



**APPROVED MINUTES OF
THE REGULAR MEETING OF THE
ZONING BOARD OF APPEALS
OF THE CITY OF ANN ARBOR
February 28, 2007**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, February 28, 2007 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

- I. **CALL TO ORDER** - The meeting was called to order at 6:05 p.m. by Chairperson Carol Kuhnke.

II. **ROLL CALL**

Members Present: (8) C. Kuhnke, R. Emaus, K. Loomis, D. Tope,
C. Carver, D. Gregorka, W. Carman and C. Briere

Members Absent: (1) R. Suarez

Staff Present: (4) M. Lloyd, K. McDonald, M. Kowalski and
B. Acquaviva

III. **APPROVAL OF MINUTES**

Approval of Draft Minutes of the December 20th, 2006 and January 24th, 2007 Regular Sessions.

Moved by D. Gregorka, Seconded by C. Carver, **“that the minutes of the December 20th, 2006 Regular Session be approved as presented.”**

On a VOICE VOTE – MOTION PASSED - UNANIMOUS

Moved by K. Loomis, Seconded by D. Gregorka, **“that the minutes of the January 24th, 2007 Regular Session be approved as presented.”**

On a VOICE VOTE – MOTION PASSED - UNANIMOUS

IV. **APPEALS & ACTION – UNFINISHED**

2007-Z-002 – 1108 Mixtwood.

Request from Petitioners for a 90-day extension – GRANTED administratively with permission from the Zoning Board of Appeals.

The Chair asked if anyone from the public would like to comment on the 90-day extension granted to this appeal - there were none.

V. **APPEALS & ACTION – NEW**

1. **2007-Z-004 – 4 Ridgemor Drive**

53 **Chapter 55, Zoning, Section 5:27 (R1B)(Area, Height and Placement):**
54

55 ZBA Member David Gregorka asked Chairperson Carol Kuhnke if he could be recused, as
56 he is a neighbor of this petitioner. Chair Carol Kuhnke stated that Mr. Gregorka is recused
57 from the action item 2007-Z-004, 4 Ridgemor Drive and should step out of the meeting.
58

59 **Summary** - Dan Williams is requesting one variance from Chapter 55, Zoning, Section
60 5:57, Averaging An Existing Front Setback:
61

62 **A variance of 7 feet in order to allow a front setback of 25 feet for construction of**
63 **a house into the front setback (32 feet is required by City Code).**
64

65 **Description and Discussion**
66

67 The subject parcel is located on Ridgemor, just south of Liberty. The parcel is zoned R1C
68 (Single-Family Dwelling District). The R1C district requires a 25 front setback, however
69 this parcel is subject to the averaging of existing setback, which results in a required
70 setback of 32 feet. The house is currently under construction.
71

72 The petitioner is constructing a single family house on this lot with an approved building
73 permit plans showing the front setback at 25 feet. Construction began in November 2006.
74 In January 2007 an inspection revealed that the Section 5:57, Averaging An Existing Front
75 Setback, was not applied in this case and the existing structure is located at the 25 foot
76 R1C front setback per approved plans, instead of 32 feet averaged setback required by
77 Section 5:57. The house is constructed at an angle on the lot due to the angle of the street
78 Right of Way (ROW). Only one corner of the attached garage is at the R1C 25 foot
79 setback with the rest of the house angled away from the ROW line. As a result, only a
80 small portion (approximately 80 square feet) of the attached garage is within the required
81 averaged front setback of 32 feet. Although the attached garage is within the required front
82 setback, the habitable portion of the house is located at least 42 feet from the ROW.
83

84 **Standards for Approval (Variance):**
85

86 The Zoning Board of Appeals has all the power granted by State law and by Section 5:99,
87 Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The
88 following criteria shall apply:
89

- 90 **(a). *That the alleged hardships or practical difficulties, or both, are exceptional***
91 ***and peculiar to the property of the person requesting the variance, and result***
92 ***from conditions which do not exist generally throughout the City.***
93

94 The subject parcel is irregular in shape, has 5 sides and a significant slope to the
95 rear of the site. This makes placement of the house a unique condition on this site.
96 In addition, the parcel is located on a curve in the ROW. As a result, the house is
97 placed at an angle on the parcel and the setback line curves away from the
98 structure along the length of the parcel.
99

- 100 **(b). *That the alleged hardships or practical difficulties, or both, which will result***
101 ***from a failure to grant the variance, include substantially more than mere***
102 ***inconvenience, inability to attain a higher financial return, or both.***
103
104

105 The slope of the land and unusual conditions of a five-sided parcel create
106 challenges in constructing a house of comparable size and scale as others in the
107 neighborhood. In addition, the petitioner built the house according to approved
108 plans from the Building Department. Removal of the house or relocating the
109 attached garage would result in more than a mere inconvenience.

110

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

116

117 The variance, if granted, will not significantly affect surrounding properties. Due to
118 the curve of the street away from the house, only one triangle section of the garage
119 is located within the front setback. This results in approximately 80 square feet of
120 an attached garage within the front setback. The size and scale of the house is
121 comparable to the surrounding houses and the adjacent neighbor has submitted a
122 letter of support for this variance request; the other adjoining parcels are vacant.

123

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

126

127 The house was constructed according to approved plans, after the majority of the
128 exterior construction was completed it was noticed that the plan was approved in
129 error and the approved setback location was incorrect. The applicant built the house
130 according to the approved permit, which is not a self-imposed hardship.

131

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

134

135 Staff considers this to be the minimum necessary to allow completion of the existing
136 house. The request places only 80 square feet of the attached garage within the
137 front setback. The angled location of the house on the parcel places the majority of
138 the house behind the front setback, at an increasing distance away from Ridgemor
139 Drive and is consistent with other properties in the neighborhood.

140

141 **Recommendation**

142

143 This request does satisfy all of the standards of approval as set forth in Chapter 55 Section
144 5:99 (1) (a)-(e), and therefore staff recommends approval.

