their July 2012 meeting.

G **NEW BUSINESS**

H **REPORTS AND COMMUNICATIONS**

[12-0890](#) Revised 2012-2013 ZBA Meeting Schedule

Approved and Filed

I **PUBLIC COMMENTARY - (3 Minutes per Speaker)**

J **ADJOURNMENT**

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

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