



**APPROVED MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
July 28, 2010**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, July 28, 2010 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, A2, MI. The meeting was called to order at 6:00 p.m. by Chairperson Carol Kuhnke.

ROLL CALL

Members Present: (6) D. Gregorka, S. Briere, J. Carlberg,
D. Tope, C. Kuhnke & W. Carman (arr. @ 6:07 pm.)

Members Absent: (3) C. Briere, K. Loomis & One Vacancy

Staff Present: (1) M. Kowalski

A – APPROVAL OF AGENDA

A-1 - The Agenda was approved as presented.

On a VOICE VOTE – MOTION TO APPROVE – PASSED – UNANIMOUSLY

B - APPROVAL OF MINUTES -

B-1 March 24, 2010 – Moved by Tope/Seconded by Gregorka – No changes – Unanimous - **APPROVED**

B-2 April 28, 2010 – Moved by Tope/Seconded by S. Briere – No changes – Unanimous - **APPROVED**

B-3 June 23, 2010 – Moved by Carlberg/Seconded by Tope – No changes – Unanimous - **APPROVED**

C - APPEALS & ACTION

C-1 ZBA10-005 – 1020 Westaire Way

Larry Nisson is requesting Permission to Alter a Non-Conforming Structure and one Variance from **Chapter 55 (Zoning), Section 5:29**: a variance of 2 feet 6 inches for expansion of an existing residential structure into the front setback. *(25 feet is required.)*

Description and Discussion

The petitioner is requesting the variance in order to legally permit two small previously constructed additions (44 sq ft and 35 sq ft) to the front of the house. The house is 936 square feet (before the additions) and was built in 1956. The additions were constructed in approximately 2000 by the previous owner without permits and never finished. The petitioner would like to keep the additions and finish the interior space in accordance with all applicable City regulations. The house is non-conforming for the covered deck on the south side of the house which encroaches into the front setback of South Circle Drive. Aerial photos indicate the deck has existed for at least 20 years. The original front of the house was setback 26.9 feet

54 and the additions were constructed to extend 4.4 feet away from the front façade of the house.
 55 The additions encroach 2.4 feet into the Westaire front setback.
 56 If the front variance is approved, the structure will be consistent with some of the houses in the
 57 neighborhood. Although the additions extend into the front setback, they are minimal in total
 58 size (79 sq ft) and are supported by piers at the front of the house (one foot over the ground
 59 level). The additions provide architectural detail to the house and the front yard contains large
 60 trees and mature landscaping, this should minimize the impact to the surrounding
 61 neighborhood. The petitioner has submitted a letter signed by 19 neighbors in support of the
 62 variance request.

63

64 **Questions to Staff by the Board**

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66 D. Gregorka (To M. Kowalski) – Matt, are we basing the setback on an average? (Yes, the
 67 setback average on this one is about 25 ft. on this one). The existing addition space, although
 68 we're going back to make this official, how do we know what is existing and what was built
 69 without code? (The Building Official inspected this and said that it is in conformance with code
 70 – and this was caught when the current owner filed for a legitimate building permit, and would
 71 meet code from here out as well. This was caught when it was evaluated for that permit.)
 72 (The petitioner can comment later, but I believe the interior is only roughed out as well, and all
 73 future inspections on this work will have to be code compliant).

74

75 J. Carlberg – The petitioner states that removing this work would be difficult due to the original
 76 construction of the house. Can staff verify that? (M. Kowalski – I cannot).

77

78 **Presentation by the Petitioner**

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80 Mr. Larry Nisson, owner of this property was present to speak on behalf of the appeal. He
 81 stated that he had hired an architect to look at this and that this can be completed in
 82 compliance with the building code. "I've hired him to do the drawings and make this
 83 compliant." When I purchased the home, I visited the neighbors and they stated that for the
 84 last ten years the house had been an eyesore on the block. The former owner started this,
 85 never finished it, and the neighbors stated that they would like to see it finished.

86

87 The home is a modular type home, and the contractor stated that this will cause problems in
 88 trying to disassemble this from the original structure. (The petitioner couldn't substantiate
 89 exactly what that entailed).

90

91 **Questions to the Petitioner by the Board**

92

93 D. Tope – When did you purchase the property? (May or June of this year. When I looked at
 94 the neighborhood, I noticed another home two doors down that has a portion that sticks out a
 95 foot further than mine, and I assumed incorrectly that this was ok).

96

97 **Public Comment** - None. The chair mentioned that there were two pages of signatures from
 98 neighbors which support the petition.

99

100 **Discussion by the Board**

101

102 D. Gregorka – This is tough – he ended up with this situation because he did the right thing
 103 and submitted for a legal permit and then found that there was an encroachment into the front
 104 setback, which is pretty minimal. This is just information for discussion.

