



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, December 16, 2015

6:00 PM

Larcom City Hall, 301 E Huron St, Second
floor, City Council Chambers

A **CALL TO ORDER**

Chair Milshteyn called the meeting to order at 6:02 p.m.

B **ROLL CALL**

Milshteyn called the roll.

Present: 8 - Candice Briere, Alex Milshteyn, Heather Lewis, Evan Nichols, David DeVarti, Kirk Westphal, Michael Dobmeier, and Michael B. Daniel

Absent: 1 - Nickolas Buonodono

C **APPROVAL OF AGENDA**

Moved by Nichols, seconded by Westphal, to approved the agenda as presented. On a voice vote the Chair declared the motion carried.

D **APPROVAL OF MINUTES**

[15-1460](#) October 28, 2015 ZBA Meeting Minutes with Live Links

Moved by Councilmember Westphal, seconded by Nichols, that the Minutes be Approved by the Board and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.

E **APPEALS AND HEARINGS**

(Public Hearings: Individuals may speak for three minutes. Please state your name and address for the record.)

(Comments about a proposed project are most constructive when they relate to: (1) City Code requirements, or (2) additional information about the area around the petitioner's property and the extent to which a proposed project may positively or negatively affect the area.)

ROLL CALL

Enter Buonodono

Present: 9 - Candice Briere, Alex Milshteyn, Nickolas Buonodono, Heather Lewis, Evan Nichols, David DeVarti, Kirk Westphal, Michael Dobmeier, and Michael B. Daniel

E-1 [15-1462](#)

ZBA15-026; 211 West Davis

Maven Development is requesting three setback variances (R1C, Section 5:28):

1. A variance of 23 feet 8 inches to allow a 1 foot 4 inch front setback; 25 feet is required.
2. A variance of 3 feet 7 inches to allow a 1 foot 5 inch front setback; 5 feet is required.
3. A variance of 25 feet to allow a 5 foot rear setback; 30 feet is required.

Matt Kowalski presented the following staff report:

Summary

Dan Williams (Maven Development) is requesting 3 variances from Chapter 55 (Zoning) Section 5:28 (R1C) in order to re construct an existing non conforming structure. The structure will be a single family dwelling upon completion.

- 1) *Front yard setback variance of 23 feet 8 inches to allow a 1 foot 4 inch front setback along West Davis.*
- 2) *Side yard setback (west) variance of 3 feet 7 inches to allow a 1 foot 5 inch side setback.*
- 3) *Rear yard setback variance of 25 feet to allow a 5 foot rear setback.*

DESCRIPTION AND DISCUSSION

The subject 3,840 square foot building is zoned R4C, however single family structures in the R4C zoning district are subject to the R1C zoning standards (Chapter 55, Section 5:10.8(2) (c). The subject parcel is nonconforming for lot area, subject parcel is 4,965 square feet and the minimum conforming parcel size for R1C is 7,200 square feet. The building was built in approximately 1910 and is currently vacant. The first historical records dated 1925 indicate that the building was used for a garage to store 20 cars. Other uses after that included car storage and limited warehousing. All documented uses of the building were not permitted uses within the R1C (or R4C) residential zoning district.

The petitioner intends to use this property as a single family home, which is a conforming use in the R4C District. In order to use the property as single family, the petitioner would like to re construct the majority of the existing building. The building would be re constructed on almost the exact same footprint as the existing building with the exception of the rear and front walls. The rear wall is currently 1 foot four inches inside the property line and will be moved to 5 feet from the rear property line. The front wall is on the property line and will be moved 1 foot four inches inside the front property line.

A garage and open court yard will be incorporated into the front of the building. The garage will provide two off street parking spaces; one parking space is required by City Code. The remaining area of the building, approximately 2,400 square feet will be converted to a home including a kitchen, living area, two bedrooms and two bathrooms.

The existing single story building is non conforming for three of the required four setbacks as the building occupies the majority of the square shaped parcel. There is currently zero setback for the front (West Davis) and one foot five inch setback for the west side and one foot four inch setback for the rear. At this point, it has not been determined the exact extent of what will be replaced, however it has been determined that enough of the structure will be replaced that it will exceed the changes permitted under Chapter 55, Section 5:87 (Structure non conformance). As such, the petitioner is required to seek variances in order to re construct the building with a slightly modified footprint.

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 practical difficulties 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 structure is legal non conforming and was constructed in 1910 before zoning regulations were adopted. It had been historically used as a garage and storage building. The structure was constructed occupying the majority of the parcel with little or no minimum setbacks to the property line. The subject parcel is non conforming for lot size (4,965

square feet, minimum R4C lot size is 8,500 square feet) and is a relatively shallow (65 feet deep) square shape.

(b). That the practical difficulties 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 existing structure is in need of restoration and replacement of many structural elements. Any re use of the building will likely require extensive restoration and ZBA permission. The small size and shallow depth shape, limit the buildable area of the parcel.

