



City of Ann Arbor

Formal Minutes

Zoning Board of Appeals

301 E. Huron St.
Ann Arbor, MI 48104
[http://a2gov.legistar.com/
Calendar.aspx](http://a2gov.legistar.com/Calendar.aspx)

Wednesday, May 25, 2016

6:00 PM

Larcom City Hall, 301 E Huron St, Second
Floor, City Council chambers

A **CALL TO ORDER**

Chair Candice Briere called the meeting to order at 6:00 p.m.

B **ROLL CALL**

Chair Candice Briere called the roll.

Staff Present: Chris Cheng, Jon Barrett

Present: 8 - Candice Briere, Nickolas Buonodono, Heather Lewis,
David DeVarti, Kirk Westphal, Michael Dobmeier, Michael
B. Daniel, and Nicole Eisenmann

Absent: 1 - Alex Milshteyn

C **APPROVAL OF AGENDA**

Chair Briere informed the Board that agenda item E-3 -- ZBA16-011; 1016 Daniel Street, would only be a Public Hearing. She explained that the applicant had requested a postponement in order to allow the applicant time to make some revisions and obtain plans/drawings accordingly before coming before the Board. Because the item had been noticed and advertised the public hearing would take place to allow public comment.

Moved by Westphal, seconded by Daniel, that the Agenda be Approved as presented. On a voice vote, the Chair declared the motion carried.

D **APPROVAL OF MINUTES**

D-1 **16-0789** Zoning Board of Appeals Meeting Minutes of April 27, 2016

Moved by Westphal, seconded by Eisenmann to approve the minutes and forward to the City Council. On a voice vote, the Chair

declared the motion carried.

E **APPEALS AND HEARINGS**

- E-1** **16-0791** ZBA16-008; 601 East Hoover Avenue - Returning item
Donna K. Tope is requesting a 12-foot rear setback variance from Chapter 55, Section 5:34. A 30-foot rear setback is required in the R4C zoning district. Applicant proposes to build a 2-story addition to the rear of the existing nonconforming dwelling with a rear setback of 18 feet.

Jon Barrett provided the following staff report:

Donna K. Tope is requesting a 12 foot rear setback variance from Chapter 55, Section 5:34. A 30 foot rear setback is required in the R4C zoning district. Applicant proposes to build a 2 story addition to the rear of the existing nonconforming dwelling with a rear setback of 18 feet.

Summary

Donna Tope is seeking a 12 foot variance from the required 30 foot rear setback requirement for the R4C district. The requested variance is from Chapter 55 Section 5:34. The variance would permit an overall 18 foot distance from the addition to the rear property line.

Description and Discussion

The subject parcel is a 2,265 square foot non conforming corner lot that is currently being used as a rental property housing six occupants. The property has five bedrooms and one bathroom. The petitioner is proposing to construct a two story 8'x20' addition (approximately 320 square feet of area) to the rear of the home which will replace the existing 5'x18' covered porch. The proposed two story addition will add a bathroom, first floor laundry room, upgrade existing cabinets, appliances and air conditioning. A new bedroom, closet space and an expanded living room floor area.

Standards for Approval Permission to Alter a Non Conforming Structure

The Zoning Board of Appeals has all the power granted by State law and by Section 5:98, from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

The alteration complies as nearly as practicable with the requirements of

the Zoning Chapter and will not have a detrimental effect on neighboring property.

Currently, the existing covered porch extends into the rear setback and is nonconforming. The proposed addition will extend an additional 3 feet into the rear setback. The homes in this area are all nonconforming and contain very small lots. The area is at the edge of campus and is a high density neighborhood.

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 structure was built prior to the establishment of zoning laws. Once zoning was established it placed the home into its current nonconforming status.

(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.

If the variance is denied, the applicant will not be able to construct the proposed addition. However, interior modifications could be permitted. Under current circumstances, the owner cannot make any additions or alterations to the existing footprint without Zoning Board of Appeals approval.

(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 granted, the modified structure would be of similar massing and scale as the surrounding properties. The additional bedroom would be consistent with density and student housing character

of this neighborhood.

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

Due to the period of time the structure was built, zoning was not enacted and the required setbacks were not in place. However, the proposal of an addition to the structure is a self imposed hardship, and the owner could still complete interior improvements without expanding the square footage of the structure.

