



**APPROVED MINUTES OF THE REGULAR MEETING OF  
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR  
MAY 28, 2008**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, May 28, 2008 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

The meeting was called to order at 6:04 p.m. by Acting Chairperson Kathryn Loomis.

**ROLL CALL**

Members Present: (9) C. Carver, C. Briere, R. Eamus, D. Tope,  
D. Gregorka, K. Loomis, W. Carman C. Kuhnke and  
R. Suarez

Members Absent: (0)

Staff Present: (2) M. Kowalski and B. Acquaviva

**A – APPROVAL OF AGENDA**

**A-1** The Agenda was approved as presented without objection.

**B - APPROVAL OF MINUTES**

**B-1** Approval of Draft Minutes of the April 23, 2008 Regular Session.

Moved by D. Gregorka, Seconded by D. Tope, **“that the minutes of the April 23, 2008 Regular Session be approved as presented.”**

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

**B-2** Approval of Draft Minutes of the April 23, 2008 Organizational Meeting.

Moved by D. Tope, Seconded by K. Loomis, **“that the minutes of the April 23, 2008 Organizational Session be approved as presented.”**

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

**C - APPEALS & ACTION**

**C-1 838 South Main Street – 2008-Z-011 – ADMIN.**

**Bob White Realty on behalf of Rhonda Gilpin is requesting an Administrative Appeal in order to change one non-conforming use to another non-conforming use.**

**Description and Discussion**

*The subject building is located at 838 South Main Street and is zoned R4B. The building is currently occupied by the Ann Arbor Framing Company, a commercial business. The Ann Arbor Framing Company has been operating as a legal non-conforming use in the building for the last 16 years. The building was built for a commercial use in 1920 and rezoned to R4B in the 1960's. The petitioner would like to purchase the property and replace the existing non-conforming use with another non-conforming use, the sale of antique jewelry.*

54 *The 838 South Main building is located on the same parcel as the single-family house at 840*  
 55 *South Main. There are 4 off-street parking spaces located on the parcel behind the house.*  
 56 *The petitioner has submitted an attached letter indicating the number of trips generated by*  
 57 *the proposed business will be less than the existing business.*

58

59 **Code Standard:**

60

61 According to Chapter 55, Zoning Code, only the Zoning Board of Appeals has the authority to  
 62 substitute one non-conforming use for another. Chapter 55, Section 5:86, Use  
 63 Nonconformance: "(1) A non-conforming use may be continued and shall be maintained in  
 64 good condition, but it shall not be:

65

66 (a) Changed to another non-conforming use, except, *after approval of the zoning*  
 67 *board of appeals*, to those permitted uses which are contained in the zoning district  
 68 wherein the non-conforming use first appears in the schedule of use regulations.  
 69 Before granting such approval, the board shall determine that such change in use will  
 70 have a less detrimental effect on neighboring property than the existing non-  
 71 conforming use.

72

73 *The Statement of Intent for Article VII, Nonconformance, Section 5:85, indicates, "It is the*  
 74 *intent of this chapter to recognize that the eventual elimination, as expeditiously as is*  
 75 *reasonable, or existing uses or structures that are not in conformity with the provisions of this*  
 76 *chapter is as much a subject of health, safety, and welfare as is the prevention of the*  
 77 *establishment of new uses that would violate the provisions of this chapter. It is also the*  
 78 *intent of this chapter that any elimination of nonconforming uses or nonconforming structures*  
 79 *shall be affected so as to avoid any unreasonable invasion of established private property*  
 80 *rights."*

81

82 *Zoning staff does not believe the proposed non-conforming use will be more detrimental to*  
 83 *the surrounding neighborhood than the existing operation. The building is located directly on*  
 84 *Main Street and has been used almost continuously as a commercial business since*  
 85 *construction in 1920. Zoning staff is not aware of any complaints from the operation of the*  
 86 *existing business at this location.*

87

88 **Questions to Staff by the Board**

89

90 K. Loomis (To M. Kowalski) – How do you determine that one miscellaneous use is less  
 91 invasive than another? (The code isn't clearly defined, and that's why it's here before the  
 92 Board tonight. It states that one non-conforming use can't be substituted for another non-  
 93 conforming use. The current frame shop as opposed to the antique jewelry store that  
 94 proposes to move there – is currently my opinion as to whether it would generate additional  
 95 traffic or not. The bottom line states that only the ZBA has the authority to approve that.)