145

146 **Questions to Staff**

147

148 C. Kuhnke – (To M. Kowalski) – The only thing in the application about how this issue
149 came before us is that a complaint was filed with the city. Can you expound on that? (M.
150 Kowalski – Correct – a complaint was filed with the city and that is when staff went out to
151 investigate in January. At that time, we found it should have had an averaged setback with
152 the other houses and vacant parcels.

153

154 Did the complaint originate with a neighbor? (M. Kowalski – We don't actually know – it's
155 an anonymous complaint).

156

157 C. Carver – (To M. Kowalski) – You talk about the many sided shape of the lot, the slope
158 and the contour and because of that this house will stick out, when they could just build a
159 smaller house. If this house hadn't been built, and they came with these plans and asked
160 for this variance, would the city still be in favor of it? (M. Kowalski – I would still support
161 the variance). Tell me about front yard setbacks. If you have 25 feet under the Code or 26
162 feet, is there some minimum before you have to average or?? (M. Kowalski) – In all
163 residential zoning districts, you have to average the existing front setback.
164

165 C. Carver – So any time a building permit is applied for, or there are plans for a vacant lot,
166 averaging just automatically kicks in? (M. Kowalski – Yes). Does the fact that the building
167 department issued this building permit in error relieve the petitioner of responsibility?
168 Should we grant the variance to 'clean up' this mess that the city has helped cause? (No,
169 technically it's the responsibility of the petitioner to know all rules and regulations. It's not
170 one that is terribly clear; it's buried in the back. One way of clarifying this is that we're
171 revising the building permits now to add that one there so that people know up front).
172

173 The petitioner is responsible (M. Kowalski – Yes. The Zoning staff looked at it and
174 approved it, but...)
175

176 W. Carman – So this has been on the books for a long time, how could Zoning staff miss
177 this? (M. Kowalski) – I don't know, I can't answer that.
178

179 What's the process in which this is looked at? It's not just dropped off and... (M. Kowalski
180 – probably because the building permit was looked at in isolation and did not have the
181 adjacent structures on there).
182

183 Isn't it standard operating procedure to look at this rule, or is it the responsibility of the
184 petitioner to put all those setbacks on his application? (M. Kowalski – Right now, staff
185 should look at the adjacent lots – averaging applies in all residential zones (R-1, R-2 and
186 R-3), and with this exception, is applied pretty consistently and has been on the books
187 since about 1978.
188

189 K. Loomis – (To M. Kowalski) How far along was the construction on this building when the
190 petitioner was notified and how long ago was that? (When I went out it was toward the
191 end of January. The walls were up, the windows were in but the roof was not on nor was it
192 sided. I don't know what was done on the inside of the house as I haven't looked in it.
193 The building is now shingled, but the petitioner was told that he was proceeding at his own
194 risk).
195

196 One of the communications we received suggested that the variance was greater than 7
197 feet? (We measured the existing house and surrounding houses and used the data we
198 have in our computers, but that is the first I've heard of that – this is not what we have).
199

200 **Petitioner Presentation**

201

202 Dan Williams – Petitioner and builder at 4 Ridgemor Drive (currently lives at 9 Ridgemor
203 Drive) was present to speak on behalf of the appeal.
204

205 Mr. Williams suggested that if the tone of the meeting and the Board was such that it might
206 be more advantageous to table the issue and have dialogue with the neighbors to rectify
207 some of these problems/questions, that he would be in favor of this.
208

209 The card (zoning notification) that was sent out this week simply states the code and that
210 I'm "asking for a 7 foot variance." There may have been some misunderstanding between
211 the neighbors and myself as to what is actually impeding on the setback (only 80 square
212 feet) as opposed to them thinking that it was the whole house or a significant part of the
213 house.

214
215 All the other houses I've built in the city of Ann Arbor in the past abide by this 25 foot
216 setback; or average of adjacent properties. I was never aware that there was averaging of
217 properties within 100 feet. I was never made aware by anyone in Zoning regarding this. I
218 was under the understanding that I was in full compliance. When I was notified that there
219 was an error and an issue here that I was well into construction. I did finish/shingle the
220 roof to protect the house from the weather and I had the electric, heating and cooling
221 installed enough (after I was notified) to keep the heat on to dry the wood out from the
222 elements. As far as doing anything else, I'm on the fence as to what to do.

223
224 As far as the house goes, I believe it keeps with the integrity of the neighborhood as far as
225 style and size and curb appeal.

226 227 **Questions by the Board**

228
229 K. Loomis – In your application, you indicated there weren't any hardships with complying
230 with the ordinance. Would you have sought this variance if this had not happened?
231 (D. Williams) – Yes, I think I would have, as the fall of the lot is such that it appeals to the
232 neighborhood and for privacy to the owners so that they can enjoy their occupancy. The
233 screened in porch is encroaching, but it's a concrete patio which would allow enjoyment of
234 the property and the fall of the land on that north side – is the best design for it.

235
236 C. Carver – (To Chair) He's asked that this be tabled, but I assume that there are a lot of
237 people here to speak on it. Is this something we should consider?

238
239 C. Kuhnke – He's certainly is entitled to proceed tonight if he'd like to and it would be my
240 suggestion to anyone on that board to make a motion if they think it should be tabled can
241 make a motion, but the public hearing should take place.

242
243 D. Tope – I think that's fair and after we hear from everyone who has been publicly noticed
244 on this and hearing what the petitioner has to say, we can then decided to table or not.

245
246 (C. Carver – Suggested that the audience/speakers also vocalize whether or not
247 something further might be accomplished by a meeting with the petitioner).

