



**APPROVED MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
MAY 23, 2007**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, May 23, 2007 at 6:00 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, Michigan.

The meeting was called to order at 6:04 p.m. by Chairperson Carol Kuhnke.

ROLL CALL

Members Present: (9) C. Kuhnke, C. Carver, D. Gregorka, C. Briere, R. Suarez and K. Loomis, D. Tope (arr. 6:11 pm), R. Eamus (arr. 6:18 pm) and W. Carman (arr. 6:19 pm).

Members Absent: (0)

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

A – APPROVAL OF AGENDA

A-1 Approved as Presented.

B - APPROVAL OF MINUTES

B-1 Approval of Draft Minutes of the April 25, 2007 Regular Session.

Corrections: (Lines 159-163) *“If there hadn’t been a change in ownership (which there has since the last variance), I would be concerned.” This is a new owner who wants to make it fresh and with their own ideas. (*The minutes were amended to show this change and reflect that the speaker was not opposed to the plans from the new owner).*

Moved by C. Carver, Seconded by D. Gregorka, **“that the minutes of the April 25, 2007 Regular Session be approved as amended.”**

On a Voice Vote – MOTION PASSED – UNANIMOUS

B-2 Approval of Draft Minutes of the April 25, 2007 Organizational Session.

Moved by C. Carver, Seconded by D. Gregorka, **“that the minutes of the April 25, 2007 Organizational Session be approved as presented.”**

On a Voice Vote – MOTION PASSED - UNANIMOUS

C - APPEALS & ACTION

C-1 1108 Mixtwood – 2007-Z-002

Chapter 55, Zoning, Section 5:57 (R1C) (Averaging an Existing Front Setback Line):

53 Edward Wier, petitioner, representing Peter Woolf and Leeann Fu, is requesting a
 54 variance from Section 5:57, Averaging an Existing Front Setback Line (for R1C Zoning
 55 District):

56
 57 **A variance of 10 feet in order to allow a front setback of 28 feet for**
 58 **expansion of the existing house into the front setback (38 feet is required**
 59 **by City Code).**
 60

61 Mark Lloyd, Planning and Development Services Director stated that this was old business
 62 first presented at the January 24th, 2007 Regular Session, in which the petitioner had
 63 requested the variance as outlined (above), and that a memo concerning this matter was
 64 handed out to the ZBA tonight. The issue was tabled to assist the petitioners to conduct
 65 dialogue with his neighbors who were generally opposed to the submitted plan and then
 66 return at a later date to resolve the issue.

67
 68 The petitioner requested a 90-day extension and at the February Regular Session, the ZBA
 69 granted the extension, allowing this item to expire on May 29, 2007. Mr. Lloyd pointed out
 70 that over that 90 day period, staff has contacted the petitioners numerous times, none of
 71 which have been successful in having them provide new or updated information regarding
 72 their appeal or an actual 'withdrawal' in writing. Since they are not in attendance tonight, staff
 73 recommends (in accordance with the current ZBA by-laws) that the item be dismissed and
 74 not reconsidered for an additional four months.

75
 76 *(*Administrative Support Note: There was discussion regarding whether we would re-post*
 77 *the information to the public the next time the appeal is heard. To clarify, once an item is*
 78 *dismissed, the item is 'closed' and after the four month moratorium period where the item*
 79 *cannot be heard has elapsed, the petitioner must re-apply as if it were a completely new*
 80 *appeal, and public hearings and noticing would take place as usual).*

81
 82 **C-2 - 1710 Avondale - 2007-Z-010**

83
 84 **Zoning Chapter 104, Section 8:434 - Fences**
 85

86 Peter Arendall is requesting one variance of 15 feet from Chapter 104, Fences,
 87 Section 8:434, to allow a six foot high, 100% opaque fence to be placed within
 88 the required front setback 10 feet from the front property line. (A 25-foot setback
 89 is required by City Code)

90
 91 **Description and Discussion:**
 92

93 The subject parcel is located on the corner of Avondale Road and Catalina Drive, and as a
 94 result, is subject to two front setbacks. The parcel is zoned R1C (Single-Family Dwelling
 95 District), which requires a 25 foot front setback. The house was built in 1955. The current
 96 fence standards were established in 1963.

