



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

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

I. The meeting was called to order at 6:05 p.m. by Chairperson Carol Kuhnke.

II. **ROLL CALL**

Members Present: (7) C. Kuhnke, R. Emaus, D. Tope,
C. Carver, D. Gregorka, W. Carman and C. Briere

Members Absent: (2) R. Suarez and K. Loomis

Staff Present: (3) C. Cheng, M. Kowalski and
B. Acquaviva

III. **APPROVAL OF MINUTES**

Approval of Draft Minutes of the February 28, 2007 Regular Session.

Corrections: (Lines 791 and 792 – Insert “[served my initial term](#) on the Board in 1979”, Strike “~~was put~~ on the Board “ - Line 794 – Insert “[the ZBA has](#) been, “ Strike “~~we’ve~~” been.)

Moved by C. Carver, Seconded by D. Tope, “**that the minutes of the February 28, 2007 Regular Session be approved as amended.**”

On a Voice Vote – MOTION PASSED - UNANIMOUS

IV. **APPEALS & ACTION – UNFINISHED**

None.

V. **APPEALS & ACTION – NEW**

1. **2007-Z-007– 2270 Glendaloch Road
Chapter 55, Zoning, Section 5:27 (R1B)(Area, Height and Placement):**

Summary: Theresa Angelini is requesting permission to alter a non-conforming structure and one variance from Chapter 55, Zoning, Section 5:27, (R1B) Single-Family Dwelling District:

A variance of 15 feet 1 inch in order to allow a rear setback of 24 feet 11 inches for expansion of the existing house into the rear setback (40 feet is required by City Code.)

53 **Description and Discussion:**

54
 55 The subject parcel is located on Glendaloch Road. The parcel is zoned R1B (Single-
 56 Family Dwelling District). The R1B district requires a 40' rear setback. The house was built
 57 in 1959 and is currently 3,650 square feet. Current zoning standards were established in
 58 1963; therefore the house became non-conforming as the result of the City enacting
 59 current Zoning standards. The existing house is non-conforming for encroachment of a
 60 covered porch and adjacent living space into the rear setback. The structure encroaches
 61 15 feet 1 inch into the rear setback.

62
 63 The petitioner is proposing to expand the existing house including reconstructing the
 64 enclosed rear porch as a breakfast room and expanding the master suite on the upper
 65 level. The position of the house on the lot is angled which places the enclosed porch, a
 66 small triangular section of the kitchen, living room and parts of the upper level master suite
 67 within the rear setback. As part of the remodeling project the 371 square foot master suite
 68 level will be reconstructed and 147 square feet of the room, which is located within the rear
 69 setback, will be removed. A new master suite will then be constructed on the same level at
 70 a slightly different location. As result of the construction, the new master suite will place 40
 71 square feet of the new room in the rear setback, which reduces the square footage of the
 72 house within the rear setback by 107 square feet. The new master suite will be constructed
 73 entirely within the existing footprint of the house. The variance is being requested in order
 74 to add the 40 square feet within the rear setback and for reconstruction of the existing rear
 75 porch to serve as a year round breakfast room. The footprint of the porch will not be
 76 expanded.

77
 78 **Standards for Approval (Permission to alter a non-conforming structure):**

79

	<u>Existing:</u>	<u>Required:</u>	<u>Proposed:</u>
80 Front setback:	24 feet 11 inches	40 feet	24 feet 11 inches

81
 82
 83 The Zoning Board of Appeals has all the power granted by State law and by Section 5:98,
 84 from the City of Ann Arbor Zoning Ordinance. The following criteria shall apply:

85
 86 **(a). *The alteration complies as nearly as practicable with the requirements of the***
 87 ***Zoning Chapter.***

88
 89 The petitioner is asking to modify an existing non-conforming structure. The existing
 90 structure will continue to be used as a single-family home. The proposed additions
 91 will continue the existing building line along the south side of the property extending
 92 15 feet 1 inch into the rear setback. When constructed, the proposed additions
 93 reduce the square footage of the house within the setback by 107 square feet,
 94 which reduces the nonconformity. This expansion allows for reasonable use of the
 95 land while respecting the intent of the Zoning Ordinance. In addition, as previously
 96 stated, the house became non-conforming as the result of the current zoning
 97 regulations being established in 1963.

