



**APPROVED MINUTES OF THE REGULAR MEETING OF
THE ZONING BOARD OF APPEALS OF THE CITY OF ANN ARBOR
JUNE 25, 2008**

The Regular Session of the Zoning Board of Appeals was held on Wednesday, June 25, 2008 at 6:08 p.m. in City Council Chambers, 100 N. Fifth Avenue, Ann Arbor, MI.

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

ROLL CALL

Members Present: (7) C. Carver, C. Briere, R. Eamus, D. Tope, C. Kuhnke, W. Carman (arr. 6:12 p.m.) and Kathryn Loomis (arr. 6:26 p.m.)

Members Absent: (2) D. Gregorka and R. Suarez

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

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 May 26, 2008 Regular Session.

Moved by C. Carver, Seconded by D. Tope, **“that the minutes of the May 26, 2008 Regular Session be approved as presented.”**

On a Voice Vote – MOTION PASSED – UNANIMOUS

C - APPEALS & ACTION

C-1 601 South Forest – 2008-Z-011 – ADMIN.

Hughes Properties and Omena Real Estate Investments are requesting two variances from Chapter 47 Section 4:20 (Curb Cuts and Driveway Approaches)

Description and Discussion

The subject parcel is 70,390 square feet in total size and is located at the corner of South University Avenue and Forest Avenue. The parcel is zoned C2A (Central Business District).

The University Village project is proposed to be a mixed-use building composed of two residential towers and a second-story courtyard. The site plan for the project was recommended for approval by the Planning Commission at their June 3rd meeting. The recommendation was contingent on a variance being granted from the ZBA. If the variance is granted, the project will proceed to City Council for final site plan approval in July. The building will contain 342 residential units, approximately 16,000 square feet of retail uses and 3,000 square feet of Office. Two levels of underground parking containing 235 spaces and 24 additional surface parking spaces will be provided. The site will be accessed by one driveway on South University Avenue and one driveway on Forest Avenue. The driveway on

54 *South University Avenue will be used for access to the underground parking area and meets*
 55 *all City Code requirements. The driveway on Forest Avenue will provide access to the 24*
 56 *surface parking spaces, loading zone and Solid Waste facility.*

57
 58 *The variance will be required for the driveway along Forest. The variance is for the driveway*
 59 *width along Forest Avenue leading to the solid waste facility adjacent to the entrance for the*
 60 *surface parking and loading area. City Code requires a maximum of 30-foot wide drive*
 61 *openings and 60-foot curb cut width. The subject property is proposing a 39 foot 9 inch wide*
 62 *drive opening (variance required) and a curb cut width of 57 feet 9 inches (meets code*
 63 *requirements, no variance required).*

64
 65 The variance is being requested in order to locate the solid waste facility adjacent to the
 66 driveway servicing the surface parking on the site. This placement will centralize curb cuts in
 67 one location along Forest Avenue. There will be a 4½ foot wide pedestrian 'island' located
 68 between the drive for the parking and the solid waste area. The number of total curb cuts on
 69 this site will be reduced from 5 to 2. Traffic Engineering has examined the variance
 70 application and supports the proposed variance.

71
 72 The proposed project is a large building located in a developed downtown area. Locating the
 73 driveways as strictly required by code would remove more surface parking from the public
 74 street and represent more opportunities for pedestrian/vehicle conflicts. Designing curb cuts
 75 as required by City code would require the design of the building to completely separate
 76 vehicular uses and spread these uses, and the associated curb cuts, along the street
 77 interrupting street level function and would not serve the intent of the Chapter 47. This would
 78 represent an unnecessary hardship with no public benefit gained from this strict application
 79 of code. The need for the requested variances is not a self-created hardship because current
 80 City code does not recognize the unique site design and usage requirements of a large
 81 downtown building. Staff does not feel that the requested variances would negatively affect
 82 any surrounding property.

83 84 **Questions to Staff by the Board**

85
 86 C. Carver (to M. Kowalski) – The footage is measured at the sidewalk? (The drive width is
 87 measured at the property line, which in this case is the sidewalk). What would be the
 88 consequences if this request were to be denied? (They have the distance to allow for three
 89 or more curb cuts (it's based on the frontage on streets), and they would have to redesign
 90 their project, but they could move a curb cut here or there).

91
 92 W. Carman – The petition states that they are only allowed to have two curb cuts.
 93 (M. Kowalski – Their distance does allow them to have three. They have over 201 feet of
 94 street frontage. They're allowed to have three curb cuts). (*W. Carman asked for a visual*
 95 *clarification with the site plan for frontage and location).*

96 97 **Petitioner Presentation**

98
 99 Mr. Tim Germain, engineer on the project, was present to speak on behalf of the appeal. He
 100 stated that he represents the developer of this project. Also in attendance were two of the
 101 architects as well as one of the property owners. We seek a variance of 9.7 feet for what
 102 we're calling a 'widened' driveway on Forest, but it's basically two driveways close together.
 103 This was a requirement that we did not meet per the ordinance and through the site plan
 104 process, it was deemed more appropriate to seek a variance as a result of the overall
 105 development.

