



# City of Ann Arbor

301 E. Huron St.  
Ann Arbor, MI 48104  
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## Meeting Minutes Zoning Board of Appeals

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Wednesday, May 23, 2012

6:00 PM

City Hall, 301 E. Huron Street, 2nd Flr.

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### CALL TO ORDER

*Chair Kuhnke called the meeting to order at 6:00 p.m.*

### ROLL CALL

*Chair Kuhnke called the roll.*

**Present:** 7 - Wendy Carman, Chair Carol A. Kuhnke, Sabra Briere, Alex Milshteyn, Perry Zielak, Ben Carlisle, and Maureen Sertich

**Absent:** 2 - Candice Briere, and Erica Briggs

### APPROVAL OF AGENDA

**A motion was made by Milshteyn, seconded by Zielak, that the Agenda be Approved as presented. On a voice vote, the Chair declared the motion carried.**

### APPROVAL OF MINUTES

**12-0585** Zoning Board of Appeals Meeting Minutes of March 28, 2012

**A motion was made by Zielak, seconded by Chair Kuhnke, that the Minutes be Approved by the Commission and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.**

**12-0730** Zoning Board of Appeals Meeting Minutes of April 25, 2012

**A motion was made by Zielak, seconded by Carman, that the Minutes be Approved by the Commission and forwarded to the City Council. On a voice vote, the Chair declared the motion carried.**

### APPEALS AND ACTIONS

**12-0740** ZBA12-006; 422 Detroit Street  
Deli Partners LLC is requesting one variance from Chapter 47 (Streets). A variance of 9 feet in order to permit a driveway opening 15 feet wide, 24 feet is the minimum width required. Petition Withdrawn

*Item Withdrawn by the petitioner.*

*Enter S. Briere*

**12-0732** ZBA12-008; 984 Broadway Street

Detroit Edison (DTE Energy) is requesting one variance from Chapter 62 (Landscape and Screening) Section 5:603 (C). A proposal to provide an 8 foot wide (15 feet required) Conflicting Land Use Buffer on the subject site with the remaining 7 feet and required vegetation to be provided on the adjacent Public Park property.

**A motion was made by Councilmember Briere, seconded by Zielak, that the Resolution/Public Hearing be Postponed. On a voice vote, the Chair declared the motion carried.**

12-0731

ZBA12-007; 841 Broadway Street  
Michigan Consolidated Gas Company is requesting one variance from Chapter 63 (Storm Water Management and Soil Erosion and Sedimentation Control). The variance will permit onsite environmental remediation and Natural Features modification without providing additional onsite storm water management system as required by City Code.

*Kowalski gave the staff report.*

**DESCRIPTION:**

*The parcel is zoned M1 (Limited Manufacturing) and is located on the north side of Broadway in between the Huron River and the Ann Arbor Railroad. This location is the site of a historical coal gasification plant that operated through the early part of the 20th century. During that time, the soils became contaminated. The gasworks operation ended decades ago and Michcon removed many of the older structures and eventually replaced them with a service center in the middle to latter part of the 20th century. Over the past few years, Michcon has removed all of the structures on the site. The access drive, parking lots, and building pads remain.*

*As part of an ongoing environmental remediation of the site, MichCon is proposing to remove contaminated soil in some locations of the site, replace the soil with clean fill, and construct a containment cap along the Huron River. The work will require the removal of landmark trees along the riverbank in order to remove contaminated soil underneath them. Some of the work will take place in the Huron River where the petitioner will remove contaminated soil. This work and the resulting disturbance to the protected Natural Features (landmark trees, river buffer) on the site require approval from the Planning Commission. The proposed work also triggers the need for a storm water detention system to be provided on the site. The petitioner has indicated that because contaminated soil will remain on the site after remediation, installing a new detention system will be harmful to groundwater and the Huron River. The petitioner could avoid providing detention systems if they remove the impervious surface on the site. However, removing impervious surfaces will allow contaminants in the soil to leach into the Huron River and ground water. The petitioner is proposing that the existing impervious surfaces continue to provide a cap on top of the contaminated soils that will remain after this remediation. The plan proposed by MichCon is consistent with Part 201 of the Michigan Natural Resources and Environmental Protection Act*