97
 98 The following requirements are excerpts from Chapter 104, Section 8:434(1):
 99

100 (1) Fences located in residential districts:

- 101 (a) In the required front open space shall not exceed 4 feet in height and 50% opacity.
 102 (b) Shall not exceed 6 feet in height and 80% opacity in any part which is 25 feet
 103 behind the front setback line.
 104 (c) Shall not have a height of greater than 8 feet at locations other than those
 105 described in subsections (a) and (b).

106 The petitioner is proposing to construct a six foot high, 100% opaque privacy fence within the
 107 required front open space of Catalina Drive. The fence would extend 30 feet from the
 108 southeastern corner of the house to 10 feet from the front property line along Catalina Drive.
 109 The fence would continue 40 feet north parallel to the Catalina Drive sidewalk to the northern
 110 property line and then extend 50 feet along the northern side property line ending at a gate
 111 near the corner of the existing garage.

112
 113 **Standards for Approval (Variance):**
 114

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

118
 119 **(a). *That the alleged hardships or practical difficulties, or both, are exceptional and***
 120 ***peculiar to the property of the person requesting the variance, and result from***
 121 ***conditions which do not exist generally throughout the City.***
 122

123 The subject parcel is located on a corner resulting in 2 front yard setbacks. The parcel
 124 has a very narrow yard behind the house and also has an area of low elevation on the
 125 western side, which remains saturated during much of the year. There is little area
 126 available for a private backyard.

127
 128 **(b). *That the alleged hardships or practical difficulties, or both, which will result from***
 129 ***a failure to grant the variance, include substantially more than mere***
 130 ***inconvenience, inability to attain a higher financial return, or both.***
 131

132 The petitioner is allowed to place a 4 foot high fence within the front setback without
 133 the need for a variance. While strict application of the City Code will result in very little
 134 area available for a private backyard, the petitioner is able to use the entire parcel
 135 without construction of a fence.

136
 137 **(c). *That allowing the variance will result in substantial justice being done,***
 138 ***considering the public benefits intended to be secured by this Chapter, the***
 139 ***individual hardships that will be suffered by a failure of the Board to grant a***
 140 ***variance, and the rights of others whose property would be affected by the***
 141 ***allowance of the variance.***
 142

143 The variance, if granted, may affect surrounding properties. The variance requested
 144 will place a six foot privacy fence within the front open space of Catalina Drive. While
 145 this will not obstruct the required visibility area for the corner of Catalina and Avondale,
 146 there will be an aesthetic impact along Catalina Drive. A visual boundary will be
 147 presented while looking south down Catalina Drive. If the variance is granted, the
 148 adjacent property on Catalina will, in effect, have a 6 foot fence placed along its side
 149 property line to within 10 feet of the front property line.

150
 151 **(d). *That the conditions and circumstances on which the variance request is based***
 152 ***shall not be a self imposed hardship or practical difficulty.***
 153

154 The house was built in 1955. The location of the property lines and total area of the
 155 yard has not changed since that time. The current homeowner purchased the property
 156 in 2006. The variance request is based on the request for privacy, the petitioner is still
 157 able to use all of the subject property for outdoor recreation without construction of a
 158 fence.

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

161
 162 A four foot high fence could be built in the same area without the need for a variance.
 163 Placing the fence at the required front setback line would allow for a much smaller
 164 private backyard, but would not require a variance.

165
 166 **Recommendation:**

167
 168 This request does not satisfy all of the standards of approval as set forth in Chapter 55
 169 Section 5:99 (1) (a)-(e); therefore, staff recommends denial.

170
 171 **Questions to Staff**

172
 173 C. Carver – The staff report states that petitioner is asking for a variance of 15 feet to allow a
 174 6 foot high fence. Isn't he asking for a 2 foot variance? (M. Kowalski – A 6 foot fence is
 175 allowed 50 feet from the front property line. It could be a variance for the height or the
 176 location – I went with the dimensional one, which is a 15 foot variance).

