



**APPROVED MINUTES OF THE REGULAR MEETING OF  
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR  
October 28, 2009**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, October 28, 2009 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: (8) J. Carlberg, C. Briere, D. Tope, D. Gregorka, W. Carman, K. Loomis, C. Kuhnke and S. Briere.

Members Absent: (1) One Vacancy

Staff Present: (2) M. Kowalski and B. Acquaviva

**A – APPROVAL OF AGENDA**

A-1 Without Opposition, the Agenda was Approved as Presented.

**B - APPROVAL OF MINUTES**

B-1 Draft Minutes of the 2009-06-24 Regular Session

Moved by D. Tope, Seconded by J. Carlberg "To approve the minutes of the June 24, 2009 Regular Session as Presented."

**On A VOICE VOTE – MOTION TO APPROVE – PASSED - UNANIMOUS**

**C - APPEALS & ACTION**

**C-1 ZBA09-005 – 1231 BALDWIN AVENUE**

Ellen Rabinowitz and David DeVarti are requesting one variance from Chapter 55(Zoning) Section 5:29: a reduction of 2.8 feet for expansion of an existing residential structure into the front setback; 25 feet is required.

**Description and Discussion**

The parcel is zoned R1D (Single-Family) and is located south of Wells across the street from Burns Park.

The petitioner is proposing to construct a 50 square foot covered front porch addition to the existing single-family house. The house currently is setback 26 foot 10 inches from the front property line and has an existing 20 square foot front porch which is not covered and extends into the front setback. The petitioner wishes to add 30 square feet to the porch platform and cover the entire porch to obtain a more useable front porch. Once the front porch is covered it will not be permitted to be located within the front setback. The total porch area within the setback will be 22 square feet. The roof of the porch will not be supported by columns, but will be supported by brackets from the front of the house.

54 Ellen Rabinowitz and David DeVarti were present to speak on behalf of the appeal. They  
55 stated that they have a small porch that they want to expand the porch and wish to put a roof  
56 over it so that they can utilize that porch. Among the things they want to share is that the  
57 contractor is building a foundation for the porch and they will be using that foundation to help  
58 create an additional room under it in the basement, but were informed by their contractor that  
59 the room could not be used due to water infiltration if the porch were not covered.  
60

61 (Mr. DeVarti passed out additional paperwork. Ms. Rabinowitz also stated that they live across  
62 from Burns park, they are on great terms with the neighbors and they submitted additional  
63 letters of support. Mr. DeVarti stated that this Burns Park neighborhood has a lot of activity  
64 and that they like to enjoy the neighborhood and a porch would allow them to do that. He also  
65 stated that there were several other homes that have the same type of porch and that it is not  
66 out of context with the neighborhood.  
67

### 68 **Questions to Staff by the Board**

69  
70 D. Gregorka – When the porch is finished, what will the finished dimensions be? (Rabinowitz –  
71 30 square feet finished, 21 ½ square feet currently). I was looking for the dimensions, not the  
72 square footage. (Rabinowitz 10 feet by 5 feet.)  
73

74 D. Tope – Ten feet across and five feet extending out? (Rabinowitz – Yes.)  
75

76 D. Gregorka – Then the porch will be a bit smaller than that. (Correct.)  
77

78 W. Carmen – It only encroaches 2 feet, 2 inches according to your plan. (Rabinowitz – Into the  
79 setback. The current porch extends into the setback currently, and from the house to the end  
80 of the porch, but the setback will be the same.) (*Mr. Devarti explained the color coded*  
81 *drawings that were submitted.*)  
82

83 C. Kuhnke – So the new porch will not extend out any further into the front setback than it  
84 already does – you're just expanding the length of it along the house. (Yes. We could do that  
85 without a roof – but with a roof, it has to comply.)  
86

87 W. Carman – Does the roof extend out further than the porch? (Kowalski – From the elevation  
88 it extends a bit, but roofs are allowed to extend a bit farther than the actual foundation.) How is  
89 it 10 x 5 and only 22 square feet sticks out and encroaches based on that drawing. Maybe it's  
90 not drawn to scale? (Kowalski – Yes, I believe the drawing was reduced. The dimensions are  
91 accurate, but the drawings are off.)  
92

