



**APPROVED MINUTES OF THE REGULAR MEETING OF  
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR  
November 19, 2008**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, November 19, 2008 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: (8) C. Carver, J. Carlberg, C. Briere, S. Briere,  
D. Gregorka, W. Carman, C. Kuhnke and D. Tope  
(arr. @ 6:12 p.m.)

Members Absent: (1) K. Loomis

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

C. Kuhnke – Welcomed the ZBA’s newest member, City Council Member Sabra Briere.

**A – APPROVAL OF AGENDA**

**A-1** The Agenda was approved as presented without objection.

**B - APPROVAL OF MINUTES**

**B-1** Approval of Draft Minutes of the October 22, 2008 Regular Session.

Postponed to the December 17, 2008 Regular Session.

**C - APPEALS & ACTION**

**C-1 719 North Fourth Avenue – ZBA08-008**

Kathleen Baxter is requesting permission to alter a non-conforming structure from **Chapter 55 (Zoning), Section 5:86**, and one variance of 3 feet in order to permit an addition into the side yard setback. (5 feet is required by Code).

**Description and Discussion**

The subject parcel is located at 719 North Fourth Avenue. The parcel is zoned R4C (Multiple-Family Residential District) and is located on the west side of Fourth Avenue, south of Summit. The house is currently used as a legal duplex and was built in 1918 and is 1600 square feet.

The petitioner is proposing to construct an addition to the rear of the house above the existing first floor. The house is non-conforming for the south side yard setbacks. The parcel is also non-conforming for lot area as well as lot width. The existing house is located at a slight angle and encroaches 2 feet 7 inches into the side setback. The rear addition will continue straight along the existing building lines. However, due to the angled house placement the addition in the rear will come 7 inches closer to the side property line than the existing house. Because the proposed addition will be placed closer to the side property line than the existing building, a variance is required.

54 The variance is being requested to allow a 3 foot encroachment into the side open space  
 55 which includes the existing house as well as the proposed addition. The addition will contain  
 56 a two-car attached garage on the ground level as well as expanded living space for the two  
 57 units. The number of units is not increasing; the construction proposed only enlarges the  
 58 existing 2 units.

### 60 Questions to Staff by the Board

61  
 62 C. Carver (To M. Kowalski) – I thought duplexes didn't have to come before the ZBA for  
 63 alteration to non-conforming structures? (M. Kowalski – It's Single-Family houses that don't  
 64 have to, but even if this was a single family, it would still have to come before the Board  
 65 because the alteration does not comply. Because the house is on an angle, it doesn't  
 66 comply).

67  
 68 Is the city in favor of this? The reason I ask is because Section 5:85 clearly states that the  
 69 city wants to reduce structural non-conformities and here we are increasing it. (I think it's a  
 70 reasonable request, considering they're continuing the existing building lines. When you look  
 71 at the floor plan the way the interior part of the existing structure is laid out – it makes sense  
 72 to continue that line, and it's only going 7 inches closer. In addition, they do have a rather  
 73 large rear yard and are nowhere near the actual setback in that area).

74  
 75 W. Carman – This structure will remain non-conforming if we grant this variance due to the lot  
 76 size and width? (Correct – This is a non-conforming, R-4C lot). If they wanted to build  
 77 another addition later, they would still have to return to the ZBA? (Correct).

78  
 79 D. Gregorka – What if the home were converted to a single family home? (No, they wouldn't  
 80 have to come back to the ZBA at that point).

81  
 82 J. Carlberg – Is there any information from the neighbor to the south about support for this  
 83 project? (M. Kowalski – Stated that there were 9 homes in the area that provided a letter of  
 84 support, in addition to the North Central Property Owners Association).

### 86 Petitioner Presentation

87  
 88 Kathleen Baxter, owner of this property, and Carl Gilmore, Architect on the project were  
 89 present to speak on behalf of the appeal. Mr. Gilmore stated that the walkway in the rear of  
 90 the property is for safety reasons. The property sits on a slope and it could be a safety  
 91 hazard for them or their tenants since it's on an incline, as well as the same possibility for a  
 92 car sliding on the incline. This is also another reason for continuing the addition on the  
 93 current lines on the left.

