

**ZONING BOARD OF APPEALS  
MEETING MINUTES  
May 23, 2018  
CITY COUNCIL CHAMBER  
7:00 P.M.**

**1. CALL TO ORDER**

The meeting was called to order at 7:00 pm.

**II. ROLL CALL**

**Present:** J. Albers, C. Garcia, H. Khan, J. Symanns, J. Talaga

**Staff:** C. Kochanek, Preservation Planner  
Nan Schuette, Executive Director

**III. APPROVAL OF MINUTES**

Commissioner Khan moved to approve the minutes of January 24, 2018 with correction (Support: C. Garcia) and the motion carried unanimously.

**IV. PURPOSE OF MEETING**

Chairman Albers stated the purpose of the meeting.

**V. OLD BUSINESS**

None

**VI. NEW BUSINESS**

1. 528, 530 and 534 N. Huron – Variances
  - Front Setback
  - Parking Setback
  - Commercial Frontage Requirements
  - Primary entrance facing street

The staff presentation was made by Preservation Planner Kochanek who stated this is a request for approval of a variance from Sec. 122-477, requiring adherence to commercial frontage standards to permit 3% transparency on Huron, a distance from ground to window of greater than 2.5', and a distance between openings of greater than 2' and Sec. 122-607(s) requiring that the building entrance face the street.

The total for the three parcels is 0.434 acres; this includes 528 N. Huron, 530 N. Huron and 534 N. Huron, parcels #11-11-40-105-029, 11-11-40-105-021 and 11-11-40-105-022. These parcels are on the southeast corner of the intersection of N. Huron and W. Forest Ave with frontage on N. Huron and W. Forest. There is an existing 1,200 sq. ft. commercial building at 530 N. Huron that partially encroaches on the 528 N. Huron parcel and a 2,700 sq. ft. commercial building on the 534 N. Huron parcel. The existing building has no window/door openings on the W. Forest St side and no window openings on the N. Huron St side with an angled entrance door at the southwest corner of the building.

Zoned NC-neighborhood Corridor, the applicant is proposing a 3,520 sq. ft. addition to the existing 2,774 sq. ft. building for a total of 6,294 sq. ft. at the northwest corner of the parcels. The plans also call for a demolition of the existing 1,200 sq. ft. structure at 530 N. Huron. Parking is proposed to the south of the structure with the entrance off the parking lot on the south side of the building, a variance from Sec. 122-607(a), requiring that the building entrance face the street. The building is addressed to N. Huron with frontage on both N. Huron and W. Forest. The proposed structure also does not comply with the required commercial private frontage required in Sec. 122-477 and fully listed Sec. 122-484 as it has only 3% ground floor transparency on the N. Huron Side, not the required 60% and no transparency on the W. Forest side of the building. The distance between openings is proposed at 2.5' up to 24.5' when the max is 2' and the height to the bottom of the window is 6' rather than the required 2.5'.

This application was tabled at the April 18<sup>th</sup> Planning Commission meeting in order to provide for applicant to seek the variances necessary for the proposed plans. There are a total of four variances that the applicant is seeking, two are addressed on one review and two on a subsequent review. Staff noted that the three parcels will need to be combined in order to accommodate the proposed use as a parking lot which cannot be a primary use in Neighborhood Corridor.

Staff reviewed all the applicable standards and sections for variances. Staff is recommending denial on the variances for commercial frontage and building entrance on street.

Staff went on to review the remaining two variances; one from Sec. 122-683, requiring a 10' setback of parking from neighboring lots, to permit a 3' setback and another from Sec. 122-477, requiring a street setback of between 5-15'.

Zoned NC-neighborhood Corridor, the applicant is proposing a 3,520 sq. ft. addition to the existing 2,774 sq. ft. building for a total of 6,294 sq. ft. at the northwest corner of the parcels. The plans also call for a demolition of the existing 1,200 sq. ft. structure at 530 N. Huron. Parking is proposed to the south of the structure adjacent to the building and the 3-unit residence to the south on N. Huron. The existing structure is nonconforming in regards to street setbacks on the N. Huron and W. Forest street sides; only the N. Huron St side is an expansion of the existing nonconforming setback thus the applicant is looking for a variance from Sec. 122-477 which requires a 5'-15' setback. The applicant is also proposing parking at a 3' setback instead of a 10' setback from the neighboring lot, an exception to Sec. 122-683(d).

Staff reviewed the standards and recommended denial on the street setback and tabling of the parking lot setback as the Planning Commission may choose to waive this requirement in whole or in part with a finding that the lot shares a common access and common parking with the adjoining lot, or that storm water, landscaping, and other similar concerns have been adequately addressed with other methods.

She gave a brief summary for benefit of the board. Some questions arose regarding the minimum variance, which she detailed. Commissioner Khan asked if the Planning Commission had provided input on the design of the proposed building. Ms. Kochanek explained that the design would have to go before the Planning Commission as well as the Historic District Commission for types of materials proposed.

Commissioner Talaga moved to open the public portion of the hearing (Support: H. Khan) and the motion carried unanimously.

**Tom Tamou, 3102 Farmdale Dr, Sterling Heights-** is asking for help with this project. They are in the business of running a party store and safety is important for his customers, employees and avoiding break-ins. They are asking for these variances because they are needed in order to make the business work, i.e. layout of the building, equipment location, etc. They have been working on this project for approximately two years, re-doing numerous drawings for what will work for both the City, the Historic District and what works for this business, too. Everything here has to do with the business plan. The setback is going to interfere with the building and the parking. Both businesses are going to be in one building. The lighting will be kept on the property and there will be a 6' fence on the property which will contain any trash and light on the property. He reviewed the overall plans for the property with ZBA members. He has contacted the neighbors and they are very comfortable with the proposed building and fence. The setback is very important for them. It is his opinion that windows are not necessary since this is not an apparel shop where showing goods is important.