93 D. Gregorka – (To M. Kowalski) – We've talked about the difference between a stoop and a  
94 porch. Can you explain the difference? (We usually defer to the Building Official. What is  
95 normally allowed is – whatever is minimal for the house for ingress and egress is a stoop,  
96 which is basically what they currently have. You can't fit a chair on there or much of anything  
97 else. There are other dimensions that the Building Official goes by as you have to have  
98 minimal dimensions for accessibility. You have to be able to open the door without backing up  
99 over the steps, and those are the minimal allowable for a stoop.)  
100

101 J. Carlberg – Covering the porch is an interesting concept. When you think of 'covered' porch,  
102 you think of columns, etc., and this one doesn't do that. Are there any other definitions that  
103 would help describe that?  
104

105 M. Kowalski – The code simply says a "covered" porch. This is a sort of "hybrid," as it's  
106 supported by brackets and not columns, but it is a covered porch just the same.

107 D. DeVarti – One of the reasons that we wanted to bring it out from the building as opposed to  
 108 posts as we thought that one of the purposes of the Zoning Code was to minimize the massing  
 109 impact and not have a structural component that someone could eventually add screening to  
 110 or windows to, and have a structural intrusion.

111  
 112 **Questions to the Petitioner by the Board** – *(Covered in discussion as one issue under*  
 113 *“Questions to Staff”)*

114  
 115 **Public Comment** - None.

116  
 117 C. Kuhnke – Read the letters seven letters of support for this appeal into the record.

118  
 119 **Discussion by the Board**

120  
 121 D. Tope – If this variance is granted, the roof is placed – anyone down the road could put  
 122 pillars up, enclose it, and the variance is for the encroachment. What would keep someone  
 123 from enclosing this and making it habitable space? The variance goes with the land.  
 124 (M. Kowalski – That would be correct. They are establishing their front setback.)

125  
 126 *(Discussion amongst the Board regarding this being filled in later and made habitable space*  
 127 *and how to avoid that possibility).*

128  
 129 D. Gregorka – I feel that the petitioner was responsible about the request. They could have  
 130 come in with a request for the whole length of the front. This is equivalent or smaller than most  
 131 of the neighboring properties, and I'll support it.

132  
 133 D. Tope – I wanted a stipulation in that this could not be enclosed later on and that was  
 134 included in the motion, so I'll support it.

135  
 136 K. Loomis – I would second those comments and add that Planning Commission and City  
 137 Council representatives here tonight would consider minor changes to the ordinance to allow  
 138 covered, unenclosed front porches (up to 5 feet) in some of these neighborhoods

139  
 140 **MOTION**

141  
 142 Moved by D. Gregorka, Seconded by D. Tope, **“In the case of ZBA09-005, 1231 Baldwin**  
 143 **Avenue, that based on the following findings of fact and in accordance with the**  
 144 **established standards for approval, the Zoning Board of Appeals hereby GRANTS a**  
 145 **variance Chapter 55 Section 5:29 (Single-Family Residential) of 2.8 feet from the**  
 146 **required front setback of 25 feet to permit construction of a front porch building**  
 147 **addition, per submitted plans, provided the porch is never screened or enclosed.**

148  
 149 a) **This is a very typical condition in this neighborhood.**

150 b) **There is a practical difficulty associated in that the overhand will assist in**  
 151 **keeping water out of the basement under the porch.**

152 c) **There is strong neighborhood support.**

153 d) **This is a minimal request in size and structure.**

154 **On a VOICE Vote – MOTION TO APPROVE – PASSED – UNANIMOUS**

155

156 **C-2 ZBA09-006 – 913 EAST HURON STREET**

157  
158 **Administrative Review, Section 5:86, Use Non-conformance**

159 Scott Munzel is requesting Zoning Board of Appeals approval in order to re-establish a non-  
160 conforming use as described in Chapter 55, Section 5:86(1)(d).

161  
162 **Description and Discussion**

163  
164 The house is located at 913 East Huron Street in the Old Fourth Ward Historic District and is  
165 zoned R4C (Multiple-Family). The subject lot is extremely small and the total area measures  
166 only 3,038 square feet; the minimum lot area required for a R4C zoned lot is 8,500 square feet.  
167 The house is also non-conforming for both side and rear setbacks. There is one non-  
168 conforming parking space located in the front open space; historical photos indicate this space  
169 has been established since at least 1964.

