



# City of Ann Arbor

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

## Meeting Minutes Zoning Board of Appeals

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Wednesday, October 24, 2012

6:00 PM

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

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### A CALL TO ORDER

*Vice Chair Milshteyn called the meeting to order at 6:00 pm.*

### B ROLL CALL

*Vice Chair Milshteyn called the roll.*

**Present:** 6 - Candice Briere, Wendy Carman, Alex Milshteyn, Perry Zielak, Ben Carlisle, and Maureen Sertich

**Absent:** 2 - Chair Carol A. Kuhnke, and Sabra Briere

### 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

[12-1359](#)

Zoning Board of Appeals Meeting Minutes of September 19, 2012

**A motion was made by Zielak, seconded by Sertich, that the Minutes be Approved by the Board and forwarded to the City Council and should be returned by 1/22/2013. On a voice vote, the Vice Chair declared the motion carried.**

### E APPEALS AND ACTIONS

E-1 [12-1357](#)

ZBA12-018; 125 Fairview Drive

Lucie Audette is requested one variance from Chapter 55 (Zoning) Section 5:57 (Averaging an Existing Front Setback Line), of 6 feet 8 inches for expansion of an existing residential structure into the front setback; 35 feet is requested (Averaged Front Setback).

*Matt Kowalski presented the staff report.*

**DESCRIPTION:**

*The subject parcel contains a 1,529-square foot, single-family dwelling constructed in 1931. The parcel is zoned R1C (Single-Family) and is located on Fairview Drive, just south of Dexter Avenue. The existing setback measures 33 feet 4 inches to the main*

house and 28 feet 4 inches to the uncovered porch. The porch measures 5 feet by 10 feet or 50 square feet. The parcel is conforming for lot area; the required minimum lot area for R1C is 7,200 square feet and the parcel is 8,410 square feet.

The petitioner is proposing to cover the 50 square foot front porch which faces Fairview. There will be no increase size and the porch will not be enclosed. The front setback to the porch will remain 28 feet 4 inches. The porch roof addition will match the rooflines of the structure and will be supported by columns.

Although the required front setback is 25 feet for the R1C zoning district, the averaged front setback at this location results in a required front setback of 35 feet. The total encroachment of the house after the porch roof addition will remain 6 feet 8 inches.

#### *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 a conforming corner lot in the R1C Zoning District (required is a minimum lot size of 7,200 square feet; parcel is 8,410 square feet). The existing house was built in the 1930's before current zoning setbacks. The house, including the uncovered porch, was built 28 feet 4 inches from the front property line. The R1C required setback is 25 feet, however the averaging of adjacent parcels adjusts the setback to 35 feet. The subject parcel is a triangular lot and narrows toward the front 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 in order to cover an existing front porch. If the variance is not granted, the existing porch can continue to be used and a ground level patio could be built, but not covered in the same location.

(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 variance is approved, the structure will be consistent with a number of houses in the neighborhood. Although covering the existing porch does require a variance, it will not extend farther into the averaged front setback, it is minimal in total size (50 sq ft), and will not be enclosed. This should minimize the impact to the surrounding neighborhood. The porch 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.

*The house was built in the 1930's before current zoning standards were established. The parcel is a slightly triangular shaped lot. The house including the front porch complies with the required 25 foot front setback of the R1C, but does not comply with the averaged front setback based on neighboring properties of 35 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 covering over an existing front porch within the average front setback. The unenclosed porch will have columns supporting it, but should have a minimal impact to the surrounding neighborhood. A covered front porch would be consistent with some porches in the neighborhood.*

*Although an uncovered front patio could be built without the need for a variance, the size and encroachment of the covered front porch is minimal.*

**QUESTIONS TO STAFF BY THE BOARD:**

*No questions for staff.*

**PRESENTATION BY THE PETITIONER:**

*Milshteyn noted that the Board had received a petition of support for the project signed by several neighbors.*