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

If the variance is granted, the addition will be 320 square feet for both floors of the addition and will be 12 feet from the rear property line. The addition will include a bedroom, bathroom and improved laundry area.

QUESTIONS BY BOARD TO STAFF:

Lewis asked about the overall site plan drawing that noted "assumed property lines".

Barrett said the applicant would have to speak to that.

PRESENTED BY PETITIONER:

Donna Tope, 2115 Nature Cove, # 305, Ann Arbor, read from a prepared statement that she also provided to the Board. She was available to respond to the Board's enquiries.

Lincoln Poley, Architect, stated that the assumed property line was taken from County records and the lot sizes and the home locations from City property records as well as the size of homes but they only measured from fence lines so they don't know if they are the exact boundary lines, and without a survey of the whole block they can not certify the property lines.

Lewis said she was mostly concerned with the site plan for this particular building, noting that fence locations don't necessary determine the property lines.

Poley said they would not have been able to get a survey in a timely manner.

Lewis said she did not feel comfortable granting a certain setback variance based on a site plan showing "assumed property lines".

Poley said he believed a survey could easily be done and provided so they could have the exact distance.

Tope said the fence has been there for longer than 15 years so it really has established a property line by adverse possession whether it's on their property or the neighbors, so we can go by the fence location as the actual lot line.

Lewis asked staff about hypothetical fence and property line issues.

Jon Barrett noted that the application requests a survey and if the variance is granted, then at the time when building plans are submitted staff can request a survey to make sure it is exact and built to where it needs to be built.

Dobmeier asked if it was safe to say that any variance granted would be based off the surveyed property line, not the fence line.

Barrett said correct.

DeVarti asked about the proposed laundry room and if there is a basement in the house.

Poley said the basement is 5 feet high, and is actually a crawl space, and not really a useable basement. He noted that the building code requires 6 feet 8 inches ceiling height in habitable spaces, and this basement would not qualify.

DeVarti said laundry rooms don't count as habitable space but he understands that laundry rooms and storage areas have to be useable.

Poley said the actual building addition would be 7 feet 2 inches from the property line, and with the 30-foot rear yard setback requirement, the total encroachment would be 22 feet and 10 inches. He said right now it is a 19 foot, 6 inches encroachment, which would be 3 feet, 4 inches more than it is now, so that would need to be clarified.

[Request has been modified by applicant without a revised modified application provided to the City; staff explained that the staff report was written based on the submitted application.]

PUBLIC HEARING:

Lincoln Poley, architect for the project said he wanted to add to what Tope had to say, that these proposed improvements are making it a healthier, safer living environment; having the laundry room on the first floor you have it in a place where you are not knocking your head, and with the added bathroom, making it 2 bathrooms it will obviously be a healthier living environment and the additional stairway, which they did not show on the plan, they are contemplating a door between the 2 neighboring bedrooms so that could be used as a second means of egress on the second floor, providing better means of egress from the 3 bedrooms that are there. He said the improvements would provide for the health, safety and welfare of the people living there, making it a better living environment.

Noting no other public speakers the Chair closed the public hearing.

LIST OF EXHIBITS PRESENTED:

No correspondence was received in support or opposition to the application.

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

[Request has been modified by applicant without a revised modified application provided to the City]

Moved by DeVarti seconded by Dobmeier, in Petition ZBA16 008; 601 East Hoover Avenue; Variance, Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS a variance from Chapter 55, Section 5:34 (R4C, Multi Family) of 22 feet, 10 inches from the required rear setback of 30 feet in order to permit construction of an addition to a nonconforming dwelling, the structure will be located 7 feet, 2 inches from the rear property line.

a) The alleged hardships are peculiar to the property and results

from conditions which do not exist generally throughout the City.

b) That the alleged hardships or practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.

c) The variance, if granted, will not significantly affect surrounding properties.

d) The circumstances of the variance request are not self imposed.

e) The variance request is the minimum necessary to achieve reasonable use of the structure.

On a rollcall vote the vote was as following with the Chair declaring the motion defeated. Vote: 4-4

Variance Denied.

