



**APPROVED MINUTES OF THE REGULAR MEETING OF  
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR  
APRIL 23, 2008**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, April 23, 2008 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

The meeting was called to order at 6:07 p.m. by Acting Chairperson Kathryn Loomis.

**ROLL CALL**

Members Present: (7) C. Kuhnke, D. Tope, C. Briere, R. Suarez  
K. Loomis D. Gregorka and W. Carman (6:07 pm)

Members Absent: (2) C. Carver and R. Eamus

Staff Present: (3) M. Lloyd, M. Kowalski and  
B. Acquaviva

**A – APPROVAL OF AGENDA**

**A-1** Moved by D. Tope, Seconded by K. Loomis, to move Agenda item  
“Closed Session” to “E” – New Business. The Agenda as Amended was  
approved without objection.

**B - APPROVAL OF MINUTES**

**B-1** Approval of Draft Minutes of the March 26, 2008 Regular Session.

Moved by D. Tope, Seconded by K. Loomis, “**that the minutes of the  
March 26, 2008 Regular Session be approved as presented.**”

**On a Voice Vote – MOTION PASSED – UNANIMOUS**

**C - APPEALS & ACTION**

**C-1 2936 Briarcliff Street - 2008-Z-010**

**George Johnstone** is requesting one variance from Chapter 55, (Zoning)  
Section 5:28 (R1C) Single-Family Dwelling District. A variance of 2 feet in  
order to allow a side setback of 3 feet for expansion of the existing house into  
the side setback (5 feet is required.)

**Description and Discussion:**

The petitioner is requesting one variance to allow the construction of a one-car attached garage 3 feet from the side property line. The subject property is located in the R1C Single-Family Dwelling District. A single-family dwelling and driveway leading to a parking place next to the house currently exist on the property. The driveway is constructed directly along the western property line. The house currently does not have a garage. The petitioner wishes to construct a new single-car garage following the existing rooflines of the house along the front and rear elevations. The proposed garage would be 12 feet wide and 24 feet deep.

54 **Questions to Staff by the Board**

55  
56 D. Gregorka (To M. Kowalski) – If the original builder had constructed a garage back in 1963  
57 when the house was built, would that have met the Zoning requirements at that time?  
58 (Depending on the size of the garage, it might have, but the standards are different). I ask  
59 because he's provided many pictures of other garages in the area, so it seemed it was more  
60 of a common practice at that time.

61  
62 **Petitioner Presentation**

63  
64 Mr. George Johnstone, owner, was present to speak on behalf of the appeal. He stated that  
65 they have wanted a garage for some time. They petitioned the ZBA in 1993 and were turned  
66 down as the adjacent neighbor at that time was opposed to it. The current neighbor, and  
67 other surrounding neighbors is supportive. The petitioner offered to answer any questions  
68 that the Board might have.

69  
70 **Questions of the Petitioner by the Board**

71  
72 W. Carman (To Petitioner) – What is the size of the proposed garage? (10 ft. 8 in. x 22 ft. 10  
73 in. We were told that this is the size for a single car garage). (M. Kowalski – That is the  
74 'useable' space on the interior of the garage. The outside dimensions are 12 ft. x 24 ft. The  
75 edge of the 3' is at the side property line).

76  
77 D. Tope – Will the cement pad be extended, or does it end 3' from the property line?  
78 (Petitioner – It's existing and is along the property line). So there will be 3' of extended pad  
79 beyond the garage? (No. The builder will 'cut in' and construct a rat wall). So the cement  
80 will remain? (Yes.)

81  
82 **Public Comment** – None. *(Six letters of support from neighbors were entered into the*  
83 *record.)*

84  
85 **Discussion by the Board**

86  
87 W. Carman – I am conflicted regarding this issue. There is no question that we would all like  
88 to have a garage and there are a lot of small lots in this neighborhood. The ones that have  
89 garages don't need a variance to have them as they chose a construction style that allowed  
90 them to 'nest' the garage inside or the lot was a bit wider than this. It's difficult for this owner,  
91 but for the original owner, it was a decision they made to cut down their costs, and they  
92 chose to build a house that filled up the whole building envelope.

