

5. ANNOUNCEMENTS/COMMUNICATIONS

A. May 2007 Edition of the Zoning & Planning News

Chairperson Colling noted the Board had received the May 2007 edition of the *Zoning & Planning News*, and called for any announcements or communications. No announcements or communications were provided.

Chairperson Colling stated that the procedure for conducting Public Hearings was outlined on a flyer located in the rear of the auditorium. He stated that any and all evidence, and any documents or exhibits submitted during tonight's proceedings, would be included as part of the public record of the meeting. He reminded the Board and the audience that all questions should be directed to the Chair.

6. UNFINISHED BUSINESS

6A. FILE NO. 86-758

Location: 1961 E. Auburn Road, located on the north side of Auburn Road, west of Dequindre Road and east of Hessel Avenue, Parcel Number 15-25-483-009, zoned B-5 (Automotive Service).

Request: Item #1:

A request for a variance of 38 feet from Section 138-1111 (Schedule of Regulations) of the Code of Ordinances, which requires a minimum rear yard setback of 50 feet in the B-5 Automotive Business Zoning District. The submitted application for the remodel of the existing gas station indicates a rear yard setback of 12 feet.

Item #2:

A request for a variance of 50 feet from Section 138-1111 (Schedule of Regulations) Footnote (s) of the Code of Ordinances, which states that on corner lots in the B-5 district, the setback from the proposed right-of-way line shall be 75 feet, with both frontages considered as the front yard setback. The submitted application for the remodel of the existing gas station indicates a front yard setback of 25 feet from the proposed right-of-way of Hessel Avenue.

Item #3:

A request for a variance of 11'11" from Section 138-1111 (Schedule of Regulations) of the Code Of Ordinances, Footnote (v)(1), which states that a canopy shall be located not less than 10 feet from a proposed right-of-way. The submitted application for the remodel of the existing gas station indicates a canopy encroaching 1'11" within the proposed Auburn Road right-of-way.

Item #4:

A request for a variance of 10 feet from the proposed Auburn Road right-of-way from Section 138-659(5) (Required Conditions) of the Code of Ordinances which requires that gasoline pumps shall be set back not less than 20 feet from all existing and/or proposed street right-of-way lines. The submitted application for the remodel of the existing gas station reflects gasoline pump islands within 10 feet of the proposed Auburn Road right-of-way.

Applicant: Faiz Simon
Fast Track Ventures
24501 Ecorse Road
Taylor, Michigan 48180

Chairperson Colling stated that this matter had been before the Board on April 9, 2007, and was **postponed** tabled to allow time for some additional research. He read the request for the record, asked the applicants to come forward to the presenter's table, and provide a brief summary of their request.

Present were Bob Kirk, Attorney, 19500 Hall Road, Suite 100, Clinton Township, Michigan, on behalf of the applicant, and Chester Stempien, Chester Stempien Associates, AIA, 29895 Greenfield Road, Southfield, Michigan. Attorney Heather Miserlian, P.O. Box 46556, Mt. Clemens, was also present representing the adjacent property owner at 1979 E. Auburn Road.

Mr. Kirk stated Ms. Miserlian would address her issues first with regard to the encroachment discussed at the April 9, 2007 meeting. He stated they had found on their survey that the sidewalk on the parcel on the east side of the property encroached three feet onto the applicant's property. He noted that Ms. Miserlian had some documents from the Register of Deeds showing there was no encroachment. He indicated that Ms. Miserlian had agreed to enter into any type of agreement necessary to allow them to proceed.

Ms. Miserlian stated she had reviewed the minutes from the April 9, 2007 Zoning Board of Appeals meeting, and became aware of the encroachment issue. She contacted Mr. Kirk and asked him for a copy of his 2006 survey, and obtained a copy of an earlier survey from her client, that did not reflect an encroachment. She added her clients were not opposed to the development of the subject property, and to the extent they could resolve any adjacent property issues, they would do so. She noted she had ordered some documents from the Oakland County Register of Deeds Office, but had not received them yet. She felt once the documents were received, they would be able to resolve any property line issues.