170  
171 The house was last inspected as a rental unit in October of 1993 and has been monitored as  
172 vacant ever since. At the request of the petitioner, the house was inspected in August 2009 by  
173 a City housing inspector, and she has confirmed the house is still vacant. The inspection also  
174 revealed that there is one 4-bedroom apartment on the first floor and a 10 bedroom rooming  
175 house on the second and third floors. The house has been issued certificates of occupancy  
176 prior to 1993 that have verified the historical multiple-family use. The total number of units and  
177 bedrooms combined with the small lot size make multiple-family uses non-conforming on this  
178 parcel.

179  
180 The Zoning Ordinance states that a non-conforming use shall not be re-established after  
181 discontinuance for a period of at least one year. The zoning administrator has ruled that  
182 according to the zoning code, the house can only be used as a single-family  
183 house with a maximum of six unrelated people. The petitioner would like to reestablish the  
184 previously existing non-conforming multiple-family use.

185  
186 **Questions to Staff by the Board**

187  
188 W. Carman (To M. Kowalski) – So the latest certificate of occupancy was 1987. The house  
189 was sold in 1992. It actually had a C of O in 1993, but you didn't include it in our packet?  
190 (Kowalski – Our records do indicate a C of O in 1993, but no, we didn't include that in your  
191 packet. The information you have was submitted by the petitioner.)

192  
193 C. Kuhnke – Informed the petitioner that one of the board members has another commitment  
194 at 7:00 p.m. and would be leaving early. If you want to maximize your votes, you should have  
195 your presentation done prior to that time. (S. Munzel – Thanks for that information.)

196  
197 **Petitioner Presentation**

198  
199 Mr. Scott Munzel, Attorney on behalf of the owner was present to speak on behalf of the  
200 appeal. He introduced Betty Hoffman, daughter of the owners of this home, owned by Betty  
201 and Hebert Jones. As Mr. Kowalski stated, this is an appeal of the interpretation of the Zoning  
202 Administrator that 913 East Huron Street has lost its Non-Conforming status. This is  
203 somewhat an unusual case, and I'm not certain how often you get these, but in my experience,  
204 it's not that common. Mr. Munzel outlined information about the home and area which was  
205 also covered in the staff report and the pictures that he submitted in his application.

206  
207 This has previously been used as a rooming house and has always been used for multi-family  
208 use. On city microfilm, I found evidence of use as a rental from 1959 through 1997.

209 In 1987, the Certificate of Occupancy (known herein as "C of O") was for 13 bedrooms. The  
 210 use itself is conforming – it is zoned R4C. The reason it's non-conforming is due to the size  
 211 structure and the lot are smaller than what would be permitted. It has always been  
 212 successfully rented in the past. Mr. Jones purchased this property as an investment; he  
 213 always managed it. He had some health problems which prevented him from managing the  
 214 property so it has been unoccupied.

215  
 216 Ms. Hoffman's son lived there a few years ago. He was in charge of managing it and renting it  
 217 out, but that proved to be unsuccessful, so it has been unoccupied for the last few years.  
 218 Basically, our argument is somewhat of a technical/legal argument. The state law in Michigan  
 219 states that "Notwithstanding the language of the Ann Arbor city zoning ordinance, which is  
 220 similar to many ordinances, you have to have two elements before you lose your non-  
 221 conforming status":

- 222 1. There has to be some kind of act or omission by the owner that manifests a  
 223 decision to abandon the non-conforming use, AND
- 224 2. There has to be an intent to abandon the non-conforming use.

225  
 226 The court has also talked about how that standard is fairly strict, in order to protect the property  
 227 rights of people, notwithstanding the typical language encouraging the elimination of non-  
 228 conforming uses. While the property has been vacant, the Jones' never had an intent to  
 229 abandon its use as a multi-family property. They have always rented it as such, and there was  
 230 a hope that Mr. Jones would recover and begin active management. He has not fully  
 231 recovered, and as I mentioned, having his grandson manage it didn't work out either. They  
 232 have always paid the taxes on it, no matter whether it was rented or not.

233  
 234 We believe that they have never intended to abandon this building for this use and contend  
 235 that they should be able to use the property as it historically has been. It's not sensible to use  
 236 that house as a single family home. It is a huge house, completely constructed inside for  
 237 purposes of rental. Using this as a single family home wouldn't eliminate any of the non-  
 238 conformities anyway. Mr. Kowalski failed to mention the letter from a neighbor that was sent  
 239 in. This is essentially a woman who owns the property to the east and she's unhappy with the  
 240 state of the property (which does need work). The Jones' have it up for sale and don't want to  
 241 make the investment to change it, but allowing the reuse of the property would only speed up  
 242 the transition to a viable structure.