93  
94 To grant this individual a variance for something that is fairly common in this neighborhood,  
95 gives this property a right that other properties don't have. Unless we are going to say that  
96 we don't agree with the zoning in this neighborhood and that it would be alright to rezone all  
97 these houses R1D, that would be fine, but otherwise, my own lot is as narrow as this, but I  
98 have a tri-level house and the garage is nested into the space. I'm not sure I can support it.

99  
100 D. Tope – The history that the petitioner stated regarding the last petition being denied, was  
101 denied on the grounds that Wendy cites. To grant a variance now, regardless that the  
102 neighbor is in favor of it, it's still burdening that property ongoing. Side setbacks in  
103 subdivisions are very appreciated by adjacent property owners, and I don't feel we should  
104 single this one out I don't see a compelling reason to single it out. I share Wendy's conflict.  
105 I am sympathetic about wanting to have a garage, but this is not a basis for granting a  
106 variance.

107

108 C. Kuhnke – Stated that the zoning laws were put into place to protect the neighbors – and  
109 while this man had a former neighbor that didn't want it, he now has a neighbor that doesn't  
110 object, and any future neighbor would be buying with the knowledge that this garage is  
111 existing. This house was built at a time when it was probably anticipated that a garage could  
112 be built, and although we can't afford it now, we'll do it in 10 or 15 years when we can – and  
113 then the zoning changed such that it wasn't allowed without a variance.

114

115 W. Carman – The zoning didn't change – they could still build one in the backyard today and  
116 comply with the ordinance. They would have to sacrifice some of the backyard and would  
117 sacrifice the deck in the back, but the petitioner or the original owner could have built a  
118 garage in the backyard and complies with the ordinance. These are personal decisions that  
119 people made along the way and not a change in the zoning.

120

121 M. Kowalski – I couldn't find a former zoning denial – were you denied? Also, a detached  
122 garage could be constructed 3 ft. from the property line in the side or the rear as well, just to  
123 clarify.

124

125 C. Kuhnke – I didn't see any other houses in the area that had a detached garage.

126

127 W. Carman – That's not true. There are lots of them. The petitioner didn't send us pictures  
128 of them, but that is the prevailing way they were built back in that time.

129

130 D. Gregorka (To M. Kowalski) – How far away from the house does the garage have to be to  
131 be 'detached' – an inch? A foot? (I checked with the Building Official. It can be detached as  
132 little as inches, but it has to be firestopped on the interior walls of the garage – or drywalled  
133 and insulated. It can qualify as detached as long as it's not touching the primary structure.)  
134 So he could build a few inches from the house and not need a variance. (Yes.) Similar  
135 styles in the neighborhood have the same setup.

136

137 *(Discussion by the Board as to whether side setbacks have changed since the house was*  
138 *built.)*

139

140 R. Suarez – I initially questioned whether we should approve something like this – if it throws  
141 off the zoning for the rest of the neighborhood, but now hearing that he could build as little as  
142 an inch away raises a lot of questions in my mind. It's not going to be an issue of setbacks.  
143 Does anyone know why a detached garage would be allowed in the same way? If there is no  
144 logic in it, I would be inclined to support the petitioner.

145

146 W. Carman – I find that somewhat shocking that it doesn't have to be back behind the house.

147

148 K. Loomis (To M. Kowalski) – Do you know if the other properties in the neighborhood have  
149 this setup? (No. I've looked at the aerial photos, and they're off a couple of feet.)

150

151 W. Carman – To answer her question, I looked up all of these houses on assessments. Most  
152 of them have much wider lots, but the ones that don't, still maintain the 5 ft. setback. It wasn't  
153 clear to me that anyone had encroached into the setback. I believe that the intention of these  
154 setbacks and the reason why people though garages in the back were ok is because you  
155 don't look out your window and see a wall right next to your house. I'm afraid that if we  
156 support this that this will set a precedent, and we're essentially changing the zoning on these  
157 properties (which isn't possibly a bad idea) – but on a case by case basis? It doesn't seem  
158 like a good idea. What is perhaps different is the larger home. I won't support it. It doesn't  
159 result from conditions that don't generally exist throughout the city.

160  
 161 K. Loomis – I'm torn about this. There is 3 ft. between the garage and the neighbor's  
 162 property and the neighbors don't object; there is an existing cement pad – all these points  
 make this a close decision.

