



City of Ann Arbor
Formal Minutes
Zoning Board of Appeals

301 E. Huron St.
Ann Arbor, MI 48104
<http://a2gov.legistar.com/Calendar.aspx>

Wednesday, April 22, 2015

6:00 PM

Larcom City Hall, 301 E Huron St,
Second Floor, City Council chambers

A **CALL TO ORDER**

Chair Milshteyn called the meeting to order at 6:04 p.m.

B **ROLL CALL**

Chair Milshteyn called the roll.

Staff Present: City Planner Chris Cheng.

Present: 8 - Candice Briere, Alex Milshteyn, Ben Carlisle, Nickolas Buonodono, Heather Lewis, Evan Nichols, David DeVarti, and Kirk Westphal

Absent: 1 - Perry Zielak

C **APPROVAL OF AGENDA**

Moved by Councilmember Westphal, seconded by Nichols, that the Agenda be Approved as presented. On a voice vote, the Chair declared the motion carried.

D **APPROVAL OF MINUTES**

[15-0485](#) March 25, 2015 ZBA Minutes with Live Links

Moved by Nichols, seconded by DeVarti, that the Minutes be Approved by the Board and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.

E **APPEALS AND HEARINGS**

E-1 **[15-0486](#)** ZBA15-004; 3010 Hickory Lane
Ann Arbor Racquet Club is requesting a front yard setback from Chapter 55 (Zoning) Section 5:25 (AG; Agricultural), of 6 feet 11 inches for

construction of a new structure into the Huron Parkway front setback; 40 feet is required.

Chris Cheng provided the following staff report:

DESCRIPTION AND DISCUSSION:

The Racquet Club is a private athletic club and the petitioner proposes removing the existing tennis facility building as it is not handicap accessible and requires numerous upgrades and constructing a single-story 3,533-square foot tennis facility building further to the east. This new location places the northeast corner of the building into the front setback.

The parcel is zoned AG (Agriculture District) and is located on the southeast corner of Geddes Ave and Hickory Lane. The subject parcel is conforming for lot area; the required minimum lot area for AG is 100,000 square feet and the subject parcel is 340,373 square feet.

The proposed northeast corner of the tennis building encroaches approximately 7 feet into the required 40-foot front setback off Huron Parkway entrance ramp and requires a setback variance from the Zoning Board of Appeals. This Huron Parkway entrance ramp is no longer used by vehicles and has been converted into a pedestrian walkway.

As part of the 1997 site plan approval for the pool expansion at this site, variances were approved to waive parking lot lighting requirements and to encroach ten feet into the front setback to expand the pool.

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 fronted by 3 public rights-of-way with the eastern right-of-way no longer used by vehicular traffic. This Huron Parkway entrance ramp has since been closed and converted to a pedestrian

walkway.

(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 new building and interior site sidewalk connections to be ADA accessible and employing sound storm water drainage on site.

(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.

Although the proposed addition would extend into the required front setback, it is minimal in total size as it is approximately 7 feet of the northeast corner of the proposed building. The building will not be extended any closer to the side property line or 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.

This site was originally used as a farm and it was zoned AG (Agriculture District) due to the lot size, private recreational use, and location of the surrounding golf course and single-family uses. The subject parcel is surrounded by 3 frontages. The petitioner proposes the location of this building into the front setback to accommodate both ADA accessibility and to properly drain storm water away from this area.

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

The variance, if approved, will permit construction of the northeast corner of the building within the front setback. The proposed building will have a minimal impact to the surrounding neighborhood. The size of the encroachment into the front setback is minimal.

Staff does not feel that the requested variance would negatively affect any surrounding property. The subject building is located in an area away from the neighborhood and allows the facility to be ADA compliant. The

expansion will allow the petitioner to improve their property while respecting the intent of the Zoning Ordinance.

QUESTIONS BY BOARD TO STAFF:

Evans commented that the code does not discriminate between public right-of-ways that are used only for foot traffic.

Cheng said, correct, it is still public right-of-way, even though it was converted, it still requires a 40 foot front setback in the agricultural district.

Carlisle asked what the setback would be if it was vacated and not public right-of-way.

Cheng said it would be considered a side setback with less than 40 feet setback. He said the side setback is based on 10 percent of the width of the lot and he was unsure what the width of the lot was.

Carlisle asked if the City had any plans on opening it up to any type of automobile traffic.

Cheng said, no, not that he was aware of.