98
 99 **(b). *The alteration will not have a detrimental effect on neighboring property***

100
 101 The requested alteration would not negatively affect any surrounding property. After
 102 construction, the house will remain the same distance from the property lines on the
 103 three sides.

104 Due to an addition on the eastern side of the house, the distance to the eastern
105 property line will be reduced by 16 feet; however, after completion of the addition,
106 the structure will remain over 27 feet from the eastern property line, significantly
107 outside of the required 5-foot side setback.
108

109 **Recommendation:**

110
111 The alteration complies as nearly as practicable with the requirements of Chapter 55 and it
112 will not have a detrimental effect on neighboring properties. Therefore, staff recommends
113 approval of the request to alter a non-conforming structure.
114

115 **Standards for Approval (Variance):**

116
117 The Zoning Board of Appeals has all the power granted by State law and by Section 5:99,
118 Application of the Variance Power from the City of Ann Arbor Zoning Ordinance. The
119 following criteria shall apply:
120

121 **(a). That the alleged hardships or practical difficulties, or both, are exceptional**
122 **and peculiar to the property of the person requesting the variance, and result**
123 **from conditions which do not exist generally throughout the City.**
124

125 The subject house is located at an angle on the parcel, in addition, because the rear
126 property line is straight while the front property line is curved there is a unique shape to the
127 parcel. The topography of the site rises significantly toward the rear of the site. The
128 proposed modifications will decrease the overall nonconformity of the house.
129

130 **(b). That the alleged hardships or practical difficulties, or both, which will result**
131 **from a failure to grant the variance, include substantially more than mere**
132 **inconvenience, inability to attain a higher financial return, or both.**
133

134 The existing house contains five levels of living space, which makes stairway access a
135 critical part of any reconstruction. Moving stairways in the house would be a significant
136 structural alteration that would result in more than a mere inconvenience. The modification
137 of the master suite level will reduce the nonconformity as much as possible while still
138 utilizing the access stairway. All modifications will be within required setbacks except for
139 the rear setback. The encroachment into the rear setback will not be increased as a result
140 of this project.
141

142 **(c). That allowing the variance will result in substantial justice being done,**
143 **considering the public benefits intended to be secured by this Chapter, the**
144 **individual hardships that will be suffered by a failure of the Board to grant a**
145 **variance, and the rights of others whose property would be affected by the**
146 **allowance of the variance.**
147

148 The variance, if granted, will not significantly affect surrounding properties. The variance
149 requested will not place a structure any closer to the rear property line than currently
150 exists. If the variance is approved 147 square feet of the master suite level that is within
151 the rear setback will be removed. A new master suite will be constructed that will place
152 only 40 square feet of living area within the rear setback. As a result, this project will
153 decrease the non-conformity of the house by 107 square feet. The attached rear porch will
154 be improved to a breakfast room within the existing foundation and the master suite will be
155 built above the existing footprint of the house.
156

156 **Questions to Staff**

157

158 W. Carman – *(Suggests that the Board discuss whether this actually needs a variance or*
159 *not)*. The house is already non-conforming and nothing is extending beyond the footprint
160 as it exists now, so why does the Board have to give a variance? (M. Kowalski – If the
161 alteration were totally within the setbacks, they would not need a variance. You can alter a
162 single-family home without permission from the ZBA, as long as the alteration complies
163 with all standards. Because they are adding square footage into the setback, this requires
164 the variance).

165

166 W. Carman – One could say that this ‘complies as nearly as practicable,’ but to give them
167 a variance requires different standards. (M. Kowalski – They are also converting a current
168 screened-in porch to year round living space – it will be removed and replaced).

169

170 ***(Further discussion on the need for a variance by the Board and staff, including***
171 ***granting the variance would also make the house change from non-conforming to***
172 ***conforming and changing the layout of the square footage of the alteration, the***
173 ***‘new’ construction being more than a 50 percent change, etc.)***.

174

175 D. Gregorka – How did this become non-conforming in the first place - when was it built?
176 (M. Kowalski – It was built in 1959 and our current zoning standards were not in place until
177 1963, so it was considered non-conforming at that time).

