



City of Ann Arbor

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

Wednesday, September 19, 2012

6:00 PM

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

A CALL TO ORDER

Vice Chair Alex Milshteyn called the meeting to order at 6:00 p.m.

B ROLL CALL

Vice Chair Milshteyn called the roll.

Present: 7 - Candice Briere, Wendy Carman, Sabra Briere, Alex Milshteyn, Perry Zielak, Ben Carlisle, and Maureen Sertich

Absent: 1 - Chair Carol A. Kuhnke

C APPROVAL OF AGENDA

A motion was made by Zielak, seconded by C. Briere, that the Agenda be Approved as presented. On a voice vote, the Vice Chair declared the motion carried.

D APPROVAL OF MINUTES

Approved as presented

D-1 [12-1197](#) Zoning Board of Appeals Meeting Minutes August 22, 2012

W. Carman commented that the minutes indicated that S. Briere was absent.

Kowalski explained that she was absent for the roll call, the approval of the agenda, and approval of the minutes, but the minutes reflected her arriving during the first Appeal and Action item on the agenda. He suggested the wording 'Enter' S. Briere be changed to 'Arrival' of S. Briere.

The Board agreed.

A motion was made by Zielak, seconded by C. Briere, that the amended Minutes be Approved by the Commission and forwarded to the City Council and should be returned by 11/19/2012. On a voice vote, the Vice Chair declared the motion carried.

E APPEALS AND ACTIONS

E-1 [12-1198](#) ZBA12-017; 2101 Winchell Drive Eugene Klaphake is requesting permission to alter a non-conforming structure and one variance from Chapter 55(Zoning) Section 5:57

(Averaging an Existing front setback line), of 11 feet for expansion of an existing residential structure into the front setback, 35 feet is required (Averaged Front Setback). 30 feet is required in R1C zone before averaging requirement.

Matt Kowalski gave the staff report.

DESCRIPTION:

The subject parcel is zoned R1B (Single-Family) and is located on the corner of Winchell and Brockman, just south of East Stadium.

The petitioner is proposing to construct a 5 foot by 18 foot (90 square feet) single-story addition to the first floor. The addition will contain a first floor handicap accessible bathroom and will project into the front setback of Brockman Boulevard. The existing house is 1,545 square foot and was built in 1956. The existing Brockman front setback is 27 feet 6 inches. The averaged front setback is 35 feet based on one adjacent property to the north on Brockman. The required setback without averaging is 30 feet. The existing house encroaches into the front setback 2 feet 6 inches. The addition will match the existing roof and building lines and will encroach an additional 3 feet 6 inches. The new front setback proposed along Brockman will be 24 feet; the front setback along Winchell Drive will not change. Since the required averaged front setback is 35 feet, the petitioner is requesting a front setback variance of 11 feet.

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.

Permission is being requested in order to add a 90 square foot addition to the first floor of the existing house. The addition will extend closer to the front property line of Brockman, however due to the curve of the road away from the subject property, only a small section (approximately 30 square feet of the new addition will be located with the front setback. The curve of the road will also minimize the visual impact to the surrounding neighborhood. The proposed addition will be located over 100 feet from the closest neighboring house.

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 14,820 square feet). The parcel is an unusual 'pie' shape with a curved front property line. This results in two front setbacks, one which is curved, with one side and one rear setback.

(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 additions to an existing home. Due to the irregular lot shape and the owners need for an accessible bathroom, there is limited area to construct an addition that complies with the setbacks and fits with the existing layout 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.

If the front variance is approved, the structure will be consistent with other houses in the neighborhood. Although the proposed addition would extend into the front setback, the curve of the street and existing mature vegetation along the street should help minimize the impact to the surrounding neighborhood. The closest adjacent house along the Brockman frontage is located over 100 feet away and is set back from the subject property due to the curve of the road.

(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 house was constructed before the current zoning code was in effect. While the subject parcel is more than conforming for lot size, the averaging of existing front setbacks requirement increases the required front setback by 5 feet.

(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 a single story 90 square foot addition extending into the averaged front setback 11 feet. However, due to the curve of the road less than 30 square feet of structure will be located within the required setback. The application of averaged front setbacks (based on one adjacent property to the north) and the unusual shape of the parcel results in increased setbacks and reduces the buildable area of the parcel.

QUESTIONS TO STAFF BY THE BOARD:

W. Carman asked staff to explain why the petitioner needed a variance as well as permission to alter a non-conforming structure.

Kowalski explained that since the building line is expanding and incroaching into the setback it triggered a setback variance request as well.

PRESENTATION BY THE PETITIONER:

Eugene Klaphake, 2101 Winchell Drive, owner of the parcel was present to respond to the Board's questions.

W. Carman asked for an explanation from the petitioner why they needed to build an

addition.

Klaphake explained that the existing wouldn't meet their needs.

S. Briere asked the petitioner to explain further.

Klaphake said that the existing space wouldn't accomodate possible future needs, adding that his wife had had hip replacement surgery and they needed to be planning ahead if the need should arise.