*Lucie Audette and Rob Bauman, 125 Fairview Street, Petitioners, said that they have talked to all of their neighbors and showed them the proposed porch design. They said that they want to construct this roof for safety reasons, to keep the rain and snow off the stoop, and they noted that all neighbors within 100 feet of their property have signed the petition that is in the packet.*

*Carman arrived at 6:09 pm.*

*Carman asked whether the requested variance is 6 feet, 8 inches or 6 feet 9 inches.*

*Kowalski clarified that the request is 6 feet, 9 inches.*

**PUBLIC HEARING:**

*Paula Trail, 123 Fairview, which is the house to the south of the petitioners, expressed support for the variance. She said that this would not cause an obstruction, and just make the house better.*

*Jane Burton, 2303 Walter Drive, said she gets to stand on the porch when she visits, and she thinks this will increase the safety and will be a beautiful addition to the home.*

**BOARD DISCUSSION:**

*None.*

**A motion was made by Carman, seconded by Zielak, that in Case ZBA12-018 for 125 Fairview Drive, that the Zoning Board of Appeals grants a variance from the 35 foot average front setback of 6 feet 8 inches to permit construction of a roof over the existing uncovered 5 foot by 10 foot stoop which will technically**

expand the existing structure into the required 35 foot front setback, 6 feet 8 inches, conditioned on the changes being built per the submitted plans and remaining unenclosed given the following findings of fact :

- a) The subject parcel is conforming lot, R1A zoned,
- b) The existing house was built in 1930 before the current setback requirements were established, but meets and exceeds the general setback requirement of 25 feet,
- c) The house, including the uncovered porch is legal at 28 feet 4 inches from the property line,
- d) Because the porch is uncovered placing a roof over the existing porch to address safety and house drainage issues,
- e) Even though the porch will not be enclosed will cause the house to be in violation of the average front setback, however there is no other place to put this roof,
- f) I believe this meets standard A, that the alleged practical difficulty and the site is exceptional and peculiar to this property and results from conditions that do not exist generally throughout the City and,
- g) The finding that the request if not granted will leave the existing porch uncovered and continuing to be unsafe,
- h) As well as to damage the existing structure, further meets the requirement for standard B, that the alleged practical difficulties, resulting from failure to grant the requested variance include substantially more than mere inconvenience, or inability to attain a higher return,
- i) And the finding of fact that the variance if approved will allow the structure rights on this property that are available to others in the neighborhood,
- j) Although the covered porch will not extend further to the front or the side of the porch,
- k) And that this size is minimal at 50 square feet
- l) And that the neighbors have supported it meet the requirements for standards C, that this will result in substantial justice being done considering the public benefit and if it is intended to be secured by the chapter, the individual hardships that will be suffered by the failure of the Board to grant the variance and the rights of others whose property would be affected by the variance,
- m) And the additional finding that the house was built before the setback requirements were established and before the front averaging was put in place,
- n) And that it would meet the 25 feet general front setback requirement,
- o) Meets standard D, that the circumstances of the requested variances are not self-imposed practical difficulties,

p) And the additional finding that the proposed change is the minimal change that can cover the porch meets the standard E, that the variance if approved shall be the minimal variance that will make possible a reasonable use of the land or structure.

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

**Variance granted.**

**Yeas:** 6 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, and Sertich

**Nays:** 0

**Absent:** 2 - Chair Kuhnke, and Councilmember Briere

**E-2**     [12-1358](#)

ZBA12-020; 1320 South University Avenue  
1320 South University Apartments LLC, is requesting three variances from Chapter 55 (Zoning), Section 5:10.20:

1. A variance of 25 feet in order to permit a side yard setback of 15 feet; 40 feet is required.
2. A variance of 85 feet in order to permit a maximum height of 145 feet; 60 feet is the maximum permitted by code.
3. A variance ranging from 2 feet 6 inches to 34 feet in order to permit a variable rear setback ranging from 37 feet 6 inches to the rear of the proposed building to 6 feet from the closest residential zoning boundary to the southeast corner of the building; 40 feet is minimum required.