*On May 15, 2012 the Planning Commission granted approval of the natural features disturbance plan contingent upon a variance being granted by the ZBA for providing required storm water detention on the site.*

*The variance request has been reviewed and is supported by staff responsible for environmental and storm water review. Planning staff feels that the request meets the general purpose and intent of the storm water section and storm water is being provided to the maximum extent possible according to the rules of the WCWC.*

**STANDARDS FOR APPROVAL:**

*Chapter 63 (Storm Water Management and Soil Erosion Control and Sedimentation Control) 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 and Chapter 63, Section 5:566. The following criteria shall apply:*

*The Zoning Board of Appeals shall have the authority to interpret this chapter and may in specific cases grant variances to these requirements providing such variance is in harmony with the general purpose and intent of the requirements. The procedural requirements for appeals under Chapter 55 shall be applicable to appeals under this chapter. In addition to the procedures of Chapter 55, when variances are requested from the storm water management system section of this chapter, the applicant shall show that storm water management systems have been provided to the maximum extent feasible with the goals of meeting the rules of the WCWRC (Washtenaw County Water Resources Commissioner).*

**QUESTIONS TO STAFF BY THE BOARD:**

*Jerry Hancock, City of Ann Arbor Stormwater/Floodplain Coordinator, was present to answer any questions from the Board. He explained that City staff is in support of the remediation work on the Michcon site.*

*S. Briere asked where the water will reach the river.*

*J. Hancock said the site is relatively flat but it does slope towards the river.*

*S. Briere asked if we won't be trying to keep it out of the area where they are working.*

*J. Hancock explained that the areas where they are working are paved for the most part or compacted soil and they will restore the soils when they are done.*

*W. Carman asked if the motion needs to include verbiage stating that the variance only applies while these site plan conditions exist.*

*M. Kowalski said the verbiage, 'per submitted plans' would be all inclusive.*

*W. Carman said she didn't think so and wanted to include site conditions in the motion.*

*J. Hancock responded that if the site was deemed clean and new uses that included impervious areas were proposed, doing some infiltration for water quality improvements might be appropriate at that time.*

**PRESENTATION BY THE PETITIONER:**

*Shayne Wiesemann, Senior Engineer with DTE Energy, and Project Manager for the remediation work for the Michcon Broadway Service site reiterated statements made by M. Kowalski and J. Hancock, noting that this project is an important one for DTE as well as the City as it will allow for the remediation of the site and takes them one step closer to redeveloping the site into something that is beneficial and valuable for the City and the community.*

*S. Wiesemann thanked the Board for hearing their petition and praised M. Kowalski for his summation of their petition. He pointed out that this request is just one step in*

*the process and even after remediation there will still be contamination on site after they finish this phase. He said they want to determine the final end use for the property so they can right-size the final piece of the remediation.*

*He said that granting the variance it would be protective of ground water and surface water in the area, and after the site is remediated, a new site plan will be required to be submitted and approved by the existing City ordinances. He said that such site plan will fully comply with the Chapter 63 Storm Water Management and Soil Erosion and Sedimentation Control, so this phase is not the ultimate solution to the problem but an interim step to protect ground water and surface water quality while they continue their remediation of the site.*

*S. Briere asked if the footprint of the old plant is the same as the footprint of the impermeable surface.*

*S. Wiesemann said, yes, in most cases, it is. He pointed out a grassy area that holds contaminants that will be addressed, noting that in many ways the excavations will continue to improve groundwater quality at the site.*

*W. Carman asked the petitioner if adding the condition, 'until such time as any new site plan is approved' would be satisfactory.*

*S. Wiesemann said, yes, and he would also say that 'as a condition of the existing ordinance, any new site plan would need to go through the same process.*

*M. Kowalski said the suggested motion is clear that the variance is only for the environmental remediation, and any new site plan will have to go through the whole process.*

*M. Sertich asked how they will be handling the stormwater during the remediation process.*