S. Briere asked why they were creating a large open space in the middle of the room.

Klaphake explained that he is a kitchen and bath designer and given the large walk-in shower and separate tub and walk-in closet the proposed space was needed to accomodate their needs.

W. Carman stated that she didn't believe the petitioner had designed the most efficient space for a handicapped person, noting that the entry door to the bedroom wasn't wide enough as well as the hallway needing to be wider.

Klaphake explained that the house has four doors all situated within a close proximity and it becomes difficult to plan around those load bearing walls.

W. Carman said that she had experience with wheelchairs since her father had been in a wheelchair and by the looks of the proposed plans it would be very tight to maneuver a wheelchair in that space, adding that she is not convinced that the proposed plans is the best way to meet the needs and she was not convinced that the petitioner needed a variance because of the existing large space available. She explained that the Board's charge is to grant the minimal necessary variance to meet the needs and she was not convinced that the petitioner needed the added space.

COMMISSION DISCUSSION:

S. Briere asked staff how large the triangle was that extended into the space.

Kowalski answered that without having the area scaled, his educated guess was that it was approximately 30 square feet, and the total area was 90 square feet.

S. Briere asked the petitioner about mentioned foundation issues and how those would or could affect the new addition.

Klaphake explained that the whole house foundation had to be replaced because it was moving off the footings. He noted what should have been a 12 inch foundation was only an 8 inch foundation which has caused the foundation shifting problems as well as water infiltration in the basement. He said he won't be able to get a mortgage on the house until the problems are fixed.

S. Briere asked the petitioner to explain to the Board why he needed a mortgage on the house.

Klaphake explained that he would like to be able to draw out the money that he has invested in the home, as equity.

A. Milshteyn said he was quite familiar with the property because he had assisted the seller in selling the property to the petitioner for over three years. He said there are significant foundation issues with the house but the backyard is highly vegetated and

you don't see Brockman Street from the house.

Klaphake said that neighbors have commented that they think it is time that someone do something with the house and they don't have an issue with the proposed plans and requested variance.

A motion was made by Councilmember S. Briere, seconded by W. Carman, based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby grants permission to alter a non-conforming structure per submitted plans, based on petition ZBA12-017 for 2101 Winchell Drive.

a) The alteration complies as nearly as practicable with the requirements of the Zoning Chapter and will not have a detrimental effect on neighboring property.

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

Unanimously approved.

Yeas: 7 - Briere, Carman, Councilmember Briere, Milshteyn, Zielak, Carlisle, and Sertich

Nays: 0

Absent: 1 - Chair Kuhnke

Motion made by P. Zielak, seconded by S. Briere, that in the case of ZBA12-017; 2101 Winchell Drive, 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 11 feet from the required front setback of 35 feet in order to permit a building addition 24 feet from the front property line, per submitted plans.

- a) The alleged hardships are peculiar to the property 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.**
- 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:

W. Carman stated that she felt the total 30 square feet of intrusion into the setback was small and probably not detrimental to anyone in the neighborhood, but she felt the variance was not necessary and not the best use of the property, therefore she would be voting no.

C. Briere said she felt the variance was minimal and given that the house was set in a curve and at an awkward situation, yet without an overall floor plan she had difficulty picturing and understand the need for the variance.

B. Carlisle stated that he didn't have an issue with the request adding that he believed the City encouraged the idea of aging in place and retro-fitting the houses in

order to conform with the needs of the residents. He said there was a unique circumstance since the house is on a corner lot and the house was constructed prior to existing zoning regulations.

S. Briere stated that there are days when we all play architect and today was on of those days when she sat down and looked at how the bathroom could be made handicapped accessible. She said she came up with that making any other changes would require making an enormous investment in changing the roofline which didn't seem like a rational thing to request in order to preserve this tiny piece of property from being encroached upon. She said she agrees that the Board is required by their own rules to approve variances that make the smallest possible variance for zoning and still allow the petitioner to reach their goal. She said they could insist that the petitioner notch out the corner but non of those things struck her as rational or elegant solutions so she decided that this request was sensible and literally squared off a building. The front setback of 30 feet is already large, considering it's the rear corner of the house, rather than the front of the house and were this a prominent entrance she might feel differently but since it is a rear corner of the house on a difficult lot, she would be voting yes.

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

Variance granted.

Yeas: 6 - Briere, Councilmember Briere, Milshteyn, Zielak, Carlisle, and Sertich

Nays: 1 - Carman

Absent: 1 - Chair Kuhnke

F OLD BUSINESS

[12-1199](#)

Approval of the ZBA Rules and Procedures

A motion was made by Zielak, seconded by Briere, that the Zoning Rules and Procedures be Approved. On a voice vote, the Vice Chair declared the motion carried.

G NEW BUSINESS

H REPORTS AND COMMUNICATIONS

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

J ADJOURNMENT

A motion was made by Zielak, seconded by C. Briere, that the meeting be Adjourn. On a voice vote, the Vice Chair declared the motion carried.

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