



# City of Ann Arbor

## Formal Minutes

### Zoning Board of Appeals

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

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Wednesday, September 23, 2015

6:00 PM

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

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**A**      **CALL TO ORDER**

*Chair Milshteyn called the meeting to order at 6:04 p.m.*

**B**      **ROLL CALL**

*Milshteyn called the roll.*

**Present:**    6 -    Candice Briere, Alex Milshteyn, Nickolas Buonodono,  
                                 Evan Nichols, David DeVarti, and Kirk Westphal

**Absent:**     1 -    Heather Lewis

**C**      **APPROVAL OF AGENDA**

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

**D**      **ELECTIONS FOR VICE CHAIR POSITION**

**Nichols nominated Candice Briere for the Vice Chair position to the Zoning Board of Appeals, seconded by DeVarti.**

**Candice Briere accepted the position.**

**On a voice vote the vote was as follows, with the Chair declaring Candice Briere elected as Vice Chair.**

**E**      **APPROVAL OF MINUTES**

**[15-1185](#)**      August 26, 2015 ZBA Meeting Minutes with Live Links

**Moved by Buonodono, 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.**

**F**      **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.)

- F-1**      **15-1182**      ZBA15-021; 1512 Morton Ave  
Shawn and Karen Schaefer are requesting one side yard setback variance (R1D Zoning, Section 5:29) of 4 inches to allow a 2 foot 8 inch side yard setback for a building addition; 3 feet is required.

*Description and Discussion*

*The subject parcel is located at 1512 Morton, east of Lincoln, west of Baldwin. The parcel is zoned R1D (Single-Family Residential).*

*The request is discussed in detail below:*

*The existing single-story house is 1,606 square feet and was built in 1924. The house is setback 5 feet 11 inches from the west side property line and 11 feet 2 inches from the east side property line; the minimum required side setback is 3 feet. In summer of 2014 the petitioner completed construction on an enclosed porch on the southwest corner of the house. The permit as approved showed the porch at 3 feet from the adjacent property line. The porch was inspected and passed final inspection by the City of Ann Arbor in October 2014.*

*In the spring of 2015 a complaint was filed with the City regarding construction of the porch. The complaint was assigned a code case and follow up was conducted by City Staff. Through the course of the investigation staff requested a boundary survey from the home owner to verify construction according to plans. A boundary survey is considered very accurate and is not required for submission of building permits. The survey results indicated that while the porch complies with the required setback at the southwest corner, it encroaches 4 inches into the side yard setback at the northwest corner of the screened porch. While the line of the porch is straight, the reason for the difference is due to the original house being constructed at a slight angle on the lot. A stone wall lining the rear of the porch does encroach 8 inches into the side setback, however, per Chapter 55 (Zoning), Section 5:54 Required Open Space,*

*"Certain architectural features, such as cornices, eaves, gutters, and chimneys may project 2 feet into required open space." The required setback calculation is measured to the actual foundation of structures. Due to the limited encroachment, there is no habitable space located in the setback, and the majority of the porch conforms to the setback requirements.*

*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 parcel is 6,621 sq ft and is a conforming R1D lot for lot area. The parcel is conforming for lot width; required width is 40 feet, subject lot is 50 feet wide. The existing house was constructed in 1924 with the enclosed porch completed in 2014. The slight angle in the placement of the original house on the lot resulted in the encroachment into the setback. The construction was inspected and approved; however, Building inspectors are not surveyors and do not measure exact distances to property lines.*

*(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 variance is being requested in order to permit the owner to allow an enclosed porch to encroach a maximum of 4 inches into the side setback. If the variance is denied the petitioner will need to remove the side wall of the porch and re-construct the porch to comply with the required setback. The petitioner could also remove the porch completely and construct a patio on the ground in the setback up to the property line. Patios are not structures, and as a result, do not need to adhere to setback standards.*

*(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 encroachment varies from 0 to 4 inches maximum and should not affect the rights of the neighborhood property owners. The intent of setbacks is to protect the separation of structures in order to help protect health, safety and livability of property. Removal of the porch and reconstruction 4 inches over will not have any discernible impact on neighboring properties. A privacy fence exists between the subject property and the property immediately adjacent to the west.*

*(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 constructed in 1924 before existing zoning code requirements, but the existing house complies with required setbacks. A smaller screened porch could have been constructed without the need for a variance. The porch was planned for a three foot setback and was built and inspected according to approved plans. However, due to the construction of the original house at a slight angle, the final porch construction resulted in a side yard encroachment.*

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

*The requested variance will allow a small triangular corner of the screened porch, less than 5 square feet extend a maximum of 4 inches into the side setback. There will be no actual habitable space in this area, it is the corner of the wall that encroaches. Due to the angle of the house away from the west side property line, the requested variance is minimal.*

#### **QUESTIONS BY BOARD TO STAFF:**

*Nichols asked if there was a mistake made or if something like this might have gone unnoticed without someone requiring higher scrutiny post permitting.*

*Kowalski said, it would typically have gone unnoticed, since building staff inspects the building aspect and in this case, it passed all inspections. He explained that the building inspectors do not measure setbacks, so it is incumbent on the property owner and builder to build their 'porch' to the dimensions that were presented on their plans.*

*Nichols asked if Building Department staff ever suggest for builders to do a stake survey.*

*Kowalski said, yes they do, but since they are typically very expensive, they are not required.*

*Westphal asked for verification that a mortgage survey was not required when submitting this type of building permit and that the City's building permit process had been followed.*