If the variances are not granted, the petitioner could try and repair and re use the existing walls, but would be limited to a replacement value of less than 75% of the appraised value of the structure. Any re use of the building for a non conforming use would require ZBA approval to allow re establishment of a non conforming use.

(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.

Approval of the variances will result in the re construction of an existing non conforming structure. The structure was constructed in 1910 before any zoning standards were established and has been an established part of the neighborhood street presence since that time. The proposed single family use is a conforming use in the R4C district and should be less detrimental to surrounding properties than the previous non conforming uses.

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

The existing building is a legal non conforming structure and was constructed before zoning standards were established. The existing single story building is non conforming for all required setbacks, except the east side, as the building occupies the majority of the parcel. The building could be demolished and a new single family home could be constructed on the parcel.

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

The variances are being requested in order to re construct a non conforming structure. The structure was reduced in size slightly, to reduce the front and rear variances that are being requested. The petitioner is planning on re using historical structural elements which necessitate a similar size to the original structure.

QUESTIONS BY BOARD TO STAFF:

Lewis asked if there were any elevations of the proposed project.

Kowalski said no.

Westphal asked if there is anything to which the degree the exterior needs to be re-used.

Kowalski said no, and the way he is treating this is that the entire building has to be torn down and will need to be rebuilt.

DeVarti asked if they grant the variances could the applicant build anything allowed within the R4C zoning.

Kowalski said, it would be within reason, 'per submitted plans', noting that they can't build anything other than a single-family house at this location because it is a non-conforming lot.

PRESENTATION BY PETITIONER:

Dan Williams, Maven Development, 544 Detroit Street, Ann Arbor, owner and applicant was available to respond to the Commission's enquiries.

Marc Rueter, Rueter Associates Architects, 515 Fifth Street, Ann Arbor, was present and explained the proposed project.

DeVarti asked if the applicant owned the lot next door.

Williams said yes, where the condos would be built.

DeVarti asked if this project is a stand alone project.

Williams said yes.

DeVarti asked if the condos would respect the current setback requirements on the front for R4C zoning.

Williams said yes.

DeVarti said he thinks this is way too close to the street, and he would have to oppose the project because it is too close. He said if they were doing a tear down and rebuild they could be set back further and thereby respecting the current front setback.

Nichols asked if the front façade would be taken down.

Rueter said the building was built without adequate foundations so it would have to be rebuilt.

Nichols asked what would be kept besides the mentioned trusses.

Rueter said they haven't come up with a plan more than they think it will be staged sequentially moving from the back of the building to the front, adding that they would need to keep the walls in the same place because they are the bearing for existing trusses.

Mike Daniel asked if the trusses themselves as architectural elements are dependent on the dimensions of the building or could they potentially re-use those architectural elements with a smaller footprint.

Rueter said certainly a truss in the front could be taken off and thrown away, but he would rather not have to do that.

PUBLIC HEARING:

Noting no 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 Nichols, seconded by DeVarti, in Petition ZBA14 026; 211

West Davis 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 the following variances from Chapter 55, Section 5:28 (R1C):

- 1) **Front yard setback variance of 23 feet 8 inches to allow a 1 foot 4 inch front setback along West Davis.**
- 2) **Side yard setback (west) variance of 3 feet 7 inches to allow a 1 foot 5 inch side setback.**
- 3) **Rear yard setback variance of 25 feet to allow a 5 foot rear setback.**

a) **The alleged practical difficulties are peculiar to the property and result from conditions which do not exist generally throughout the City**

b) **That the practical difficulties, 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.**

DeVarti moved to amended the motion to strike 1) Front yard setback variance.

Failed for lack of a second.

Moved by Nichols, seconded by C. Briere, to postpone taking action until the next meeting. On a voice vote, the vote was as follows with the Chair declaring the motion carried.

Yeas: 9 - Briere, Chair Milshteyn, Buonodono, Lewis, Nichols, DeVarti, Councilmember Westphal, Dobmeier, and Daniel

Nays: 0

5:28) of 10 feet to allow a 20 foot rear setback; 30 feet is required (Required Rear Setback).

Matt Kowalski presented the following staff report:

Summary: Robert Clark (Contractor) is requesting one rear yard setback variance (R1C, Section 5:28) of 10 feet to allow a reconstruction of an enclosed porch. A 20 foot rear setback is proposed; 30 feet is required (Required Rear Setback).

DESCRIPTION AND DISCUSSION:

The subject parcel is located on the corner of Georgetown Boulevard and Yorktown Drive. The parcel is zoned R1C (Single-Family Residential). The house is 1,318-square feet and was constructed in 1965. The house is conforming to all zoning setback standards but currently has an attached 12 foot by 12 foot enclosed porch that encroaches 10 feet into the rear setback of 30 feet. The main house is set back 32 feet from the rear property line, the setback to the enclosed porch is 20 feet.