### 95 Questions of the Petitioner by the Board

96  
 97 W. Carman – Asked if the architect could comment on the flood plain line? (He stated that he  
 98 understood that the flood plain was going to be reduced in this area, but even if that weren't  
 99 the case, the floor elevation of the building and basement itself is above the existing  
 100 floodplain by about six inches. Any habitable space in this building would still be above that  
 101 line, even if the floodplain doesn't change. The floor of the garage would be under that, but  
 102 that is not habitable space).

103  
 104 (M. Kowalski – Did comment that the MDEQ is changing its floodplain maps and have been  
 105 doing so for over a year. This affects site plan projects significantly, so it's something we  
 106 deal with frequently).

107 J. Carlberg – Asked the architect if some of the proposed building was going to actually  
 108 ‘displace’ part of the existing floodplain by ‘filling it in? You’ll be putting in footings, and  
 109 building there? (C. Gilmore – Stated that the state is not so much concerned with that but  
 110 *what* you put in the flood plain and whether or not it’s habitable). I understand that concern,  
 111 but there is also a concern with maintaining the existing capacity, possibly by creating flood  
 112 plain area in another part of your site, as they need that volume in order to have the waters  
 113 move into that area. You don’t want it ‘lapping up’ on your garage.  
 114

115 W. Carman – We had a previous case on ~~Washtenaw south of~~ Huron Parkway ~~south of~~  
 116 ~~Washtenaw~~. The residents couldn’t have doors on their garages, because the garage had to  
 117 help hold the volume of water in order to meet the flood plain rules; I’m inclined to believe that  
 118 that could be an issue. (C. Gilmore – If the building permit were issued for this, provided that  
 119 the Board approves it, prior to when the state modifies their flood plain, then something like  
 120 that could be taken care of by modifying the garage door to allow any water that comes in to  
 121 easily go back out).  
 122

123 S. Briere – Asked if some of that couldn’t be accomplished by modifying the landscaping  
 124 plan. (Yes, but even the existing grade will cause the garage into the existing elevation).  
 125 What we’re really talking about is storm water retention in a floor plain. Dealing with that as a  
 126 part of your plan might be an approach.  
 127

128 C. Carver – Isn’t this out of our area of expertise? I’ll assume here if there is something  
 129 wrong that this will be broached in the permit process, correct? (M. Kowalski – when it goes  
 130 through our grading process, it will be flagged as a flood plain and stopped at that point if it  
 131 doesn’t meet the requirements – drainage, erosions, etc.).  
 132

133 **Public Comment** – None. (Written Communications were noted earlier).  
 134

### 135 **Discussion by the Board**

### 137 **MOTION #1**

139 Moved by W. Carman, Seconded by D. Gregorka, “In the case of Appeal Number  
 140 ZBA08-008, 719 North Fourth Avenue, that the Zoning Board of Appeals grants  
 141 permission to alter this non-conforming structure to build a 26 ft. x 24 ft. two and one  
 142 half story rear addition per submitted plans. The expansion complies as nearly as  
 143 practicable with the requirements of the Zoning chapter and the following findings of  
 144 fact:  
 145

- 146
- 147 1. It does not appreciably extend the encroachment into the side setback, but
- 148 merely extends the line of the existing house;
- 149 2. The closest the new addition will come to the south lot line will be 2 ft., which
- 150 will still allow construction and maintenance to occur without trespassing on the
- 151 neighboring property;
- 152 3. It will not be any closer to the front or north side setbacks;
- 153 4. It will still provide the required rear setback, given the depth of the lot; and
- 154 5. Although the lot size and lot width are still non-conforming, it will remain non-
- 155 conforming. This will not increase the number of units on the lot.  
 156

157 On a Voice Vote – MOTION APPROVED – **UNANIMOUS** (*Permission to alter a non-*  
 158 *conforming structure - Granted*)  
 159