164  
 165 *(Additional discussion by the Board on pro's and con's of the request.)*  
 166

167 **MOTION**

168  
 169 Moved by D. Gregorka, Seconded by C. Briere, "in the case of 2008-Z-010, 2936 Briarcliff  
 170 Street, that based on the following findings of fact and in accordance with the  
 171 established standards for approval, the Zoning Board of Appeals hereby grants a  
 172 variance from Chapter 55 Section 5:28 (Accessory Buildings) of 2 feet from the  
 173 required side setback of 5 feet to permit construction of a attached garage 3 feet from  
 174 the side property line per attached plans;

- 175  
 176 a) This is a minimum variance for a single car garage;
- 177 b) The petitioner has neighborhood support for the garage;
- 178 c) The garage construction is generally consistent with other garages in the  
 179 neighborhood;
- 180 d) If the petition were to be denied, the petitioner could build a garage in the same  
 181 position only by being detached from the house;

On a Voice Vote – MOTION PASSED – 5 Yeas, 2 Nay *(Variance Granted)*

183  
 184 **NAY** – W. Carman and Donna Tope (2)  
 185 **YEA** – D. Gregorka, C. Kuhnke, K. Loomis, R. Suarez, C. Briere (5)  
 186

187 **D. UNFINISHED BUSINESS** – None.

188  
 189 **E. NEW BUSINESS** - Attorney – Postponed  
 190

191 **E – 1 Closed Session** (Moved by Amended Agenda)  
 192

193 C. Kuhnke – It is our understanding that Mr. McDonald (city attorney) is not feeling well and  
 194 will not be present tonight. (M. Lloyd – That is correct. That item can be postponed.)  
 195

196 D. Tope – I'm fully in favor of postponing this until the next meeting, but I feel very strongly  
 197 that this should not be a closed session and should comply with the open meetings act. The  
 198 subject of these memo's don't meet the standards for not having an open meeting.  
 199

200 D. Gregorka – Asked for clarification – was not sure if the closed session was regarding  
 201 ongoing litigation. (D. Tope – It would be a discussion with our attorney, as clients, and  
 202 concerning ongoing litigation in which the attorney is representing us. This would be  
 203 appropriate for a 'closed session.')

204 C. Kuhnke – Yes, and the subject of the meeting that was scheduled is the two memoranda  
 205 prepared by the city attorney.  
 206  
 207

208 *(Discussion by the Board on general criteria for closed session.)*

209 M. Lloyd – We will relay your concerns and comments to the city attorney that this information  
210 could be considered an open session.  
211

212 D. Tope – I would like to have a greater capacity in putting this information on the agenda. If  
213 we don't need a full discussion, we could take a straw poll here tonight.  
214

215 D. Gregorka – Stated that he doesn't necessarily disagree with Donna, but until he  
216 understands from the city attorney's office why they feel this needs to be a closed session, I  
217 can't support it. I would like to hear his reasoning.  
218

219 Moved by D. Tope, Seconded by W. Carman, **“that the attorney/client privileged  
220 informational session be postponed and be held at the next regular session as an  
221 open session to comply with the open meetings act.”**  
222

223 On a Voice Vote – MOTION TO POSTPONE – **PASSED (6 Yea and 1 Nay)**  
224

225 **NAY – D. Gregorka (1)**

226 **YEA – W. Carman, Donna Tope, C. Kuhnke, K. Loomis, R. Suarez, C. Briere (5)**  
227

228 D. Gregorka – Stated that the closed sessions should be at the end of the agenda from now  
229 on in order to be fair to the public. It's not appropriate to make the public wait until after we  
230 come out of closed session.  
231

232 **F. REPORTS & COMMUNICATIONS - Confidential Memo's from City Attorney.**  
233

234 **G. AUDIENCE PARTICIPATION – GENERAL – None.**  
235

236 **ADJOURNMENT**  
237

238 Moved by D. Tope, Seconded by R. Suarez, **“that the meeting be adjourned.”**  
239

240 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**  
241

242 Chairperson Carol Kuhnke adjourned the meeting at 6:45 p.m.  
243

244 **(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –  
245 Zoning Board of Appeals)**  
246

247   
248 \_\_\_\_\_  
249 C. Kuhnke, Chairperson

5-28-08  
\_\_\_\_\_  
Dated ZBA Minutes