248

249 **Written Communications**

250

251 Staff received the following -

252

253 **Communication in Support:**

254

- 255 1. Ken Staples – 5 Ridgemor Drive
- 256 2. Kathy McNair –16 Ridgemor (See "**Administrative Note**" under #6
257 below)

258

259 **Communication in Opposition:**

260

- 261 1. Joan Morrell-Gregorka – 6 Ridgemor Drive

- 262 2. Kurt Miller – 11 Ridgemor Drive
 263 3. Ken Staples - 5 Ridgemor Drive
 264 4. Cindy and Greg Mast -12 Ridgemor Drive
 265 5. Richard M. & Edith M. Croake – 14 Ridgemor Drive.
 266
 267 6. Kathy McNair – 16 Ridgemor – (**Administrative Note:** *First*
 268 *communication from Ms. McNair stated she was opposed; the next stated*
 269 *she was not ‘not opposed’ to the variance being granted, but wanted the*
 270 *board to have the history of why the neighbors are in opposition. Staff*
 271 *listed this as a communication in SUPPORT of the variance. Staff was*
 272 *again contact by Ms. McNair after the meeting and stated that she was*
 273 *not in support of the petitioner, so it’s unclear what her position is).*
 274

Public Commentary

- 275
 276
 277 1. Joan Morrell-Gregorka – 6 Ridgemor Drive, Ann Arbor, MI 48103 – Spoke in
 278 opposition to the variance request. Ms. Gregorka read her statement
 279 previously submitted to the board and also submitted photographs of the
 280 property from the curb view along with the adjoining properties (to lend
 281 perspective to the averaging that should have taken effect).
 282
 283 3. Kurt Miller – 11 Ridgemor Drive, Ann Arbor, MI 48103 – Spoke in
 284 opposition to the variance request. He stated that his home is adjacent to
 285 the home that the petitioner previously built for himself (9 Ridgemor) and that
 286 the construction process during that included violating his property line and
 287 damaging/destroying trees on his property. He stated that he did not feel
 288 that meeting again with Mr. Williams would have any benefit, as previous
 289 meetings were also unproductive and ended in shouting matches.
 290
 291 4. David Ross – 2 Ridgemor Drive, Ann Arbor, MI 48103 – Spoke in opposition
 292 to the variance request. Stated that he’s lived at 2 Ridgemor Drive for 28
 293 years and has expressed his opposition through written communication
 294 previously submitted to the board. He also stated that the setback problem is
 295 greater than was stated in the report as he measured the distance himself
 296 and found it to be lacking 9 feet 3 inches. Communication has been non-
 297 existent until the petitioner had to file for the variance.
 298

Discussion by the Board

300
 301 C. Carver – (To Staff) – If the Board doesn’t grant this variance, what happens? What will
 302 the city’s position be if the variance is denied?
 303

304 M. Lloyd – If the variance is denied, we would have to notify the petitioner that they would
 305 have to cease construction on that component of that property (The garage portion that is
 306 within the setback). We would begin the working process with them to try and find
 307 resolution to rectify the situation.
 308

309 C. Carver – As to the property that is not encroaching into the setback, he can continue the
 310 construction? (M. Lloyd – I would not suggest that we would be immediately supportive of
 311 that – we would need to understand how we were going to rectify the rest of that before we
 312 would blatantly say “go ahead.” We would prefer to work with the petitioner and try to
 313 resolve everything early and upfront to minimize any potential for additional costs or
 314 problems associated with the construction that has already happened).

315 D. Tope – I would ask staff how to resolve the question of the structure as it is –
316 encroaching on the 25-foot setback. There seems to be a difference of opinion as to how
317 and where things have been measured and where from.
318

319 M. Lloyd – We would require that absolute information be submitted (we believe we have
320 accurate information). Given the fact that the question has arisen, we would want to
321 recertify the dimensions of the beginning of the setback and the location of the nearest
322 point of the portion of the garage that extends beyond the averaging.
323

324 D. Tope – So if we tabled it, or tabled it pending a resolution of that question, would staff
325 be able to then give us a definite answer to the question that was raised about the existing
326 encroachment of the 25 feet?
327

328 M. Lloyd – Yes, based on that direction, we would require that the petitioner provide us
329 with a surveyed document from a registered engineer identifying the location of what we'll
330 call the right of way, although it's a private road and not a public right of way and the
331 nearest portion of the extension of the garage.
332

333 D. Tope – That could be made a condition of tabling – that it's tabled until staff comes back
334 with a second survey of those dimensions (as an option). The other question is that if we
335 denied it, you would still have to do that in order to get it past the encroachment.
336

337 M. Lloyd – True – no different than having the petitioner provide that information through a
338 survey.
339

340 D. Tope – If it is determined that those dimensions are true, than an even larger portion of
341 the garage may have to be removed. (M. Lloyd) If it comes to a portion of the garage
342 being removed, we would get absolute data from the petitioner to verify what is real and
343 what is being measured from the street.
344

345 D. Tope – I'm not inclined to table. This is what it is with front setbacks, and I can only
346 repeat what Chuck has said many times, which is "it's a vacant lot" and there is no reason
347 why the rules shouldn't or couldn't be complied with. To give additional time to speak with
348 the neighbors or not, none of our standards say that this has to meet with the neighbors
349 approval or not.
350

351 C. Carver – I won't support this variance for the same reasons that Donna mentioned. You
352 have a vacant piece of land and you build it according to the zoning law. We have
353 neighbors that have asked for protection with the ordinance, and I don't know how we can
354 deny that. It will then be up to the petitioner to appeal it to a judge.
355

356 R. Emaus – Since this is a private road, it's not clear where the right of way is relative to
357 the point of the garage that extends out the furthest, I'm inclined to agree with the staff
358 recommendations and support it.
359

360 W. Carman – I tried to look at this as though the house weren't built yet, and whether I
361 would have granted a variance on building this way on this property, and it's clear that
362 even the size of the house that he built could have been built there within code if he had
363 used slightly different proportions. I can't convince myself to support this. I don't think I
364 would change my mind, as there are too many standards that this doesn't meet.
365

366 K. Loomis – I tend to echo the comments made by Wendy, Chuck and Donna. If the city
367 hadn't allowed the permit to go through, would I have granted the variance?