96

97 Is there precedent here for one non-conforming use to another non-conforming use? (Not  
 98 since I've handled the ZBA appeals.) Do you know how this current non-conforming use  
 99 came to be? (No. It has been there for sixteen years. It looks as though it wasn't used for a  
 100 couple of years prior to that. In the future we're trying to track this more closely. We have to  
 101 be certain that this is a less intensive use as opposed to a more intensive use if possible.  
 102 Ideally, the code is written so that these things will be phased out. Whether you want to do  
 103 that or not is the ZBA's decision.)

104

105 C. Carver – You state that the change in use will have less detrimental effect than the current  
 106 non-conforming use. Has the city made the decision that this is less detrimental? (No.)

107 We've had a couple of these in the past. We have previously had to have at least six  
108 affirmative votes to approve this. Is that still true? (Maybe one of our long standing members  
109 can answer that?)

111 D. Gregorka – You state that “staff does not believe that this will cause a more detrimental  
112 effect on the neighborhood.” What was that statement based on? (Based on the information  
113 that the petitioner submitted and what I know of the current business and what I would think  
114 about the possible traffic to an antique jewelry store. If it were a Starbucks, we could safely  
115 say that that would generate more trips to and from the business.)  
116

117 W. Carman – The problem isn't 'more' detrimental, but 'less' detrimental. (Yes.) Regarding  
118 the parking spaces, they don't appear to meet our code. They are in what constitutes the  
119 front setback. (Yes. They are non-conforming spots. They go back as far as our 1990 aerial  
120 photos. We're not site planning it, so they're not required to provide parking as required by  
121 the code as they're only swapping non-conforming uses.)  
122

123 I'm not sure that's true, because they're swapping non-conforming uses. (If you think that  
124 those are an issue, then that is one of the reasons it's before you.) I suspect that they would  
125 have less traffic than the frame shop, but I'm not convinced that we have any control over  
126 what traffic they produce. What is the daily 'trip' limit for home occupations?  
127

128 D. Tope – Ten trips per day. That was one of the things I was going to use as a guide.  
129

130 W. Carman – Basically, if the trips per day start exceeding ten, then the neighbors start to  
131 complain and some enforcement occurs. (That's correct. That enforcement is complaint  
132 driven. You could include that restriction in your motion, but that's up to the ZBA.) I think that  
133 this was a t-shirt shop prior to the frame shop, but I don't remember a period when it was  
134 vacant. Did this come before us as a frame shop? (No evidence of that was found.)  
135

136 C. Kuhnke – Could this become a home office the way the petitioner proposes as a jewelry  
137 shop? (No, because home occupations as they're listed have to be attached to the home.  
138 This is a detached building, so it wouldn't qualify as a home occupation.)  
139

#### 140 **Petitioner Presentation**

141  
142 Rhonda Gilpin, petitioner, was present to speak on behalf of the appeal. She offered to  
143 answer any questions that the Board might have.  
144

#### 145 **Questions of the Petitioner by the Board**

146  
147 D. Gregorka – You state in your letter in the application that you believe there will be less  
148 trips to the jewelry shop than the frame shop. Could you tell us what that was based on?  
149 (My business is currently on Main Street just a few blocks from this site, so that was based on  
150 the amount of traffic flow I currently receive. At Christmas time I get busier, but most of the  
151 time the max would be ten customers per day, some days less than ten. It's a special  
152 occasion type of business.)  
153

154 What type of traffic was the frame shop getting? (I'm not sure. From the letter she wrote, I'll  
155 assume between twenty to thirty customers per day. This is kind of a 'destination' site.)  
156

157 D. Tope – You've had a similar business elsewhere? (I have two antique businesses. I have  
158 one in the Nickels' Arcade and one on Main Street near Crazy Wisdom books.