Westphal asked about the use of the building and asked if there was ADA accessibility to the west of the building.

Cheng reviewed the site plan approved by the City Planning Commission noting that there was ADA accessibility to the proposed building which does not exist on the current building.

PRESENTATION BY PETITIONER:

Scott Betzoldt, Midwestern Consulting, 3815 Plaza Drive, Ann Arbor, Civil Engineer for the project, was available to respond to the Board's enquiries. He explained the request.

John Mouat, Mitchell and Mouat Architects, 113 South Fourth Ave, Ann Arbor, was present and explained the site layout.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

Xin Jing, M.D. and Leilei Lin, 3003 Hickory Lane, Ann Arbor; Opposed.

BOARD DISCUSSION:

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

Moved by DeVarti, Seconded by Briere, in Petition ZBA15-004; 3010 Hickory Lane, Variance; 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 5:25 (Agricultural) of 6 feet 11 inches from the required front setback of 40 feet, per submitted plans.

- a) **The alleged practical difficulties are peculiar to the property and result from conditions which do not exist generally throughout the City**
- b) **That the practical difficulties, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.**
- c) **The variance, if granted, will not significantly affect surrounding properties.**
- d) **The circumstances of the variance request are not self-imposed.**
- e) **The variance request is the minimum necessary to achieve reasonable use of the structure.**

COMMISSION DISCUSSION:

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

Variance Denied.

Yeas: 3 - Briere, Carlisle, and Lewis

Nays: 5 - Chair Milshteyn, Buonodono, Nichols, DeVarti, and Councilmember Westphal

Absent: 1 - Zielak

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

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

Chris Cheng provided the following staff report:

DESCRIPTION AND DISCUSSION:

The subject 3,680-square foot building is located at 215 Beakes Street and is zoned R4C(Multiple-Family Residential). The subject parcel is nonconforming for lot area, subject parcel is 4,227 square feet and the minimum conforming parcel size for R4C is 8,500 square feet. The building was built in approximately 1930 and is currently used for storage. It was recently operated as a garage for repair, storage, parking of vehicles, as well as some use as a warehouse for storage of files and documents. Historical records indicate the building has been used for vehicle repair and storage for at least 40 years. As indicated above, the property is zoned R4C and all current and documented uses of the building are not permitted uses within the R4C zoning district.

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

In February 2014, the ZBA granted the same dimensional variances that are currently being requested, with the condition of, "per submitted plans" stated in the official motion. While the first floor remained the same size as originally constructed, at that time, the proposed second floor was 1,546 square feet.

After ZBA approval, further analysis of the structural integrity of the building revealed that entire building would need to be demolished and replaced. In light of this news, the property owner modified the plans in order to increase the square footage of the second floor addition (to a

total of 3,185 square feet) to create a more livable space and re-applied to the ZBA in November 2014. The ZBA denied the variance request at that time.

The petitioner has now re-worked the plan a third time to increase the size of the second floor addition over the original approved variance request, but 1,000 square feet less than the November 2014 request that was denied. The second floor addition is now proposed at 2,186 square feet. The second floor footprint now reflects the dimensions of the original approved variance along the north side of the building. The north side façade was of particular interest to the adjacent neighbor, as well as the ZBA due to the minimal setback along this side. The additional floor area on the second floor extends to the southwest corner of the building toward Beakes street and away from the adjacent neighbor to the north. There will be a slight change in the first floor footprint, with the southwest corner of the building being 'shaved' off to allow for increased visibility for pedestrians and vehicles exiting the adjacent alley.

The dimensional parameters of the current zoning variance request are the same as they were for the February and November 2014 plan. However, the plans have changed to increase the overall size and massing of the structure and therefore do not match the plans that the February 2014 ZBA approved and the November 2014 ZBA denied. The February and November staff reports are attached.

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

The petitioner still intends to use the structure as a single-family residence, which is a conforming use in the R4C District. In order to use the property as single-family, the petitioner will need to re-construct the majority of the existing building and would like to add a second-story addition. The building would be re-constructed on the exact same footprint as the existing building. A kitchen, living area and a bathroom will be constructed in 759 square feet of the first floor space which is a total of 3,680 square feet; the remainder of the first floor will be used for parking and storage. The 2,186 square foot second story will contain living area, two bedrooms, bathrooms and a small outdoor deck area. The first floor is setback just over three feet from the property line. The second story will be setback three feet from the northern edge of the first floor of the building, for a total second story setback of approximately six

feet to the north. The second story will be built to a three foot setback from the alley (west property line) and zero foot setback on the Beakes side (south property line) of the building.