106

107 We segregated our parking entrance off of University to the north and we've tried to take our
108 entrance and exit through to the grade level parking and combine that with refuse storage
109 adjacent to that, moving everything further away from the intersection in an attempt to help
110 alleviate traffic congestion. He offered to answer any questions the Board might have.

111

112 **Questions of the Petitioner by the Board**

113

114 W. Carman – What is in our packet was not everything that was presented at the Planning
115 Commission, so I'd like information about that. The drawings appear to show a garage door
116 on the refuse area? (T. Germain – Yes. That is a rolling door that keeps that refuge area
117 closed at all times, except for when the trash and recyclables are brought out through that
118 entrance). Is there a wall that separates that from the other part of the driveway? (Yes).
119 When the trash pick-up happens, do they pull in the drive and back out or back in the drive
120 and then pull out or do they park on the street?

121

122 T. Germain – I'll tell you what will practically happen and what we envision them doing. The
123 curb cut is wide enough to turn in to the east from the main aisle to the trash compactor area.
124 Their intention is that the truck should be able to go into the site (forward), turn around the
125 'loop' road and come back out and park adjacent to the recycling.

126

127 W. Carman – They'll go in the regular 'two way' entrance,' turn around and then park in the
128 'out' driveway by the small door and someone inside the trash collection area will come out
129 with the trash? (T. Germain – That's correct, but what I believe will 'practically' happen (like
130 every other garbage truck up and down Main Street and other streets), is that they will park
131 on Forest, adjacent to that roll up door, they'll be far enough forward so that traffic can get in
132 and out of that drive aisle, and they'll load the recycling cans in the truck and roll them back
133 inside and leave. What we envision is the actual traffic maneuver to be done in the street like
134 it is everywhere else, but the intention is that they are supposed to go in and circle around.
135 We will make every attempt possible to make sure that they follow proper protocol in this
136 measure, but it's unlikely that it may happen).

137

138 Mr. Dan Ketelaar (one of the developers) – Stated that they are looking at this in two ways;
139 what we're talking about here, but also, we're looking at both public and private collection of
140 trash and recycling. We envision the building to have almost 100 percent recycling, so we're
141 unsure of the exact number of recycling canisters that we'll need. So we're looking at two
142 ways of doing this – 1) Coming into that curb cut and having a compactor that we can then
143 pick up and pull off-site and empty; 2) The second is what we're talking about here.

144

145 As we know, Ann Arbor has its own collection for recycling materials, and they have the big
146 containers and they come by with trucks that are side lifted, and they pick up those
147 containers and dump them. So we're talking about both private and public collection to
148 address this issue. The preferred way is to be able to have it all tied in so that the truck pulls
149 in and picks up the container/compactor unit and pulls it off-site. This would happen one a
150 week. The smaller containers would require two or three times a week pick up by the city.

151

152 W. Carman – Where will they drive the off-site containers to and bring them back?
153 (T. Germain – There is probably a transfer station where they will take the full containers to,
154 empty them and then bring them back, most likely on the same day, same trip). Where is the
155 transfer site? (We're not sure. There are different contractors - Waste Management,
156 Republic, wherever the city takes their refuse – that has not been determined yet, but the
157 process will be that they'll take the full containers off-site to a dumping station and bring back
158 an empty container and place it back for reuse). Do you envision one large container for this
159 large space or many containers which would require many trucks coming in and out?

160 T. Germain – Due to the size of the trucks, we envision one pickup and one drop-off. We
 161 envision numerous containers because we're trying to accomplish a 'Lead Certified' status -
 162 we're trying to recycle everything that comes into the building, so we expect there will be lots
 163 of bottles, cans and newspapers. Until this is up and running, the size of the container has
 164 not been determined, but the room has 1200 square feet of storage area adjacent behind that
 165 which would provide a substantial amount of available storage volume for recyclable
 166 materials.

167
 168 W. Carman – A single truck could pick up all of this in one single trip? (D. Ketelaar – One
 169 truck, if it had a compactor unit, could pick up a substantial amount. The container itself is a
 170 compactor). So, you expect a single trip in and out every day? (If it was one large
 171 compactor, you would have one a week, maybe two, but if it were smaller units (2 yard bins)
 172 that the city of Ann Arbor has, then there would be a number of those bins and pick up would
 173 probably be twice a week. It would be dependent on the amount of recyclable materials
 174 generated from the building). So all of the retail spaces would still have their regular pick up
 175 twice a week, and that would be on the street? (No, those would also be stored in the same
 176 recycling area as ours, so the retail components haven't been established – that will
 177 determine their amount of trash dependent on the business, i.e., a restaurant might generate
 178 a lot of trash, but if it were a different business, it might be less frequent. We're looking at
 179 once to twice a week pickup).

