



City of Ann Arbor

Formal Minutes

Zoning Board of Appeals

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

Wednesday, June 24, 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 6:00 pm.

B **ROLL CALL**

Chair Milshteyn called the roll.

Staff present: Chris Cheng

Present: 6 - Candice Briere, Alex Milshteyn, Perry Zielak, Ben Carlisle,
Nickolas Buonodono, and David DeVarti

Absent: 3 - Heather Lewis, Evan Nichols, and Kirk Westphal

C **APPROVAL OF AGENDA**

Approved

The agenda was unanimously approved as presented. On a voice vote, the Chair declared the motion carried.

D **APPROVAL OF MINUTES**

D-1 **[15-0670](#)** April 22, 2015 ZBA Meeting Minutes with Live Links

Moved by Zielak, seconded by Buonodono, that the minutes be approved as presented. 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.)

E-1 15-0777

ZBA15-012; 2151 West Stadium Blvd.

Expedite The Diehl Signs is requesting a variance from Chapter 61(Signs & Outdoor Advertising) Section 5:502 (2) (b), of 31 feet from the front setback and 15.5 feet from the allowable height to allow an existing 2-faced pole sign to be re-faced. The maximum amount of signage allowed for this site is 128 square feet and the total proposed for the pole sign is 52.5 square feet.

Chris Cheng provided the following staff report:

Summary:

Expedite the Diehl is requesting a variance from Chapter 61, Signs and Outdoor Advertising, Section 5:502 (2)(b) of approximately 31feet from the minimum required front setback.

Background:

The petitioner, Expedite the Diehl, is requesting a variance on behalf of Auto Zone, located at 2151-2161 W. Stadium Blvd, from Chapter 61, Section 5:502 (2) (b) for the re-facing of an existing two sided goal post style sign fronting W. Stadium Blvd. The existing height of this sign is 19.3-feet and requires a 38.6-foot setback from the front property line. The existing sign was granted a front setback variance in 1997 by the Sign Board of Appeals subject to the site being used as a car wash and gas station.

The existing goal post sign had 115-square feet of signage (57.5 feet/side) and the new sign is proposed at the same location with a reduced total of 52.5-feet of signage for an overall reduction of 62.5 feet.

The subject parcel is zoned both C2B (Business Service District) and C3 (Fringe Commercial District). This site plan was recently approved by the City Planning Commission to demolish the existing car wash and gas station and combine the site with an adjacent vacant site to construct a one-story, 7,381- square foot retail building.

Per City records, variances were also granted in 1979, 1983 and 1997 by

the Sign Board of Appeals with this last variance granted subject to the site remaining a car wash and gas station.

Chapter 61 addresses sign area in the following section:

5:502 Exterior Business Signs.

(2) (b) Exterior Business Signs

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 Zoning Board of Appeals has the power granted by State law and by Section 5:517, Application of the Variance Power from Chapter 61, the City of Ann Arbor Sign Ordinance. The following criteria shall apply (petitioner's response in italics, staff's response in regular type):

(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 sign exists. Requiring removal of this sign and installing a new sign with a new foundation creates a financial burden and undue hardship.

Staff discussed the sign alternatives with the petitioner on options for signs at this site. The petitioner is allowed to install up to a maximum of 128-square feet of signs on site with a combination of wall signs and a monument sign without needing a setback variance.

From a safety perspective, the proposed sign is perpendicular to W. Stadium Blvd. and would alert customers to the business entrance without screening oncoming traffic.

(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.

The existing sign is in good condition and can be re-faced. Properties along W. Stadium are commercial uses and have signs that are grandfathered.

Staff agrees that approval of the sign setback variance would not negatively impact other property owners, and the proposal does not cause negative traffic impacts.

This site is under consideration of redevelopment. The existing sign is nonconforming as the gas station and car wash businesses have closed. Per Chapter 61, Nonconforming Signs, signs shall not have any change made in the structure, shape, size, type, design, or mechanical or electrical equipment of the sign unless the change brings the sign into compliance with this chapter; however the Building Official may order repair of a nonconforming sign for safety; and shall not be re-established or maintained after the activity, business or usage to which it relates has been discontinued for 90 days or longer.

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

The petitioner states the sign is in place and seeking to re-face.