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

Standards for Approval - Variance

The Zoning Board of Appeals has all the power granted by State law and by Section 5:99, Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

(a). That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance, and result from conditions which do not exist generally throughout the City.

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

(b). That the practical difficulties which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

The existing structure is in need of restoration and replacement of many structural elements. Any re-use of the building will likely require extensive

restoration and ZBA permission. The small size, unusual shape, and limited buildable area of approximately 52 square feet would trigger the need for variances on any structure that was constructed on this parcel. If the structure were demolished, no building could be constructed without zoning variances being granted.

If the variances are not granted, the petitioner does have previously approved variances and could construct additions based on the previously approved plan.

(c). That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

Approval of the variances will result in the re-construction of an existing non-conforming structure and an addition of 2,186 square feet to the second story. The structure was constructed in 1930 before any zoning standards were established and has been an established part of the neighborhood street presence since that time. The proposed single-family use is a conforming use in the R4C district and should be less detrimental to surrounding properties than the previous non-conforming uses. The first floor is setback approximately three feet four inches from the north property line and the second-story addition will be constructed just over six feet from the north property line, with the majority of the building placed along the front line of Beakes Street and alley to the west.

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

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

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

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

QUESTIONS BY BOARD TO STAFF:

Lewis asked about the required setbacks for the lot and the possible building envelope.

Cheng reviewed the parcel layout with the Board.

Nichols asked about the square foot difference of the previously granted variance and the current proposed request.

Cheng said, the previously granted variance, approved in February 2014, was for 1,546 square feet for the second floor; the current request is for 2,185 square feet, so the difference is approximately 600 [639] square feet.

Westphal asked about the proposed second floor and the existing footprint.

Cheng explained that this request is only for the second floor, since the current building is a single-story structure, noting that he understood the first floor area would remain the same size.

PRESENTATION BY PETITIONER:

David Esau, 310 Depot Street, Ann Arbor, Architect for the project, was available to explain the request and respond to the Board's enquiries.

Michael Potter, Berardy Group, LLC, 701 Tecumseh Road, Clinton, was also present.

PUBLIC HEARING:

John Beranek, 620 N. 4th Avenue, Ann Arbor, neighbor, spoke in opposition to the request.

Karen Park, 620 N. 4th Avenue, Ann Arbor, neighbor, spoke in opposition to the request.

Steve Kaplan, 331 Catherine Street, Ann Arbor, spoke in opposition to the request.

David Santacroce, 601 N. 5th Avenue, Ann Arbor, spoke of the need to include the limitations of the building plans into the motion. He stated that he did not want to take sides.

LIST OF EXHIBITS PRESENTED:

Michael Brinkman, 718 N. 4th Avenue, Ann Arbor; Opposed

Mike Appel, 613 N. Fifth Avenue, Ann Arbor; Opposed

North Central Neighborhood Association, Ann Arbor; Opposed

BOARD DISCUSSION:

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

Moved by Nichols, Seconded by Westphal, in Petition ZBA15-006; 215 Beakes, Variance; Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS the following variances from Chapter 55, Section 5:34 (R4C):

- 1) Front yard setback variance of 25 feet to allow a 0 foot front setback along Beakes.**
 - 2) Side yard setback (east) variance of 1 foot to allow a 4 foot side setback.**
 - 3) Side yard setback (west) variance of 5 feet to allow a 0 foot side setback.**
 - 4) Rear yard setback variance of 27 feet to allow a 3 foot side setback.**
-
- a) The alleged practical difficulties are peculiar to the property and result from conditions which do not exist generally throughout the City**
 - b) That the practical difficulties, which will result from a failure to**

grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

c) The variance, if granted, will not significantly affect surrounding properties.

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

e) The variance request is the minimum necessary to achieve reasonable use of the structure.

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

Variance Denied.

Yeas: 0

Nays: 8 - Briere, Chair Milshteyn, Carlisle, Buonodono, Lewis, Nichols, DeVarti, and Councilmember Westphal

Absent: 1 - Zielak

F **YEARLY ORGANIZATIONAL MEETING**

F-1 **15-0489** Election of Officers

A motion was made by Nichols, seconded by C. Briere, to nominate Perry Zielak as Vice Chair of the Zoning Board of Appeals.