*Kowalski presented the staff report.*

**DESCRIPTION:**

*The subject parcel is located on South University Avenue, west of Washtenaw Avenue and east of Forest Avenue. It contains a 33,057 square-foot, three-story apartment building with 36 apartment units and a floor area ratio of approximately 92%. A surface parking lot is located behind the building. A storm sewer crosses the southeast portion of the property under the parking lot. The building was constructed in 1965 before site plans were required.*

*The parcel is zoned D2 (Downtown Interface) and is located in the South University Character Overlay District. The existing building is non-conforming due to the 40-foot setback required from the abutting residential zoning district on the east. The existing building complies with the D2 maximum building coverage requirement of 80%. It is unclear from the information provided whether the site complies with the D2 minimum open space requirement of 10%.*

*The parcel was zoned R4C (Multiple-Family Dwelling District) when the building was constructed in 1965. The parcel was rezoned to C2A (Central Business District) in October 2006 as part of the South University Area rezoning. Three years later, as a result of the A2D2 (Ann Arbor Discovering Downtown) project, the site was subsequently rezoned from C2A to D2. Public hearings were held throughout the A2D2 zoning process, and a separate City Council public hearing was held on the*

*proposed rezoning of 1320 South University at the request of the property owner.*

*The petitioner is requesting three variances in order to allow the construction of a new building on the parcel. The existing building would be demolished. A site plan for City Council approval will be required, and approval of the variances does not enable construction of the proposed project. Although standard ZBA practice is to consider variance requests after the Planning Commission has reviewed and made its recommendation on a site plan, the petitioner has declined to submit a site plan at this time. Due to the lack of a site plan for reference, staff responses are limited to information provided in the variance application packet provided by the petitioner.*

*The petitioner states that the D2 zoning regulations, in particular the 60-foot height limit and 40-foot side and rear setbacks, make it practically difficult to redevelop the property. The petitioner states that the D2 zoning regulations cause unnecessary and practical difficulties that are not imposed on other parcels located within the City's Downtown Districts and that the property contains unique characteristics compared to other D2 parcels as detailed on Attachment 1 to the application. The petitioner states that the high cost of redevelopment, including demolition, construction, underground parking, possible relocation of a sewer easement, footing drain disconnects, and compliance with other City regulations, means that complying with D2 zoning prevents any redevelopment of the property.*

#### *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 35,725 square feet; the D2 Zoning District has no minimum lot size requirement. This parcel is the second largest parcel in the South University Character Area and is larger than the adjoining D2-zoned parcel.*

*The parcel abuts residential zoning on the south (R4C) and east (R2B) sides, and D1 property is located to the north (across South University) and to the west. The other parcel in this D2 district, 625 S. Forest Avenue, abuts the R4C zoning boundary and also is subject to the 40 foot setback requirement.*

*The petitioner indicates that the side and rear setbacks result in 35% of the site being dedicated to setback areas, creating a hardship for redevelopment. The proposed variances would reduce this to 24.8%. The petitioner's arguments as to why the property is unique compared to other D2 parcels are stated in Attachment 1 to the petitioner's application.*

*(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 in order to permit construction of a new mixed use building. If the variance is not granted, the existing building may continue to be*

*used as an apartment building or be renovated to a mixed use building under the existing D2 zoning requirements.*

*As noted above, this parcel is larger than all but one of the parcels within the South State Street character area. The existing lot is 116 feet wide. The application of the required side setback of 40 feet will leave a buildable area with a minimum of 76 feet in width. Application of the required rear setback would leave a buildable area of approximately 250 feet in depth. With a 19,000 square foot floorplate, a 266% FAR, five-story, 60-foot tall building could be built in compliance with the 80% maximum building coverage requirement.*

*(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 variance is approved, the structure referenced in this application would be similar in scale and massing to the adjacent building to the west. However, that parcel is zoned D1 (Downtown Core). D2 zoning standards were enacted to provide a transitional buffer between the D1 and the lower density housing to the south and east.*

*The proposed building could be 145 feet tall and a minimum of 6 feet from the adjacent residential zoned parcel to the southeast, which includes a single-family house.*