Staff research shows sign variances were approved in 1979, 1983 and in 1997 as long as the site remains a gas station and car wash. The previous gas station and car wash are no longer in use making the most recently approved variance null and void. The Master Plan: Land Use Element referencing the West Area Plan makes specific recommendations for the Stadium Boulevard Commercial Corridor. A problem identified by the plan is that inconsistent size and location of signage along the corridor contributes to visual confusion.

The existing Big M Carwash sign is the most prominent in the general vicinity. There is adequate space between the proposed retail building and the sidewalk to install a sign that meets sign ordinance standards.

The proposed building allows for 128-square feet of signs on site and should be sufficient to facilitate business identification and promotion.

QUESTIONS BY BOARD TO STAFF:

Carlisle asked if staff is making a recommendation on this request, noting

that the findings seem to be contradictory.

Cheng clarified that the comments read by Carlisle were the petitioner's response. He noted that there is sufficient room on the site to comply with the allowable 128 square feet of signage without getting a variance. He said the request is strictly for the existing signage.

DeVarti asked if they are given a variance, would that be the limit as to how much they are allowed.

Cheng said they are allowed 50 square feet for this sign. He said they may in the future put more onto the sign, but since the petitioner had not mentioned additional signage, he was only going by signage submitted, which is the 2-faced Auto Zone sign.

DeVarti asked if they can put additional signage on the posts.

Cheng said that would be up to the ZBA to limit the amount of signage permitted on that sign.

Zielak asked if only gas stations would be allowed to have high signage like this, based on grounds for earlier variance granted.

Cheng said that was considered.

Zielak asked if only a monument sign would be allowed and what would the maximum height allowed.

Cheng said they could do a pole sign, ground sign, or a monument sign at a maximum height of 25 feet.

Scott Zuruski, Professional Engineering Associates, Civil Engineer, representing Auto Zone, said they would like to keep the existing sign in place and re-face the upper third of the sign. He said they are removing about 65% of the face of the sign on both sides. He said there will be signage on the building as well, but it was unanswered as to what would be allowed. He said their financial hardship includes disturbing right-of-way and because of the zoning they are required to bring the building closer to the street, leaving only a swath of land for signage. He said they are also keeping the existing drive approach as the previous car wash had because it aligns perfectly with the CVS across the street and since they are re-developing an existing site they would like to keep the sign to go with the geometry. He said a low rise sign would create a hazard for

turning movements, while the taller sign would not.

DeVarti asked how far the proposed building will be setback from the street.

Zuruski said 25 feet from the right-of-way, adding that it will be pushed as far back as they possibly could.

PUBLIC HEARING:

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

BOARD DISCUSSION:

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

Moved by Zielak, seconded by DeVarti, In Petition ZBA15 012; 2151 West Stadium Boulevard, the Zoning Board of Appeals GRANTS a variance from Chapter 61. A variance may be allowed by the Board in cases involving practical difficulties or unnecessary hardships only when the evidence in the official record of the appeal supports all the following affirmative findings;

- 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.**
- 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 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, per submitted plans and limiting the signage on the posts to 50 square feet.**

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

Vote: 1-5

Variance Denied

Yeas: 1 - DeVarti

Nays: 5 - Briere, Chair Milshteyn, Zielak, Carlisle, and Buonodono

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

E-2 [15-0778](#)

ZBA15-009; 3945 South State Street

Brownie Signs is requesting a variance from Chapter 61(Signs & Outdoor Advertising) Section 5:502 (1), of 61 square feet from the maximum amount of signage allowed for this site which is 48.6 square feet, for a proposed total of 110 square feet.

Chris Cheng provided the following staff report:

Summary:

Brownie Signs, LLC is requesting a variance to exceed the total amount of sign area allowed per Chapter 61, 5:502 (1). The site is currently vacant and the petitioner seeks to add approximately 62-square feet above the allowable signage to the east, west, and south elevation of the retail building and add a monument sign fronting South State Street. The maximum allowable signage is 48.6- square feet and 10 message units (the business faces one street and is allowed 10 message units per street frontage).

Background:

The petitioner, Brownie Signs, LLC is requesting a variance on behalf of Jimmy John's, located at 3945 S. State Street, from Chapter 61, Section 5:502 (1).