(5 affirmative votes required to approve a variance)

Yeas: 4 - Chair Briere, Lewis, Daniel, and Eisenmann

Nays: 4 - Buonodono, DeVarti, Councilmember Westphal, and Vice Chair Dobmeier

Absent: 1 - Milshteyn

E-2 [16-0792](#)

ZBA16-010; 806 Mt Vernon Avenue

Richard A. Goetsch is requesting a 1 foot 10 inch variance from the required average setback of 33 feet. Chapter 55, Section 5.57 requires that an average setback within 100 feet of properties be applied when the average setback is greater than the required setback for the district. Applicant proposes to construct a 10'x20' cedar deck at the front of the structure.

Jon Barrett provided the following staff report:

Summary:

Richard A. Goetsch is requesting one variance from Chapter 55 (Zoning) Section 5:57 (Averaging an Existing Front Setback Line), of 1 foot 10 inches to allow a 31 foot 2 inch setback; 33 feet is required (Averaged Front Setback).

Description and Discussion:

The subject parcel contains a 1726-square foot, single family dwelling constructed in 1949. The parcel is zoned R1C (Single-Family) and is conforming for lot area; the required minimum lot area for R1C is 7,200 square feet and the parcel is 9,081 square feet. The current front setback measures 36 feet to the front face of the house. The required setback for R1C is 25 feet; however using the required averaging section to include adjacent houses within 100 feet the required setback is increase to 33 feet.

The petitioner is proposing to construct a 10 foot by 20 foot wide cedar deck at the front of the house. The deck will be 3 feet off the ground near the house and increasing to 12 feet off the ground at the end of the deck. Applicant states that landscaping will be installed to reduce the visual impacts of the deck at the street level.

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 lot in the R1C Zoning District. The home currently is located 36 feet from the property line and has an inset of an additional 5 feet 2 inches for a total of 41 feet 2 inches. The deck is to be constructed at this 41 foot 2 inch inset. If the applicant was to comply with the 33 foot averaged setback, the deck would be 8 feet 10 inches in depth. However, the applicant proposes a 10 foot deep deck which encroaches the 1 foot 2 inches into the 33 foot averaged setback. The applicant states that since the home was built in 1949 the subject home and surrounding neighborhood was built at a time period when front porches and decks were not constructed.

(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 construct a front porch on the front of the house. If the variance is not granted, the petitioner could construct a front porch that would not encroach into the averaged setback and would be an 8 foot 10 inch deep wood deck.

(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.

The ordinance requires a 25 foot setback for properties in the R1C district. The averaging of setbacks grants the property owners for this property an additional 8 foot for a 33 foot setback. The applicant has the option of constructing a deck in their front or rear yards. The applicant has several options of complying with the Zoning ordinance and substantial justice would be served by complying with the conditions of the code.

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

The applicant has the option of reducing the proposed deck to meet the average setback. The property does not have any variables such as irregular shaped lot or topography issues that are unique to this situation that make meeting the code difficult.

(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 10'x16' front porch at the front yard of the property. Although the variance requested is small, only 1 foot 2 inches, by reducing the size of the deck the code requirements can still be met.

QUESTIONS BY BOARD TO STAFF:

Eisenmann asked for clarification about the proposed deck being set at 3 inches off the ground and the slope to 12 inches off the ground.

Barrett said the information was taken from the application; he deferred the question to the applicant.

Lewis asked if the neighbor's deck at 804 Mt Vernon had come before the ZBA for a variance.

DeVarti said he remembers that it did.

Barrett responded that he know of all the requests that had come before the Board.

DeVarti said he knew there was a difference between a stoop and a covered porch, and asked if a deck was a different category. He said if this would be an uncovered stoop the applicant would not need a variance.

Barrett explained that the Zoning ordinance allows for a 5x4 or 20 square foot stoop to encroach with steps under the setbacks but this request was for a 160 square feet deck.

PRESENTED BY PETITIONER:

Richard Goetsch, 806 Mt Vernon Avenue, Ann Arbor, owner, explained the application and was available to respond to the Board's enquiries

Devarti commented that during his site visit he had noted the slope and topography and asked about the possible typo of feet versus inches.

Barrett explained that the existing topography would have the deck going from 3 inches off the ground to 12 inches, so a total of 9 inches.