159 I get a lot of people from the county building, but most are deliberately planning the visit.  
 160 Sometimes I get three people a day. On average, five sales per day.)  
 161

### Public Comment

163

164 **Julie Weatherby, 837 South Main Street, Ann Arbor, MI** – She stated that she lives directly  
 165 across the street from the proposed shop. She fully supports the proposed use as an antique  
 166 jewelry store. This is a mixed use area, and she is pleased that someone will be present in  
 167 their neighborhood in the daytime when they are not. Traffic is probably heavier due to  
 168 football game Saturday's and the 'Fairy Door' at this shop than it would be for her regular  
 169 business customers. There is probably heavier traffic with the frame shop with trucks picking  
 170 up larger frames, so the jewelry store would be less intensive use.  
 171

172

173 **Bob Doppleman, 837 South Main Street, Ann Arbor, MI** – He stated that the jewelry store  
 174 would be an asset to the neighborhood, and they are pleased with the intended use. The  
 175 building itself will not be very useful as anything else. We carefully considered what might  
 176 move into that building, and we think that this fits well with out neighborhood.

176

### Discussion by the Board

178

179 D. Tope – These kinds of things were done 'quasi-administratively' which is why there aren't  
 180 many records of its past. I'm pleased that these issues are coming before the ZBA, to make  
 181 certain that these uses fit. Non-conforming uses need to have a full review and allocation  
 182 and laying on of the rules to see if they fit. That is what non-conforming is all about, and if  
 183 they don't fit, the idea is to stage them out. I'm very supportive of neighborhood based, small  
 184 businesses like this that meet the standards of home occupation even though it does not  
 185 qualify as a home business. She expounded on the various assets that this would have for  
 186 the community. I will support this non-conforming use in this location.  
 187

187

188 C. Carver – I am in favor of granting this use. The only problem I have is that if 'less  
 189 detrimental' means trip counts, the next guy who comes in is going to have a tough time  
 190 having only four people a day.  
 191

191

192 D. Gregorka – I tend to agree with Kathryn on this. I am wondering if this should even be  
 193 before the ZBA. You could argue that it is the same use – miscellaneous retail, but on the  
 194 other hand I don't have an issue with it. The information provided by the petitioner looks  
 195 reasonable and the use intensity will drop, and that meets the standard, so I will support it.  
 196

196

197 R. Suarez – I agree with most of what Donna stated and will add that I think that this is Main  
 198 Street and especially with the support of the neighbors welcoming this use, I think it  
 199 contributes to a vibrant, walking downtown and something that we want to encourage.  
 200

200

201 W. Carman – I just want to reiterate something that Donna said. I do think this should come  
 202 before us and I don't want to set the precedent that any mixed use commercial can go in  
 203 where any former mixed use commercial was before, because that will not support what the  
 204 ordinance is saying about non-conforming uses, which is that they're supposed to eventually  
 205 be phased out and that they should always be 'lesser.' If we don't want that to be the goal,  
 206 then we should rezone the property which I might support. In this case, I'm convinced that  
 207 this is a less detrimental use of the property than the previous use, and I will support it.  
 208

208

209 K. Loomis – The language of the ordinance is ambiguous regarding whether one  
 210 miscellaneous retail use needs to come before the Board when it's being switched to another  
 211 miscellaneous retail use, but I think that Wendy makes a very good point, which is the intent

212 of the code is to phase these buildings out over time. If you read that intent into the statutory  
 213 language into the code, then I think that it does need to come before the Board. I don't have  
 214 any problem supporting this petition.