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

Yeas: 8 - Briere, Chair Milshteyn, Carlisle, Buonodono, Lewis, Nichols, DeVarti, and Councilmember Westphal

Nays: 0

Absent: 1 - Zielak

A motion was made by Nichols, seconded by DeVarti, to nominate Alex Milshteyn as Chair of the Zoning Board of Appeals.

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

Yeas: 8 - Briere, Chair Milshteyn, Carlisle, Buonodono, Lewis, Nichols, DeVarti, and Councilmember Westphal

Nays: 0

Absent: 1 - Zielak

F-2 [15-0490](#) Approval of July 2015 - June 2016 ZBA Meeting Schedule

Moved by Briere, Seconded by Westphal to approve the 2015 2016 ZBA Meeting Schedule as presented. On a voice vote, the Chair declared the motion carried.

Yeas: 8 - Briere, Chair Milshteyn, Carlisle, Buonodono, Lewis, Nichols, DeVarti, and Councilmember Westphal

Nays: 0

Absent: 1 - Zielak

F-3 [15-0491](#) Review of ZBA Rules and Procedures

Milshteyn pointed out that the current rules do not include specific time limits for speakers at the Zoning Board of Appeals meetings and he felt it would be helpful to limit the audience participation to 3 minutes and petitioner presentations to be limited to 5 minutes, which would be similar to the bylaws of the City Planning Commission and City Council.

DeVarti said he would rather err on the side of caution and not set time limits since some people need longer time to express themselves. He felt it had not been a problem in the past.

Lewis said she didn't feel it had been an issue, and that a 10 minutes limit would be more appropriate.

Nichols supported the addition of a time limit and felt it would be appropriate.

Moved by Nichols, Seconded by Briere, to Postpone taking action of the ZBA Rules and Procedures until the next meeting.

COMMISSION DISCUSSION:

Westphal suggested looking at other Board and Commission bylaw language, noting there are several way of adding restrictive language and that the last thing they would want to do is to cut off a petitioner who is

presenting a request to the Board.

On a voice vote, the Chair declared the motion carried.

G UNFINISHED BUSINESS

H NEW BUSINESS

I REPORTS AND COMMUNICATIONS

15-0492 Various Correspondences to the ZBA

DeVarti asked for any follow-up on his suggestion of making a motion regarding the large electronic UM Athletic billboard.

Milshiteyn said since such action has never been done by this body he had spoken with City Attorney, Kevin McDonald, who was going to respond to the Board regarding the issue, if the Board can even proceed on the matter.

Carlisle stated that he felt Board decisions, such as this, which would require staff as well as City Attorney time, should be made through motions and resolution by the Board as a whole before staff time is directed to deal with matters from individual Board members.

Nichols agreed.

DeVarti said after he learned that the Sign Board of Appeals had been absorbed by the Zoning Board of Appeals, he felt it might be appropriate for the Board to voice concern on the billboard. He said he hadn't directed staff on the matter, but wants to bring a resolution to the table and is willing to draft such.

Nichols noted that there was a procedure in place for proposed changes that included multiple layers and they need to be mindful of this as they move forward.

Westphal said he would like to work with staff in looking into ways that the Zoning Board of Appeals can shift some of their duties to administrative approvals, such as for porches. He said he knows it has been discussed for some time and he would like to bring the discussion to the table to hear how the Board feels as well as get some possible language from

staff on the issue.

Milshteyn explained that the Board has been hesitant to make any changes until after ZORO [Zoning Ordinance Reorganization Project] is completed and given that ZORO is in the final stages and being reviewed he felt it wouldn't be long until they had a document in their hands that they will be able to respond to.

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

K **ADJOURNMENT**

Moved by Councilmember Westphal, seconded by DeVarti, to adjourn at 7:40 p.m. On a voice vote, the Chair declared the motion carried.

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- *Video on Demand: Replay public meetings at your convenience online at www.a2gov.org/government/city_administration/communicationsoffice/ctn/Pages/VideoOnDemand.aspx*
- *Cable: Watch CTN Channel 16 public meeting programming via Comcast Cable channel 16.*

The complete record of this meeting is available in video format at www.a2gov.org/ctn, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>), or is available for a nominal fee by contacting CTN at (734) 794-6150.

Alex Milshteyn
Chairperson of the Zoning Board of Appeals

Mia Gale
Recording Secretary