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

*As noted above, the site was rezoned from R4C to C2A in October 2006 and then subsequently rezoned from C2A to D2 in December 2009. Both of these rezonings were the result of City ordinance amendments adopted as a result of a public process. While the petitioner did not support the rezoning to D2, the D2 zoning does permit redevelopment of the property, although at a smaller scale and massing than would be permitted if the variances are granted.*

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

*The D2 district allows a 200% Floor Area Ratio (FAR), with the ability to exceed this limit up to a total of 400% FAR if zoning premiums are met. The current building has a FAR of approximately 92%. Based on the Exhibit C rendering, the building is shown to be 13 stories tall. Using the footprint indicated in Exhibit D.2 (101 x 257 feet), a 6-story building would result in a FAR of approximately 400%.*

#### **QUESTIONS TO STAFF BY THE BOARD:**

*Carman asked about the diagonal from the R4C to the building, and if the setback requirement needs to be 40 feet from the zoning district boundary.*

*Kowalski said, yes.*

*Zeilak referenced the staff report that mentioned that the FAR can go up to 400% if certain premiums are met. He asked what those might be.*

*Kowalski said if certain certifications are met, such as LEED [environmental*

certifications], residential use premiums, affordable housing premiums, etc., that if met in their building, it would allow them to receive the 400% FAR.

Carlisle asked whether the petitioner had opposed the D2 zoning originally, when the petitioner had requested the rezoning a few years ago.

Kowalski said yes.

Carlisle asked if they had since requested rezoning from the D2 Zoning District from the Planning Commission.

Kowalski said the petitioner had gone through a conditional rezoning request after that, which was denied at first reading at City Council.

Sertich asked about potential loss of parking, and if there is a minimum parking requirement, noting that it didn't look like there was much space for parking on the site.

Kowalski said there are parking standards that the petitioner would have to meet, but the petitioner is not requesting a variance for parking at this time.

Milshteyn stated for the record that the Board had received letters of opposition from the following,

Eleanor Linn, 1321 Forest Court,  
Marc Gerstein, 1321 Forest Court,  
Betsy Price, Co-Chair North Burns Park Association,  
Andrea Parks Van Houweling,  
Ellen Ramsburgh, 1503 Cambridge Road,  
Earl Barr, 1320 Forest Court

#### PRESENTATION BY THE PETITIONER:

Susan Friedlaender, 83493 West 14 Mile, Farmington Hills, Attorney for the petitioner, introduced the owners and David Birchler, Land Use Planner.

Friedlaender confirmed the zoning request that was denied by City Council. She said regarding parking, they still want to provide parking on site, and the idea is to put in underground parking. She said that nothing is proposed in the open space areas shown on their plan. Friedlaender said the ZBA variance process has historically been a safety valve for ordinances because all properties are not alike, and the flexibility provided in the variance process can uphold the validity of ordinances. She said in this case, it's a dimensional issue that makes it difficult as a practical matter to develop the parcel. She reviewed her petition application material and outlined hardships with the Board. She said the South University area merchants are in favor of the petitioner. She presented for the record signed petitions from 1800 students and others whom she said are in favor of the construction. She said that she didn't believe that it was ever intended to have D2 zoned property in D1 districts. Friedlaender said that open space is as important, or more important than building height.

David Birchler, Land Use Planner with Birchler Arroyo, identified the following unique circumstances. 1320 South University Ave is the only parcel within the DDA that is not zoned D1, and has a unique shape, it is adversely impacted by an existing storm sewer easement, the adjoining R4C zoning district has only two owner occupied