PUBLIC HEARING:

Richard Goetsch, 806 Mt Vernon Avenue, Ann Arbor, owner, explained the application and was available to respond to the Board's enquiries

Noting no other public speakers the Chair closed the public hearing.

LIST OF EXHIBITS PRESENTED:

*Tom and Sally Seymour, 809 Mt Vernon, Ann Arbor; Support
Karen Coupland, 804 Mt Vernon, Ann Arbor; Support*

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

Moved by Daniel, seconded by Lewis in Petition ZBA16 010; 806 Mt Vernon Avenue, Variance: Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby GRANTS a variance from Chapter 55 (Zoning) Section 5:57 (Averaging an Existing Front Setback Line), of 1 foot 10 inches to allow a 31 foot 2 inch setback; 33 feet is required (Averaged Front Setback), per submitted plans. 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.**
- (b). That the alleged hardships or practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.**
- (c). 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.**
- (d) That the conditions and circumstances on which the variance request is based shall not be a self imposed hardship or practical difficulty.**
- (e). A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.**

On a rollcall vote the vote was as following with the Chair declaring the motion approved. Vote: 6-2

Variance Granted.

Yeas: 6 - Chair Briere, Buonodono, Lewis, DeVarti, Vice Chair Dobmeier, and Daniel

Nays: 2 - Councilmember Westphal, and Eisenmann

Absent: 1 - Milshteyn

- E-3** [16-0793](#) ZBA16-011; 1016 Daniel Street - PUBLIC HEARING ONLY
Jimmy Bevilacqua is requesting a variance from Chapter 55, Section 5:30 of 4 feet 2.5 inches to construct a front porch on a corner lot. The property is zoned R2A and has two front setback requirements of 25 feet on each side.

PUBLIC HEARING:

Noting no public speakers the Chair closed the public hearing.

The Board unanimously postponed the agenda item until the next ZBA meeting.

- E-4** [16-0794](#) ZBA16-012; 808 East Ann Street
Jon Keller is requesting permission to alter a non-conforming structure in accordance with Section 5:87 (1)(a)(b). The property is zoned R4C. The request will allow an attic space to be finished into habitable space. The additional space is approximately 450 square feet and there will not be any exterior changes to the structure.

Jon Barrett provided the following staff report:

Summary: Jon Keller, is requesting permission to alter this non-conforming structure by converting 450 square feet of the existing attic to living space. The attic will contain two bedrooms that will be part of the existing second floor unit.

Background:

The subject parcel is zoned R4C (Multiple-Family Residential District) and located on East Ann Street. The parcel is non-conforming for required lot size: subject parcel is 5,270 square feet; minimum lot size is 8,500 square feet. The structure was built in 1901 and is 1,810 square feet. The rear of the site contains a gravel parking area that can accommodate up to eight vehicles.

Description:

The petitioner would like to convert the attic to living space with two bedrooms, which will result in the expansion of floor area being used for occupancy, but will not change the footprint of the structure. The existing structure is a registered rental duplex with a total of five bedrooms. It is zoned R4C, which permits a maximum occupancy of six unrelated people per unit according to Zoning code, for a maximum of 12

occupants in the structure. The structure is currently permitted a total maximum of nine occupants based on Rental Housing code and unit configuration. Due to the fact that the lot does not meet the minimum lot area requirement of 8,500 square feet, the existing structure is a legal non-conforming structure with two units. The proposed plan would increase the total number of bedrooms from five to seven and increase the number of occupants to eleven.

As noted above, Chapter 55, Section 5:87 (1)(a) states that a nonconforming structure may be maintained or restored, but no alteration shall be made to a nonconforming structure unless one of the following conditions are met:

(a) The alteration is approved by the Zoning Board of Appeals upon a finding that it complies as nearly as practicable with the requirements of this chapter and that it will not have a detrimental effect on neighboring property.

If the alteration is approved, the new bedrooms and attic (and all other planned improvements) will be inspected and will be required to meet all housing and building codes for health and safety, including emergency egress. If the variance is not approved, the petitioner will not be able to use the upstairs attic as a living space.