Chairperson Colling asked if the City was satisfied the issue was resolved. Mr. Anzek stated he and Mr. Stempien had been working on that issue, and clarified there was no building encroachment, but rather there was a walkway. He indicated if Ms. Miserlian's client was supportive of moving, changing, altering or doing something to make the project work, the City was agreeable to that. Ms. Miserlian stated they just needed to verify the matter.

Mr. Anzek stated that once the encroachment had been identified at the prior meeting, there had been some concern the subject project would create some type of hardship to or problem for the neighbor. Chairperson Colling clarified that the aerial included in the April 9, 2007 meeting packet was not completely accurate. Mr. Anzek explained the City could only verify the GIS System up to one or two feet in accuracy, and that a certified survey was required, which the applicant had provided.

Chairperson Colling asked the applicant if they wanted to restate their case. Mr. Kirk suggested he review the list of items discussed by the Board at the prior meeting, noting Mr. Anzek had researched the Michigan Department of Transportation (MDOT) issue and the history of the site. With regard to the other issues with the proposed building, he noted Mr. Stempien had addressed those through submittal of a revised plan. He noted his letter set forth their case, and they had addressed the issues brought up at the last meeting.

(Arrive Member Duistermars: 7:36 PM)

Mr. Stempien stated he had submitted a survey that stated the easterly half of the subject property was dedicated to the adjacent property owner, which eliminated any possibility of encroachment. He noted that was a landscape area that would not be developed, and he thought that issue could be easily resolved.

Mr. Anzek stated the Board had asked Staff to research the site and any proposed MDOT projects. He noted the City's Assessing Records reflected the original station was built in 1971. He stated in discussions with the City's Traffic Engineer, any road improvements to either Auburn or Dequindre were scheduled for the year 2011 or 2012. The City's Traffic Engineer did not believe those proposed improvements would have any impact on the subject site. He indicated that any MDOT improvements to the Auburn Road Corridor would merely be an overlay at this time, and did not include any widening or other road improvements, and was tentatively scheduled for 2012.

Chairperson Colling noted that although the Public Hearing had been held at the April 9, 2007 meeting, there were a number of people in the audience and he opened another Public Hearing at 7:43 PM to allow any member of the audience an opportunity to speak on this matter. There being no members of the audience wishing to speak on this matter, Chairperson Colling closed the Public Hearing at 7:44 PM. He then called for discussion from the Board.

Mr. Verschuere stated he had brought up the encroachment at the prior meeting based on the aerial photograph included in the packet materials. He stated he was happy with the way the applicant handled that situation, noting the survey made it clear there was no encroachment.

Chairperson Colling verified with the applicant that none of the building plans had changed since the prior meeting. Mr. Stempien responded that they had removed some parking along the easterly property line to alleviate any congestion for vehicles coming in off Auburn Road. He stated they still complied with the City's parking requirements, but by removing those parking spaces, they had created better traffic flow for the site.

Chairperson Colling asked if the City agreed to that solution. Mr. Anzek noted that was more of a site plan issue, but wanted to be sure that no parking variance would be necessary.

Mr. Anzek referred to Item #1, the variance request of 11'11" for the canopy, and noted the revised site plan depicted the canopy right on line with the proposed right-of-way. He asked the applicant if any changes were being made to the canopy. Mr. Stempien stated they were using

the existing canopy without any changes. He indicated there was an error in their previous dimensions, and the revised plans were correct.

Mr. Anzek indicated he would review the revised plans to determine if a different footage calculation was necessary for Variance Request Item #3. Chairperson Colling indicated the Board could proceed with the other variance requests until the calculation for Item #3 was resolved.

Mr. Anzek stated that Variance Request Item #3 would be for a 10-foot variance rather than 11'11" as noticed. He noted that because it was a lesser amount, the request would not have to be renoticed. Chairperson Colling stated for the record that any motion regarding Variance Request #3 would be corrected to read 10-feet within the proposed Auburn Road right-of-way. Mr. Anzek clarified the canopy would not encroach into the proposed right-of-way, but would be in line with the proposed right-of-way.