residence, with all other residential structures in the area being student or fraternity/sorority occupied and therefore not a classic downtown single family neighborhood. He said the East Huron Character Overlay District has more single-family owner occupied, but has no D2 interface buffer between it and the adjoining district. He said the 1320 South University parcel is required to maintain a 40 foot setback from a residential zone, even though there is that intervening parcel to the south, zoned D2 interface as well as the large fraternity house immediately to the east. He said 1320 South University Avenue is the only parcel uniquely impacted by the 40 foot setback. He said the D2 overlay for the Liberty/Division requires only a 5 foot setback from the immediately adjoining R4C residential zoning, with the same type of situation. He said the current zoning for 1320 South University renders 34% of its frontage unusable. He said 1320 South University was officially recognized as C2A [Central Business District] for three years before it was rezoned, and that it has always been an interior lot fronting on South University. He stated there are no self-imposed practical difficulty, created through the application, but that the practical difficulty was imposed upon them when the City rezoning the parcel to D2 interface. He said the City also gave more stringent setback requirements for this parcel than others in the D2 district through a character overlay. He said the rezoning even rendered the existing structure non conforming because it doesn't meet the 40 foot setback requirement. He said the proposed structure would not have a 6 foot setback from the neighboring house, but from the yard.

**PUBLIC COMMENT:**

Gwen Nystuen, 1016 Olivia Avenue, stated that the property has historically been used for residential use. She said it is the last property before Washtenaw Avenue, adding that Washtenaw Avenue is one of the main entrances to the city and has buildings with large setbacks all along Washtenaw. She noted that most of the area is zoned R2B, and Forest Court is a residential street. She said 1320 South University is directly adjacent to R2B and R4C, which means you will want a step down from the D1 district. She said there was a lot of public review involved in the process with most neighbors thinking that all of South University should have been zoned D2. She said the petitioner is asking for both height and setback variances. She said the setbacks make a great difference to residential parcels and would not be compatible. She said the petitioner is asking to use adjacent property for buffers instead of their own.

Kevin McKay, represent 1408 Washtenaw, Sigma Alpha Epsilon Fraternity, ask that these variances not be granted. He said when the rezoning was enacted, the fraternity was opposed to the D1 designation at the corner lot, adding they have suffered adversely from light and sound bouncing back into the neighborhood behind them. He said they believe that the step down zoning is a good idea and ask that the Board sustain that. He said the petitioner is essentially asking for D1 zoning, which defeats the purpose of a step down zoning. He said they own the corner lot on Washtenaw and are the gateway to South University Avenue. He said they wonder if the City would consider granting them D1 zoning as well, noting that they don't want that but they want to maintain a step down.

Ethel Potts, 1014 Elder Blvd, said that there has been talk about planning in general, which leads to zoning, not variances. She noted that the variances requested from the Board are very large requests, and it would be logical for the petitioner to ask for other zoning, which they have done and this has been refused. She said the variances have the same effect as a rezoning. Potts explained that the ZBA has standards taken from state law, and in granting variances, all standards must be met. She said there is nothing exceptional about this property, noting that many property owners would like to building something not allowed in their zoning. She said they clearly are looking for higher financial return from a bigger building. She said the

request does not respect adjacent residential building. She believed the situation is self imposed since they cannot get the building they want. Potts said the petitioner currently enjoying reasonable use of the land and could even expand somewhat. She stated that none of required standards are being met, therefore no variances should be granted.

Tony Pennell, 1328 Minerva Road, expressed his strong opposition against the request. This project has been the subject of lengthy discussion and it has been discarded. He asked that the big picture be looked at, noting that they have been concerned about heights of newer buildings being built, but added that they most accepting of higher density. He said this property is very well situated and is a dream come true, even as it is. He said the notion of maximize building space in the D2 district would not be successful and is not supported. He said neighboring property owners have a right to enjoy their property based on current zoning.

Christine Crockett, 506 E Kingsley, President of the Old Fourth Ward, worked on the Design Review for A2D2 so followed much of the discussion, said this zoning was a deliberate decision for D2 Zoning because it was a buffer. She said she had attended a meeting where the petitioner said the City was in error. Now, in another way that petitioner is saying the City was in error. She said variances are usually small, and not a rezoning in essence, such as this request. She said there is no hardship for the petitioner and she urged the Board not to grant the variances.