Standards for Approval - Permission to Alter a Non-Conforming Structure

The Zoning Board of Appeals has all the power granted by State law and by Section 5:98, from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

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

Permission is being requested in order to convert existing attic space to the existing second floor unit of a legal nonconforming duplex. The conversion of this attic will not expand the footprint or maximum height of the structure. The multiple-family use is consistent with the surrounding uses and the addition of two bedrooms to the structure should not have a detrimental effect on adjacent properties.

QUESTIONS BY BOARD TO STAFF:

Lewis asked if there were any exterior changes.

Barrett said no changes to the footprint were proposed, just finishing off the existing attic space.

Westphal asked about density changes.

Barrett responded that they are allowed to have 6 unrelated occupants in each unit on the first floor and the second floor, but he believed the added space would be to accommodate additional living space for the existing occupants and they would not be increasing the number of renters.

Westphal said, but they could legally if they wanted to.

Barrett said, yes, if it all meets the rental housing code as well.

Westphal asked if the ZBA could condition their approval on the limitation of occupants.

Barrett said he believed they could.

PRESENTED BY PETITIONER:

Jon Keller, Keller Properties, Inc. 2435 S. Main Street, Ann Arbor, owner, explained the application and was available to respond to the Board's enquiries

Lewis asked about the staff report description noting that the proposed plan would increase the total number of bedrooms from 5 to 7 and increase the number of occupants to 11.

Keller reiterated that they have no intention of increasing the number of occupants and he would have no problem with the ZBA granting the variance for the occupancy limit.

DeVarti asked about the first floor unit.

Keller explained that the house is a duplex and the first floor is a separate unit with 3 bedrooms; the second floor has 2 bedrooms with occupancy of 5, and has a rear access.

DeVarti explained the requirement of the Rental Housing Code noting that the Rental Housing Code was separate from the Zoning Code.

Eisenmann asked about the house layout and proposed plans.

Keller reviewed the submitted plans with the ZBA.

PUBLIC HEARING:

Olga Bilakus, 812 E. Ann Street, Ann Arbor, spoke in opposition to the request, explaining parking problems on her shared driveway with 808 E. Ann Street, and the negative impact that the over-occupancy of 808 E. Ann Street has on her property and the neighborhood.

Noting no other public speakers the Chair closed the public hearing.

LIST OF EXHIBITS PRESENTED:

None

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

Moved by DeVarti, seconded by Dobmeier, in Petition ZBA16 012; 808 East Ann Street, Permission to alter a nonconforming structure: Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby grants permission to alter a non conforming structure, per submitted plans. The Zoning Board of Appeals has all the power granted by State law and by Section 5:98, from the City of Ann Arbor Zoning Ordinance.

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

Amendment by Westphal, seconded by DeVarti, to amend motion to include occupancy limit not to exceed 9 persons.

BOARD DISCUSSION ON AMENDMENT:

The members of the Board took into consideration the presented amendment and discussed the matter.

Vote on Amendment:

On a rollcall vote the vote was as following with the Chair declaring the motion defeated. Vote: 3-5

Amendment Failed.

Yeas: 3 - Buonodono, Councilmember Westphal, and Vice Chair Dobmeier

Nays: 5 - Chair Briere, Lewis, DeVarti, Daniel, and Eisenmann

Absent: 1 - Milshteyn

Vote on Main Motion:

On a rollcall vote the vote was as following with the Chair declaring the motion approved. Vote: 8-0

Permission to Alter Granted.

Yeas: 8 - Chair Briere, Buonodono, Lewis, DeVarti, Councilmember Westphal, Vice Chair Dobmeier, Daniel, and Eisenmann

Nays: 0

Absent: 1 - Milshteyn

E-5 [16-0795](#)

ZBA16-013; 2865 Esch Avenue

Igor De Padova is requesting a variance from Chapter 104, Fences, Section 8:434 (1 (a) to construct a 6 foot fence with between 75-100% opacity in the required front open space on a corner lot. Corner lots in Ann Arbor have two front yards and the maximum allowable height and opacity for fences is 4 feet and 50% opacity in the front open space.

Jon Barrett provided the following staff report:

Summary: Igor De Padova is requesting one variance from Chapter 104 (Fences), Section 8:434 (1)(a), in order to permit a 6 foot, 75-100% opaque fence in the front open space; a maximum 4 feet, 50% opacity is permitted.