180
 181 W. Carman – Can you expound on parking that is within the inner court? It says the parking
 182 is metered parking. Is all the parking metered or only that strip? (T. Germain – At this point,
 183 only the strip of twelve spaces on the south side will be metered parking, and that was a
 184 requirement of site plan approval that we had to provide some additional parking for that
 185 area. The DDA requested some metered parking spaces). Is this parking 'exempt?'

186
 187 M. Kowalski – Technically, it's in a 'parking exempt district.'

188
 189 W. Carman – But isn't only a portion of this in the DDA? (Correct). Then how can the entire
 190 site be parking exempt? (M. Kowalski – What they are currently zoned is C2A and the entire
 191 C2A district, even if it's outside of the DDA district, which part of this is, but it's all zoned C2A,
 192 so it's all 'parking exempt,' except that they have to provide this parking to qualify for the
 193 "Premium"). Every C2A zoning is parking exempt?

194
 195 M. Kowalski - The vast majority of it, except for a few portions, particularly around South
 196 University that are just outside the DDA, are parking exempt. They are required to provide
 197 *some* parking because they're utilizing 'Premiums' – to allow them to go from 300 percent to
 198 600 percent. They are also providing 200 plus spaces under the building for the residents.
 199 Based on the square footage of Premiums that they are allowed, that is how we calculate the
 200 required parking on-site, which they've provided. They don't have to provide parking for the
 201 first 300 percent of 'Floor Area Ratio' (*herein known as FAR*), because it's in the *Parking*
 202 *Exempt District*). The entire site is zoned C2A.).

203
 204 (*It was discussed who would monitor those twelve spaces – it would be the city who monitors*
 205 *that and collects the money*).

206
 207 R. Eamus – As a Planning Commission (CPC) member, I've seen this issue twice previously.
 208 The CPC reviewed the site plan, and one of these issues is that it is for "Mixed Use
 209 Development," and most of our ordinances are not written with a Mixed Use Development in
 210 mind, so you have formulas to provide for so many curb cuts for so many linear feet of street
 211 frontage, etc. For instance, the parking deck at William and Fourth with its two entrances
 212 doesn't have any problem because it doesn't have the mixed uses.

213 R. Eamus – Now you get to a parking deck that has Mixed Uses and you need to get garbage
214 collection in there. The CPC passed this, and one thing considered from a Planning point of
215 view is that you want to keep the retail street experience continuous along the retail street
216 frontages without breaking that up. One thing the CPC often looks for asked for in
217 development is that contiguous retail space along the street frontage, so this satisfies our
218 plan. That said, I do have one question. Why don't you have an opening to the back instead
219 of the street if you have a room back there with 1200 square feet? What is the issue of not
220 opening that up to the inside semi-circle?
221

222 D. Ketelaar – One problem that we're still addressing is having them come in – for instance
223 with a compactor storage unit, is having them back in and load it up and drive out. We don't
224 have the room to do that with our circular drive to pick that up. Without that, it would limit our
225 options on how best to service the trash on site. There is a garage door on the back of that,
226 and we are trying to allow for the most flexibility. The city of Ann Arbor runs the recycling,
227 and we're trying to work with them to be sure that they have the access that they need.
228

229 R. Eamus – So you may have a locked door that never opens onto the street? (Yes).
230

231 C. Carver (To R. Eamus) – With the garbage questions, the CPC didn't have any problems
232 with this? (No).
233

234 M. Kowalski – We have a Solid Waste city staffer that we route the site plans to for review on
235 behalf of the city for pickup, recycling, etc. (R. Eamus – The CPC gets staff reports like that –
236 so the traffic study, the sanitation study, etc. are provided to us, and we look at that from their
237 point of view and see what has not been covered by the code. Everyone is satisfied with the
238 site plan and how it works and that it's contiguous, so then it comes to the Zoning Board of
239 Appeals (ZBA) for the variance request).
240

241 W. Carman – One of the reasons why we wait between the CPC and the ZBA is because
242 we're supposed to get copies of the CPC minutes. We didn't get those or anything like that in
243 our packets, so if we keep repeating the same questions, we didn't get the information we
244 need and expect. (*Staff stated that they would make every effort to provide this information
245 for future meetings*).
246

247 W. Carman – So there are roughly 1140 bedrooms? (D. Ketelaar – There are 340 some
248 apartments and there will be approximately 1178 'beds.' The majority of the apartments are
249 four bedroom units, and there are some which one bedroom or two bedroom studio
250 apartments, but almost one bedroom per student). Are there any bedrooms anticipated to be
251 more than 100 square feet? (The average bedroom is 8' x 12' 96 square feet; a 10' x 10' is
252 100 square feet). But a 10' x 10' can have two people living in it. I'm asking because you
253 could go away tomorrow and someone else could come in and change things. (I don't think
254 that has to do with the curb cut variance). I do think it pertains to the curb cut variance, as
255 the amount of traffic that goes in and out of here is part of the congestion of the
256 neighborhood, and I'm trying to get a handle on how much traffic. If every one of your
257 bedrooms is 10' x 10' and instead of 1178, you had twice as many people there, you'd have
258 twice as much traffic.
259

260 D. Ketelaar – I'll answer that in two ways. This curb cut variance is specifically for trash and
261 recycling. It has nothing to do with the population of the building. Secondly, we have a
262 management company – U.S. Equities out of Chicago that will make certain that there is only
263 one student per bedroom. It is a fully secured and managed building. No bedroom will ever
264 house more than one person because it's in their lease and fully managed.