105

106 D. Tope (To M. Kowalski) - Did you do the hypothetical exercise that "if the petitioner had
107 come to you as if this addition didn't exist, and you based it on the current request of adding
108 this portion, would you have suggested that this had a unique situation and/or had a basis for
109 qualifying for a variance? (M. Kowalski – I did not)

110
111 D. Tope – Do you have any prior experience with other people who have come before the ZBA
112 you with similar cases?

113
114 M. Kowalski – No. Every case is unique. If you look at the neighborhood, it's a minimal
115 encroachment. If you say, "is it necessary to the functionality of the home? No, probably not,
116 but it's there now and the parcel itself is not that unique.

117
118 D. Tope – Would the practical difficulty standard have any impact on a petition to add these
119 structures? (Yes, it's one of the standards). Substantial justice being done? This one bothers
120 me the most. All of the people that come before us with a request to be able to build into the
121 front setback have to meet a practical difficulty – have to meet a uniqueness standard – can't
122 be judged on financial profit or loss. My quandary in this is that substantial justice is not being
123 met as I don't see any of the standards that we use in approving requests like this.

124
125 C. Kuhnke – I'll draw up some comments without signaling that I actually support this, as I
126 haven't decided yet, but this is a modest, small house that is set toward the back of the lot, and
127 the most practical place to add on is in the front setback. It is a minimal encroachment, and
128 according to the applicants contractor, it would ruin the integrity of the home to remove this, so,
129 and this is one of the things that we would have discussed, had he not built it yet.

130
131 D. Gregorka – (To M. Kowalski) – Do you guys go out and measure this? (No. We use
132 averaging and GIS aerial photos.

133
134 S. Briere – I looked at the subdivision, and want to ask staff if these are all modular homes? (I
135 didn't look at that). Due to the shape of the homes on the aerial view, it would imply that it
136 started out as a neighborhood that started out as small rectangular homes that have been
137 altered at some point. If that's the case and we're talking about substantial justice, we would
138 need to know that.

139
140 J. Carlberg – This neighborhood has considerable variety which would support the statement
141 that this is not out of line with the rest of the neighborhood. I find that someone buying this and
142 having this problem in place is a practical difficulty to change what is in place. I think that
143 someone having to undergo the cost of removing it is a substantial injustice. We know that
144 people are staying in their homes more and more and trying to make them livable, so I think
145 this is quite a challenge in this neighborhood of small homes.

146
147 D. Gregorka – Mentioned that due to the fact that the Board does not have a full compliment of
148 members this evening, that the petitioner will need five affirmative votes out of six to pass the
149 variance. In the past, we have offered the option to the applicant to table this until the next
150 meeting when there may be additional members present.

151
152 D. Tope – Stated that she is interested in the comments made by Sabra Briere – substantial
153 justice - did others get variances for the same type of thing in the past? Also, this is a corner
154 lot, and this is what corner lot rules do to small houses on small lots – they restrict the ability to
155 do exactly what Jean talked about – make your home livable.

156
157 W. Carman – So I'm troubled by the thought that we would say that a small house on a corner
158 lot deserves variances by virtue of the zoning itself -- that is exactly what we're not supposed

159 to do. We are supposed to look at the lot and say 'there is something about this property that
 160 makes it unusable.' That isn't true. If they had come to us without this being built, we wouldn't
 161 have approved it. I'd like to explore giving them a permission to alter a non-conforming
 162 structure rather than a variance.

163
 164 C. Kuhnke – And this would put them into virtually the same place as most of the city – that the
 165 property becomes non-conforming. (*Further Discussion by the Board regarding this issue*).

166
 167 **MOTION**

168
 169 Moved W. Carman, Seconded by D. Gregorka, **"In the case of ZBA10-005, 1020 Westaire
 170 Way, that the Zoning Board of Appeals grants Permission To Alter a Non-Conforming
 171 Structure in that the alteration complies as nearly as practicable with the requirements
 172 of the Zoning Chapter and the following finding of facts:**

- 173
 174 1. The additions are minimal in total size, and due to the original setback, the
 175 additions encroach a maximum of 2 ½ feet into the front setback;
 176 2. The alteration will not have a detrimental effect on neighboring property;
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 178 3. The structure will be consistent with some of the houses in the neighborhood and
 179 although the addition extends 79 feet into the front setback, the addition provides
 180 architectural detail to the house and has been supported by nineteen neighbors,
 181 per attached plans)

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 183 **On a Voice Vote – MOTION TO APPROVE – PASSED – UNANIMOUS**
 184 ***Permission to Alter a Non-Conforming Structure - Approved.***

185
 186 **C-2 ZBA10-006 – 509 North Ashley Street**

187
 188 David C. Crouse is requesting one variance from **Chapter 55 Section 5:28** (R1C Single-
 189 Family) of 2 feet 6 inches from the side setback of 5 feet to permit construction of a carport
 190 addition 2 feet 6 inches from the rear property line. (*** This petition was dismissed in March
 191 2010 due to no petitioner being present at the meeting. Per the Rules of the Zoning Board
 192 of Appeals, the petition was dismissed and could not be re-heard for 4 months.*)