Chairperson Colling recapped the requests before the Board, noting the subject site contained an older service station that the applicant wanted to redevelop. He explained the Auburn Road corridor in that particular area was part of the City's Commercial Improvement (CI) District; however, the subject site was zoned B-5 (Automotive Service) and was not included in that CI zoning.

Mr. Anzek explained the CI District was an incentive put in place by the City with the 1998 Master Land Use Plan. He stated the CI District did allow zero lot line development to encourage the redevelopment of properties. However, two parcels in that corridor, the subject site and one additional service station to the west, were specifically zoned B-5, and as such fell under the B-5 Standards. Those Standards required a 75-foot front yard setback, and because the station was on a corner lot, that same front yard setback applied to the corner. The Standards also required a 50-foot rear yard setback. He noted the subject site contained an existing 6-foot high masonry wall on the property line, with a 20-foot alley behind the wall, separating the subject parcel from the adjacent property to the north. He pointed out that although the City would relax setbacks for the CI District to allow reinvestment in the neighborhood, the subject parcel fell under a more restrictive zoning category.

Chairperson Colling reminded the Board that although the case before them was difficult, unfortunately the alternative was blight. He noted the site had been sitting vacant for quite some time, and this was an opportunity to alleviate that situation. He pointed out that the property, with its buried tanks, was not likely to be developed in another manner at any time soon. He stated he would like to have this matter decided at this meeting.

Mr. Monaghan stated he went past the site earlier in the day, and noted it was a small lot that was not currently in good condition. He felt the type of improvement being requested would be a substantial upgrade for the lot and the corridor in general. He stated he would be happy to make a motion, but would require a few minutes to put one together.

Chairperson Colling called for a short recess to allow the Board time to prepare a motion.

(Recess: 7:47 PM to 8:00 PM)

Chairperson Colling called the meeting back to order at 8:00 PM, and asked if the Board had any further questions or discussion about the subject case. Mr. Monaghan proposed the following motion:

MOTION by Monaghan in the matter of File No. 86-758, that the request (Item #1) for a variance of 38 feet from Section 138-1111 (Schedule of Regulations) to allow a rear yard setback of 12 feet; (Item #2) for a variance of 50 feet from Section 138-1111 (Schedule of Regulations) to allow a front yard setback of 25 feet from the proposed right-of-way of Hessel Avenue; (Item #3) for a variance of 10 feet from Section 138-1111 (Schedule of Regulations) to allow the existing canopy to remain at the proposed Auburn Road right-of-way; and (Item #4) for a variance of 10 feet from Section 138-659(5) (Required Conditions) to allow gasoline pump islands within 10 feet of the proposed Auburn Road right-of-way, be **APPROVED** for Faiz Simon, Fast Track Ventures, for the property located at 1961 E. Auburn Road, Parcel Identification Number 15-25-483-009, with the following findings and conditions:

Findings:

1. A practical difficulty or unnecessary hardship exists for this property in the form of a newly limited building envelope as required for the B-5 Zoning District as determined by proposed right-of-way by the Michigan Department of Transportation (MDOT).
2. There are exceptional circumstances with the property and site plan configuration. Specifically, the property is extremely small and utilizes the only configuration that has a usable building envelope, which would provide safe site access. The applicant has not self-created the situation.
3. No other feasible alternative exists that would allow the reasonable use of the property providing safe site access that is consistent with other similar properties within the City.
4. The granting of this variance would preserve a substantial property right for the owner as enjoyed by other property owners in similar circumstances, and thus substantial justice will be done. The setback variance is necessary in order to meet all other zoning ordinance requirements.
5. The granting of this variance will not be materially detrimental to the public welfare or materially injurious to this property or any other properties or premises in the zone or district in which the property is located. There are no indications given from this application that this will impair the traffic on the road, the safety of those traveling the road, or those living on or near the property.
6. The granting of this variance is not expected to impair an adequate supply of light and air to adjacent properties; unreasonably increase the congestion in public streets; increase the danger of fire or endanger the public safety; make the site inaccessible to fire department or other emergency vehicles; create any particular concern with the traveling public;

unreasonably diminish or impair established property values within the surrounding area; or in any other respect impair public health, safety, comfort or morals, or the welfare of the inhabitants of the City for all of the reasons stated above.

