



**APPROVED MINUTES OF THE REGULAR MEETING OF  
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR  
AUGUST 22, 2007**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, August 22, 2007 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

The meeting was called to order at 6:05 p.m. by Acting Chairperson Kathryn Loomis.

**ROLL CALL**

Members Present: (7) W. Carman, C. Carver, R. Eamus, D. Gregorka,  
C. Briere, R. Suarez and K. Loomis

Members Absent: (2) C. Kuhnke and D. Tope

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

**A – APPROVAL OF AGENDA**

**A-1** K. Loomis – Noted that the Agenda had been revised showing that Item C-1, Burton Commons was postponed to the September 2007 Meeting, but would offer the audience a chance to speak on the scheduled public hearing for the item.

**B - APPROVAL OF MINUTES**

**B-1** Approval of Draft Minutes of the July 25, 2007 Regular Session.

Moved by C. Carver, Seconded by, D. Gregorka, **“that the minutes of the July 25, 2007 Regular Session be approved as presented.”**

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

**C - APPEALS & ACTION**

**C-1 Burton Commons – 2007-Z-016**

WITHDRAWN//POSTPONED

**Audience Participation** – No one was present to speak regarding the postponed item.

**D. UNFINISHED BUSINESS**

**D-1 405 Awixa Road – 2007-Z-015** (*Postponed at the July Regular Session*)

**Summary:** David Lewis is requesting permission to alter a non-conforming structure as described in Chapter 55, Zoning, Section 5:87, Structure Nonconformance and one variance from Chapter 55 Section 5:27 (R1B, Single-Family) of 8 feet 6 inches from the previously approved rear setback of 25 feet to permit construction of an enclosed porch 16 feet 6 inches from the rear property line.

The property was granted a variance in 1992 to extend 15 feet into the rear setback, so currently it sits at 25 feet from the rear lot line. The house was non-conforming prior to the

54 first variance being granted. There is a small corner of the existing home that falls within the  
55 estimated rear lot line. The house was built in 1926 and is approximately 2000 square feet.  
56

57 The variance, if granted, will permit the addition of a 267 square foot enclosed porch. If  
58 constructed, the new addition will be located approximately 10 feet 10 inches from the  
59 eastern property line and approximately 16 feet 7 inches from the southern or side property  
60 line. The size of the structure will remain consistent with surrounding houses. The existing  
61 house will be enlarged, but the proposed porch will not be visible from the street. Due to the  
62 triangular shape of the parcel, there are only two adjacent neighbors. We did receive one  
63 letter in support of this request, and one letter in opposition. The property is an unusual  
64 triangular shape, which results in an estimated rear lot line. This is an unusual condition for a  
65 parcel in the city. A patio currently sits in this same area, which can be constructed and  
66 enlarged without the need for a variance.  
67

### 68 **Questions to Staff by the Board**

69  
70 K. Loomis (To M. Kowalski) – I am unsure of the actual variance they require. It appeared  
71 that in a few places that it was marked as 8'6", which is what you stated tonight, but I've seen  
72 6'6" (M. Kowalski – This is correct. There were a couple of typographical errors in the staff  
73 report, but the correct figure is 8'6").  
74

### 75 **Petitioner Presentation**

76  
77 David Lewis, architect on the project was present to speak on behalf of the appeal. He asked  
78 the Board if it were possible to table the appeal again until the September meeting.

80 C. Carver – Asked the reasoning behind the request.  
81

82 Petitioner – Stated that he was looking for a greater turnout of the Board. (C. Carver – Stated  
83 that there were five Board members present last month, and seven present this evening – a  
84 quorum and nearly full attendance.)  
85

86 D. Gregorka – Stated that the Board would not be present at all this evening if it weren't for  
87 this single appeal to be heard. He stated that if anyone proposed the issue to be tabled, that  
88 he would not vote in favor of it and that the Board needs to act on the issue.  
89

90 K. Loomis – Asked if anyone would propose a motion. (No motion was proposed by the  
91 Board.) Seeing no action to grant your request to table the issue, we suggest that you make  
92 your presentation.  
93

94 Petitioner – Stated that staff did cover the request for the variance and just wanted to add  
95 that the homeowners are very interested in having a screened in porch to better utilize their  
96 yard, to have a space where they can be free of bugs. We'd like to point out that there is an  
97 existing patio in the back yard, so the space is not changing from what it currently is – it will  
98 just be enclosed. I'd like to emphasize the odd shape of the lot. It has very little potential for  
99 any kind of expansion. It is also a fairly small expansion and still respects the side yard  
100 setbacks.

102 C. Carver – Fifteen years ago, we gave this property a variance of 15', and now you're asking  
103 for a variance of 8'6" – you state that your client wants an enclosed porch so he can better  
104 utilize his rear yard. There may not be any rear yard by the time we finish with variances.  
105 Will you return again in another ten years and ask for more relief?