No current signage exists on site. The previously existing house on site was recently demolished and a site plan was approved in 2013 to construct two one-story retail buildings totaling 8,531 sq ft. This lot is narrow (82-feet wide) with a modest building frontage of 24.3-feet facing S. State Street allowing for a maximum of 48.6-square feet of signage.

The petitioner is requesting additional signage for this site totaling 110-square feet, therefore, requiring a sign area variance of 61.4-square feet.

Chapter 61 addresses sign area in the following section:

5:502 Exterior Business Signs.

(1) Exterior Business Signs

Each ground floor business is permitted exterior on-premises and noncommercial signs having an area totaling 2 square feet per linear feet of ground floor frontage. The total area of such signs may not exceed 200 square feet. Such signs may contain a total of 10 message units and shall meet the placement standards contained in this section. If all the signs of a business do not exceed a maximum height of 15 feet, such business shall be permitted sign area and message units of 20 percent more than would otherwise be permitted by this Chapter.

Standards for Approval - Variance

The Zoning Board of Appeals has the power granted by State law and by Section 5:517, Application of the Variance Power from Chapter 61, the City of Ann Arbor Sign Ordinance. The following criteria shall apply (petitioner's response in italics, staff's response in regular type):

(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 the narrow lot combined with high traffic volume will prevent customers from locating this business. Traditionally, Jimmy John's restaurants do not have a drive-thru which is unique to this business and property. Strict compliance with the ordinance would make for low-visibility signage making identification of the business difficult for motorists and customers.

Staff responds that the petitioner has not presented evidence of a practical difficulty and/or undue hardship which does not exist generally throughout the city; therefore, there is no precedent for relief from this standard. Most commercial sites throughout the City are fronted by a public street and meet the maximum signage allowed by sign code.

Staff discussed the sign alternatives with the petitioner on options for signs at this site. The petitioner is allowed to install up to a maximum of 48.6-square feet of signs on site with a combination of wall signs and a monument sign without needing a sign area variance.

(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.

The requested variance would have minimal effect on neighboring businesses as this property abuts a parking lot on the south side with an area of trees and natural foliage that includes a raised "mound" of earth which partially obscures the building from northbound traffic.

Staff agrees that approval of the sign area variance would not negatively impact other property owners, and the proposal does not cause negative traffic impacts.

Most commercial sites throughout the City are fronted by street trees in the extension that potentially block visibility of a sign from certain angles. Further, the petitioner has approximately 48-square feet of signage that can be placed on any of the sides of the building or on a monument sign to maximize visibility from South State Street.

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

The petitioner states the location, building frontage and narrow lot width creates a hardship limiting the amount of signage on site.

Staff recognizes the challenge presented to the petitioner to promote this business, however, code-compliant signage located and properly sized on the property should be sufficient to facilitate business identification and promotion.

As part of the site plan approval in 2013, staff discussed the challenges of signage on site and the petitioner indicated there was no sign master plan for this site and any proposed signs will meet the requirements of Chapter 61, Signs and Outdoor Advertising.

The proposed building allows for 48.6-square feet of signs on site and should be sufficient to facilitate business identification and promotion.

QUESTIONS BY BOARD TO STAFF:

Zielak asked about the Tim Horton's restaurant around the corner, if it meets the requirement. He asked if the allowable signage is based on the building frontage.

Cheng said yes, it meets the code. He explained that due to the narrow lot and proposed building of Jimmy John's it is allowed less signage.

DeVarti asked if, when the future business use goes in would the new business have to ask for a variance.

Cheng explained that that they would be allowed additional signage on the building. He said if they have more than 5 businesses, they could apply for a business center sign of not more than 200 square feet.

DeVarti asked if this sign would be allowed in addition to the business center sign.

Cheng said, yes.

PRESENTATION BY PETITIONER:

Tommy Tomako, Jimmy Johns Sandwich Shop, presenting the petitioner said he thought it would be a good solution to use Ellsworth for the frontage which is the side of the building, since it would allow for 164 square feet of signage, or 123 square feet if counting the linear footage.

DeVarti asked if the petitioner has control over the rear of the building.