177
 178 *(Lengthy discussion regarding the allowed opacity. Staff states that the opacity was not*
 179 *mentioned in the variance request as it is not dimensional, but something that needs to be*
 180 *mentioned in the motion. There was also discussion regarding which standards to use to*
 181 *judge this (Referring to the Code on Fencing) – M. Kowalski stated that he used the*
 182 *“Established procedures of the Board” – (quoting the code). The ‘interests of public health*
 183 *and welfare’ are covered under that statement).*

184
 185 C. Carver – Asked which ‘standards’ they should be using. Proving undue hardship and
 186 practical difficulty is not the correct standards for a fence, and impossible for a petitioner to
 187 pass that standard – this is a self-imposed hardship.

188
 189 D. Tope – The guidelines for the fence standards give general police powers that are inherent
 190 in the regulations – Matt is using the regulations that have been approved under the police
 191 power, health, safety and welfare. Anything that refers to the Zoning Board for our action is
 192 under our regulations, which have been promulgated under the police power of the state
 193 (stated above). It's our standards that meet those general standards.

194
 195 **Petitioner Presentation**

196
 197 Mr. Peter Arendall was present to speak on behalf of the appeal. He presented the Board
 198 with a letter signed by his neighbors stating that they have no objections to a six foot high
 199 fence being built within the 25 foot setback. The majority of them agree that if they owned
 200 the parcel that I own, they, too would want a 6 foot fence. The petitioner explained that he
 201 has a son that is approaching a year old and they feel that a fence would give a bit of safety
 202 and security while he is in the yard. As to opacity, the fence that I submitted is an alternating
 203 vertical board fence (shadowbox). The regulation I see states 80% opacity when viewed
 204 perpendicular to the fence.

205
 206 Mr. Arendall stated that when they originally purchased the property that they wanted to put a
 207 fence on the west side of the property. We weren't aware of the negative drainage/flooding
 208 area along that property line that extends through the north property line. There is also a
 209 Japanese maple that is an obstruction for any useable space in the backyard, leaving the
 210 side yard for our use.

211

212 **Questions of the Petitioner by the Board**

213

214 D. Gregorka – Asked the addresses associated with the pictures submitted by the petitioner
215 showing non-compliant fences. How close are those? (Petitioner) – One is on Stadium
216 Boulevard (corner of Ardmoor), one at the corner of Greenview and Stadium and the other is
217 at Scio Church at Murchion.)

218

219 Can you tell us why a four foot fence would not meet your needs? (Petitioner) We would
220 also like some privacy on our lot. The tree and the flooding areas make it difficult to have any
221 yard that is private.

222

223 M. Lloyd – The comment that Donna (Tope) made is the most applicable here. There are
224 standards that have been established by the state that direct the ZBA and the actions that
225 they take granting variances. The heights, etc. are the criteria that you use to deny or grant
226 the variance.

227

228 C. Carver – So those are the same standards that are used for off-street parking and parking
229 lots – which we’ve never used before. Each section of the ordinance has a reference to
230 these standards, but if we’re using one standard, I’m not sure the petitioners will meet all of
231 these requirements and/or anything.

232

233 W. Carman – I think it is true that in the past we have sometimes only supplied the language
234 in the fence ordinance and/or another ordinance other than Chapter 55 - so we have ...“it’s
235 in harmony for the intent and purpose of the Fence Ordinance....” I’ve never personally felt
236 that was correct, but it is what has been provided sometimes by staff in the past. If we all
237 agree that this wasn’t the correct situation in the past, we don’t have to keep perpetuating it
238 just because we did it that way before.

239

240 *(The Board discussed appropriate applicable standards at length.)*

241

242 C. Kuhnke – (To M. Kowalski) – Did you look at the document circulated by the petitioner that
243 was signed by his neighbors? It mentions that these neighbors do not object to a fence that
244 is six feet high, 100% opaque, 10 feet from the property line. It doesn’t mention any variance
245 for opacity in the application. What notice was given? (M. Kowalski – The notice language is
246 the same language statement at the heading under “summary’.)