106 (Petitioner – It was another homeowner.) Yes, but the same home/property. Rear yard  
 107 setbacks are not something to just be ignored.  
 108

110 R. Suarez (To M. Kowalski) – The neighbor who had a complaint – Do they own a property  
 111 adjacent to this, and if so, how close is their house to that property line? (M. Kowalski – I  
 112 don't know the exact distance, but I'm not sure where the footprint of that house actually lies.  
 113 The aerial photo is not helpful as it is heavily treed.)

114 C. Brier – (To Petitioner) – There is a rear elevation included in our packet, and it looks like  
 115 there is a proposed screened in porch, and above that screened in porch, there's a deck? Is  
 116 it true that the porch will be used on both levels? (Petitioner – There is currently a deck  
 117 coming out of the master bedroom on the second floor. I cantilevered that out over the porch  
 118 with the idea that this would be tied into the proposed porch.)  
 119

120 K. Loomis – That question ties into one of my questions – why is it necessary that the  
 121 screened in porch be off of the family room? It looks like you have enough space within the  
 122 setback either where the existing patio and pergola is off the side yard and the living room  
 123 area where a screened in porch could be placed. (Petitioner – It is the owner's desire to have  
 124 the screened in porch off the family room to have appropriate adjacent spaces. There is also  
 125 quite a bit of slope on the site. If you went over to where the study is – where the pergola  
 126 currently is, it's actually a walk-out basement there, so you're actually dropping a full floor. If  
 127 you built it off the study, not only would it be not in the back yard, but it would be exposed to  
 128 the street and would also need to be a two story structure in order to get the floor on the main  
 129 floor of the house.)  
 130

132 K. Loomis – Can you tell me how dense the trees are and/or what other kind of cover is  
 133 present? Can you see the neighbors' house? They talk about it being directly across from  
 134 their dining room. (Petitioner – When I was in the backyard, I had a difficult time seeing the  
 135 neighbors' house. I had to peer through branches and move those to see it. There is a fence  
 136 along the property line.)

### 137 Audience Participation

139 1. Nicholas Beeson – 401 Awixa Road, Ann Arbor, MI 48104 – (Spoke in Opposition) –  
 140 Mr. Beeson stated that he lives next door. He stated that if they only screened in what  
 141 is currently there, it would not be visible from the street and would not change the way  
 142 the property looks. My house isn't that close, and it's hard to see through the trees,  
 143 although the addition that happened in 1992 did have a negative impact – it put light  
 144 into my house because they installed a wall of windows – but the point is, that's my  
 145 backyard, and it's very private. This current proposed addition would essentially  
 146 destroy all privacy in my backyard, as there will only be 8 feet between this building  
 147 and my land.  
 148

149 The roof on top of this porch would loom over my backyard and they would be looking  
 150 down into my backyard, and for all practical purpose, they'd be in my backyard. I  
 151 purchased my property in 1985 – I've lived there for 22 years. I purchased this  
 152 property with the expectation that the zoning ordinance would keep the neighbors from  
 153 being able to build against the lot line. The precise purpose of the zoning ordinance is  
 154 to preserve privacy and views.  
 155

156 There is a current patio in use that could be enclosed and comply with all zoning laws  
 157 and would not need a variance. What is the hardship involved?  
 158

159 C. Carver – (To opposing neighbor) – The privacy issue is paramount with you? (Absolutely.)  
 160 When I lived in the city, it was common that each neighbor can see their neighbor's backyard  
 161 – that's part of living in the city.

163 **2. Thomas Collet** – 405 Awixa Road, Ann Arbor, MI 48104 (Homeowner/Petitioner) -  
 164 Mr. Collet thanked the Board for postponing their issue from last month's meeting to  
 165 this one, and said that he wanted this to be done with the minimum imposition  
 166 necessary.

167  
 168 He stated that he wanted to speak on two issues brought up by the Board:

169  
 170 1. Alternate building locations – With those suggested here, they are indeed on  
 171 a steep incline and would require a two story structure which would be  
 172 disconnected from the living areas in the back.

173  
 174 2. They would also prefer not to have the backyard area edge out toward the  
 175 street because the screening from the bushes would be minimal at that  
 176 point.

177  
 178 From our perspective, it is a very high standard not to expect to have light problems  
 179 from neighboring houses. We did, however, offer to mitigate any light problems our  
 180 neighbor may be experiencing by adding extra greenery. As a property owner in the  
 181 city, it is difficult to expect not to have light pollution on your property.