Tomako said no, he is not the owner.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

John W. Teeter, Adjacent property owner; Opposed

BOARD DISCUSSION:

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

Moved by Zielak, seconded by DeVarti, in Petition ZBA15 009; 3945 South State Street; Chapter 61(Signs & Outdoor Advertising) Section 5:502 (1), of 61 square feet from the maximum amount of signage allowed for this site which is 48.6 square feet, for a proposed total of 110 square feet. This variance is granted to the requirement that allows the petitioner a total of 80 square feet of wall signage restricted to the structure of the building.

A variance may be allowed by the Board in cases involving practical difficulties or unnecessary hardships only when the evidence in the official record of the appeal supports all the following affirmative findings;

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.

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 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, per submitted plans.

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

VOTE: 5-1

Variance Granted

Yeas: 5 - Briere, Chair Milshteyn, Zielak, Carlisle, and DeVarti

Nays: 1 - Buonodono

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

E-3 [15-0779](#)

ZBA15-008; 705 Indianola Drive

Marianne Rzepka is requesting one front yard setback variance (Section 5:57) of 1 foot 1 inch to allow a 21 foot 7 inch front setback; 22 feet 8 inches is required (Averaged Front Setback).

Chris Cheng provided the following staff report:

Summary:

Marianne Rzepka is requesting one variance from Chapter 55 (Zoning) Section 5:57 (Averaging an Existing Front Setback Line), of 1 foot 1 inch to allow a 21 foot 7 inch front setback; 22 feet 8 inches is required (Averaged Front Setback).

Description and Discussion:

The subject parcel contains a 1,084-square foot, single-family dwelling constructed in 1948. The parcel is zoned R1C (Single-Family) and is non-conforming for lot area; the required minimum lot area for R1C is 7,200 square feet and the parcel is 5,749 square feet. The existing setback measures 21 feet 7 inches to the existing uncovered porch. The house was constructed in a line with adjacent houses to the east and slight behind the front of the house immediately to the west. 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 reduced to 22 feet 8 inches.

The petitioner is proposing to re-construct and cover an existing 3 foot 11 inch by 8 foot 7 inch front porch. After construction, the porch of the house would encroach 1 foot 1 inch into the averaged front setback of 22 feet 8 inches. The proposed porch is the same size as the existing porch, but will be covered which is not permitted without a variance. The total area (approximately 35 square feet) and size of the encroachment is the same as the existing porch.

Standards for Approval - Variance

The Zoning Board of Appeals has all the power granted by State law and by Section 5:99, Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

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

The subject parcel is a conforming corner lot in the R1C Zoning District (required is a minimum lot size of 7,200 square feet; parcel is 5,749 square feet). The existing house was built in the 1940's before current zoning setbacks, when the current front setback was enacted the house was made non-conforming. The house, including the uncovered porch, was built 21 feet 7 inches from the front property line. The R1C required setback is 25 feet; however the averaging of adjacent parcels adjusts the setback to 22 feet 8 inches. Adjacent neighborhood houses used in the averaging requirement were also constructed before current zoning standards.

(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 re-construct and cover an existing front porch. If the variance is not granted, the petitioner could construct a covered stoop (Maximum size: 20 sq feet) without requiring a variance. The porch is being reconstructed to the same size as the existing porch preserving the footings and building lines on the house.

(c). That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

If the variance is approved, the structure will be consistent with a number of houses in the neighborhood. Although the porch is being covered, the size will remain the same. A covered front porch would be an aesthetic improvement to the property and will enable residents to use the porch offering same protection from the elements. The addition will not be extended any closer to any property line or adjacent neighbors.

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

The house was built in the 1940's before current zoning standards were established. Changes in the zoning code after construction of the house made the house non-conforming and the porch will be replaced with the same size as existing.

(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 covered front porch. The porch will be rebuilt the exact same size as currently exists, but will now be covered. Given that the proposed porch is not being enlarged and only a covering will be added, the variance request and overall encroachment of the porch is minimal.

QUESTIONS BY BOARD TO STAFF:

None

PRESENTATION BY PETITIONER:

Marianne Rzepka, 705 Indianola Drive, Ann Arbor, owner, was present to answer questions.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

*Dana Jackman, 714 Indianola Ave, Ann Arbor; Support
John Rinne, 710 Indianola Ave, Ann Arbor; Support
Doris Wunderlich, 1510 Chandler Road, Ann Arbor; Support
Sue Stevens & Chip Kramer, 701 Indianola Drive; Support
Jan Warren, next door neighbor; Support*

BOARD DISCUSSION:

None.