265 W. Carman – I understand what your plans are and I also know that you could, for any
 266 numbers of reasons, not eventually be the owner of this property, and in other hands, if there
 267 are bedrooms that are more than 100 square feet or more, more people could live here than
 268 you're currently planning.

269
 270 D. Ketelaar – The only ones that are larger are the Studio Apartments. This is an upscale
 271 project, and when you start diminishing quality, you diminish value.

272
 273 C. Kuhnke – I think the question is very ~~discreet~~ *discrete*– whether there are any bedrooms
 274 that will be 100 square feet. (D. Ketelaar – All the four bedroom units are roughly 8' x 12'.
 275 Some of the Studios are larger, but some of those are two bedroom units.)

276
 277 Mike Segall was present to speak on behalf of the petitioner. He stated that are 12 bedrooms
 278 on the second floor that are larger than 8' x 12'. (96 square feet), so there are 12 bedrooms
 279 that are larger than 100 square feet in the entire project.

280
 281 R. Eamus – Wasn't there a request to be put in the development agreement as to how many
 282 persons that could rent in the building? (T. Germain – That was a fixed number on the leases
 283 to how many people could be in each room, and that was maxed out on the number of beds
 284 that are in there. That is a fixed number and that is what everyone has accepted at the CPC
 285 level). Yes, I believe that this is in the Development Agreement.

286
 287 *The Chair stated that the Board had not received any written communications regarding this.*
 288 *She invited the public to speak on this issue for a three minute limit, and asked that they*
 289 *please remember that what the Board is considering is the curb cut.*

290

291 **Public Comment**

292

293 1. **Andrea Van Houweling, 920 Lincoln Ave., Ann Arbor, MI 48104** – She stated
 294 that many of the twenty residents present tonight are opposed to this extra wide
 295 driveway on Forest because they have a number of safety concerns related to this
 296 large building that is being proposed. (She passed out two 'charts' that she had
 297 composed). The first chart passed out was regarding building heights. She
 298 stated that this building would be the same height as the Tower Plaza in
 299 downtown, currently the city's tallest building. The twenty story buildings are the
 300 second tallest buildings. The second chart showed the square footage, and she
 301 purports that this building has twice as much square footage as any other
 302 buildings in downtown. It's no surprise that a building of this size (with the extra
 303 wide drive) will cause safety problems due to the congestion along this block of
 304 Forest. We were told at the CPC meeting that all the bedrooms were going to be
 305 8 x 10. Has that plan been changed?

306

307 2. **Mr. William Copy, 1012 Miner Street, A2, MI 48103** (Stated he lived at 1315
 308 Forest Ct., but city records show that this is a rental property he owns, and not his
 309 actual residence) – He stated that he objects to this project no only because of the
 310 curb cut, the garbage pickup and scale for the neighborhood. He believes that if
 311 the contractor reduces the size of the building by half, that this would reduce the
 312 amount of traffic. He also stated that parking will also be a problem. The traffic in
 313 front of the parking structure across the street from this proposal is congested in
 314 the mornings, and another non-conforming curb cut would make that condition
 315 worse. He also said that since the CPC has already approved this, that if the ZBA
 316 passes this, neighbors will be looking forward to selling out Forest Ct. and the
 317 surrounding area.

318 C. Carver – Asked the Chair to once again reiterate that the reason for public comment for
 319 this issue is to address the WIDENED DRIVEWAY ONLY. He stated that the ZBA is
 320 informed on the rest of the project, but that the only purview of the ZBA is to deal with the
 321 request for the widened driveway. He also reminded the public that this is NOT a request for
 322 a curb cut – the curb cut is less than required and does not require a variance.
 323