216 R. Eamus – So many of the items come before us are because they're non-conforming for  
 217 use, for the site or structures. When people zone, they don't really consider how many things  
 218 they make 'non-conforming' in an area. We actually try to do that now with our GIS system  
 219 so we can ask that question better now than we could thirty or forty years ago without that  
 220 data. I think this is similar enough not to quibble about is it ten trips or eleven trips or four  
 221 trips is not really the issue. The uses are similar enough that yes, administratively, you could  
 222 almost do it, but I don't mind them coming before us and basically saying 'yes, this is a similar  
 223 use – similar enough that it can be allowed.  
 224  
 225

## 226 MOTION

228 Moved by K. Loomis, Seconded by D. Gregorka, **"In the matter of 2008-Z-011 –**  
 229 **ADMIN., 838 South Main Street, that permission be granted to allow replacement**  
 230 **of the current non-conforming use of a frame shop and changed to a new use –**  
 231 **that being a retail antique jewelry store, per the submitted plans. Doing so will**  
 232 **have a less detrimental effect on the neighboring property than the current use**  
 233 **as noted by the neighbors that smaller vehicles will be making fewer visits to**  
 234 **this business.**  
 235

236 **On a Voice Vote – MOTION PASSED – UNANIMOUS** (*Permission for change of Use –*  
 237 *Granted*)  
 238

## 240 C-2 2955 Packard Road – 2008-Z-012

242 T.S. Quatro Construction is requesting one variance from Chapter 55, Zoning, Section  
 243 5:43(C1), Area, Height and Placement Regulations of 18 feet in order to allow a front setback  
 244 of 7 feet to allow replacement of an existing canopy over gas pumps (25 feet is required).  
 245

### 246 Description and Discussion

247  
 248 *The subject parcel is located on Packard Road, west of Platt. The parcel is zoned C1 (Local*  
 249 *Business District) and is currently being used as a gas station and small convenience store.*  
 250 *A total of four gasoline pumps exist on the site, covered by a 38 foot by 48 foot canopy. The*  
 251 *existing canopy is non-conforming and is located 5 feet from the front property line.*  
 252

253 *The petitioner is proposing to upgrade the site and replace the existing canopy over the gas*  
 254 *pumps. The new canopy will be 7 feet from the front property line, slightly more conforming*  
 255 *than the existing canopy. Due to the reorganization of existing gas pumps, the new canopy*  
 256 *will be slightly longer than the previous canopy but will extend away from the front property*  
 257 *line toward the interior of the site. This canopy will not increase impervious surface on the*  
 258 *site.*

### 260 Questions to Staff by the Board

261  
 262 R. Eamus (to M. Kowalski) – Living close to this and seeing the gas tankers pull in, where are  
 263 the underground storage tanks? The trucks usually pull in where the canopy is. Did they  
 264 discuss traffic in the site? (No. The petitioner may have an answer to that.)

265 D. Tope – The edge of the canopy is how high off the pavement? Twenty five or thirty feet?  
 266 (At least twenty feet.) On the ground, what is the distance from the property line to the first  
 267 thing that is on the ground? (I did not measure that.) So there is at least a car width off the  
 sidewalk? (Yes. Probably close to twenty feet from the property line.)

269  
 270 R. Eamus – There are two gas stations just to the east of this. Both of those have canopies.  
 271 Do you know how close they are to the road? (No. This issue has come up before. Most  
 272 gas stations' canopies are close to the property line because of the way they were built. If  
 273 you're simply replacing the existing one, it wouldn't technically need to be before the Board,  
 274 but they are enlarging the new one. There are many around the city between five, ten, even  
 275 zero – throughout the city.)

276  
 277 **Petitioner Presentation**

278  
 279 Tom Quatro of T.S. Quatro Co. of Ypsilanti, MI (applicant) was present to speak on behalf of  
 280 the appeal. He agreed with the staff report as being representative of their appeal. Some of  
 281 the gas pumps would be moved far enough away from the building so that traffic flow into the  
 282 store would be easier for the customer.

283  
 284 It's a bit tight for a semi-truck, but would improve a bit than the existing conditions. The  
 285 owner actually owns a trucking company that provides the fuel, so he has driven through it.  
 286 The center of the pole is actually seventeen feet from the property line. The bottom of the  
 287 canopy is fourteen feet from the ground, seventeen to the top. We'll have to repave the  
 288 entire lot. The impervious area will actually decrease slightly.