Moved by Briere, seconded by Zielak, in the case of Petition ZBA15 008; 705 Indianola Drive, 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 5:57 (Averaging Existing Front Setback) of 1 foot 1 inch from the required front setback of 22 feet 8 inches, to allow construction of a covered porch, approximately 35 feet in size, per submitted plans.

- 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.

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

VOTE: 6-0

Variance Granted

Yeas: 6 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, and DeVarti

Nays: 0

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

E-4 [15-0780](#)

ZBA15-010; 723 McKinley Avenue

Michael T. Van Goor is requesting Permission to Alter a Non-Conforming structure in order to construct an addition over an existing non-conforming structure.

Chris Cheng provided the following staff report:

Summary:

Michael Van Goor is requesting permission to alter a non-conforming structure (Chapter 55, Zoning, Section 5:87), from the Zoning Board of Appeals in order to allow expansion of an existing single-family structure over an existing non-conforming structure within the required rear open space.

Description and Discussion:

The subject parcel is located on the corner of McKinley Avenue and White Street, just east of State Street. The existing single-family dwelling is 1,093 square feet constructed in 1917. The parcel 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 parcel is non-conforming for lot size (7,200 sf; required, parcel size is 3,092 sf). The existing house is non-conforming because the house encroaches 17 feet into the required rear setback. The required rear setback is 30 feet, and the house is setback 13 feet from the rear property line. There is also a one-car attached garage at the rear of the house that is within 2 feet of the rear property line.

The petitioner is proposing to construct a 26 foot 6 inch by 20 foot 8 inch, 530-square foot third-story addition to the existing house. The proposed addition will be constructed directly over and will match the footprint of the existing second floor living space. The addition will not extend over the existing garage and will not extend any closer to the side or rear property line. The new addition will be 13 feet (required setback is 30 feet) from the rear property line and 7 feet 6 inches from the side property line (required setback is 5 feet) and will match the footprint of the existing house, not including the attached garage. The house currently has three bedrooms and is a registered rental with six occupants as the maximum. There is one legal parking space on the site, 1.5 spaces are required by City Code. After completion of the addition the house will have six bedrooms and the maximum occupancy will remain six people.

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.

The existing structure is 1,093 square feet and the proposed addition is 530 square feet and will match the footprint of the existing building. The addition will comply with the 30 foot height limit in the zoning district and will not extend any closer to any property line than the existing structure. The structure is located in a primarily rental area with a maximum of at least 6 persons in the adjacent structures. While the massing of the structure will be increased, the petitioner has submitted photographs of structures in the neighborhood of similar size and massing. As a requirement of the constructing the addition, the entire building will be required to be brought up to existing building and safety codes.. While the property only has one legal parking space, the maximum legal occupancy will not be increased and will remain at six people.

QUESTIONS BY BOARD TO STAFF:

DeVarti asked if parking requirements are tied to bedrooms.

Cheng said they are based on the unit, which is 1.5, which is rounded up

to 2 for multi-family, non-conforming.

DeVarti clarified that the number of occupants is based on bedroom size.

Cheng said yes.

PRESENTATION BY PETITIONER:

Mike Van Goor, representative for the petitioner, was present to answer questions.

DeVarti asked when the property owner graduated from high school.

The response was 1983.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

John Wade, owner of property nearby; Support

Tammy Moon, Bartonbrook, 1117, 1109, 1224 White, Ann Arbor; Support

Peter Deininger, 1129 & 1132 White Street and 724 Arch Street, Ann Arbor; Support

Donald Jones, 1117 S. State Street, Ann Arbor; Support

Marty Nyrkkaren, 1133 & 1203 White Street, Ann Arbor; Support

BOARD DISCUSSION:

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

Moved by Zielak, seconded by Briere, in Petition ZBA15 010; 723 McKinley, 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.

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.

On a roll call, the vote was as follows with the Chair declaring the

motion carried.

Vote: 6-0

Permission to Alter Granted

Yeas: 6 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, and DeVarti

Nays: 0

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

E-5 [15-0781](#)

ZBA15-011; 1404 Lutz Avenue

Tom Bartlett is requesting one front yard setback variance (Section 5:57) of 9 feet to allow a 25 foot front setback; 34 feet is required (Averaged Front Setback).