- 324 3. **Mr. Peter Nagourney – 914 Lincoln Ave., A2, MI 48104** - He stated that the
 325 assumptions that the Developers made about the trash and the way that it will be
 326 handled is distressing to him because the assumptions that the developers made
 327 about this and other issues are based on ‘fantasy’ projections, specifically that all
 328 1100 residents of this building are going to recycle their trash, it’ll be compacted,
 329 and they’ll be able to access this additional space created with a new curb cut. I
 330 suggest that this is optimistic, not all will recycle. The congestion they’re saying
 331 that won’t happen will be greater than anticipated.
 332
- 333 4. **Ms. Alice Ralph, 1607 E. Stadium Blvd., A2, MI 48104** (*This property is a rental*
 334 *– home is owned by Peter C. Cokinos*) – Stated there is a difference in the five
 335 curb cuts listed in the application and the four shown on the information in the
 336 photo of the site. The idea of a drive is also referred to vaguely as ‘drives and
 337 curb cuts’ so it’s not clear to me whether the garage pick up drive is a ‘drive’ or not
 338 a drive.
 339
- 340 5. **Gwen Nystuen, 1016 Olivia Ave., A2, MI 48104** - Stated that this would cause
 341 an extreme traffic problem for the North Burns Park neighbors. Most of the
 342 businesses along Forest are double parked in this area doing delivery to the
 343 existing retail stores. This project adds additional retail. Is this the best place to
 344 add both a dumpster and two way traffic close to the intersection of Willard?
 345
- 346 6. **Lori Longan, 2065 Chalmers Drive, A2, MI 48104** (*Speaker stated she lived on*
 347 *Olivia, but city records show her home as the above address*) – She stated that
 348 there are a lot of ‘uncertainties’ related to this project. With regard to the trash
 349 collection and how much trash and whether to be inside the parking area, these
 350 seem to be incremental changes that will eventually be inaccurate at the end. She
 351 stated that giving the curb cut (*sic. Drive, not curb cut*) will give permission to do
 352 whatever the petitioner wants. She suggested the issue be tabled.
 353
- 354 7. **John Nystuen, 1016 Olivia Ave, A2, MI 48104**– Spoke about the traffic impact
 355 study. He stated that the study purports that “there would be no traffic increase or
 356 level of service problems by putting in this large building. He said that this was
 357 already a busy area, and cannot see how service levels will not increase. They
 358 claim a 90 percent reduction in traffic due to non-motorized traffic and that the city
 359 will adjust the traffic signals. He referred to the city traffic projections for each
 360 intersection, and questioned how the city arrived at these conclusions.
 361
 362
- 363 8. **Mr. C. Robert Snyder - 525 Elm Street, A2, MI 48104** – (*President of the South*
 364 *University Neighborhood Assn.*). We are largely a student occupied area between
 365 Geddes, S. University, Oxford and Observatory. He stated that there are
 366 approximately 900 residents in that area. (He passed out a ‘facts’ sheet to the
 367 ZBA and he spoke about city council’s lifting of height restrictions in the area). He
 368 encouraged the Board to continue to ask questions of the Developer.
 369
 370

371 **Discussion by the Board**

372

373 C. Carver (to the Developer) – It seems that the public in the audience seem to think that if
374 we turn this appeal down, that this will ‘kill’ the project; if we turn this down, what will
375 happen?

376

377 (Developer – The reason things seem indecisive is that we have two different ways we’re
378 approaching the trash subject. One is to service it off of Forest Street. If the appeal for the
379 drive is turned down, we will service this differently. Approving this appeal will allow the best
380 option for trash pickup. The project goes on and will not change otherwise.

381

382 They also stated that at the CPC meeting, there were a tremendous amount of people from
383 the S. University area who also came out to *support* this project. The people who spoke
384 tonight are the same group of people who we have previously worked with and have tried to
385 address their problems. The issue we’re here for tonight is solely to assist in the functionality
386 of the building).

387

388 W. Carman (To Developer) – You’ve indicated that you’d like to have the trucks come in,
389 circle around and not actually be using the drive? (No, that would be our alternate method.
390 The preferred method is to use that are that would come in an let us pick up the trash in a
391 large 40 yard canister and pick it up once. The other condition would mean that we would
392 have to have many smaller containers).

393

394 At CPC did they make you put in the drive to the recycling? Is there a reason why you could
395 NOT do it from the inside? (I think that getting the truck in there becomes inefficient. If the
396 large trucks go around the circle is made for cars, and that area becomes a very pedestrian
397 area. We would ‘prefer’ to have the garbage away from the pedestrian area). In my view,
398 with protecting the public, as well as proving the developer with relief, would be to get the
399 congestion on Forest – OFF of Forest, so if you could get this trash inside, then all of the
400 street traffic wouldn’t be blocked while you’re doing whatever it is – daily and/or weekly
401 pickup.

402

403 The developer stated that this is their intention; this is why the circular drive will service the
404 retail shops that will be in this building. The ability and use of those accesses, done early in
405 the mornings, will aid in preventing traffic obstruction. This is a high pedestrian area.

406

407 W. Carman – Regardless of whether the students walk or bring their cars, this area will
408 continue to have a lot of bike, pedestrian and truck and other motorized traffic. That is part of
409 an urban environment, and if we could get the trash pick-up off the street, that would be good
410 in my estimation. If we can’t, I don’t know if this is a ‘driveway’ – it has walls around it with a
411 curb cut that you’re probably not going to use. (The contractor stated that this is the same
412 ‘idea’ as someone’s garage – holding/storage space.