Eleanore Linn, 1321 Forest Court, the property in the photo with the garage. She said they have owned their property for 30 years, as have neighbors in the area with is hardly 'transient' as stated by the petitioner. She said they are opposed because granting the variances would be a grave injustice to her, because that building will be pulled up to her house and she would be sandwiched only 6 feet away from. She said the petitioners claim that her back yard is a buffer and have used her trees on her lot as their buffer. She said her property characteristics have nothing to do with their buffer. She said that voting yes would result in substantial injustice being done. She said for the Board to approve, they must find that 5 criteria have been met. She felt they did not meet Criteria C.

Ray Detter, 120 N. Division, Chair of Downtown Area Citizens Council, asked for denial of the variance requests. He said the Planning staff report makes the reasons clear. He said there have been no change in policy, and no mistake in zoning the parcel to D2. He said the variance is a disguised attempt to rezone this property. He said the request does not comply with zoning requirements as outlined in the City's Master Plan, adding that they are meant to preserve and enhance incremental transitions. He said a variance of 85 feet is substantial and another building next door to the existing high rise would block windows for the Landmark building. He said the owners could build a D2 structure. Detter said they are proud of the City's commitment to planning. He said East Huron Street was designed D1 also. He said if the Board supports this request, neighbors of that area will be unhappy. He said he feels that the ZBA is being tested and the staff report shows this request does not meet the requirements.

Susan Friedlaeder clarified that there had been question about the D2 zoning for this parcel. She said during the process, it was originally recommended for D1 zoning, and when it went to Council, they recommended eleven parcels, and when it went back to the Planning Commission, they worked out a compromise for just two parcels. She said the parcel had also had been zoned C2A during Calthorpe period. She said regarding the comment that when the approval was given for the Landmark, it was with understanding that this parcel would be D2, and that is not accurate. She said it was C2A, and the property was not recommended for D2 at that time. She said

*one has to look at the area when determining if substantial justice is being done. She said the character of the area is not lots of small parcels, but larger parcels, stressing that the character and mass of area is larger parcels and taller buildings. She said she would be happy to see examples how this parcel can be redeveloped within the D2 zoning. She said they came to the ZBA because under Michigan law, they are required to come here to ask for relief.*

**Motion made by Carman, seconded by Zielak, in the case of ZBA12-020 for 1320 South University that the ZBA grant a variance, varying in width from 1 foot at the south end to 25 feet at the north end to permit a setback varying from 15 to 39 feet along the east property line which abuts the R2B campus dwelling district boundary, from the required 40 foot minimum setback in D2 for abutting residential zoning districts, and**

**a variance varying in width from 2 feet 6 inches to 34 feet to permit a variable rear setback between the R4C family dwelling district boundary and the rear of the proposed building. The proposed setback would range from 37 feet, 6 inches at the south west corner of the proposed building to 6 inches at the south east corner of the building and this would be in a variance from the 40 foot required minimum setback in the zoning district, and**

**a variance of 85 feet to permit a maximum height of 140 feet given the 60 foot maximum height in the D2 district, given the following findings of fact:**

**This property is a 35,725 square feet D2 lot. It abuts residential zoning on Forest Court to the south and Washtenaw to the east. The D2 zoning results in approximately 35% of the site being dedicated to setbacks, a characteristic which is not experienced in all of the other D2 properties.**

**The petitioner has supplied a list of reasons why they think the D2 lot should have been zoned D1:**

**There is a storm sewer located on the site and the practical difficulty here is that the property is zoned D2. This is the evidence for meeting standard a) that the alleged practical difficulties on this site are exceptional and unique throughout the City: and,**

**an additional finding of fact that if the variance is not granted the property may continue to be used as an apartment building or as a mixed use D2 property. This is in support of the standard b) the alleged practical difficulties that would result in failure to grant these requested variances, include substantially more than mere inconvenience, or inability to attain higher return: and,**

**an additional finding of fact, if the variances are approved, this lot will be similar in scale and massing to D1. The proposed building would be 145 feet high, the property would not provide required setbacks for D2 and there is only one owner home adjacent to this property. This was the evidence to meet the standard for c) that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Chapter, the individual hardships that will be suffered by failure of the Board to grant the variances and the rights of others whose property would be affected by the variances: and,**