182  
 183 K. Loomis – (To Petitioner) – You spoke to where the patio is currently – what about the  
 alternate location off of the living room. Your architect stated that this is sloped? (Petitioner  
 185 – Yes, it is sloped, and there are 4 locations possible – one of which would be closer to the  
 186 other neighbor, which would be the worst in terms of hardships, so we wanted to avoid that  
 187 (this was the neighbor who supported our request. There were two more locations – one is  
 188 closer to our house, the other is where the driveway is, which is out overlooking the street  
 189 which is on a steep incline and offers no privacy at all.)

190  
 191 R. Suarez – What is the problem with the incline – you want to be able to walk out from the  
 192 porch into the yard as opposed to exiting from other areas of the house? (Petitioner – It  
 193 would be a two story structure, and this is a one story structure. The bottom level would be  
 194 half walk-out basement – what it is now.) I'm trying to understand why the second story is  
 195 problematic. Is it because you want to walk out from the porch? (Petitioner – Ideally, we'd  
 196 like to walk out from the living room/living level out onto the porch, as opposed to having to  
 197 go down to the basement and have to go out there. The other problem is that there are trees  
 198 there that would have to be removed and this would eliminate all privacy.)

199  
 200 **Discussion by the Board**

201  
 202 R. Eamus – The neighbors state that their privacy will be reduced because of this particular  
 203 construction, yet the petitioner is also saying that they can't put it where they already have  
 204 the patio, because then their privacy would be harmed. They're both arguing on the basis of  
 205 privacy, and that strikes me as odd. I don't see the hardship in this particular case. A  
 screened in porch is not necessary and won't be a year 'round structure.

206  
 207  
 208 C. Carver – I voted for this fifteen years ago, and I'm not supporting another variance. They  
 209 have already taken up 15 feet of the backyard and now want another 8 ½ feet. We have a  
 210 neighbor asking for protection under the ordinance, and this is not unreasonable. I won't  
 211 support this.

212 D. Gregorka – I also won't support this as the standard in this neighborhood is a 40 foot  
 213 setback. The neighbor makes a good point that the ordinance is there to protect the  
 214 neighborhood and this appears to be alternate locations to place the porch without a  
 variance. The earlier variance encroached significantly on the setback, and this would go  
 216 even further into it and it simply doesn't meet the standards.

217  
 218 W. Carman – I think that when you look at this neighborhood and the shapes of the lots – this  
 219 lot is uniquely shaped within the neighborhood, but it's a large lot and we've already given  
 220 them a sizeable variance before. I don't think the hardship that they allege includes  
 221 reasonable use of the property, and that is the point – to allow reasonable use – I don't think  
 222 the alterations complies as nearly as practicable and may have a detrimental effect on  
 223 surrounding properties.

224  
 225 R. Suarez – I feel that in neighborhoods like this, people move into these neighborhoods to  
 226 seek a lot of privacy. I don't think there is a hardship here and I can't support this.

227  
 228 Moved by D. Gregorka, Seconded by C. Carver **“to grant permission to alter a Non-  
 229 Conforming Structure for Appeal Number 2007-Z-015, 405 Awixa Road based on the  
 230 following findings of fact and in accordance with the established standards for  
 231 approval:**

- 232  
 233 1. **With respect to complying as nearly as practicable with the  
 234 Chapter, this particular request is outside of the established  
 235 setbacks, and in this case the 25 Foot current setback is based on  
 236 an earlier granted variance, where the actual zoning for this  
 property is a 40 foot setback.**
- 238  
 239 2. **With respect to having detrimental effects on the neighboring  
 240 property, we have testimony from two neighbors. One neighbor  
 241 states that there is no detrimental effect, which a second neighbor  
 242 states that there would be a detrimental effect on his property, per  
 243 the attached plans submitted.”**

244  
 245 ***On a Voice Vote – MOTION FAILED – UNANIMOUS***

246  
 247 **Note:** The Chair stated that because the motion for the Non-Conforming structure request  
 248 had failed, there was no need to pursue the Variance request.

249  
 250 **E. NEW BUSINESS – None**

251  
 252 **F. REPORTS & COMMUNICATIONS**

253  
 254 C. Carver – Thanked staff for researching the requests he had made regarding 'Standards'  
 255 used for variances, etc. (Correspondence was included to communication with the Board.)

256  
 257 **G. AUDIENCE PARTICIPATION – GENERAL – None**

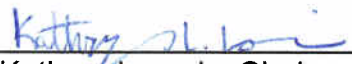
258  
 259 **ADJOURNMENT**

260  
 261 Moved by D. Gregorka, Seconded by C. Carver, **“that the meeting be adjourned.”**

262  
 263 **On a Voice Vote – MOTION PASSED - UNANIMOUS**

264

265 Chairperson Kathryn Loomis adjourned the meeting at 6:53 p.m.  
266 **(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –**  
267 **Zoning Board of Appeals)**

269  
270   
271 Kathryn Loomis, Chairperson

9/25/07  
Dated ZBA Minutes