Description and Discussion:

The subject parcel is located on the corner of Esch Avenue and King George Boulevard, and as a result, is subject to two front setbacks. The parcel is zoned R1C (Single-Family Dwelling District), which requires a

25 foot front setback. The house was built in 1966.

The following requirements are excerpts from Chapter 104, Section 8:434(1):

(1) Fences located in residential districts:

(a) In the required front open space shall not exceed 4 feet in height and 50% opacity

(b) Shall not exceed 6 feet in height and 80% opacity in any part which is 25 feet behind the front setback line.

(c) Shall not have a height of greater than 8 feet at locations other than those described in subsections (a) and (b).

The petitioner proposes to construct a 6 foot tall 75 - 100% opaque privacy fence within the required front open space of King George Boulevard. The proposed fence would extend approximately 72 feet 6 inches. Within the 72 linear feet of fencing are five different sections of fencing ranging from 4' and 25% opacity to 6 feet and 50% opacity.

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:

The Zoning Board of Appeals of the City of Ann Arbor may, after a hearing in accordance with the established procedures of the Board, in its sound discretion and in the interests of the public health, safety or welfare of the inhabitants of the community, reduce or remit the requirements of this Chapter in individual cases.

The subject parcel is located on a corner resulting in 2 front yard setbacks. The parcel is triangular shaped with two sidewalks bordering each street frontage. A four foot high 50% opaque fence could be built in the same area as the subject fence without the need for a variance. The proposed fence is to provide a secured rear yard for the residents of the house and reduce the glare of oncoming lights from vehicular traffic.

Due to the distance from the intersection of Esch and King George, the fence will not impact the sight lines for that intersection, and will maintain the visual clearance for pedestrian and vehicular traffic. Applicant has submitted six signatures of support from neighborhood residents.

QUESTIONS BY BOARD TO STAFF:

Westphal asked staff to give a brief overview of the fence regulations and their purpose in Ann Arbor.

Barrett said he believed it was to allow for more open space and open communities and not to prohibit view –sheds within communities and from other neighboring properties. He said limits are placed on fences near intersections to protect motorists and for safety reasons such as sight distance triangles because you would not want objects interfering with sight visions.

PRESENTED BY PETITION:

Igor DePadova, 2865 Esch Avenue, Ann Arbor, owner, explained the application and was available to respond to the Board's enquiries

Daniel asked about the opacity and height of the fence.

DeVarti continued asking questions noting that the 6 foot tall section would be about 50 feet away from the corner where it could obstruct views. He asked the applicant to show where the fence would be at 100% opacity on the aerial map..

DePadova outlined on the map, which DeVarti showed to all the members.

Dobmeier said there seemed to be 2 groups that were opposing the proposed fence, those who are concerned about driving up to the corner and not being able to see around the fence or the perceived notion that would e the case. He asked if the staggering was for safety reasons.

DePadova said the area on the side is not a matter of safety because it wouldn't block any views; he said the staggering was for aesthetics.

Lewis read from the signed petition noting that she could understand why people would be opposed to the fence because on the petition it said the petitioner would install a 6-foot tall fence all the way to the corner. She said with as much opposition and confusion she suggested postponement to allow the petitioner to explain their request more to their neighbors.

DePadova said he didn't believe more time would help some people to

make up their minds; he said if the City wouldn't help him with the issue, he would build a fence per the City's code. He said he felt he was embellishing the area as much as possible by his proposed fence.

Eisenmann asked if the applicant could confirm that the section of 100% opacity would be 17 linear feet.

DePadova said yes.

PUBLIC HEARING:

Johanna Paltier, said she lives right where Esch dead-ends into King George and she would love to put up a fence to block the car lights from coming into her livingroom, but that had never occurred to her because it seemed contrary to the community aspect. She spoke in opposition to the proposed fence.

Nick Anger, said he lives across from where the fence is, and he believed the applicant had presented different plans to the neighbors that what was presented in the staff presentation. He spoke in opposition to the proposed fence.

Liz Nowland-Margolis and Marc Margolis, 1389 King George Boulevard, Ann Arbor, said they live 4 doors down from the applicant and they spoke in opposition to the proposed fence.