368 I don't think so. I asked the petitioner himself what the hardships were, and the application
 369 states there are no hardships, even though he states that he would have sought a variance
 370 had he been told this to begin with. I feel badly for the petitioner, but I can't support it.
 371

372 **MOTION**

373
 374 Moved by K. Loomis, Seconded by D. Tope (*Friendly Amendment by C. Carver to make*
 375 *proposed motion worded in favor of the petitioner – Amendment Accepted by K. Loomis*
 376 *and D. Tope*), **“to grant permission for a variance from Chapter 55, Section 5:57 (R1C)**
 377 **(Averaging an Existing Front Setback), to allow a front setback of 25 feet (a variance**
 378 **of 7 feet), based on the following findings of fact and in accordance with the**
 379 **established standards for approval with regard to petition 2007-Z-004, 4 Ridgemor**
 380 **Drive:**

- 381
- 382 a) **The alleged hardships or practical difficulties are peculiar to the property**
 383 **and result from conditions that don't generally exist throughout the city;**
 - 384
 - 385 b) **The alleged hardships include more than a mere inconvenience, inability**
 386 **to obtain a higher financial return or both;**
 - 387
 - 388 c) **The variance, if granted, will not significantly affect the surrounding**
 389 **properties.**

390
 391 **On a Voice Vote – MOTION FAILED – (Variance Denied)**

392
 393 **Aye – (1) – R. Eamus**

394
 395 **Nay – (6) – K. Loomis, D. Tope, C. Kuhnke, C. Briere, W. Carman, C. Carver**

396
 397 **Abstention – (1) – D. Gregorka**

398
 399 **Absent – (1) – R. Suarez**

400
 401

402 **2. 2007-Z-003 – 1003 Berkshire Road**

403
 404 (*Note: D. Gregorka returns to the Board after recusing himself for the former hearing*)
 405

406 **Summary:** Dawn Zuber is requesting permission to alter a non-conforming structure and
 407 one variance from Chapter 55, Zoning, Section 5:57, Averaging an Existing Front Setback:
 408

409 A variance of 6 feet 1 inches in order to allow a front setback of 31 feet 4 inches for
 410 expansion of the existing house into the front setback (37 feet 5 inches is required by
 411 city code.
 412

413 **Description and Discussion:**

414
 415 The subject parcel is located on Berkshire. The parcel is zoned R1C (Single-Family
 416 Dwelling District). The R1C district requires a 25 front setback, however this parcel is
 417 subject to the averaging of existing setback, which results in a required setback of 37 feet
 418 5 inches. The house was built in 1938 and is currently 2,294 square feet.
 419

420 The petitioner is proposing to construct an 18 foot wide covered carport to the front of the
 421 existing house. The carport will not be enclosed, and will extend out 10 feet in front of the
 422 existing garage and 6 feet 1 inch into the front setback.

423 The carport addition is being constructed in order to allow for a covered entrance and exit
 424 to a handicapped equipped van. The attached garage on the house is only 10 feet wide
 425 and does not allow for wheelchair access to a van. Per Ann Arbor city code, the standard
 426 barrier-free parking space for is 18 feet wide.

427
 428 As indicated above, Section 5:57, Averaging of Exiting Front Setbacks does apply in this
 429 case. The adjacent house to the north is on a corner and is setback 38 feet 8 inches; the
 430 two houses to the south are setback at 31 feet 3 inches and 42 feet 3 inches respectively
 431 (see attached). As a result the average setback is calculated at 37 feet 5 inches. The
 432 existing house is nonconforming due to a covered front porch that extends into the front
 433 setback 5 feet 4 inches. The addition will extend 9 inches further into the front setback
 434 than the existing front porch, resulting in a setback 31 feet 4 inches from the Right of Way.

435
 436 **Standards for Approval (Permission to alter a non-conforming structure):**

	<u>Existing:</u>	<u>Required:</u>	<u>Proposed:</u>
437			
438			
439	32 feet 2 inches	37 feet 5 inches	31 feet 4 inches
440			

441 The Zoning Board of Appeals has all the power granted by State law and by Section 5:98,
 442 from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

443
 444 **(a). *The alteration complies as nearly as practicable with the requirements of the***
 445 ***Zoning Chapter.***

446
 447 The petitioner is asking to modify an existing non-conforming structure. The existing
 448 structure will continue to be used as a single-family home. The proposed carport
 449 addition will continue the existing building line along the south side of the property
 450 extending 6 feet 1 inch into the front setback. When constructed, the proposed
 451 carport will encroach 9 inches further into the required front setback than the
 452 existing covered front porch. This expansion allows for reasonable use of the land
 453 while respecting the intent of the Zoning Ordinance.

454
 455 **(b). *The alteration will not have a detrimental effect on neighboring property***

456
 457 The requested alteration would not negatively affect any surrounding property. As
 458 stated previously, the proposed carport addition is not enclosed and will not place
 459 the structure any closer to the adjacent houses than it is currently located. The front
 460 setback will still be over 31 feet from the Right of Way.

461
 462 **Recommendation:**

463
 464 The alteration complies as nearly as practicable with the requirements of Chapter 55 and it
 465 will not have a detrimental effect on neighboring properties. Therefore, staff recommends
 466 approval of the request to alter a non-conforming structure.

467
 468 **Standards for Approval (Variance):**

469
 470 The Zoning Board of Appeals has all the power granted by State law and by Section 5:99,
 471 Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The
 472 following criteria shall apply:

- 473 (a). ***That the alleged hardships or practical difficulties, or both, are exceptional***
474 ***and peculiar to the property of the person requesting the variance, and result***
475 ***from conditions which do not exist generally throughout the City.***
476

477 The subject house has an extremely narrow attached single car garage and since
478 the garage is built along the side property line there is no room for expansion of the
479 garage in order to accommodate barrier free access to a vehicle. The garage
480 measure just less than 10 feet wide, which is slightly larger than a standard parking
481 space and 8 feet narrower than the required van accessible handicap parking
482 spaces.