178

179 W. Carman – The 50 percent rule applies to non-conforming use for non-conforming
180 structures. (Quotes rule – “A non-conforming structure shall not be replaced after damage
181 or destruction if the estimated expense of reconstruction exceeds 75 percent of the
182 appraised value of the entire building”).

183

184 ***(Further discussion from the Board as to whether this requires a variance or not)***.

185

186 **Petitioner Presentation**

187

188 Theresa Angelini was present to speak on behalf of the appeal. She stated some of the
189 practical difficulties associated with the non-conforming structure along with its irregular lot.
190 (Extreme topography, etc).

191

192 **Audience Participation**

193

194 None.

195

196 **Discussion by the Board**

197

198 D. Gregorka – If we could avoid granting a variance and provide permission to alter a
199 non-conforming structure - that would get the job done. I would favor that but not so sure
200 where we stand on that issue. We could make a pretty strong case for granting a variance
201 as well. *(He asked the Board for input)*.

202

203 C. Kuhnke – Insofar as we would be overriding the city Zoning Administrator’s
204 interpretation [of the zoning](#) as it applies to this property (as was cited by D. Tope) - that is
205 something that carries precedent. Our decision whether or not to grant a variance will not
206 set precedent [because every property is different](#).

207

208 W. Carman – Suggests that this be discussed in a working session.

209 C. Kuhnke – Suggested that this issue be tabled and ask the petitioner to resubmit as to
210 exactly what they are asking the Board to approve.

211
212 C. Carver – I have no objections to what the petitioner’s asking; the problem is not seeing
213 *all* the grounds necessary for granting a variance (*i.e., hardship, least possible amount*
214 *necessary to grant a variance, etc*).

215
216 R. Emaus – I’m in favor of granting a variance on this and not reinterpreting the Zoning
217 Administrator’s decision. I can find reason for the variance – if you look at the lot? It’s 114
218 feet deep, it rises 1 foot for every 6 feet of length over the entire lot. They are 30 feet off
219 the front, 40 feet off the back, that leaves ~~34~~44 feet for you to build on, and the city
220 created that situation.

221
222 D. Tope – I am very much in favor of what staff has brought to this specific case. It doesn’t
223 create any more problems than it solves, but *not* granting a variance for this would create
224 more potential problems of a broader nature. It’s specific to this property and the variance
225 that is now necessary is one that was placed upon the property by the city (the non-
226 conformity), so I would like to stay specific with the properties and the situations.

227
228 W. Carman – While I’m convinced by Donna that we should grant the variance, let’s work
229 harder on the reason for the hardship as I don’t feel that the topography of the land is the
230 reason why they receive the variance; I feel they get the variance because they’re building
231 on something that is already there.

232
233 D. Tope – (Interjected that ‘because that home was conforming at one time and made non-
234 conforming not by any fault of the petitioner.’)

235
236 **Questions by the Board**

237
238 None.

239
240 **Written Communications**

241
242 None.

243
244 **MOTION #1**

245
246 Moved by D. Gregorka, Seconded by C. Carver, “**that in the case of Appeal**
247 **Number 2007-Z-007, 2270 Glendaloch Road, petitioner be granted permission**
248 **to alter a non-conforming structure based on the following findings of fact**
249 **and in accordance with the established standards for approval:**

- 250
251 **1. Per the attached plans, the alteration complies as nearly as**
252 **practicable with the requirements of the chapter.**
253
254 **2. The alterations will not have a detrimental effect on neighboring**
255 **property because this particular modification will result in less**
256 **encroachment into the rear setback.”**

257
258 **On a Voice Vote – MOTION PASSED – UNANIMOUS**

259
260 ***Permission to Alter a Non-Conforming Structure Granted***

261

262 **MOTION #2**

263

264 Moved by D. Gregorka, Seconded by W. Carman, “that in the case of Appeal Number
 265 **2007-Z-007, 2270 Glendaloch Road, based on the following findings of fact and in**
 266 **accordance with established standards for approval, the Zoning Board of Appeals**
 267 **hereby grants a variance of 15’ 1” from Chapter 55, Section 5:27 (Single Family) to**
 268 **allow a rear setback of 24’ 11” per attached plans:**

269

270 a). The current structure is non-conforming due to changes in the city
 271 ordinance (it was originally built as a conforming structure prior to
 272 current city ordinances) and the proposed addition will be built within
 273 the current footprint of the existing house.