Condition:

1. The property be developed per the plan as submitted to the City by the applicant dated May 10, 2007.

Chairperson Colling called for a second to the proposed motion on the floor. Mr. Duistermars stated he would second the motion. Chairperson Colling called for discussion on the proposed motion on the floor.

Mr. Verschueren suggested the following condition be added:

2. The plans must adhere to all City Codes and requirements.

Chairperson Colling asked the motion maker and seconder if they agreed to the addition of Condition #2. Both Mr. Monaghan and Mr. Duistermars agreed to the addition of Condition #2.

Chairperson called for any additional discussion on the proposed motion. Upon hearing none, he called for a roll call vote.

Complete Motion (as voted):

MOTION by Monaghan, seconded by Duistermars, in the matter of File No. 86-758, that the request (Item #1) for a variance of 38 feet from Section 138-1111 (Schedule of Regulations) to allow a rear yard setback of 12 feet; (Item #2) for a variance of 50 feet from Section 138-1111 (Schedule of Regulations) to allow a front yard setback of 25 feet from the proposed right-of-way of Hessel Avenue; (Item #3) for a variance of 10 feet from Section 138-1111 (Schedule of Regulations) to allow the existing canopy to remain at the proposed Auburn Road right-of-way; and (Item #4) for a variance of 10 feet from Section 138-659(5) (Required Conditions) to allow gasoline pump islands within 10 feet of the proposed Auburn Road right-of-way, be **APPROVED** for Faiz Simon, Fast Track Ventures, for the property located at 1961 E. Auburn Road, Parcel Identification Number 15-25-483-009, with the following findings and conditions:

Findings:

1. A practical difficulty or unnecessary hardship exists for this property in the form of a newly limited building envelope as required for the B-5 Zoning District as determined by proposed right-of-way by the Michigan Department of Transportation (MDOT).

2. There are exceptional circumstances with the property and site plan configuration. Specifically, the property is extremely small and utilizes the only configuration that has a usable building envelope, which would provide safe site access. The applicant has not self-created the situation.
3. No other feasible alternative exists that would allow the reasonable use of the property providing safe site access that is consistent with other similar properties within the City.
4. The granting of this variance would preserve a substantial property right for the owner as enjoyed by other property owners in similar circumstances, and thus substantial justice will be done. The setback variance is necessary in order to meet all other zoning ordinance requirements.
5. The granting of this variance will not be materially detrimental to the public welfare or materially injurious to this property or any other properties or premises in the zone or district in which the property is located. There are no indications given from this application that this will impair the traffic on the road, the safety of those traveling the road, or those living on or near the property.
6. The granting of this variance is not expected to impair an adequate supply of light and air to adjacent properties; unreasonably increase the congestion in public streets; increase the danger of fire or endanger the public safety; make the site inaccessible to fire department or other emergency vehicles; create any particular concern with the traveling public; unreasonably diminish or impair established property values within the surrounding area; or in any other respect impair public health, safety, comfort or morals, or the welfare of the inhabitants of the City for all of the reasons stated above.

Conditions:

1. The property be developed per the plan as submitted to the City by the applicant dated May 10, 2007.
2. The plans must adhere to all City Codes and requirements.

Roll Call Vote:

Ayes: Brnabic, McGunn, Verschueren, Brennan, Colling, Monaghan,
Duistermars
Nays: None
Absent: None

MOTION CARRIED

Chairperson Colling stated for the record that the motion had carried. The applicants thanked the Board for their time and consideration.