



**APPROVED MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
November 19, 2008**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, November 19, 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 Chairperson Carol Kuhnke

ROLL CALL

Members Present: (8) C. Carver, J. Carlberg, C. Briere, S. Briere,
D. Gregorka, W. Carman, C. Kuhnke and D. Tope
(arr. @ 6:12 p.m.)

Members Absent: (1) K. Loomis

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

C. Kuhnke – Welcomed the ZBA's newest member, City Council Member Sabra Briere.

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 October 22, 2008 Regular Session.

Postponed to the December 17, 2008 Regular Session.

C - APPEALS & ACTION

C-1 719 North Fourth Avenue – ZBA08-008

Kathleen Baxter is requesting permission to alter a non-conforming structure from **Chapter 55 (Zoning), Section 5:86**, and one variance of 3 feet in order to permit an addition into the side yard setback. (5 feet is required by Code).

Description and Discussion

The subject parcel is located at 719 North Fourth Avenue. The parcel is zoned R4C (Multiple-Family Residential District) and is located on the west side of Fourth Avenue, south of Summit. The house is currently used as a legal duplex and was built in 1918 and is 1600 square feet.

The petitioner is proposing to construct an addition to the rear of the house above the existing first floor. The house is non-conforming for the south side yard setbacks. The parcel is also non-conforming for lot area as well as lot width. The existing house is located at a slight angle and encroaches 2 feet 7 inches into the side setback. The rear addition will continue straight along the existing building lines. However, due to the angled house placement the addition in the rear will come 7 inches closer to the side property line than the existing house. Because the proposed addition will be placed closer to the side property line than the existing building, a variance is required.

54 The variance is being requested to allow a 3 foot encroachment into the side open space
 55 which includes the existing house as well as the proposed addition. The addition will contain
 56 a two-car attached garage on the ground level as well as expanded living space for the two
 57 units. The number of units is not increasing; the construction proposed only enlarges the
 58 existing 2 units.

59
 60 **Questions to Staff by the Board**

61
 62 C. Carver (To M. Kowalski) – I thought duplexes didn't have to come before the ZBA for
 63 alteration to non-conforming structures? (M. Kowalski – It's Single-Family houses that don't
 64 have to, but even if this was a single family, it would still have to come before the Board
 65 because the alteration does not comply. Because the house is on an angle, it doesn't
 66 comply).

67
 68 Is the city in favor of this? The reason I ask is because Section 5:85 clearly states that the
 69 city wants to reduce structural non-conformities and here we are increasing it. (I think it's a
 70 reasonable request, considering they're continuing the existing building lines. When you look
 71 at the floor plan the way the interior part of the existing structure is laid out – it makes sense
 72 to continue that line, and it's only going 7 inches closer. In addition, they do have a rather
 73 large rear yard and are nowhere near the actual setback in that area).

74
 75 W. Carman – This structure will remain non-conforming if we grant this variance due to the lot
 76 size and width? (Correct – This is a non-conforming, R-4C lot). If they wanted to build
 77 another addition later, they would still have to return to the ZBA? (Correct).

78
 79 D. Gregorka – What if the home were converted to a single family home? (No, they wouldn't
 80 have to come back to the ZBA at that point).

81
 82 J. Carlberg – Is there any information from the neighbor to the south about support for this
 83 project? (M. Kowalski – Stated that there were 9 homes in the area that provided a letter of
 84 support, in addition to the North Central Property Owners Association).

85
 86 **Petitioner Presentation**

87
 88 Kathleen Baxter, owner of this property, and Carl Gilmore, Architect on the project were
 89 present to speak on behalf of the appeal. Mr. Gilmore stated that the walkway in the rear of
 90 the property is for safety reasons. The property sits on a slope and it could be a safety
 91 hazard for them or their tenants since it's on an incline, as well as the same possibility for a
 92 car sliding on the incline. This is also another reason for continuing the addition on the
 93 current lines on the left.

94
 95 **Questions of the Petitioner by the Board**

96
 97 W. Carman – Asked if the architect could comment on the flood plain line? (He stated that he
 98 understood that the flood plain was going to be reduced in this area, but even if that weren't
 99 the case, the floor elevation of the building and basement itself is above the existing
 100 floodplain by about six inches. Any habitable space in this building would still be above that
 101 line, even if the floodplain doesn't change. The floor of the garage would be under that, but
 102 that is not habitable space).