Chris Cheng provided the following staff report:

Summary:

Tom and Jean Bartlett are requesting one variance from Chapter 55 (Zoning) Section 5:57 (Averaging an Existing Front Setback Line), of 9 feet to allow for a front setback of 25 feet for expansion of an existing residential structure into the front setback; 34 feet is required (Averaged Front Setback).

Description and Discussion:

The subject parcel contains a 980-square foot, single-family dwelling constructed in 1928. The parcel is zoned R1D (Single-Family) and is conforming for lot area; the required minimum lot area for R1D is 5,000 square feet and the parcel is 5,183 square feet. The existing setback measures 26 feet 6 inches to the main house. The parcel is located on a dead end street leading into a drive to the Zion Lutheran Church parking lot. The house was constructed in front of the adjacent houses to the east and west. As a result, the required averaged front setback is 34 feet, which makes the structure non-conforming.

The petitioner is proposing to remove an existing 7 foot 9 inch by 26 foot enclosed front porch and construct a 9 foot 3 inch by 26 foot addition to the front of the house which would encroach a maximum of 9 feet at a corner into the averaged front setback of 34 feet. The new addition will be 1 foot 6 inches closer to the front property line. The front setback after the addition will be 25 feet which is the required setback before the averaging

requirement is applied. The new floor area within the front setback will be approximately 35 square feet.

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 R1D Zoning District (required is a minimum lot size of 5,000 square feet; parcel is 5,183 square feet). The existing house was built in 1928 before current zoning setbacks. The house, including the existing covered porch, was built 26 feet 6 inches from the front property line. The R1D required setback is 25 feet; however the averaging of adjacent parcels adjusts the setback to 34 feet. The subject parcel is a 50 feet wide which is non-conforming for lot width, which is 60 feet required.

(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 an addition to the front of the house. If the variance is not granted, the petitioner could construct a smaller addition to the front. There is limited room to construct an addition to the rear of the house due to the placement of the detached garage.

(c). That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the individual hardships that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.

If the variance is approved, the structure will be consistent in size with a number of houses in the neighborhood. The addition will extend 1 foot 6 inches closer than the existing structure to the front property line and will not be extended any closer to the side property line or adjacent

neighbors.

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

The house was built in the 1920's before current zoning standards were established. The house is non-conforming for the averaged front setback requirement established by the construction and location of the adjacent houses.

(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 an addition in the front yard. At the closest point the addition will be 25 feet from the front property line. The proposal represents an increase of approximately 35 square feet and will be 1 foot 6 inches closer to the front property line than the existing enclosed porch. Due to the layout and position of the house, any addition to the front would require a variance. There is an existing enclosed porch that will be removed and the increase in size and encroachment of the proposed addition is minimal.

QUESTIONS BY BOARD TO STAFF:

Zieslak asked if research was done to determine why the front addition encroaches.

Cheng said the house was built in 1920's prior to zoning requirements.

PRESENTATION BY PETITIONER:

Tom Bartlett, property owner, said there are only three houses on the short street.

DeVarti asked if they will be tearing off the existing porch and rebuilding.

Bartlett said they will be rebuilding it for a studio and dining space, noting that their house will now be matching adjacent houses.

DeVarti asked if the addition will be one story.

Bartlett said yes.

PUBLIC HEARING:

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

LIST OF EXHIBITS PRESENTED:

Bill and Beth Cron, 1406 Lutz Ave, Ann Arbor; Support

Joan Schmidt, 1402 Lutz Ave, Ann Arbor; Support

Jeff Horowitz & Michelle Segar, 614 Soule Blvd, Ann Arbor; Support

BOARD DISCUSSION:

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

Moved by DeVarti, seconded by Zielak, in Petition ZBA15 011; 1404 Lutz 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 5:57 (Averaging Existing Front Setback) of 9 feet from the required front setback of 34 feet, per submitted plans.

- 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.**

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

Vote: 6-0

Variance Granted

Yeas: 6 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, and DeVarti

Nays: 0

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

E-6 [15-0782](#)

ZBA15-013; 580 Liberty Pointe Drive

John Leppiaho is requesting one side yard setback variance (R4A zoning, Section 5:32A) of 8 feet to allow a 12 foot side yard setback for a building addition; 20 feet is required.