- 483
484 (b). ***That the alleged hardships or practical difficulties, or both, which will result***
485 ***from a failure to grant the variance, include substantially more than mere***
486 ***inconvenience, inability to attain a higher financial return, or both.***
487

488 The petitioner is proposing a small covered carport to assist in the loading and
489 unloading of a wheelchair into a van. Constructing the addition in a different area
490 would not allow the addition to serve the intended purpose and would result in more
491 than a mere inconvenience.

- 492
493 (c). ***That allowing the variance will result in substantial justice being done,***
494 ***considering the public benefits intended to be secured by this Chapter, the***
495 ***individual hardships that will be suffered by a failure of the Board to grant a***
496 ***variance, and the rights of others whose property would be affected by the***
497 ***allowance of the variance.***
498

499 The variance, if granted, will not significantly affect surrounding properties. The
500 construction of the unenclosed carport would place a structure no closer to the side
501 property line or adjacent houses than what currently exists. The addition, once
502 completed, will be over 31 feet from the front property line.

- 503
504 (d). ***That the conditions and circumstances on which the variance request is***
505 ***based shall not be a self imposed hardship or practical difficulty.***
506

507 Because of the logical location for expansion of the house in order to serve the
508 intended purpose, this variance is a reasonable request. The physical disability of
509 the resident and extremely narrow garage are not considered self-imposed
510 hardships.

- 511
512 (e). ***A variance approved shall be the minimum variance that will make possible a***
513 ***reasonable use of the land or structure***
514

515 Staff considers this to be the minimum necessary to make reasonable use of the
516 existing house. The variance requested does not increase the encroachment into
517 the side setbacks and only extends 9 inches further into the front setback than the
518 existing covered front porch. It is the minimum variance possible to allow
519 reasonable use of the existing house for allowing covered barrier free access.

520
521 **Recommendation:**
522

523 This request does satisfy all of the standards of approval as set forth in Chapter 55 Section
524 5:99 (1) (a)-(e), and therefore staff recommends approval.
525

526 **Questions to Staff**

527
528 None.

529
530 **Petitioner Presentation**

531
532 Dawn Zuber of Studio Z Architectural in Canton, MI was present to represent the
533 homeowners and speak on behalf of the appeal. She stated that she believes that the
534 staff report states the case and that she is present to answer any questions that the Board
535 may have.

536
537 **Questions for the Petitioner**

538
539 None.

540
541 **Public Commentary**

542
543 1. John Legros - 2022 Vinewood Boulevard, Ann Arbor, MI 48104 – Speaker
544 indicated that he has lived in the area since 1967, and that he doesn't care
545 what they do, but that any other neighbors that have done remodeling have
546 stayed within the front setback. He wanted to be sure that the neighborhood
547 retain its character.

548
549 **Written Communication**

550
551 None.

552
553 **Discussion by the Board**

554
555 D. Gregorka – (To M. Kowalski) – Clarification – This variance will result in going into the
556 front setback a total of 9 ¾ inches *more* than the current covered porch (Yes), although the
557 required setback is actually back beyond where the covered porch is now (Yes).

558
559 **MOTION #1**

560
561 Moved by W. Carman, Seconded by D. Gregorka, “**that in the case of 2007-Z-003 the**
562 **Board grant permission to alter a non-conforming structure to allow a carport**
563 **addition to the front that will extend into the front setback per submitted plans and**
564 **the following finding of facts:**

- 565
566 a) **The alteration complies as nearly as practicable with the requirements of the**
567 **Zoning Chapter in that it extends no further into the front setback (9 ¾ inches**
568 **more than the existing front porch).**
569
570 b) **The expansion allows for reasonable use of the land.**
571
572 c) **The alteration will not have a detrimental effect on neighboring properties**
573 **because it will not place the structure any closer to the adjacent houses than**
574 **it is already located.**
575
576 d) **The front setback will still be over 31 feet from the right of way.”**

577
578 **On a Voice Vote – MOTION #1 PASSED – (Variance Granted)**

579 **MOTION #2**

580

581 Moved by K. Loomis, Seconded by D. Gregorka “that in the case of 2007-Z-003, 1003
 582 Berkshire that per the attached plans and in accordance with the established
 583 standards for approval, the Zoning Board of Appeals hereby GRANTS a variance of
 584 6 feet 1 inches from Chapter 55, Section 5:57, (R1C) Averaging An Existing Front
 585 Setback, to allow a front setback of 31 feet 4 inches based on the following findings
 586 of fact:

587

588 a) The alleged hardships are peculiar to the property and result from
 589 conditions, which do not exist generally throughout the City.

590 b) That the alleged hardships or practical difficulties, or both, which will
 591 result from a failure to grant the variance, include substantially more than
 592 mere inconvenience, inability to attain a higher financial return, or both.

593 c) The variance will not significantly affect surrounding properties.

594 d) The circumstances of the variance request are not self-imposed.

595 e) The variance request is the minimum necessary to achieve reasonable use
 596 of the structure.

597 D. Gregorka – I will support this variance. The main house is within the setback
 598 requirements although the porch sticks out but we’re not talking about an enclosed
 599 structure but the covered portion that sticks out an additional 9 ¾ inches. There are
 600 hardships and practical difficulties that are associated with wheelchair access. The
 601 neighborhood has not shown objection and this is the minimum use for the situation.

602

603 **On a Voice Vote – MOTION PASSED – UNANIMOUS – (Variance Granted)**

604

605 **3. 2007-Z-005 – ADMIN – 907 South Main Street**

606

607 **Summary** Matthew Wilk is requesting an Administrative Review of the Zoning
 608 Administrator’s interpretation of Section 5:61, Applications to Lots of Record.