413

414 R. Eamus – Stated that he has previously had worked in Laurel Park. Laurel Park is an office
415 building with a mall across from it, and right across from the entrance to the mall is trash pick-
416 up, and the entire office building is all managed to have all the waste go into one place there
417 and it’s all compacted. I never actually saw the truck come there in all the working hours that
418 I was there. It never caused any congestion there. You have one very concentrated trash
419 pick-up, and if we had a well planned city, all of our retail businesses would have an alley
420 behind them that the city supported access could pick up trash. We’re asking to take the
421 trash inside – out of the way and off of the street (on their property) and the city is not giving
422 them the public access to that trash, so I think this is a fair compromise, in that they’re storing
423 it inside and a city truck will pick up the recycling and drive away.

424 Is that going to contribute to the congestion on Forest Street? I don't believe so, and I don't
425 believe that anyone on the CPC thought so. The congestion that exists is because of the
426 University and the parking structure. From the CPC point of view, this is not a 'high intensity'
427 use at this particular location. The traffic use is on South University where the parking
428 structure entrance and exit is. This request is only for the drive for trash pickup and the 24
429 spaces on the ground level (which they're taking the metered spaces OFF the street, thereby
430 relieving the street of more congestion. The deliveries will be off the street and inside. The
431 petitioner is doing everything possible without having the city do a public right of way like
432 most of the other retail has in the downtown area. I think it is a reasonable request. Staff
433 and engineers have looked at this, and it meets with the approval of the CPC and it meets the
434 Zoning Ordinance.

435

436 D. Tope – My concern is that this is very efficient from the internal workings, but I don't have
437 a sense of 'trips generated' by the deliveries – the pick-ups, the parking in the delivery and
438 removal area and the number of trips generated by the on-the-ground reality, as it is right
439 now, hoping that things will improve. With technology and our ability to manage waste,
440 should become more efficient, but realistically I'm most concerned with the on-site
441 necessities of serving this number of residents.

442

443 I understand the site plan does not put a maximum number of occupants in the space, but its
444 300 or so units; so, someone would have to police that. The practical necessity of servicing
445 the maximum number of people who could live in these spaces along with the retail all
446 concentrated in an area which is directly opposite the major entrance of the parking structure
447 – I don't have enough information to help me determine the amount of traffic.

448

449 It's a difficult area to maneuver and is tremendously impacted by where is currently there. I'm
450 looking at public health, safety and welfare. The usage of this (trips per day) along with
451 location. It's using public space to do what they need to do to service this, so when I look at
452 the ZBA criteria we need to use, I think that is another way to separate and move that so that
453 it isn't exactly opposite a public parking structure. I don't think I have enough information that
454 should be available to us to make me believe that I'm not overly concerned about this. I can't
455 make an informed decision to apply the standards to grant a variance.

456

457 C. Carver – Defer's to the Planning Committee and staff reviews and their evaluation of it.
458 I'm supporting of it because a no might make this worse than a yes vote. I am forced to
459 support this, and I will.

460

461 C. Kuhnke (To M. Kowalski) – Matt, have determined if there is a third curb cut allowed on
462 this property? (Discussion of dimensions of street frontage). (Yes, they would be allowed
463 two curb cuts on South Forest, and one curb cut on South University). How far down would
464 they have to move from the egress/ingress? (M. Kowalski – They would have to be at least
465 nine feet apart). So if they move nine feet closer to South University, they could put this curb
466 cut in? (Yes). They have enough room to add another one on South University as well,
467 correct? (Yes).

468

469 M. Lloyd – Stated that as he's sure that the Board well knows, the petitioner could, in
470 actuality, do these curb cuts – but it's not the preferred approach for design, and I would like
471 to address the 'maybes' and how this might go – our Solid Waste staff as well as Traffic staff
472 have done an analysis of this proposal and have recommended approval as they have
473 submitted this information tonight. If there were improvements associated with how that
474 traffic and trash can be maneuvered differently, that would only add to the improvement
475 process.

476

477 K. Loomis – I'm leaning toward supporting this variance for some of the reasons cited by Ron
 478 and Chuck. The plan before us consolidates as much as possible the trash and recycling
 479 services, and keeping that toward the back of the development as much as possible and
 480 keeping the primary pedestrian ways along South University and Forest and having one curb
 481 cut as opposed to multiple curb cuts -I think that requiring extra curb cuts would be entirely
 482 burdensome.

483
 484 W. Carmen – In addition to the concerns that I've already raised, I have a problem with this
 485 from a constructionist point of view as there isn't really a hardship here. A hardship is
 486 supposed to be something about the property that makes it unusable with the zoning its been
 487 given, unless you give them a variance and I would prefer they get the trash pick up off the
 488 street, and I'm pretty sure they're not going to be using this anyway – we could narrow the
 489 curb cut and we wouldn't have to have the drive width, and that would be in the best interest
 490 of the pedestrians and that's one of the things I'm charged with protecting. I don't see a way
 491 around that unless they are willing to change their plan.