*S. Wiesemann said they will have a City grading permit and they have addressed with the City what the controls will be, such as silt fencing, check dams if need be, and blocking off any storm sewers that are still connected, adding that they will take the normal precautions as part of any grading permit, which will be under the prevue of a certified stormwater operator that will be employed by the contractor. He said once the construction is complete and while the vegetation is being established the stormwater controls will remain in place, until they have the vegetation buffers that will act as a stormwater control. He said the banks on the site are quite steep in certain places and are eroded and they will be lessening the slopes so that future run-off from the site won't be creating erosional issues, adding that any erratic movements of the dam won't be creating the bank erosion that currently exists.*

*W. Carman asked what will happen with the contaminated soil that is removed.*

*S. Wiesemann responded that it will be taken to a type II landfill.*

*M. Kowalski explained that the stormwater controls during the remediation process was outlined on the site plan that was approved by the Planning Commission, which included a lengthy and thorough review process, as with all site plans, noting that it went through the City's soil erosion review and inspection as with all projects and the necessary controls are in place which include monitoring throughout the construction phase.*

*S. Wiesemann said that maybe part of the confusion might be the wording presented*

*that they are asking for a variance from the soil erosion controls, since they do anticipate full compliance with the storm water and soil erosion counter measure requirements of the City code.*

*A. Milshteyn asked how long the project would take.*

*S. Wiesemann responded two and a half months from mobilization of the project to completion, with anticipated construction to begin the first week in August and completion sometime in October.*

**AUDIENCE PARTICIPATION:**

*None*

**BOARD DISCUSSION:**

*B. Carlisle asked staff about possible other variance for the project.*

*M. Kowalski said there is only one variance needed for the storm water detention, since they will meet all other City codes on the soil erosion requirements.*

*M. Sertich asked staff about the submitted application from the applicant, regarding Proposed dimension: 'Use of existing on-site storm water management systems', and what those existing systems are. She also asked if there is any drainage system on site.*

*M. Kowalski said he believed the site is currently sheet flowing off the pavement, which is a type of storm water management. He said they are maintaining the existing current conditions.*

*S. Wiesemann said there is no detention on site, and at one time there were storm sewers and the DEQ was concerned about the storm sewers and ordered DTE to break the storm sewers, because they believed they were conduits, such that the contaminated ground water could reach the river. He added they complied with the DEQ's request.*

*M. Sertich asked what storm water requirements the petitioner would have to meet if the ZBA didn't grant the variance.*

*M. Kowalski said it would depend on the amount of impervious surface on the site, and given the amount presented, there are three items; First flush, Bank flow, and hundred year storm, and they would probably be required to provide a large detention basin or surface retention basins or underground pipes.*

**Motion made by W. Carman, seconded by S. Briere, in the case of ZBA12-007, 841 Broadway Street, that the Zoning Board of Appeals grant a variance from Chapter 63, Section 5:566, a variance to permit onsite environmental remediation and Natural Features modification without providing additional onsite storm water management system as required by City Code, until such time as any new site plan is approved, given the following findings of fact:**

**a. Installing new on-site storm water management that complies with the ordinance will have a practical difficulty involved in installing that and protecting the ground water and the river from the contaminants from the site.**

**b. These difficulties are more than a mere inconvenience and disrupting the surfaces would potentially expose us to even more contamination.**

c. The variance will help protect the ground water.

d. The property that has had this contamination for many years, since the early 1900's.

e. This is not a self imposed hardship.

f. The applicant has shown that storm water management systems have been provided to the maximum extent feasible by agreeing to cooperate with all the remaining rules as they do their de-contamination.

On a voice vote, the Chair declared the motion carried.

Variance granted.

**Yeas:** 7 - Carman, Chair Kuhnke, Councilmember Briere, Milshteyn, Zielak, Carlisle, and Sertich

**Nays:** 0

**Absent:** 2 - Briere, and Briggs

**OLD BUSINESS**

**NEW BUSINESS**

**REPORT AND COMMUNICATIONS**

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

**ADJOURNMENT**

A motion was made by Zielak, seconded by Councilmember Briere, that the meeting be Adjourned. On a voice vote, the Chair declared the motion carried.