103
 104 (M. Kowalski – Did comment that the MDEQ is changing its floodplain maps and have been
 105 doing so for over a year. This affects site plan projects significantly, so it's something we
 106 deal with frequently).

107 J. Carlberg – Asked the architect if some of the proposed building was going to actually
 108 ‘displace’ part of the existing floodplain by ‘filling it in? You’ll be putting in footings, and
 109 building there? (C. Gilmore – Stated that the state is not so much concerned with that but
 110 *what* you put in the flood plain and whether or not it’s habitable). I understand that concern,
 111 but there is also a concern with maintaining the existing capacity, possibly by creating flood
 112 plain area in another part of your site, as they need that volume in order to have the waters
 113 move into that area. You don’t want it ‘lapping up’ on your garage.
 114

115 W. Carman – We had a previous case on ~~Washtenaw south of~~ Huron Parkway ~~south of~~
 116 ~~Washtenaw~~. The residents couldn’t have doors on their garages, because the garage had to
 117 help hold the volume of water in order to meet the flood plain rules; I’m inclined to believe that
 118 that could be an issue. (C. Gilmore – If the building permit were issued for this, provided that
 119 the Board approves it, prior to when the state modifies their flood plain, then something like
 120 that could be taken care of by modifying the garage door to allow any water that comes in to
 121 easily go back out).
 122

123 S. Briere – Asked if some of that couldn’t be accomplished by modifying the landscaping
 124 plan. (Yes, but even the existing grade will cause the garage into the existing elevation).
 125 What we’re really talking about is storm water retention in a floor plain. Dealing with that as a
 126 part of your plan might be an approach.
 127

128 C. Carver – Isn’t this out of our area of expertise? I’ll assume here if there is something
 129 wrong that this will be broached in the permit process, correct? (M. Kowalski – when it goes
 130 through our grading process, it will be flagged as a flood plain and stopped at that point if it
 131 doesn’t meet the requirements – drainage, erosions, etc.).
 132

133 **Public Comment** – None. (Written Communications were noted earlier).
 134

135 **Discussion by the Board**

137 **MOTION #1**

139 Moved by W. Carman, Seconded by D. Gregorka, “In the case of Appeal Number
 140 ZBA08-008, 719 North Fourth Avenue, that the Zoning Board of Appeals grants
 141 permission to alter this non-conforming structure to build a 26 ft. x 24 ft. two and one
 142 half story rear addition per submitted plans. The expansion complies as nearly as
 143 practicable with the requirements of the Zoning chapter and the following findings of
 144 fact:
 145

- 146
- 147 1. It does not appreciably extend the encroachment into the side setback, but
- 148 merely extends the line of the existing house;
- 149 2. The closest the new addition will come to the south lot line will be 2 ft., which
- 150 will still allow construction and maintenance to occur without trespassing on the
- 151 neighboring property;
- 152 3. It will not be any closer to the front or north side setbacks;
- 153 4. It will still provide the required rear setback, given the depth of the lot; and
- 154 5. Although the lot size and lot width are still non-conforming, it will remain non-
- 155 conforming. This will not increase the number of units on the lot.
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157 On a Voice Vote – MOTION APPROVED – **UNANIMOUS** (*Permission to alter a non-*
 158 *conforming structure - Granted*)
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MOTION #2

Moved by W. Carman, Seconded by D. Gregorka, **“In the case of Appeal Number ZBA08-008, 719 North Fourth Avenue, that the Zoning Board of Appeals grants a variance of 3 ft. from the south side yard setback to allow construction of a 26 ft. x 24 ft., two and one half story addition per submitted plans. The hardships are:**

- 1. That the house was placed on this lot prior to the establishment of zoning regulations. This house was placed on the lot on an angle, and there is limited buildable room on the lot.**
- 2. Failure to grant this variance will prevent improvement of this property. Allowing the variance will result in substantial justice as the house can be enlarged while preserving the rear and front setbacks.**
- 3. Conditions are not self imposed as this situation occurred prior to the establishment of the zoning ordinance**
- 4. The variance is the minimum variance necessary and it only encroaches 7 inches further at the rear than the existing structure.”**

On a Voice Vote – MOTION APPROVED – UNANIMOUS (Variance Granted)

D. OLD BUSINESS

D-1 1123 South Forest Avenue – ZBA08-005

(Tabled at the September Regular Session pending additional neighbor feedback).