**the additional findings that, this property has been rezoned from R4C to C2A to D2 and this meets the standard d) that the conditions and circumstances on which the requested variances are based are not self imposed practical**

difficulties: and,

the additional finding of fact that D2 would allow a 200% FAR with the ability, with premiums to exceed this up to 400% FAR. The current building is only 92% FAR. This is set forward as evidence for standard e) that the variances approved will be the minimum variances that will make possible a reasonable use of the land or structure under the zoning.

**Friendly Amendment by Milshteyn, that the height variance be 145 feet.  
Seconded by Zielak.**

*BOARD DISCUSSION:*

*Zielak said he supports density in the City, but he strongly believes that this proposal does not meet our requirements for a variance. He said looking at the height variance, they would be granting more than double the maximum height allowed. He said the Board should be granting the minimum needed. He said he cannot support the request based on this fact alone.*

*Sertich, pointed to standard B, stated that she felt the variance request is based on a business decision to obtain higher returns on his investment, and that is not normally grounds for approving variances. She said there are other options available for use of this property, possibly options that don't take up as much of the property might be acceptable or minor variance requests.*

*Milshteyn said if this request is approve, they will be setting a dangerous precedent fore the City of Ann Arbor. He said there are many property owners in the City that would love to rezone their properties. He said he won't be supporting the request.*

*Carman said that she felt the only standard they meet is the one that the situation is self-opposed. She said she will be voting no.*

*Carlisle said the reasons for denial have clearly been expressed, noting that the request is more of a rezoning request than dimensional relief due to hardship. He asked if it would be clearer to make a motion to deny the request.*

*Kowalski said they are following accepted practice of making motions in the affirmative, so if they pass the petitioner receives the relief requested.*

*C. Briere said she intends to vote no. She said she sympathizes with the owner, but someone has to be the buffer. She said this is the transition parcel and the only standard that she felt they met is that the situation is not self imposed. She said it is not the Board's position to grant variances for properties that want to be rezoned but can't be. She said it undermines the zoning process.*

*Carman said the question of whether this is the minimum variance for making a reasonable use of the land or structure, the Board doesn't have to provide highest possible use, just a reasonable use. She believes the owners already have the ability to make a reasonable use of the property.*

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

**Variances denied.**

**Yeas: 0**

**Nays:** 6 - Briere, Carman, Chair Milshteyn, Zielak, Carlisle, and Sertich

**Absent:** 2 - Chair Kuhnke, and Councilmember Briere

**F**      **OLD BUSINESS**

**G**      **NEW BUSINESS**

**REPORTS AND COMMUNICATIONS**

[12-1360](#)      Update on Sign Appeals Amendment

*Rampson provided an update on the proposed ordinance amendments to the Sign Ordinance. She explained that City Council will likely approve the changes on November 8, which will put them into effect on November 26. She explained that no sign appeals will be scheduled for the Zoning Board until they have received training, and asked when the Board would prefer to schedule this. The Board consensus was to schedule a training session for the November 28 regular meeting, provided the appeal agenda is not long.*

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

**J**      **ADJOURNMENT**

**A motion was made by Zielak, seconded by Briere, that the Meeting be Adjourned. On a voice vote, the Vice Chair declared the motion carried.**

*Community Television Network Channel 16 live televised public meetings are also available to watch live online from CTN's website, [www.a2gov.org/ctn](http://www.a2gov.org/ctn), on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>).*

*Live Web streaming is one more way, in addition to these listed below, to stay in touch with Ann Arbor City Council and board and commission actions and deliberations.*

- *Video on Demand: Replay public meetings at your convenience online at [www.a2gov.org/government/city\\_administration/communicationsoffice/ctn/Pages/Vid eoOnDemand.aspx](http://www.a2gov.org/government/city_administration/communicationsoffice/ctn/Pages/Vid eoOnDemand.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](http://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.*