247

248 R. Eamus – This is not an uncommon situation. There are many homes like this with corner
249 lots and this frontage. I did not see anyone else in this neighborhood who had a large
250 opaque fence. This would be setting a precedent.

251

252 D. Tope – I’m not inclined to support this due to public safety; people walking, stop signs not
253 always observed, etc., those distance requirements for set-backs are directly a result of that.
254 Pedestrians need to be seen and that is to the general health, safety and welfare.

255

256 D. Gregorka – I will also be unable to support this petition. The petitioner has other
257 alternatives that he can do working within the fence ordinance.

258

259 R. Suarez – I think in particular where it comes to the corner, bicyclists, pedestrians, etc.
260 would not be seen.

261

262 K. Loomis – I would add that if we deny this variance there is still sufficient usable space
263 within the lot (the eastern edge of the house) - enough for a small swing, a table and chairs
264 for outdoor dining, etc.

265 **Audience Participation** - None.

266

267 **Discussion by the Board**

268

269 C. Kuhnke - asked that the petition be included in the file.

270

271 **Questions by the Board** - None.

272

273 **Written Communications** – Submitted by petitioner and included in permanent file.

274

275 **MOTION**

276

277 Moved by K. Loomis, Seconded by D. Tope, “that in the case of Appeal Number
278 **2007-Z-010, 1710 Avondale, that in accordance with the established standards**
279 **for approval and the following findings of fact that petitioner be granted a**
280 **variance of 15 feet from Chapter 104, Section 8:434 (Fences), to allow a six foot**
281 **high 100% opaque fence to be placed within the front setback, 10 feet from the**
282 **property line as:**

283

- 284 a. The alleged hardships are peculiar to the property and result from
285 conditions that do not exist generally throughout the city.
- 286
- 287 b. The alleged hardships or practical difficulties or both, which will
288 result from a failure to grant the variance includes substantially
289 more than mere inconvenience, inability to obtain a higher financial
290 return or both.
- 291
- 292 c. The variance, if granted, will not significantly affect surrounding
293 properties.
- 294
- 295 d. The circumstances of the variance request are not self imposed.
- 296
- 297 e. The variance request is the minimum necessary to achieve
298 reasonable use of the structure.
- 299

300 **On a Voice Vote – MOTION FAILED – *UNANIMOUS (Variance Denied)***

301

302

303 **D. UNFINISHED BUSINESS**

304

305 **D-1** Final Review and Revision - Rules of the ZBA

306

- 307 ➤ For consistency within the document and all other Boards and Commissions,
308 Mark Lloyd has requested a change of listing the agenda items from Roman
309 Numerals to an alphabetical list to be in harmony with other city boards and
310 new software.

311

- 312 ➤ Discussion by the Board regarding ‘re-noticing’ of appeals.

313

314 *(The general concensus is that this can be worked out as a policy later and not necessarily*
315 *included in the by-laws).*

316

- 317 ➤ Discussion by the Board regarding Staff Recommendations on the staff reports
 318 – to include them or not.
 319

320 D. Gregorka – Stated that he felt that the outcome of the appeals should solely rest with the
 321 board, and that the cases that have to go to a court of law could be more clear-cut and not
 322 cloud the matter by involving the city in any way in the documentation.
 323

324 We do spend time challenging the staff recommendation, and I believe we should spend
 325 more time on whether the standards are met or not met. I believe we are doing a disservice
 326 to petitioners, as they may be coming here with an incorrect perception – focusing on the
 327 staff report rather than thinking they’re coming into a fair, impartial hearing, which I believe
 328 these are.
 329

330 R. Suarez – You could put a disclaimer on the report stating that the Zoning Board of Appeals
 331 may have a totally different conclusion. I like the fact that I can see the staff opinions. It’s
 332 helpful to me, as I don’t have a background in zoning.
 333