193
 194 **Description and Discussion**

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 196 The petitioner is proposing to construct a 336 square foot unenclosed carport with roof deck
 197 above. The roof deck will not be enclosed and will be accessed through a proposed door on
 198 the second floor. The carport will be eight feet tall attached to the house on one side and
 199 supported by 4 posts on the other side. The carport will also provide cover to the side door of
 200 the house. According to Chapter 55, 5:59, a carport is an accessory building and is not
 201 permitted in the required side open space. The proposed carport will extend 14 feet from the
 202 house and will result in a two foot 6 inch side setback, requiring a variance of two feet six
 203 inches from the site setback requirement of 5 feet. There is 16 feet 6 inches in between the
 204 house and the side property line.

205
 206 The requested variance is minimal in area and will have a minimal impact in the required side
 207 yard. In addition, Chapter 55, Section 5:54(c) does permit certain architectural features such
 208 as eaves to project two feet into the required open space. The petitioner is requesting 2 feet 6
 209 inch variance from the five foot side setback requirement in order to allow placement of the
 210 posts within the required setback.
 211

212 **Questions to Staff by the Board**

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214 D. Gregorka – If petitioner so chose, he could build a detached garage up to the property line?
 215 (No, it would have to be 3 feet from the property line). So if the carport weren't attached, he
 216 would need a 6" clearance? (Yes).

217

218 **Presentation by the Petitioner**

219

220 Mr. David Crouse was present to speak on behalf of the petition and explained the need for the
 221 carport and the hardships associated with the property.

222

223 **Questions to the Petitioner by the Board**

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225 D. Gregorka – Have you spoken to any of your neighbors about this? (Yes, and all are in
 226 support with the exception of the home next door which is condemned and we could not
 227 contact the owner).

228

229 The chair once again notified this petitioner that there are only five board members present,
 230 and a unanimous vote would have to take place in order to approve the request. The
 231 petitioner had no objection to finishing the hearing. Chair read 4 letters of support.

232

233 **Public Comment** - None.

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235 **Discussion by the Board**

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237 D. Gregorka - Felt that the structure was a bit larger than it needs to be. (Petitioner stated that
 238 there are window wells that stick out two feet from the home, and the posts to the structure
 239 have to be positioned this way.)

240

241 W. Carman – I understand he would like to have this, but I don't see the hardships, nor does it
 242 meet the standards and I don't think it is even the minimum request.

243

244 S. Briere – Stated that due to the drive configuration (angular) is the reason for the request. Is
 245 there a way to economically address that issue? (M. Kowalski – with the basement window
 246 wells being there, there is no shortcut for what he needs). (*Additional discussion*).

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248 **MOTION**

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250 Moved D. Gregorka, Seconded by D. Tope, "In the case of ZBA10-006, 509 North Ashley
 251 Street, the Board grants a variance of 2' 6" from the required side setback of 5', per
 252 Chapter 55, Section 5:28. The alteration complies as nearly as practicable with the
 253 requirements of the Zoning Chapter and the following finding of facts and the attached
 254 plans:

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- 256 1. The alleged hardships are not peculiar to the property and result from
 257 conditions which do not generally exist throughout the city;
- 258 2. The alleged hardships or practical difficulties or both, which would result from
 259 a failure to grant a variance do not include substantially more than a mere
 260 inconvenience or inability to gain a financial return;
- 261 3. The variance does not significantly affect neighboring properties, supported
 262 by letters from neighbors;
- 263 4. The circumstances of this particular request are self-imposed;

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5. The variance request is not the minimum request possible to achieve use of the structure.

On a Voice Vote – MOTION TO APPROVE – FAILED – UNANIMOUS
Request for variance – Denied.

D. OLD BUSINESS –

C. Kuhnke – At our Organizational meeting last month we amended our rules, and the rules state that a majority vote of the members must vote after a period of thirty days, but we don't have those rules in front of us.

D. Tope – Why are the amended rules not here?

M. Kowalski – They are in the attorney's office for review.

C. Kuhnke – Why does the attorney get to review our rules? (M. Kowalski – It's standard procedure. They have to make certain that they don't violate any law, etc.)

E. NEW BUSINESS - Open discussion regarding past variances.

W. Carman – Regarding the Zoro Project, we did meet and there is a public meeting on August 4th. Anyone can attend that meeting and make comments.

F. REPORTS & COMMUNICATIONS – None.

AUDIENCE PARTICIPATION – GENERAL – None.

ADJOURNMENT

Moved by D. Gregorka, Seconded by D. Tope “that the meeting be adjourned.”

On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS

Adjournment – 7:07 p.m. (Submitted by: Brenda Acquaviva, Administrative Support Specialist V – Zoning Board of Appeals)



Carol Kuhnke, Chairperson

12/15/10
Dated ZBA Minutes

Kathryn L. Loomis,
Vice Chair