Paul Fossum, 1391 King George Boulevard, Ann Arbor, provided photos to the ZBA, of the property and the intersection, showing probable obscurity as a result of the fence. He spoke in opposition to the proposed fence.

Noting no other public speakers the Chair closed the public hearing.

LIST OF EXHIBITS PRESENTED:

Petition in Opposition to Application

Petition in Support to Application

David Porter, 1465 King George Blvd, Ann Arbor; Opposed

Ellen Porter, 1465 King George Blvd, Ann Arbor; Opposed

Marcia Turkington, 1440 King George Blvd, Ann Arbor; Opposed

Charles and Tamar Weaver, 1390 Escg Ct., Ann Arbor; Support

Jane Weyher, 2628 Fenwick Ct., Ann Arbor; Opposed

Mark Yagerlener, 1391 Esch Court, Ann Arbor; Opposed

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

Moved by DeVarti, seconded by Dobmeier to postpone taking action on the item until the petitioner brings forward a re-design in collaboration with the staff and at the petitioner's choice of future meeting for the ZBA to reconsider.

BOARD DISCUSSION ON THE POSTPONEMENT:

The members of the Board took into consideration the presented petition and discussed the matter.

On a rollcall vote the vote was as following with the Chair declaring the motion approved. Vote: 6-2

Item Postponed

Yeas: 6 - Chair Briere, Buonodono, Lewis, DeVarti, Vice Chair Dobmeier, and Eisenmann

Nays: 2 - Councilmember Westphal, and Daniel

Absent: 1 - Milshteyn

16-0796

ZBA16-014; 615 East Huron Street

Brownie Signs, LLC is requesting a variance from Chapter 61 5:502 (b) Ground signs of 10 feet to allow a ground mounted identification sign to be 5 feet from the front setback. Additionally, applicant is requesting a 5.5 foot variance to allow an 8 foot overall height identification sign to be installed at the property.

Chris Cheng provided the following staff report:

Summary: Brownie Signs, LLC is requesting a variance from Chapter 61 5:502(2)(b) Ground Signs of 11 feet to allow a ground mounted identification sign to be 5 feet from the front setback. Additionally, applicant is requesting a 5.5 foot variance to allow an 8 foot overall height identification sign to be installed at the property.

Background:

The petitioner, Brownie Signs LLC, is requesting variances on behalf of The Graduate Hotel, from Chapter 61, Section 5:502(2)(b) for the

placement of 1 two-sided monument sign fronting 615 East Huron Street. The variances include a reduction from the required setback from the right-of-way from 16 feet to 5 feet.

The subject parcel is zoned D1 (Downtown Core District) and is a 14 story hotel constructed in the 1960's in the downtown area of the City. The hotel is located between an insurance company and historic Harris Hall. Currently, the hotel has 1 wall sign near the fourteenth floor and a detached monument sign does not exist.

Chapter 61 addresses sign height and setback requirements in the following sections:

5:502 Exterior Business Signs.

(2) (b) Ground Signs.

Signs not structurally attached to a building shall be at least 5 feet from all property lines. Such signs shall be permitted a maximum height of 1 foot for each 2 feet the sign is set back from the nearest property line, provided that the height of any such sign shall not exceed 25 feet.

Standards for Approval - Variance

The Sign Board of Appeals has the power granted by State law and by

Section 5:517(4), Application of the Variance Power from the City of Ann Arbor Sign

Ordinance The following criteria shall apply:

(a) That the alleged hardships or practical difficulties, or both, are peculiar to the property of the person requesting the variance and result from conditions which do not exist generally throughout the city.

The petitioner states that the lot is split between the hotel and parking lot area, leaving a reduced front open space area to locate an identification sign. Traffic on East Huron Street flows in two directions at 35 miles per hour, therefore, making a sign difficult to see if it is installed at the 15 foot setback requirement and the height requirements. Applicant has indicated traffic and safety concerns for their patrons as a need for the sign variance to allow for better visibility for the subject business.

The City Traffic Engineer confirmed the viewing triangle for existing traffic

is acceptable as the sign is located mid-block.

(b) 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 the failure of the Board to grant a variance and the rights of others whose property would be affected by the allowance of the variance.