334 W. Carman – Ms. Carmen reiterated that the Board values the comments on each of the
 335 standards within the staff reports; they are extremely valuable and probably efficient without
 336 including the last sentence that says “Recommendation: The staff recommends approval
 337 and/or denial.” I think this lends the view that staff carries some weight in the outcome, but in
 338 fact it is the Board’s decision. The removal of the ‘recommendation’ section will certainly not
 339 hurt us.
 340

341 D. Tope – Stated she did not see a problem either way, and only because they (the Board)
 342 are now enumerating every standard. Staff can state that “based on the findings, staff does
 343 not feel that the standards are being met,” taking the confrontation out of the appeal.
 344

345 C. Carver – I see no harm in the city giving its position. The Planning Department gives the
 346 Planning Commission its decisions, and no one gets upset about that. If we’re all worried
 347 about lawsuits, we should make sure we put our findings of fact in each motion. If we want to
 348 do this right and not include the city within the opinion, then we need to start stating our
 349 motions correctly.
 350

351 C. Kuhnke – I spoke with the City Attorney’s office about this issue, and they stated that they
 352 have never faced the city recommendation and the Board’s rejecting a recommendation as
 353 being a serious issue in any cases brought to circuit court.
 354

355 K. Loomis – Also stated that she felt that the staff reports speak for themselves, whether the
 356 sentence of support or denial is there or not.
 357

358 M. Kowalski – Stated that he always tells the petitioners at the pre-submission meeting that
 359 the ‘staff recommendation’ is ONLY that – a recommendation - and that the ZBA can and
 360 does vote differently than what staff recommends.
 361

362 Moved by D. Gregorka, Seconded by D. Tope “**that in Section 3, subsection 7, (“And a**
 363 **staff recommendation”), that that language be stricken.”**
 364

365 Friendly Amendment by D. Tope to insert instead the following: **“a staff analysis of each**
 366 **standard that the ZBA is to consider.”** (Accepted by D. Gregorka/D. Tope).
 367

368 R. Eamus – The amendment as stated does not limit the possibility of a ‘staff
 369 recommendation,’ but it eliminates the “REQUIREMENT” to do so.

370 C. Carver - Call the question.

371
372 **On a Roll Call Vote – MOTION PASSED - Yea (8), Nay (1)**

373
374 **Yea** – W. Carman, C. Carver, R. Eamus, D. Gregorka, C. Kuhnke, K. Loomis, D. Tope and
375 C. Briere.

376
377 **Nay** – R. Suarez

378
379 ➤ Conduct of Hearings

380
381 Moved by W. Carman, Seconded by K. Loomis, “to strike the words **“and**
382 **recommendation”** in Section 6:32 of the Conduct of Hearings.”

383
384 **Yea** – W. Carman, C. Carver, R. Eamus, D. Gregorka, C. Kuhnke, K. Loomis, D. Tope and
385 C. Briere.

386
387 **Nay** – R. Suarez

388
389 Moved by W. Carman, Seconded by D. Gregorka, “to accept all the changes of the Rules
390 of the ZBA.”

391
392 **On a Voice Vote – MOTION PASSES – NEW RULES ADOPTED.**

393
394 **E. NEW BUSINESS – None.**

395
396 **F. REPORTS & COMMUNICATIONS**

397
398 **F-1** Memo from M. Lloyd regarding 1108 Mixtwood (Presented at Session)

399
400 **G. AUDIENCE PARTICIPATION – GENERAL – None.**

401
402 **ADJOURNMENT**

403
404 Moved by D. Gregorka, Seconded by C. Carver, “that the meeting be adjourned.”

405
406 **On a Voice Vote – MOTION PASSED - UNANIMOUS**

407
408 Chairperson Carol Kuhnke adjourned the meeting at 7:27 p.m.

409
410 **(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –**
411 **Zoning Board of Appeals)**

412
413
414
415 _____
Carol Kuhnke, Chairperson

Dated ZBA Minutes