243  
 244 This lot is small but it is in the old part of Ann Arbor. Most of the homes in the area are the  
 245 same size and have the same non-conformity. Yes, the lot is small and the building fits on it  
 246 quite tightly, but not an unusual condition for this part of town.

#### 247 **Questions to the Petitioner by the Board**

248  
 249 W. Carman – The city records show that the house was sold at the end of '92 and somehow  
 250 they got it back recently. Some, if not all of that time, it was vacant. If at some time during that  
 251 period someone was living there, they didn't obtain a C. of O. since then and you haven't  
 252 presented any evidence that they were trying to rent it. We haven't seen any ads or any  
 253 substantiation of that claim. Previous to you (Mr. Munzel) being on this board, we had a case  
 254 very similar to this, and I don't think that you've shown any evidence that they didn't intend to  
 255 abandon it.

256  
 257 Can you talk about the sale of this house? That's a pretty long time to pass in which this was  
 258 not in their name.

262 S. Munzel – They sold the house on land contract and I don't recall the name of the gentleman  
263 who purchased it on a land contract. (*B. Acquaviva – Records show that it was purchased by*  
264 *Zaki Alawi during that time, and that Mr. Jones was sent a letter in March of 2008 stating that*  
265 *this was possible rental property and needed to be registered with the City of Ann Arbor.*)  
266

267 The land contract was forfeited in 1993 and the house reverted back to the Jones' in 1994. I  
268 would say that Mr. Jones had numerous health problems.  
269

270 W. Carman – I'm confused. The city records don't show him owning it between 1993 and  
271 2004. (S. Munzel – I don't know why that would be. I didn't check with the register of deeds.  
272 Typically, when you buy on a land contract, there is no deed recorded. I could look into that,  
273 but those offices are closed.)  
274

275 So for ten years they sent the tax bills to someone who didn't own the property? You're telling  
276 me that they sold this to some other guy for one year, he defaulted and they got the property  
277 back? (Mr. Munzel – He had it for three years and forfeited the land contract. Do you know  
278 who it said was getting the tax bills?)  
279

280 So they didn't have a certificate of occupancy, so they rented it anyway? (S. Munzel – If you  
281 look at the C of O records, they skip. You don't have to have one every year. There are five C  
282 of O's issued every 5 to 6 to 7 years in the records? (*Staff Note: All C of O's' are re-inspected*  
283 *and reissued or denied every 2 ½ years!*). The last one I found was in 1987, but that doesn't  
284 mean you can't occupy the building.  
285

286 D. Gregorka – To follow up on Wendy's question, you said there was a grandson living there  
287 for two years? (S. Munzel – Not certain how long). But during that period, it was his job to rent  
288 it and he just lived there and never rented it? (Yes. He was supposed to manage and rent it to  
289 other students and it bogged down and he made some repairs, but was never able to rent it  
290 out.) You have an affidavit from the owner saying they never had trouble renting it, so, he tried  
291 for two years and didn't rent it? (The affidavit is from the owner speaking to her years of  
292 renting the property. The grandson was in there then and I didn't talk to him about what he did  
293 to rent it.)  
294

295 S. Munzel – When city inspector Fulton walked through the house, she walked through with  
296 me and the real estate agent, the question is, what do you do with a house that has 15 rooms  
297 and 3 kitchens and 5 bathrooms in it, and the city says you can have 6 people in there? We  
298 wanted to see what the city inspector had to say, and she said "This looks great to me, I don't  
299 think you need anything from the ZBA, I think it's a ten unit rooming house and a four bedroom  
300 apartment." That doesn't quite fly across different departments.  
301

302 D. Gregorka – That's because you didn't ask someone who was qualified to answer the  
303 question. Why don't you ask the refuse collector what he thinks? You need to ask the people  
304 in charge. (*Note: There were code complaints on file with the city that people were illegally*  
305 *occupying/renting the home and storing items inside in 2008.*)  
306

307 J. Carlberg – Would you agree that this probably hasn't been rented for at least ten years? If  
308 their last C of O was ten years ago, then no one has actually legally been living there.  
309 (S. Munzel – That could be, but again, the key test under the state law is your 'intent' to  
310 abandon a non-conforming use.  
311

312 C. Kuhnke – How would that 'intent' be demonstrated if not by a ten year vacancy? (S. Munzel  
313 – There would be a variety of ways, but I would say that they bought this property as an  
314 investment property, they've continued to pay taxes on it as if it were a multi-family building.