Staff contends that approval of the setback variance would not negatively impact other property owners, and the proposal does not cause negative sight impacts. The petitioner proposes to setback the monument sign as far as practicable to be seen from traffic while not being a distraction to adjacent businesses.

(c) Is the condition which prevents you from complying with the ordinance self-imposed? How did the condition come about?

Staff has asked the petitioner why the sign cannot be reduced in overall height and to be prepared to respond to this inquiry at the Zoning Board of Appeals.

The condition which would make strict compliance with the ordinance problematic is not new to the current owner of this business. The Graduate hotel was built using the site and building of the former Dahlmann Inn, which was built in the 1960s. As the owners of The Graduate have always been conscious of their green building certification and carbon footprint, they decided early on to utilize the existing building structure on site and reuse or modify what has previously existed. The building will be LEED certified. As a result, it would not technically be correct to say this condition was self-imposed.

QUESTIONS BY BOARD TO STAFF:

DeVarti asked if the Valet sign counts towards allowable signage.

Cheng said no, directional signage does not.

Westphal asked staff to give a brief overview of the reasons why signage is limited. He noted that the sign ordinance is also going to be looked at and re-worked in the near future.

Cheng explained that the rationale behind signage is that we want it to be safe, which is the reason for a minimum 5-foot setback, so there are not

vehicular and pedestrian conflicts up against the right-of-way. He explained that the total allowable signage is capped, based on the width of the building, and multiple businesses at the same location are consolidated on one sign.

PRESENTED BY PETITIONER:

David Reginer, Attorney, speaking on behalf of the Graduate Hotel, explained the application and was available to respond to the Board's enquiries.

DeVarti asked if they had considered putting a sign in the parking lot.

Redninger said they believed people wouldn't see it in time to turn in.

Walther, said the further back the sign is placed the less visible it becomes. Walther explained their request.

Staff explained that the parking lot parcel next door did not belong to the hotel and would soon be developed with a highrise.

Eisenmann asked if the word hotel was included on the sign.

Walther said no, because the branding of the hotel didn't allow it.

PUBLIC HEARING:

Kathy Hufano, 505 E Huron, Sloan Plaza, said she has lived in Ann Arbor for 45 years, and she appreciates the sign ordinance of the City and she hoped the Board would make the applicant comply with the code; she spoke in opposition to the request.

Noting no other public speakers the Chair closed the public hearing.

LIST OF EXHIBITS PRESENTED:

Donald and Kathy Duquette, 505 E Huron ST., 603 Ann Arbor; Opposed

BOARD DISCUSSION:

The members of the Board took into consideration the presented petition and discussed the matter.

Moved by Dobmeier, seconded by Buonodono in ZBA16-014, 615

East Huron Street, Variance: Based on the following findings of fact and in accordance with the established standards for approval, the Zoning Board of Appeals hereby **GRANTS** a variance from Chapter 61; 5:502(2)(b) Ground Signs of 11 feet to allow a ground mounted identification sign to be 5 feet from the front setback. Additionally, applicant is requesting a 5.5 foot variance to allow an 8 foot overall height identification sign to be installed at the property per submitted plans. 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.
- (b). That the alleged hardships or practical difficulties, or both, which will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.
- (c). 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.
- (d) That the conditions and circumstances on which the variance request is based shall not be a self imposed hardship or practical difficulty.
- (e). A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.

On a rollcall vote the vote was as following with the Chair declaring the motion defeated. Vote: 3-5

VariANCES Denied.

(5 affirmative votes required to approve a variance)

Yeas: 3 - Buonodono, Lewis, and DeVarti

Nays: 5 - Chair Briere, Councilmember Westphal, Vice Chair Dobmeier, Daniel, and Eisenmann

Absent: 1 - Milshteyn

F UNFINISHED BUSINESS**G NEW BUSINESS****H REPORTS AND COMMUNICATIONS**

- H-1** **16-0790** Various Correspondences to the ZBA
Received and Filed

I PUBLIC COMMENTARY - (3 Minutes per Speaker)**J ADJOURNMENT**

Moved by Councilmember Westphal, seconded by Buonodono, that the meeting be Adjourned. On a voice vote, the Chair declared the motion carried.

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Candice Briere
Chairperson of the Zoning Board of Appeals

Mia Gale
Recording Secretary