609

610 **Description and Discussion**

611

612 **Background:**

613

614 The petitioner purchased the property in May 2006. The parcel is zoned R4C and is 4,887
 615 square feet and 53 feet wide. The minimum width for an R4C lot is 60 feet, minimum lot
 616 area is 8,500 square feet and the minimum lot area per dwelling is 2,175 square feet. As a
 617 result, the parcel is nonconforming and is subject to the regulations of 5:61, Application to
 618 Lots of Record. The petitioner has proposed to demolish the existing single-family house
 619 and construct a duplex.

620

621 **Case History**

622

623 *In response to staff’s determination that 5:61 applied, in June 2006 the applicant applied*
 624 *for a variance from the dimensional requirements in order to permit the construction of a*
 625 *duplex on the subject lot. In July 2006 the Zoning Board of Appeals unanimously denied*
 626 *the variance request.*

627 *In December 2006, the petitioner applied for a building permit for the subject property in*
628 *order to construct the previously mentioned duplex. The building permit was subsequently*
629 *denied based on Chapter 55, Section 5:61 and the petitioner decided to appeal the Zoning*
630 *Administrator's interpretation of 5:61 to the ZBA. The petitioner states that Section 5:61*
631 *should be interpreted to allow a duplex to be constructed on the subject parcel and that*
632 *Zoning staff has applied this section in error.*

633 **Case Specifics**

634
635
636 *Chapter 55, Section 5:61, Application to Lots of Record: " Where the owner of a*
637 *nonconforming lot of record does not own and cannot reasonably acquire sufficient land to*
638 *enable him to conform to the requirements of this chapter relating to lot area, lot width, or*
639 *both, such lot of record may be used by such owner as a building site, provided that such a*
640 *use shall be limited to the permitted principal use that directly corresponds to the area,*
641 *height, and placement characteristics of the lot of record. Except, that if a lot of record*
642 *cannot conform to any minimum area, height, and placement regulations of the zoning*
643 *ordinance, then the lot of record may be developed only for single-family residential use."*

644
645 *Although zoned R4C (Multiple-Family) the subject parcel is only 4, 887 square feet, which*
646 *is 113 square feet smaller than the smallest residential zoning district (R1D, Single-*
647 *Family=5,000 square feet) and 3,613 square feet smaller than the R4C zoning district*
648 *requirement. The petitioner is proposing to construct a duplex. Under the existing R4C*
649 *zoning standards, duplexes are an allowed principal use, "subject to all the regulations of*
650 *the district in which such use first appears", which in this case would be the R2A district*
651 *regulations. The requirements of the R2A (Two-Family) zoning district are 8,500 square*
652 *feet lot area minimum and at least a 60-foot lot width. The subject parcel cannot meet*
653 *either of these standards.*

654
655 *As indicated above, the lot is a non-conforming lot of record that cannot comply with area*
656 *requirements for any of the principal permitted uses, which are residential. According to*
657 *Section 5:61, if a parcel cannot comply with the minimum area, height and placement*
658 *regulations of any of the principal permitted uses, "the lot of record may be developed only*
659 *for single-family residential use."*

660
661 *An example of where Section 5:61 may permit something other than a single-family*
662 *residential development is a nonconforming lot of record of 8500 square feet and 60 feet*
663 *wide in an area zoned R4C/D (Multiple-Family Dwelling District). The R4C/D district*
664 *requires a minimum lot size of 14,000 square feet and width of 120 feet and has the same*
665 *permitted principal uses as the R4C. In this case the owner of the 8,500 square foot*
666 *nonconforming lot of record could not build to R4C/D standards because he does not meet*
667 *the minimum lot size or width for that district. However, he could build a duplex, because*
668 *the permitted principal uses of R2A do directly correspond to the area, height and*
669 *placement requirements of the nonconforming lot, i.e. it requires 8,500 square feet of area*
670 *and 60 feet in width.*

671
672 *Zoning staff has consulted with City Planners, former Zoning Administrators and office staff*
673 *in order to confirm the intent and interpretation of this section.*

674 **Questions to Staff**

675
676
677 *C. Carver – (To M. Lloyd) In the letter from the attorney to you, Mark, they give their*
678 *interpretation then go on to say "if for some reason you conclude that our interpretation of*

679 the ordinance is incorrect, please state these reasons in writing so that we can appeal
680 your....” - Did you ever state your reasons in writing to respond to the attorney?
681 (M. Lloyd) – I don’t know that we sent him a formal letter ‘from me,’ per se, but I believe
682 that the action we took to cancel the (building) permit and the information associated with
683 that noted that difference of opinion.

684

685 Petitioner Presentation

686

687 Matthew Wilk, Petitioner, and Jeffrey Lohmeyer were present to speak on behalf of the
688 appeal. Mr. Wilk asked the Board if it were possible to deviate from the normal procedure
689 and make it more of a dialogue instead of a soliloquy. He asked that the Board interrupt
690 him if anything is unclear (No objection was given from the Board).

691

692 The section of the ordinance we’re interpreting is 5:61(1) called “Application of Lots of
693 Record.” The Building and Planning Development Department has interpreted the
694 following two sentences to say:

695

696 1. “If a lot is too small or too narrow, all that can be built on that lot is a single-
697 family home.” (To correct the record, we raised this previously with the ZBA last
698 June). We feel that that interpretation, based on the ordinance before you is
699 clearly incorrect and it’s why we appeal to you this evening.

700

701 2. It says “Where the owner of a nonconforming lot of record does not own and
702 cannot reasonably acquire sufficient land to enable him to conform to the
703 requirements of this chapter related to lot area, lot width or both, such lot of
704 record may be used by such owner as a building site, provided that such a use
705 shall be limited to principal permitted use that directly corresponds to the area,
706 height and placement characteristics of the lot of record – except that if the lot of
707 record cannot conform to any minimum area height and placement regulations
708 of the zoning ordinance, then the lot of record may be developed only for single-
709 family residential use.