289  
 290 **Questions of the Petitioner by the Board** – None.

291  
 292 **Public Comment** – None.

293  
 294 **Discussion by the Board**

295  
 296 **MOTION**

297  
 298 Moved by D. Gregorka, Seconded by D. Tope, **"In the matter of 2008-Z-012 – 2955**  
 299 **Packard Road, that a variance be granted from Chapter 55 (Zoning), Section 5:43**  
 300 **(C1 – Local Business District), to allow a variance of 18 feet and a front setback of 7**  
 301 **feet for reconstruction of the existing canopy into the front setback per the submitted**  
 302 **plans, given the following findings of fact:**

- 303  
 304 a) **The new canopy will be two feet farther back from the property line than**  
 305 **the existing canopy and,**  
 306  
 307 b) **Many gas stations throughout the city have the same conditions as this**  
 308 **one and this complies as nearly as practicable with the code.**

309  
 310 **On a Voice Vote** – MOTION PASSED – **UNANIMOUS** (*Variance Granted*)

311  
 312  
 313 **C-2 1880 Robert Street – 2008-Z-013**

314  
 315 Acheson Builders is requesting one variance **Chapter 55, (Zoning), Section 5:28 (R1C)**  
 316 **Single-Family Residential District.** A variance of 10 feet 2 inches in order to construct a  
 317 screened in rear porch 19 feet 10 inches from the rear property line, 30 feet is required.

318 **Description and Discussion**

319

320 *Donald and Julia Levitt are requesting one variance to allow the construction of an attached*  
 321 *enclosed porch at the rear of the house. The enclosed porch would be just over 20 feet from*  
 322 *the rear property line and 7 feet 8 inches from the side property line. The subject property is*  
 323 *located in the R1C Single-Family Dwelling District. A single-family dwelling and two-car*  
 324 *attached garage currently exist on the property. The house is located on the corner of Robert*  
 325 *Street and Victoria Avenue, which results in two front setbacks of 25 feet, one rear setback of*  
 326 *30 feet and one side setback of 5 feet. The proposed addition will be 10 feet 6 inches by 17*  
 327 *feet. The house is 2206 square feet and was built in 1991.*

328

329 **Questions to Staff by the Board**

330

331 D. Tope (To M. Kowalski) – What is the side setback on the left? (That side is actually a  
 332 front. It's a corner house that has two front setbacks, and that is twenty five feet.)

333

334 **Petitioner Presentation**

335

336 Mr. Jim Acheson, potential builder on this project, was present to speak on behalf of the  
 337 appeal. He stated that the proposed screen porch would not be out of character with the  
 338 neighborhood and the privacy fence will hide a lot of the addition as well. Many houses in  
 339 this area are built close to the lot lines. The only other possible place to build this on this lot  
 340 is the right corner where you could squeeze something in, but both Victoria and Robert  
 341 streets are gravel roads, and it would be like having your relaxation area in a fishbowl.

342

343 He stated that he had provided the Board with additional pictures of other corner lot homes in  
 344 the area that violate the thirty foot setback. What is fair for others would be fair for the  
 345 Levitt's. They also contacted all of their neighbors within one hundred and fifty feet – those  
 346 most affected by it, and you have their signatures stating that they are in support of this.

347

348 As to this being a 'self-imposed' hardship, this house was not built for the current owner.  
 349 When they purchased it, they were not aware that there would be this kind of restriction when  
 350 they wanted to build their porch. He also stated that they had done specific designs that  
 351 would impact the neighbors in a lesser manner. *(He explained the plan at length.)*

352

353 **Questions of the Petitioner by the Board**

354

355 K. Loomis – As to the other properties in the neighborhood that encroach into the setback, do  
 356 any of those encroachments involve a screened porch? (Petitioner – Most of them involve  
 357 attached garages, but some were the house structure. I don't recall a screened porch being  
 358 one of those.)