Commissioner Symanns confirmed with staff that this plan does not conform to our standards regarding windows, door, etc. to which Ms. Kochanek agreed. She also stated that the door should be on the N. Huron side or could be on an angle as it is currently, if the board agrees.

**Joe Novitsky, Architect, 12 Mile, Berkeley, MI** – working with the owner on this project. He stated there is not another commercial building close by in the area. In the context of the ordinance, the ordinance has been written with an overlay. That overlay is in the Historic District and while we truly respect the Historic District, this is an island within an overlay that doesn't exist. We are asking for the variances because it does not make sense for this specific business in this location. We are asking for this to make it a viable and successful business.

Commissioner Talaga moved to close the public portion of the hearing (Support: C. Garcia) and the motion carried unanimously.

Commissioners decided to address each variance request separately. After some discussion, Commissioner Talaga moved to approve a 2' variance request to permit the building addition to encroach on the street setback requirement in Sec. 122-477 at 528-534 N. Huron with the following findings:

1. The alleged practical difficulties on which the variance request is based has not been created by any person presently having an interest in the property.
2. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

The motion was supported by Commissioner Symanns and carried unanimously.

Chairman Albers stated that it is his opinion that since the Planning Commission has the authority to make a determination on this issue, it is his thought that to let them do it based on whatever new information they would have as a result of this meeting. The other members were in agreement.

Commissioner Garcia moved that the Zoning Board of Appeals table the variance request to permit the parking within the 10' setback from neighboring lots as required in Sec122-683 back to the Planning Commission as the Planning commission may choose to waive this requirement in whole or in part with a finding that the lot shares a common access and common parking with the adjoining lot, or that storm water, landscaping, and other similar concerns have been adequately addressed with other methods.

The motion was supported by Commissioner Talaga and carried unanimously.

Commissioner Garcia confirmed with staff that any new building has to meet the requirement of windows, to which Ms. Kochanek agreed. Commissioner Symanns stated that it is her opinion that this building should not be compared to the gas station that was expanded on Washtenaw. Commissioner Talaga stated that it does not conform and if we are trying to create a walkable community, and there are residential units in the area, it should have windows. More discussion was held on the necessity of windows and it was the consensus that windows should be required. There was some discussion on how transparent windows would have to be; if windows could be built but yet be blacked-out. Ms. Kochanek was unsure if there was anything in the ordinance that would or would not allow some type of film over windows.

Commissioner Garcia moved that the Zoning Board of Appeals deny the variance request to permit a variance from Sec. 122-477, requiring adherence to commercial frontage standards, to permit 3% transparency on Huron, a distance from ground to window of greater than 2.5', and a distance between openings of greater than 2' at 528-534 N Huron, with the following findings:

1. The applicant has failed to show practical difficulty, as required under 122-307(b)(1).

2. The applicant has failed to show that such a variance is necessary for the preservation and enjoyment of a substantial property right enjoyed by other property owners in the same district, as required under 122-307(b)(2).
3. The applicant has failed to show that substantial justice would be done in the granting of this variance, as required under 122-307(b)(5).
4. The applicant has failed to show that this is the minimum variance that will make possible a reasonable use of the land, buildings, or structure, as required under 122-307(b)(6).

The motion was supported by Commissioner Talaga and the motion carried by a vote of 4:1. Commissioner Symanns opposed.

Chairman Albers stated that in terms of automotive traffic and no parking on Huron, having a door on Huron would not bother him but also depends on pedestrians – it is less a matter of how difficult that would be than if it actually fits into the required standards. He feels that if it should be on Huron according to the standards, then he would tend to require the door be on the front. Commissioner Symanns did not have a preference. Commissioner Talaga would like it to be on Huron but is okay with 45 degree angle and feels it would not hinder pedestrians. Commissioner Khan realized that the building will actually be bigger and might be more awkward if the door was on Huron – she continued by stating that it seems to work where it is and at that angle. Commissioner Garcia stated the angle would be fine with him – doesn't have a strong preference. Already having to remove second door but if they are building something new it should be conforming but he doesn't have a strong preference either way. Chairman Albers asked if the board was inclined to approve of the angle, if this would have to be brought back before the board. Ms. Kochanek responded that it would require a formal application to ask for the 45 degree angle.

Commissioner Talaga moved that the Zoning Board of Appeals deny the variance request to permit a variance from Sec. 122-607(a), requiring that the front entry into the building face the street to which the property is addressed at 528-534 N Huron, with the following findings:

1. The applicant has failed to show practical difficulty, as required under 122-307(b)(1).
2. The applicant has failed to show that such a variance is necessary for the preservation and enjoyment of a substantial property right enjoyed by other property owners in the same district, as required under 122-307(b)(2).
3. The granting of the variance will be detrimental to the public welfare, in that it will not aid in fostering a walkable community, per 122-307(b)(4).
4. The applicant has failed to show that substantial justice would be done in the granting of this variance, as required under 122-307(b)(5).
5. The applicant has failed to show that this is the minimum variance that will make possible a reasonable use of the land, buildings, or structure, as required under 122-307(b)(6).

The motion was supported by Commissioner Garcia and the motion carried unanimously.

## **VII. ADJOURNMENT**

Since there was no further business, Commissioner Symanns moved to adjourn the meeting (Support: J. Talaga) and the motion carried unanimously.

The meeting was adjourned at 8:23 pm.