Chris Cheng provided the following staff report:

Summary:

John Leppiaho is requesting one variance from Chapter 55(Zoning) Section 5:32 (Multiple-family, R4A), of 8 feet for expansion of an existing residential structure into the side setback, 20 feet is required.

Description and Discussion:

The subject parcel is located on the corner of Liberty Pointe and Philadelphia Street. It is the end unit of a multiple unit condominium building located in a larger condominium development. The structure is zoned R4A (Multiple-Family). The condo is 2,044-square feet and was constructed in 1993. The existing structure is conforming for all zoning setback standards and has an existing uncovered rear deck. The required side setback is 20 feet, and the house is set back 22 feet from the rear property line.

The petitioner is proposing to construct a covered and enclosed 10 foot by 21 foot 11 inch, 220-square foot addition to the existing house. The proposed addition will be located behind the structure and will match the footprint of the existing deck. It will not be built any closer to the side property line than the existing unenclosed deck along the rear of the house. The new addition will be 12 feet (required setback is 20 feet) from the side 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 unit requesting the variance is the end unit of a 5 unit structure. Many of the units in this development have unenclosed decks similar to the existing deck. The subject parcel is not exceptional or peculiar. It conforms to the minimum lot area and width requirements of the R4A Zoning District.

(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 construct a new 220 sq ft enclosed porch addition. If the variance is not granted, the existing unenclosed deck can remain. There is no area available on the site for a conforming addition to the structure.

(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.

Allowing the variance will result in an addition to the structure that will not encroach any further into the side open space than the existing unenclosed deck. The addition and existing porch are visible from a public street and from adjacent attached residences. However, the existing deck does have an approximately 6 foot high opaque privacy fence between the subject unit and the neighboring unit immediately adjacent. Staff has not received any objections from neighbors. The Condominium Association has given preliminary approval of the addition pending final review of plans.

(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 deck was completed shortly after the building was constructed in 1993. The deck complies with code and would be permitted to remain as an unenclosed area.

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

The proposed addition is the same footprint as the existing deck. The requested variance is required only to enclose and cover this area. A smaller deck could be proposed, but would still require a variance due to the location of the building 2 feet from the required side setback.

QUESTIONS BY BOARD TO STAFF:

Carlisle asked if the homeowner association had signed off on the request.

Cheng said yes, staff had received a letter of support.

Carlisle asked if there are other situations in the development like this.

Cheng said yes.

PRESENTATION BY PETITIONER:

Jeff Brown, Dexter Builders, said been approved by old and new management company.

DeVarti asked about the square footage of units.

The owners said there unit is 2,300 square feet.

Milshteyn added that the units vary from 1,300 to over 2,000 square feet.

PUBLIC HEARING:

Noting no speakers, the Chair declared the Public Hearing closed.

LIST OF EXHIBITS PRESENTED:

*Kathleen Kuhn (Barratt) 588 Liberty Pointe Drive, Ann Arbor; Support
Jan LeLand, 580 Liberty Pointe Drive, Ann Arbor; Support
Ron Powell, 573 Liberty Pointe Drive, Ann Arbor; Support*

Jackie Presta, 569 Liberty Pointe Drive, Ann Arbor; No Objection
Stephanie E. Newell, 640 Liberty Pointe Drive, Ann Arbor; Support
Pete Malley, 585 Liberty Pointe Drive, Ann Arbor; Support
Susan Klein, 601 Liberty Pointe Drive, Ann Arbor; Support
John Mudd, Secretary Liberty POinte Board, Ann Arbor; Support

BOARD DISCUSSION:

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

Moved by Zielak, seconded by Buonodono, in Petition ZBA15 013; 580 Liberty Point, 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 5:32A (R4A, Multiple Family) of 8 feet from the required side setback of 20 feet, per submitted plans.

- 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.**

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

Vote: 6-0

Variance Granted

Yeas: 6 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, and DeVarti

Nays: 0

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

E-7 15-0783

ZBA15-014; 1304 Horman Court

Geoffrey Perkins is requesting Permission to Alter a Non-Conforming structure in order to construct an addition to the side of an existing non-conforming structure.

Chris Cheng provided the following staff report:

Summary:

Gina and Peter Katz are requesting permission to alter a non-conforming structure in order to expand the non-conforming structure by constructing a building addition to the side of the existing non-conforming structure.