359

360 D. Gregorka – The adjacent properties on Robert and Victoria streets – what are the  
 361 addresses of those two properties, and are they on the list of neighbors you've provided?  
 362 (The owner stated that the home on Joseph street is in the backyard, the next home's  
 363 address is 1860, and the other home on Victoria is empty so there was no one to obtain a  
 364 signature from.)

365

366 **Public Comment**

367

368 Mr. Levitt, owner of the property in question was present to speak on this appeal. He stated  
 369 that all of his neighbors were very enthusiastic about this project.

370



371 **Discussion by the Board**

372

373 D. Tope (To M. Kowalski) – He stated the home faces Victoria Street. The proposed porch  
 374 will be in the right rear? (It's technically the rear of the parcel. It looks like the side.) So, it's  
 375 closer to the neighbor than it is to the front? (Yes.)

376

377 *(Discussion by the Board and staff regarding what is actually the front or side of the home in*  
 378 *question since it technically has 'two' fronts).*

379

380 R. Eamus – I'm conflicted about this. My neighborhood is R1C as are many others. He  
 381 stated that they (the Board) may be setting precedence if this is approved.

382

383 C. Briere – I agree with Ron in that this could open up a 'can of worms' and create problems  
 384 with the neighborhood, wanted to build their own screened in porch. There are several other  
 385 options; they could build a deck, an open porch or a detached gazebo, so I don't think there  
 386 is a hardship here that they 'need' this variance to build a screened in porch.

387

388 D. Tope – I agree. In a nutshell, it doesn't meet the standards. When the home was built, it  
 389 was built to the max which included an attached garage. They didn't give themselves room  
 390 to build anything else. The photos in the area do not depict encroachments. These are  
 391 detached garages which are allowed within the rear setback. They have alternatives – a  
 392 deck, gazebo, etc.

393

394 W. Carman – I concur. This would be granting a right that other people couldn't have. There  
 395 is no hardship involved that would keep them from enjoying this property without the  
 396 variance.

397

398 C. Carver – That is what I would like the petitioners to understand. I'm not really opposed to  
 399 this, but if we grant it, who do we then deny it to in the future? We have to draw the line and I  
 400 will not support this.

401

402 D. Gregorka – Even though the neighbors support this, you can't make a convincing case  
 403 with the standards that we have to use. I can't support it either.

404

405 K. Loomis – The petitioner does have other options and has admitted that it doesn't meet the  
 406 code requirements. Not having an awareness that the home was built to the max when they  
 407 purchased it is simply irrelevant. They should have checked the zoning code before  
 408 purchasing the home.

409

410 **MOTION**

411

412 Moved by W. Carman, Seconded by D. Gregorka, **"In the matter of 2008-Z-013, 1880**  
 413 **Robert Street, that a variance of 10 feet, 2 inches be granted to allow a rear setback of**  
 414 **19 feet, 10 inches for the construction of an enclosed porch per submitted plans due to**  
 415 **the following findings of fact:**

416

417 \*a) The proposed hardship is the desire to have a screened in porch.

418

419 **On a Voice Vote – MOTION FAILED – UNANIMOUS (Variance Denied)**

420

421



422 *\*(D. Tope – Friendly amendment to remove any negative connotations from the motion*  
423 *– amendment accepted by both board members, and the final motion was edited as*  
424 *appears above).*

426  
427 D. **OLD BUSINESS** – None.

428  
429 E. **NEW BUSINESS** - None.

430  
431 F. **REPORTS & COMMUNICATIONS** - Included under each appeal.

432  
433 G. **AUDIENCE PARTICIPATION – GENERAL** – None.

434  
435 **ADJOURNMENT**

436  
437 Moved by D. Tope, Seconded by C. Briere, **“that the meeting be adjourned.”**

438  
439 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**

440  
441 Chairperson Carol Kuhnke adjourned the meeting at 7:58 p.m.

442  
443 **(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –**  
444 **Zoning Board of Appeals)**

445  
446   
448 Carol Kuhnke, Chairperson

6-25-08  
Dated ZBA Minutes