492
 493 C. Carver – Suggested the petitioner might want to table the issue? (Petitioner – No).
 494

495 R. Eamus – Part of the struggle I have with this is that when you ask developers to do mixed
 496 use development with retail on the ground floor, the trade off is not so much a hardship for
 497 them, but the city and the CPC and the planning principals say "you don't want to move that
 498 particular driveway up Forest street, closer to South University – so say you moved it on the
 499 other side of this retail – you've now chopped this one retail business off from the rest. No
 500 one is going to rent that, it becomes unusable as retail and when you're trying to make this
 501 retail space, it needs to be done on a contiguous basis, not cut up by another curb cut. It is
 502 not as desirable for the city, pedestrians, retailers, etc. to split those up, and not get any relief
 503 from the traffic. Have you solved any problems? No. Is that a hardship? They're doing what
 504 the CPC and the city has asked them to do.

505
 506 W. Carman – I hate to be in the position of being 'blackmailed' – not by the developer, but by
 507 the city who encouraged mixed use without putting the protections into the ordinance that it
 508 should have had (which rezoned this property without thinking about the consequences). I
 509 don't want them to move the drive up by the corner; I want them to get the entire thing inside.
 510 It's not in the public's best interest to have them parking out on the street no matter what.

511
 512 D. Tope – I think it is better to separate out the criteria we use to just look at this appeal as
 513 the ZBA. This doesn't have much to do with numbers and distances, building plans, etc. It
 514 looks at the public health, safety and welfare, etc. and does it meet the definition of
 515 unnecessary hardship, practical difficulty or other possible ways without needing the
 516 variance. It is true that this is a case of the 'tail wagging the dog,' but it is my job to apply the
 517 standards to this particular situation. I think the garbage should be placed inside away from
 518 the public which is in the interest of the public welfare.

519
 520 C. Carver – We have people who come before us asking for a variance to add on to their
 521 homes, and we give the variance even though we say "you could build on the other side of
 522 the house and not need a variance," We have given variances when there were other
 523 options, and I think this is along those lines. The project will go through regardless of what
 524 we do, and I think this is the best scheme. If a no vote would change their plans, it would be
 525 different – but it will not impede this development. Will support.

526
 527 C. Briere – Concur with Chuck. There are many issues here, but realistically, they are
 528 allowed two more curb cuts. This is good planning and urban design to consolidate your
 529 access points and I'll support this.

530 R. Eamus – Noted that the Board didn't have a problem granting a variance to the city for a
531 parking structure drive directly across from this.

532

533 W. Carman – I do think each case must be looked at in its own set of circumstances, and I
534 don't think that that set of circumstances were the same. One that we recently turned down
535 like this was at Pfizer; there was less congestion there and we turned it down on the aspects
536 that they didn't need it and that is the case here as well. I don't see how I can support this.

537

538 **MOTION #1**

539

540 Moved by R. Eamus, Seconded by W. Carman, **“that the appeal be tabled.”**

541

542 **On a Roll Call Vote – MOTION TO TABLE – *FAILED* (4 No, 3 Yes)**

543 **Per the ZBA By-Laws, a vote must have five affirmative votes to pass any motion.*

544 **No - (4) Kuhnke, Carver, Loomis and Briere**

545 **Yes - (3) - Carman, Eamus, Tope**

546

547 **MOTION #2**

548

549 Moved by K. Loomis, Seconded by C. Carver, **“In regard to Appeal Number 2008-Z-007,
550 601 S. Forest Avenue, that based on the following findings of fact and in accordance
551 with the established standards for approval, the Zoning Board of Appeals hereby
552 grants a variance from Chapter 47, Section 4:20 of 9 feet 9 inches from the required 30
553 foot maximum width for a driveway onto Forest Avenue that will be *39.7 feet wide;
554 The practical difficulty and unnecessary hardship in particular are:**

555

556 **a. It would be an unnecessary burden to subject the petitioner **to have to*
557 *construct a greater number of curb cuts* than is requested under the
558 current plan; and,**

559

560 **b. Granting this variance would be in harmony with the general purpose
561 and intent of the Chapter, based on the submitted plans.”**

562

563 **On a Roll Call Vote – MOTION TO APPROVE - *PASSED* – (5 YES, 2 NO)**

564 **No – (2) Carman and Tope**

565 **Yes – (5) Carver, Eamus, Kuhnke, Loomis and Briere**

566 **(Variance Granted)**

567

568 ***Friendly amendments:**

569

570 **W. Carman – To subject the petitioner **“to have to construct a greater number of curb
571 cuts.....”** (The friendly amendment was accepted by K. Loomis and C. Carver, and is
572 amended as noted above in the final motion with an asterisk).**

573

574 **C. Briere – Variance should be **“*39.7 ft. wide”**, and not 39 feet 9 inches (The friendly
575 amendment was accepted by K. Loomis and C. Carver, and is amended as noted above in
576 the final motion with an asterisk).**

577

C-2 630 Revena Place – 2008-Z-014

Richard Sienicki is requesting permission to alter a non-conforming structure as described in Chapter 55, Zoning, Section 5:87, Structure Nonconformance.