Description and Discussion:

The subject parcel is zoned R2A (Two-Family Residential District) and located on Horman Court, between Olivia and South Forest. The parcel is non-conforming for required lot size. The size of the parcel is 4,138 square feet and the minimum lot size is 8,500 square feet. The house was built in 1924 and is 1,470 square feet.

The petitioner would like to construct a 16 foot by 21 foot 2 inch two-story addition to the south side of the house. The existing house is non-conforming for the required rear yard setback. The required rear setback is 30 feet, the existing house is setback 10 feet and the depth of the lot is only 44 feet. The addition will be inset 1 foot from the existing rear wall for a rear setback to the new addition of 11 feet. The existing house is setback 8 feet 6 inches from the front property line which is conforming because this is based on front setback averaging of existing properties which makes the front setback approximately 8 feet. The addition will be inset 2 feet from the front wall of the existing house for a setback of 10 feet 6 inches to the new addition

A variance is not required because the new addition will not encroach any further into the front or rear setback than the existing house. The addition complies with the required side setback of 5 feet.

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.

The subject parcel is non-conforming for parcel size (4,138 square feet; required) minimum lot size is 8,500 square feet). The lot dimensions are 44 feet deep by 96 feet wide. The home was constructed before current zoning standards were in effect. The shallow depth of the parcel and required 30 foot rear setback results in a 14 foot deep buildable area. The depth of the parcel limits the area available for an addition to the rear or front of the house.

The proposed 16 foot by 21 foot 2 inch two-story addition will be set back 1 foot from the existing rear wall of the house and 2 feet from the front wall, the addition will comply with required side setbacks of 5 feet. The addition will be designed to be consistent with the existing design of the house. The expansion will allow the petitioner to improve their property while respecting the intent of the Zoning Ordinance. Staff does not feel that the requested variance would negatively affect any surrounding property. The subject house is located on a parcel in an area of houses with similar sized parcels and scale of structures.

QUESTIONS BY BOARD TO STAFF:

None.

PRESENTATION BY PETITIONER:

Geoff Perkins, representing Gina and Peter Katz, the new owners of the property, was present to respond to questions.

PUBLIC HEARING:

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

BOARD DISCUSSION:

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

**Moved by Zielak, seconded by Buonodono, in Petition ZBA15 014;
1304 Horman Court, 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.

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.

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

Vote: 6-0

Permission to Alter Granted

Yeas: 6 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, and DeVarti

Nays: 0

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

F UNFINISHED BUSINESS

F-1 [15-0784](#) Review of ZBA Rules and Procedures

Milshteyn said a few months ago he had explored the speaking time limits, and the City Attorney's office noted that the bylaws already had provisions for the Chair to limit the speaking time, so there was no need to amend that matter.

DeVarti said he remains concerned about member absences; he said without enough members it could mean an automatic no vote, which would be an inconvenience to the petitioner. He said it might merit looking into an excused absence procedure, noting that if people have to miss meetings, they shouldn't be on the Board. He said he is putting it out there because he feels it should be a requirement to attend.

Milshteyn said the lack of a quorum is rare and it was only the second time in the past five years, since he has been on the Board.

Moved by DeVarti, seconded by Zielak, that the ZBA Rules and Procedures be Approved by the Commission. On a roll call, the vote was as follows with the Chair declaring the motion carried.

Vote: 6-0

Yeas: 6 - Briere, Chair Milshteyn, Zielak, Carlisle, Buonodono, and DeVarti

Nays: 0

Absent: 3 - Lewis, Nichols, and Councilmember Westphal

G **NEW BUSINESS**

H **REPORTS AND COMMUNICATIONS**

15-0785 Various Correspondences to the ZBA

Received and Filed

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

(Please state your name and address for the record)

J **SPECIAL PRESENTATIONS**

Chair Milshteyn presented Zielak with a Certificate of Appreciation and thanked him for his time and commitment to the Zoning Board of Appeals.

DeVarti thanked him, adding it had been a pleasure to serve with him on the ZBA.

K **ADJOURNMENT**

Moved by Zielak, seconded by Briere, that the meeting be Adjourned at 7:45 p.m. On a voice vote, the Chair declared the motion carried.