*Kowalski said, that was correct.*

**PRESENTATION BY PETITIONER:**

*None*

**PUBLIC HEARING:**

*Shawn Schaefer, 1512 Morton Avenue, Ann Arbor, owner was present to respond to the Board's enquiries.*

*DeVarti asked whom their architect was.*

*Schaefer said it was Studio Z.*

*Nichols asked if City staff had advised them to do a stake survey given that their project would be so close to the boundary.*

*He said they did not; not until Kowalski contacted him to say that the City requested it, did it come up.*

*DeVarti asked when that was.*

*Schaefer said he believed it was earlier this year.*

*Kowalski agreed it was around March or April.*

*DeVarti asked if it was after the structure was built.*

*Kowalski said yes.*

*Westphal asked who had built and maintained the fence.*

*Schaefer said the fence was pre-existing when they purchased the property, and he isn't sure who is responsible for maintaining it. He said you can see in the plans that the front of the fence sits 1 foot 2 inches inside of their property line and then goes at an angle directly back to where the stake was, so it's on the property line in the back.*

*Westphal said from the narrative it would seem that it's not so much the floor area of the porch but the height. He asked if they had considered adding to the height of the fence.*

*Schaefer said he believes the maximum height of a fence without a permit is 6 feet in their district, and they applied for and received a permit for a 7 foot fence. He added that the permit expires today under the contractor who they originally pulled it under, which is Johnson Brothers. He said they plan to have their new contractor pull a new permit for exactly the same work, if the City permits them, adding they plan to build the new fence 1 inch on their side of the property line.*

*DeVarti said in walking the site, it seems that there was enough space to build the porch on the east side.*

*Schaefer said he doesn't know where the mistake was made, but it is obvious that there was a mistake made, since the survey shows that the porch is built 3.6 inches too close, and he now understands that. He noted that they followed all the legal processes required by the City and in some cases even more than that, in that they used a licensed architect, licensed contractor, and the City gave them final approval on the project. He said whether the mistake was made by Studio Z when they used the original mortgage survey in measuring their setbacks, or was it made when the machine came and dug the footers 3.6 inches too close. He said he can't say where the mistake was made, and it was not self inflicted, because they didn't do this to get an additional 3.6 inches, and it was not done intentionally.*

*Becky Fogel, 1510 Morton Ave, Ann Arbor said they had a wonderful relationship with their neighbor until the porch went up, and they had believed the porch was built too close to the fence which has had a huge impact on their home both inside and outside. She said in the pictures presented to the Board one can see that when someone is standing in their porch they are waist high and looming over them. She said when they turn on the two really bright lights their whole living and dining room light up, since the houses are really close already, and to build something that close has a tremendous impact. She said they did not do*

*a survey as it is very expensive. She said there is a sound issue, a light issue, and it could have been built very differently. She said they really tried approaching their neighbors about adding a taller fence, siding on the porch, shading of the lights and that didn't get anywhere. She said a 7-foot fence wouldn't do it; they would need to build a 10-foot fence and add siding to the porch to block the light. She said you can't just look at the lineal inches but the cubic inches it creates and the impact on them.*

*Norton Fogel, 1510 Morton Ave, Ann Arbor, was also present with his wife.*

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

**LIST OF EXHIBITS PRESENTED:**

*Drew Denzin, 1506 Shadford, Ann Arbor; Support*

*Joe Malcoun, 1500 Morton, Ann Arbor; Support*

*Norton and Becky Fogel, 1510 Morton Ave, 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 Westphal, in Petition ZBA15 021, 1512 Morton, 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 4 inches from the required side setback of 3 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.**

**BOARD DISCUSSION:**

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

**Moved by DeVarti, seconded by Nichols, to postpone taking action until the next ZBA meeting. On a voice vote, the vote was as follows with the Chair declaring the motion carried. Vote: 6-0**

**Yeas:** 6 - Briere, Chair Milshteyn, Buonodono, Nichols, DeVarti, and Councilmember Westphal

**Nays:** 0

**Absent:** 1 - Lewis

**G UNFINISHED BUSINESS**

**H NEW BUSINESS**

**I REPORTS AND COMMUNICATIONS**

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

*Norton Fogel and Beck Fogel, 1510 Morton Ave, Ann Arbor, reiterated their concerns with their neighbor's porch.*

**K ADJOURNMENT**

**Moved by Nichols, seconded by Councilmember Westphal, that the meeting be Adjourned at 7:15 p.m. On a voice vote, the Chair declared the motion carried.**

*Community Television Network Channel 16 live televised public meetings are also available to watch live online from CTN's website, [www.a2gov.org/ctn](http://www.a2gov.org/ctn), on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>).*

*Live Web streaming is one more way, in addition to these listed below, to stay in touch with Ann Arbor City Council and board and commission actions and deliberations.*



- *Video on Demand: Replay public meetings at your convenience online at [www.a2gov.org/government/city\\_administration/communicationsoffice/ctn/Pages/VideoOnDemand.aspx](http://www.a2gov.org/government/city_administration/communicationsoffice/ctn/Pages/VideoOnDemand.aspx)*
- *Cable: Watch CTN Channel 16 public meeting programming via Comcast Cable channel 16.*

*The complete record of this meeting is available in video format at [www.a2gov.org/ctn](http://www.a2gov.org/ctn), on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>), or is available for a nominal fee by contacting CTN at (734) 794-6150.*

*Alex Milshteyn  
Chairperson of the Zoning Board of Appeals*

*Mia Gale  
Recording Secretary*