The petitioner is proposing to demolish the existing enclosed porch and reconstruct a new foundation and enclosed porch in the exact same foot print. The existing porch appears to have been constructed before zoning setbacks were enacted, no variance or building permit was found. The 1966 aerial photo was too blurry to reveal the porch, but the existing porch is clearly visible in the 1979 aerial of the parcel.

The dimensions of the new porch will remain 12 feet by 12 feet for a total square footage of 144 square feet. The proposed porch will be located behind the structure and will not be built any closer to the any property line than the existing unenclosed deck along the rear of the house. The new porch will be 20 feet (required setback is 30 feet) from the rear property line and will match the architectural style and roofline of the existing structure.

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 parcel is a corner lot which is not unusual in the City; however it is required to have two front setbacks of 25 feet. While the proposed porch does not encroach into a front setback, having two front setbacks does limit the area available for construction. The existing porch appears to have been constructed before zoning setbacks were in place, no variance or building permit was found, the proposed porch will be the same size as the existing porch..

(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 to reconstruct a new 144 sq ft enclosed porch. If the variance is not granted, an unenclosed deck or patio could be constructed at this location. While there is some area available on the site for a conforming addition to the structure, the interior layout, including doorwall, would need to be significantly altered.

(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 proposed porch will be the exact same size as the current porch. Allowing the variance will result in reconstruction of a new porch that will not encroach any further into the any required open space than the existing enclosed porch. The porch is visible from a public street and from adjacent attached residences. Staff has not received any objections from neighbors at this time. If the variance is approved, the structure will not have a negative impact on surrounding structures.

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

The existing porch appears to have been completed shortly after the building was constructed in 1965. The existing porch is deteriorated, but could be removed and a deck or patio could be constructed that would not require a variance.

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

The requested setback encroachment of 10 feet for the proposed porch is the same as the existing porch encroachment. It is the minimum necessary to enable the desired improvements to the structure. A smaller deck could be proposed, but would still require a variance due to the location of the building 2 feet from the required rear setback.

QUESTIONS BY BOARD TO STAFF:

None

PRESENTATION BY PETITIONER:

Robert Clark, 6055 Jackson Road, Ann Arbor, Owner of Four Seasons Sunrooms of Ann Arbor, was present to respond to the Board's enquiries. He explained the request and handed out a petition of support from the neighbors.

DeVarti asked if the porch would also be a peaked roof.

Clark said yes, it would be saddled into the existing roofline, with added gutters.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

*Diane Wines, 2254 Georgetown, Ann Arbor; Support
Gwendoyne Ball, 2230 Georgetown, Ann Arbor; Support
Patricia Walker, 2235 Yorktown, Ann Arbor; Support*

BOARD DISCUSSION:

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

Moved by Briere, seconded by Nichols, in Petition ZBA15 027; 2242 Georgetown; 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 5:28 (R1C, Single Family) of 10 feet from the required rear setback of 30 feet in order to permit a building addition 20 feet 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.**

Yeas: 9 - Briere, Chair Milshteyn, Buonodono, Lewis, Nichols, DeVarti, Councilmember Westphal, Dobmeier, and Daniel

Nays: 0

F UNFINISHED BUSINESS

G NEW BUSINESS

H REPORTS AND COMMUNICATIONS

15-1461 Various Correspondences to the ZBA

Kowalski said there would a January meeting with the returning item and at least one other item that he was aware of.

Kowalski introduced Jon Barrett, as the new Zoning Coordinator, whom would be taking over his position as ZBA liaison to the Zoning Board of Appeals, after he is trained in the City's zoning codes.

Jon Barrett said he was glad to be at the City, adding that he came from Charlotte, North Carolina.

Evan Nichols reported that this would be his last meeting on the ZBA, noting that it has been a great 3 years for him. He said he was resigning a bit early due to his law school studied abroad. He said staff support has always been excellent and leadership from the Chair has always been thoughtful and steady, and he has learned a lot from his colleagues on the Board even with the changing faces throughout the years. He encouraged the Board to keep up the good fight.

Milshiteyn thanked Nichols for this service and wished him well in Geneva.

I PUBLIC COMMENTARY - (3 Minutes per Speaker)

(Please state your name and address for the record)

J ADJOURNMENT

A motion was made by Dobmeier, seconded by Briere, that the meeting be adjourned at 6:58 p.m. On a voice vote, the meeting was unanimously adjourned.

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- *Video on Demand: Replay public meetings at your convenience online at www.a2gov.org/government/city_administration/communicationsoffice/ctn/Pages/VideoOnDemand.aspx*
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Alex Milshteyn
Chairperson of the Zoning Board of Appeals

Mia Gale
Recording Secretary