Description and Discussion

The subject parcel is located at 630 Revena Place. The parcel is zoned R1C (Single-Family Residential District) and is located on the north side of Revena Place. The house was built in 1955 and is 987 square feet.

The petitioner is proposing to construct a one-story 400 square foot addition to the house. After construction of the addition, the house will be 1,387 square feet and the proposed addition will contain a living room and dining area. The addition is planned to align with the existing house floor plan. The rear of the building addition will be inset 2 feet 6 inches from the rear building line of the existing house and 19 feet 2 inches from the rear property line. The house is non-conforming for the rear setback; the existing house is located 16 feet 10 inches from the rear setback. The required rear setback is 30 feet.

Due to the unique configuration of the parcel the front of the proposed addition is approximately 20 feet from a side lot line and over 120 feet from the other side lot line.

The required rear setback is 30 feet. After construction the addition will be 19 feet, 2 inches from the rear property line, slightly more conforming than the existing house. No other part of the structure is constructed within the setbacks.

The existing house is located on a very uniquely L-shaped lot. This is an unusual shape for a lot within the City and the existing house is currently located 13 feet 2 inches into the rear setback. The footprint of the existing house will be expanded to the east (side) by 20 feet. After construction the addition will be 19 feet 2 inches from the rear property line, slightly more conforming than the existing house. The addition will not encroach closer to the western (side) southern (front) or eastern (side) property line than the existing building. The size of the structure will remain consistent with some of the other surrounding houses. The home was constructed before current zoning standards were in effect.

The addition will allow the petitioner to improve their property while respecting the intent of the Zoning Ordinance.

The subject parcel lies in an area of single-family homes. The existing house will be enlarged, but the existing rooflines and architectural patterns will be continued along the new addition. The house addition will be at least 19 feet from the rear property line and no closer to the front or side property lines. While the existing structure and addition will continue encroachment into the rear setback, the rear yard does adjoin a semi-public use (church) and not a single-family house. Staff has received letters of support from neighbors.

Questions to Staff by the Board – None.

Petitioner Presentation

Mr. Richard Sienicki was present to speak on behalf of the appeal. He stated that there is not anywhere else to put his addition and he has the support of the neighbors. He said that this would not be a bedroom, but a family room and the parcel is odd shaped.

631 **Questions of the Petitioner by the Board** – None.

632

633 **Public Comment** – Chair C. Kuhnke read four letters of support into the record.

634

635 **Discussion by the Board**

636 D. Tope – Stated that the configuration of the lot is definitely unique with the site of the house
637 and the living area that exists don't allow for any other solution to make this a livable
638 residence. I will support it.

639

640 **MOTION**

641

642 Moved by K. Loomis, Seconded by W. Carman, “**In regard to Appeal Number 2008-Z-014,**
643 **630 Revena Place, based on the following findings of fact and in accordance with the**
644 **established standards for approval, the Zoning Board of Appeals hereby grants**
645 **permission to alter a non-conforming structure from Chapter 55, Section 5:87, per the**
646 **attached plans and:**

647

648 a) **The alteration complies as nearly as practicable with the requirements of the**
649 **Zoning Chapter;**

650

651 b) **The alteration complies as nearly as practicable with the requirements of the**
652 **Zoning chapter;**

653

654 c) **The alteration will not have a detrimental effect on neighboring property,**
655 **demonstrated by the numerous letters of support from the neighbors; and**

656

657 d) **The petitioner currently has a small home and this is a reasonable request.”**

658

659 **On a Voice Vote – MOTION PASSED – UNANIMOUS**

660 *(Permission to Alter a Non-Conforming Structure - Granted)*

661

662 D. **OLD BUSINESS** – None.

663

664 E. **NEW BUSINESS** - None.

665

666 F. **REPORTS & COMMUNICATIONS** - Included under each appeal.

667

668 G. **AUDIENCE PARTICIPATION – GENERAL** – None.

669

670 **ADJOURNMENT**

671

672 Moved by W. Carman, Seconded by C. Carver, “**that the meeting be adjourned.**”

673


674 **On a Voice Vote – MOTION TO ADJOURN - PASSED - UNANIMOUS**

675

676 Chairperson Carol Kuhnke adjourned the meeting at 7:56 p.m.

677 *(Submitted by: Brenda Acquaviva, Administrative Support Specialist V –*
678 *Zoning Board of Appeals)*

679

680 

681 _____
682 Carol Kuhnke, Chairperson

9-24-08

Dated

ZBA Minutes