710

711 (Petitioner) – If A, then B... If C, then D – (Petitioner has a flip chart and is illustrating his
712 points by breaking the verbiage into sections labeled below).

713

714 “A” – “Where the owner of a nonconforming lot of record does not own and cannot
715 reasonably acquire sufficient land to enable him to conform to the requirements of this
716 chapter related to lot area, lot width or both...”

717

718 C. Carver – So that’s true in this situation, correct? (Petitioner – Yes)

719

720 “B” – “Such a lot of record may be used by such owner as a building site, provided that
721 such a use shall be limited to permitted principal use that directly corresponds to the area,
722 height and placement characteristics of the lot of record.....”

723

724 “C” - “Except, that if a lot of record cannot conform to any minimum area, height and
725 placement regulations of the zoning ordinance....” (Petitioner states that this clause starts
726 with “except,” and feels this is an important distinction – proves distinction within a group).

727

728 “D” – Second clause – “Then the lot of record may be developed only for single-family
729 residential use.” (Petitioner states that this is the only part of section 5:61 that mentions
730 limiting a property to single-family use. The concept is here and only here – nowhere else
731 does it mention this in the ordinance).

- 732 Petitioner - Compares "A" versus "C"- which applies when related to "D"
733 "A" is what governs our lot. (Lot area/lot width or both).
- 734 C. Carver – What does "C" apply to, if it doesn't apply to you? (Petitioner –
735 We're subject to "A" and not to "C" because "C" is called a 'taking savings clause.' You
736 know that when an ordinance is passed in the city, and that ordinance takes away all of the
737 use of a particular property and you can't do anything with it, then you have to compensate
738 the landowner – what that sentence says is "if you can't do anything with it, you can at
739 least build a single family home.")
- 740
- 741 K. Loomis – Aren't you substituting the word 'all' for 'any?' (Petitioner – No. It says can
742 you meet any one of the following things).
- 743
- 744 W. Carman – Are you saying that you think you only have to meet 'one' of those three
745 things? (I'm saying that these sentences are mutually exclusive – they cover different
746 things. Sentence or clause "A" refers to lot area, lot width and both. Sentence "C" talks
747 about everything else).
- 748
- 749 W. Carman – I don't agree with you. Minimum area is the same as lot area.
- 750
- 751 C. Kuhnke – Why should we read "C" to cover those who don't cover any of the
752 requirements. (Petitioner – I'm showing that we're not covered by it and that it is
753 attempting to cover different territory).
- 754
- 755 C. Kuhnke – If I don't accept that, but I still want to hear what you have to say about "Any"
756 vs. "All," how can you say that "C" shouldn't apply to lots that don't meet area and height
757 and placement? (Petitioner) – It would apply to those, but it would not apply to those that
758 are lot area..... the argument that I would make after I read through this about a
759 thousand times is that the people who wrote this intended to mean is if you read the zoning
760 chapter ordinance of R4C from left to right, there is minimum lot area, minimum useable
761 open space, which is basically 'building area,' how much building area can you have –
762 setbacks, height, lot area, lot width – those are the criteria. (Demonstrates point on flip
763 chart).
- 764
- 765 C. Carver – If "C" is the 'catch-all' to prevent your property from being taken without
766 compensation, why isn't your lot included in "C." (Petitioner - I'm fully admitting that we're
767 covered by "A" – Our lot does not meet lot area AND lot width).
- 768
- 769 (Petitioner) So, what can we do with our lot? – "B" – "Such a lot of record may be used by
770 such owner as a building site, provided that such a use, shall be limited to the permitted
771 principal use that directly corresponds to the area, height, and placement characteristics of
772 the lot of record." Our use corresponds to and complies with building area, height and
773 placement – all those three. So, when the lot is in R4C is too small and too narrow, still
774 using the same three criteria under "B." We are only meeting lot are and lot width, so we
775 don't qualify with "C."
- 776
- 777 K. Loomis – Can you tell me how the Zoning Administrator's example that he gave of how
778 he feels that this statute applies to a situation different than yours? (Petitioner) – Would be
779 glad to but needs to hear the example (from Staff) again.
- 780
- 781 W. Carman – In what way do you think that you meet the minimum lot area for a duplex?
782 (Petitioner) We do. The minimum lot area per dwelling is 2175 feet. We are more than
783 4350 square feet, so we can have two units.
- 784 W. Carman – Under what use? (Petitioner) - Under R4C

785 W. Carman - But you're not R4C anymore. (Petitioner) – Sure we are, why would we no
786 longer be?

787 W. Carman - Because it says now you're limited to such a use as principal use that directly
788 corresponds to area, height and placement. You have to go through all the choices here
789 until you get to the one area, height and placement that matches your size. (Petitioner) –
790 Yes, that's one reading.

791 W. Carman – That's the reading that's been in effect in Ann Arbor since I ~~was put~~ served
792 [my initial term](#) on the Board in 1979. (Petitioner) – I appreciate that. My argument is that
793 that is in error.

794 W. Carman – So, ~~we've-~~ [the ZBA has](#) been in error for 30 years? (Petitioner and Second
795 Owner – Jeff Lohmeyer) That could very well be. Yes.

796
797 (Petitioner) – What happens when you get to a lot that has no minimum lot size and no
798 setbacks and a much higher height requirement.

799 W. Carman – Would you like to point out such a ... (Petitioner) – Sure, C2A. Why did
800 Matt (Kowalski) in his presentation pick R2A? Because residential use is certainly a
801 permitted use under C2A, is it not?

802
803 C. Kuhnke – We need to interrupt and ask if there are any questions for the petitioner?
804

805 Questions for the Petitioner

806
807 None.