Rueter Associates is requesting permission to alter a non-conforming structure from **Chapter 55 (Zoning), Section 5:86**, in order to permit an addition to the rear of an addition to the rear of an existing house.

Description and Discussion

This request was tabled at the September ZBA meeting for the petitioner to meet with neighbors. The petitioner has indicated that they have met with neighbors and will present these findings at the November ZBA meeting. No changes have been proposed to the previous submitted plan. The subject parcel is located at 1123 South Forest. The parcel is a corner lot and is zoned R2A (Two-Family Residential District). It is located on the east side of South Forest and south side of Minerva. The house was built in 1914 and is 1496 sq. ft.

The petitioner is proposing to construct a two-story addition with a single-car attached garage to the house containing 272 square feet on the first floor and 206 square feet on the second for a total of 478 square feet. The proposed additions will be constructed on the rear of the house. However, because the house is located on a corner lot, the area of the addition is considered a front yard due to the frontage along Minerva. After construction of the addition, the house will be 1,974 square feet, not including the single-car attached garage.

The proposed addition will contain a family room and the attached garage on the first floor, closet space and a master bath on the second floor and attached deck in the rear yard. The second story addition will extend over the front half of the garage only; the addition will not extend over the first floor family room addition. The house is non-conforming for the front setback along Minerva Road. The existing rear, side and Forest Avenue front setbacks will not be impacted by this proposal. The Minerva Road required front setback, resulting from

213 averaging, is 13 feet 3 inches. The existing structure is 7 feet 6 inches at its closest point to
 214 the front property line; the new addition will be 8 feet 4 inches at its closest point.
 215

216 **Questions for Staff**

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218 C. Carver (To M. Kowalski) – Is it the city's position here that no variance is needed because
 219 even though the addition encroaches in the side setback, it doesn't encroach as much as the
 220 original structure? (That's correct). I've gone on record many times stating that I don't agree
 221 with the city's position on that. If this is a single-family structure alteration, why do they need
 222 to be here? (Because the proposed addition does not comply).
 223

224 D. Gregorka – What is the average setback on Minerva? (13 ft., 3 in.)
 225

226 W. Carmen – If this were approved, it would lower the average – affecting every house on the
 227 block? (No, because their existing house is already closer than the proposed addition, so it's
 228 already affected – but not because of this proposed addition).
 229

230 J. Carlberg – The last time we heard this issue, it was tabled to allow the petitioner to meet
 231 with the neighbor who was unhappy with this. Has that taken place, and if so, what was the
 232 outcome? (We can ask the petitioner and her representative, but I think we did receive
 233 additional letters of support that were in the packet).
 234

235 B. Acquaviva – We had two letters of support, but not that particular neighbor.
 236

237 **Petitioner Presentation**

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239 Ms. Barbara Luke, owner of this property, and Marc Rueter, architect on this project were
 240 present to speak on behalf of this appeal. She stated that she purchased the home a few
 241 years ago and renovated most of the home which was dilapidated.
 242

243 She stated that she has spoken with many of the neighbors and that many of them did not
 244 respond at the last meeting because they had no objection. She also stated that she did
 245 speak with the neighbors that were present at the last meeting, and the female living at this
 246 home stated she was in complete accord with the proposed plan, and the male was unsure
 247 what the variances were for and how this would affect them. Mr. Rueter also offered to
 248 answer any questions that the Board might have.
 249

250 **Public Comment** – (The chair read two letters of support into the record).
 251

252 **Discussion by the Board**

253

254 J. Carlberg – Stated that there is a home across the street from this location, and it is
 255 interesting to note that a neighbor already has an addition in the same style and type. I don't
 256 see any negative impact there. Most of the lots on Minerva are non-conforming. If they wish
 257 to do anything, they'll be faced with this great difficulty as they have this extremely narrow lot.
 258 If you require the 13 ft., 3 in. setback, you leave them with literally no building space. I can't
 259 see how they could build a family room and a garage.
 260

261 D. Gregorka (to M. Kowalski) – If this weren't a front (where the garage is) and it were a side
 262 setback and it was into the normal side setback, would it be allowed since there is no living
 263 space above it? How would that be interpreted? (M. Kowalski – Stated that attached
 264 garages are not allowed in the side or front setbacks, but they are allowed in the rear
 265 setback).