274

275 b). It will be built within the current setback and it is a reasonable
 276 modification of the existing structure and it needs to be placed in this
 277 location to take advantage of the current layout and structure of the
 278 house.

279

280 c). The proposed addition will not be placed any closer to the rear property
 281 line; in fact, the encroachment will be less and there will be no impact
 282 on surrounding properties.

283

284 d). This is not a self-imposed situation as the structure was originally
 285 conforming prior to city ordinance changes.

286

287 e). This is the minimum use as this proposal actually reduces the amount
 288 of encroachment that the structure currently has.”

289

290 **On a Voice Vote – MOTION PASSED – UNANIMOUS – Variance Granted**

291

292

293 **VI. UNFINISHED BUSINESS**

294

295 None.

296

297 **VII. NEW BUSINESS**

298

299

300 C. Kuhnke – The rules were submitted to the Board for changes and review for a thirty day
 301 period prior to the yearly Organizational Meeting that will take place next month.

302

303 *Discussion by the Board included mention that these current rules (a.k.a. “By Laws”) had*
 304 *been up for review last year, but due to new regulations at that time (The Zoning Enabling*
 305 *Act), verbiage changes regarding city reorganization and lack of quorum at the 2006*
 306 *Organizational Meeting, the issue had been tabled until those issues could be investigated.*

307

308

309

STAFF REPORTS

310 D. Gregorka stated that this should be discussed at the forthcoming Organizational
 311 Meeting, and that he would suggest that staff reports be changed. In lieu of making an
 312 argument either for or against, staff would simply list the findings of fact based on the
 313 application they have received. Pulling the facts out of the application will provide the ZBA
 314 the basis for their discussion.

315 C. Kuhnke – I was approached by some Board members and I spoke with some staff and
316 the city attorney’s office regarding this and asked them to look into this matter to see if
317 there was any requirement that would necessitate this requirement from staff. The
318 consensus was that we don’t need a recommendation from staff; our rules are the only
319 stipulation that shows that we *do* have to have it. This will be discussed at our next
320 meeting.

321
322 I’ve also noted a few other things - Section 4 – Describing the “Order of Business” –
323 Roman Numeral IV states that “No testimony shall be taken unless the petitioner or his
324 attorney is present.” This came up at the last meeting where the petitioner asked to table
325 their appeal at the last minute, and there would have been no opportunity for the public to
326 know that the petition had been tabled. We might want to discuss if testimony can be
327 taken if the petitioner is not present and an appeal is delayed without notice to the public.
328 This is only fair to the public that attends and the petitioner can still find out what has been
329 said, either by what is contained in the minutes or watching it on television.

330
331 Roman Numeral V – “Appeals and Applications” – Number one says that an appeal has to
332 be filed within sixty calendar days of the decision of the Administrative official charged with
333 enforcing the ordinance. I believe that this is supposed to apply to any appeal that we
334 receive. (**Example**): If someone is denied a building permit, and their remedy is to come
335 to us for a variance and that requires an actual decision. This has been something that
336 has arisen recently and I think that the Building Department should either grant the permit
337 or give a formal denial for one. This is something that staff has been working on but we
338 have not been aware of.

339
340 Roman Numeral VII – “Motions” – States motions (per our rules) have to be in the
341 affirmative. If we are going to change the way our motions will be stated, we have to
342 remember to amend our rules to do that.

343
344 VIII. **REPORTS & COMMUNICATIONS**

345
346 None.

347
348 IX. **AUDIENCE PARTICIPATION - GENERAL**

349
350 None.

351
352 X. **ADJOURNMENT**

353
354 Moved by D. Gregorka, Seconded by C. Carver, “**that the meeting be adjourned.**”

355
356 **On a Voice Vote – MOTION PASSED - UNANIMOUS**

357
358 Chairperson Carol Kuhnke adjourned the meeting at 6:47 p.m.

359
360 (**Submitted by: Brenda Acquaviva, Administrative Support Specialist V –**
361 **Zoning Board of Appeals**)

362
363
364
365

Carol Kuhnke, Chairperson

Dated ZBA Minutes