808 809 Public Commentary

810
811 1. Kim Katchedorian – 204 E. Davis, Ann Arbor, MI 48104 – She stated she
812 lives east of this area and has lived in there for 15 years. Wanted to point
813 out that they (the owners) knew this was a single-family home before they
814 bought it. It was always an owner/occupied home that was well maintained.
815 Since they've purchased it, it has since declined significantly. You've
816 received letters from some neighbors (Bob and Julie) and I echo their
817 concerns.

818
819 Speaker states that one of the things their concerned with is parking in an
820 already 'parking challenged' neighborhood. East Davis (below this address)
821 has shared driveways. The neighborhood would likely have rainwater-
822 flooding issues being at the top of the hill. You usually don't hear about the
823 flooding (the last was at Green and E. Davis) because they happen on U of
824 M property. We've had sewage issues and this would add to that. We're
825 looking to the city to keep this as a neighborhood and deny this.

826
827 *(Note: C. Carver asked the Chair if the public should limit their discussion to the*
828 *Administrator's Decision and whether the appeal should be granted or denied. C. Kuhnke*
829 *reminded the public that they should comment on the administrative appeal at hand).*
830

831 2. Tom Bletcher – 834 Brown Street, Ann Arbor, MI 48104 -
832

833 Looking over the file and the ordinance, it was my belief that the
834 Administrator's decision on this issue was correct. I suppose we are talking
835 about 'clever parsing,' of language, which usually happens long after the
836 language was written, but my interpretation is that the area referred to in "C"
837 is inclusive of lot and building area.

- 838
839 3. Julie Weatherby – 837 South Main, Ann Arbor, MI 48104 - I did submit a
840 letter, and I do agree with the Administrator's decision as well. The lot is too
841 small for a duplex.
842
- 843 4. Dennis Gayla - 903 S. Main, Ann Arbor, MI 48104 – Own the property
844 directly north of 907 S. Main. About 4 years ago, I tore down an existing
845 home and rebuilt a new home and had nothing but opposition from the
846 neighbors, and the home turned out well. I don't want to be that way to the
847 petitioners. I want to be supportive, but I don't want a huge duplex next door
848 to me. A one or two bedroom duplex is fine but 12 bedrooms are too much
849 for that lot.
850
- 851 5. Lori Wintermeyer – Owns the property at 834 South Main Street. I was at the
852 same hearing that the petitioners were last July, and I'm confused. I had the
853 same request – mine was a single family home and the home was being
854 used as a duplex and the city inspected and said that I cannot have a duplex.
855 Does this leave my property in the same boat? I have one person in this
856 huge home. I don't understand the Zoning Chapter 55, and if theirs were
857 approved, then I would come back and appeal as well.
858

Written Communications

859
860
861 Julie Weatherby, 834 South Main Street, Ann Arbor, MI 48104 – Letter to Deny Appeal
862 Robert Droppleman, 837 South Main Street – Letter to Deny Appeal
863

Discussion

864
865
866 R. Emaus – The title for the Section 5:24 is “Area, Height and Placement Regulations.”
867 (the clause), the modifier of “ANY” in paragraph one in section 5:61 which says “Except
868 that if a lot of record cannot conform to ANY (a separate word) and then the clause “Area,
869 Height and Placement Regulations” – This clause refers to the whole section which
870 includes all of the tables; therefore, to me, your lot does not comply with any of the
871 residential ones listed here for multi-family. Therefore, it's very clear to me that you can
872 only use this as a single-family residential lot.
873

874 Your ‘parsing’ of the word ‘any’ as a modifier on each single term in that clause (i.e.,
875 “Area,” “Height” and “Placement” Regulations) is incorrect.
876

877 C. Carver – The petitioner does have a burden to prove, and if I'm going to say that the
878 Administrator's decision was wrong and overturn 30 years of practice, he's going to have
879 to make a stronger case than he's made. If he's right, I'd let a judge decide that. I will be
880 supporting the Administrator on this.
881

882 D. Tope – Wendy's comment on this tells us what reasonable people have decided about
883 this over the last 30 years, and that is the interpretation that should be upheld. If this is the
884 interpretation that the Administrator applied to it, then I think that all of those reasonable
885 people have made the case that that interpretation is the one that prevails, even though
886 one version may give one pause to thought. The fact that the precedent is over such a
887 long period of time, that this creates the definition.
888

890 K. Loomis – I would just say that many of the petitioners written materials and request for
891 us to review the Administrators case focused on the question of whether or not the Zoning
892 Administrator’s decision renders that first sentence nugatory, and I think that the example
893 given by Matt (Kowalski) at the beginning of the meeting exemplifies that this is not the
894 case.

895
896 **MOTION**

897
898 Moved by C. Carver, Seconded by W. Carman “that in the case of Appeal No.
899 2007-Z-005-ADMIN., 907 South Main Street, that the city building department
900 erred in not granting a building permit for this duplex.

901
902 **On a Voice Vote – MOTION FAILED – UNANIMOUS – (Appeal Denied).**

903
904 W. Carman – They had asked for a role call vote, did we want to do that?

905
906 C. Kuhnke – Since it was unanimous, no.

907
908 **VI. UNFINISHED BUSINESS**

909
910 None.

911
912 **VII. NEW BUSINESS**

913
914 None.

915
916 **VIII. REPORTS & COMMUNICATIONS**

917
918 (Discussed under the previous appeals)

919
920 **IX. AUDIENCE PARTICIPATION - GENERAL**

921
922 None.

923
924 **X. ADJOURNMENT**


925
926 Moved by, D. Tope, Seconded by D. Gregorka “that the meeting be adjourned.”

927
928 **On a Voice Vote – MOTION PASSED - Unanimous**

929
930 Chairperson Carol Kuhnke adjourned the meeting at 7:43 p.m.

931
932 **(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –**
933 **Zoning Board of Appeals)**

934
935
936 
937 _____
938 Carol Kuhnke, Chairperson

934
935
936 
937 _____
938 Dated ZBA Minutes