266 C. Carver – I try to discourage building in the front setback when we can, but because of the
 267 lot size, I may have to overlook that objection. I'm generally not in favor of these, but I'm
 268 going to support this, unless someone can convince me otherwise.
 269

270 W. Carman – The hardship here is that this is a corner lot, and there aren't any smaller lots in
 271 the city than on Minerva Street. She could obviously put the garage back to where it was and
 272 it's a personal decision to change that. This house functioned in the past without that
 273 change, and it's hard for me to see that this is more than a personal issue, and a variance is
 274 supposed to be used when there are no other alternatives.
 275

276 D. Gregorka (To M. Kowalski) – Is it correct to say that the reason that the house is non-
 277 conforming is because it was built before current zoning code? (Yes - built in early 1914).
 278

279 C. Carver – Because I can't find any effect on the neighboring properties, I'll support this.
 280 Had this been a request for a variance, I would probably vote no. As I said previously, I don't
 281 like building in the front setback, but it's a small lot and maybe it needs some help.
 282

283 J. Carlberg – The challenge to this neighborhood is that the zoning was changed after the
 284 house was built and the zoning designation doesn't actually fit what was built there. In every
 285 case, we are faced with a difficult limitation on the size of their lot and where their houses are
 286 already located. That makes it very difficult. We are not able to change the zoning
 287 designation at this time, but it seems that it's clear that it's not zoned appropriately.
 288

289 W. Carman – (Concurs with J. Carlberg). I'm not sure we could come up with a zoning
 290 designation that would be appropriate for this neighborhood, but even so, I don't necessarily
 291 support the notion of increasing the encroachment which I think is what we're doing here.
 292

293 S. Briere – Echo's what J. Carlberg stated. She stated that she has been puzzled with
 294 putting the garage in the front of the house which is more of a 'suburban' look on what is
 295 traditionally an Arts and Crafts style building in this neighborhood. From the point of view of
 296 making this consistent with the neighborhood and with the feel of the house. As much as I've
 297 tried, I cannot find a reason to say 'no' to this.
 298

299 MOTION

300
 301 Moved by D. Gregorka, Seconded by C. Carver, "In regard to Appeal Number ZBA08-005,
 302 1123 South Forest Avenue, the Board grants permission to alter a non-conforming
 303 structure, from Chapter 55, Section 5:86, in order to permit an addition to the rear of an
 304 existing house per the attached plans and the following findings of fact:
 305

306 1. The alteration complies as nearly as practicable with the requirements of the
 307 Zoning Chapter. This home was originally built prior to the current code and
 308 was allowed to be closer to Minerva than current code allows, however the
 309 new addition is actually further from the front setback than the existing
 310 home; and,
 311

312 2. This alteration will not have a detrimental effect on the neighboring
 313 properties. It mirrors the home across the street and the neighbors have
 314 given due consideration to this proposal and fully support it."
 315

316 **On a Voice Vote – MOTION APPROVED – YES (7), NO (1) (Variance Granted)**

317 **YES (7)** - C. Carver, J. Carlberg, C. Briere, S. Briere, D. Gregorka, C. Kuhnke and D. Tope.

318 **NO (1)** – W. Carman

319 **Note:** The Chair stated that item C-2 - 547 Sixth Street and 714 West Madison Street –
320 ZBA08-009 was removed from the agenda prior to the meeting as the petitioner had asked
321 that the issue be heard at the December 2008 Regular Session. She offered the chance to
322 the public to be able to speak on this issue if they had concerns. There was no public
323 comment.

324
325 E. NEW BUSINESS - None.

326
327 F. REPORTS & COMMUNICATIONS - Included under each appeal.

328
329 G. AUDIENCE PARTICIPATION – GENERAL

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331
332 ADJOURNMENT

333
334 Moved by D. Gregorka, Seconded by C. Carver, “that the meeting be adjourned.”

335
336 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**

337
338 Chairperson Carol Kuhnke adjourned the meeting at 6:53 p.m.

339
340 *(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –*
341 *Zoning Board of Appeals)*

342
343 

344
345 Carol Kuhnke, Chairperson

1-28-09

Dated ZBA Minutes