

The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, September 17, 2002.

PRESENT: Kenneth Courtney
Christopher Fejes
Marcia Gies
Michael Hutson
Matthew Kovacs
Mark Maxwell
Cindy Pennington

ALSO PRESENT: Mark Stimac
Allan Motzny
Pam Pasternak

ITEM #1 – APPROVAL OF MINUTES – MEETING OF AUGUST 20, 2002

Motion by Maxwell
Supported by Fejes

MOVED, to approve the minutes of the meeting of August 20, 2002 as written.

Yeas: All – 7

MOTION TO APPROVE MINUTES CARRIED

ITEM #2 – APPROVAL OF ITEMS #3 THROUGH #8

Motion by Courtney
Supported by Gies

MOVED, to approve Items 3 and 5 and Items 6 and 8 in accordance with the suggested resolutions as presented by City Staff.

Yeas: All – 7

ITEM #3 - MOVED, to grant the request of Handleman Company, 500 Kirts, a three (3) year renewal of their variance for relief of the 6' high masonry-screening wall required along the west 606 feet of their northern property line where it abuts residentially zoned land.

- A berm with landscape is provided along the property line.
- Conditions remain the same.
- There are no objections or complaints on file.

ITEM #5 – MOVED, to grant the request of F & R Investments, 6050-6054 Livernois, a three (3) year renewal of relief of the 6’ high masonry-screen wall required along the north and east property lines where they abut residentially zoned land.

- A six-foot fence exists along the north property line.
- There is existing vegetation along the east property line.
- Conditions remain the same.
- There are no objections or complaints on file.

ITEM #6 - MOVED, to grant Arnold Becker, 2480-2880 Rochester, a three (3) year renewal of the 6’ high masonry-screen wall required along the east property line where the site abuts residentially zoned land.

- Adjacent property is shown on the Master Plan as non-residential use.
- Conditions remain the same.
- There are no objections or complaints on file.

ITEM #8 - MOVED, to grant St. Nicholas Greek Orthodox Church, 760 W. Wattles, a three (3) year renewal of relief to provide a 4’-6” high landscaped berm in lieu of the 4’-6” high masonry-screen wall required along their parking areas which abut residential zoned property.

- Conditions remain the same.
- There are no objections or complaints on file.

ITEM #7 – RENEWAL REQUESTED. TROY CHURCH OF CHRIST, 800 TROMBLEY, for relief of the 4’-6” high masonry-screening wall required along the east, south and west sides of off-street parking.

Mr. Stimac explained that the petitioner is requesting renewal of relief to provide landscape screening in lieu of the 4’6” high masonry screen wall required along the east, south and west area of the parking lots where they are adjacent to residential zoning. This Board has granted this relief since 1989. This item last appeared before this Board at the meeting of September 1999 and was granted a three (3) year renewal at that time.

Mr. Karl Randall a member of the Troy Church of Christ was present and stated that he had nothing to add.

Motion by Courtney
Supported by Gies

ITEM #7 – con't.

MOVED, to grant Troy Church of Christ, 800 Trombley, a permanent variance for relief of the 4'-6" high masonry-screening wall required along the east, south and west sides of off-street parking.

- No objections or complaints on file.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect on surrounding property.
- Substantial landscaping exists along the property line.
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Yeas: All – 7

MOTION TO GRANT A PERMANENT VARIANCE CARRIED

ITEM # 9 – VARIANCE REQUESTED. KENT MELLEBRAND, 1065 HARTLAND, for relief to construct a 576 square foot detached garage that would result in 896 square feet of accessory building where 600 square feet are permitted.

Mr. Stimac explained that the petitioner is requesting relief to construct a 576 square foot detached garage that would result in 896 square feet of accessory building where 600 square feet are permitted. This item first appeared before this Board at the meeting of June 2002 and was postponed to allow the petitioner to explore the possibility of attaching this proposed garage to his home. This item was then placed on the agenda for the meeting of July 16, 2002 and the Board took no final action. This item has now been placed on this agenda to allow the petitioner the opportunity to be present, and to allow the Board to take final action on this request.

Mr. Kent Mellebrand was present and stated that the other garage is unusable as a garage, but is used mainly for storage and a workshop. Mr. Mellebrand also stated that he had looked into the possibility of attaching the garage to his home, but did not feel that was a workable solution. Mr. Mellebrand said that he wished to stay with his original request.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

Motion by Courtney
Supported by Gies

MOVED, to deny the request of Mr. Mellebrand, 1065 Hartland, for relief of the Ordinance to construct a 576 square foot detached garage that would result in 896 square feet of accessory building where 600 square feet are permitted.

- Petitioner did not demonstrate a hardship.

ITEM #9 – con't.

Mr. Fejes asked for a discussion on this matter before a vote was taken. Mr. Fejes asked Mr. Mellebrand why he wanted this extra garage. Mr. Mellebrand stated that the other building was more like a shed, than a garage. Mr. Mellebrand also said that he has two cars, and would like to have the benefit of a full garage. Mr. Mellebrand stated that he uses the original garage for storage and a workshop. Mr. Fejes asked what he used the workshop for and Mr. Mellebrand stated that his home is approximately 800 square feet and does not have a basement and therefore he uses this accessory building for storage, as well as a shop for wood working.

Mrs. Pennington asked Mr. Mellebrand if he could add on to his existing garage. Mr. Mellebrand stated that the area that appears to be a driveway has now been fenced off and he would not have any access to this area.

Mr. Fejes asked how large this lot was and Mr. Stimac stated that based on the site plan submitted by the petitioner, the lot is 80' x 110'.

There are two (2) written approvals on file and there are two (2) written objections on file.

Mr. Fejes then asked Mr. Mellebrand what he planned to put in this new structure. Mr. Mellebrand stated that he planned on putting his cars in the garage. Mr. Mellebrand went on to say that he has never used the original structure as a garage, because it is too difficult to park a car in there, due to the fact that the location of the door makes it very difficult to enter or exit a car. Mr. Fejes asked Mr. Mellebrand to explain what he feels the hardship is, and Mr. Mellebrand stated that basically it is because he does not have anywhere to park his cars.

Mr. Fejes stated that he felt this home was small due to the fact that it does not have a basement. Mr. Courtney stated that he feels that an accessory building at 600 square feet would be sufficient, or if Mr. Mellebrand wished he could attach this building to his home and a variance would not be required. Mr. Fejes also asked how large the original building is, and Mr. Courtney stated that he thought it was about 16' wide X 18' deep. In his opinion it would be a large one-car garage.

Mr. Kovacs asked Mr. Mellebrand why he was against attaching the garage to his home. Mr. Mellebrand stated that the only way he could attach it was by putting it on the east side of the home, and he had just added new siding and windows, and the only way it would work was if he added a breezeway and he felt that this would be a breezeway with nowhere to go. Mr. Mellebrand also stated that he could not put it at the front of the house, due to the fact that there was a large mature tree in that area. Mr. Kovacs asked if he would like the garage that far back, and Mr. Mellebrand stated that he would probably move the garage up.

Mr. Hutson called for a vote on Mr. Courtney's motion to deny this request.

ITEM #9 – con't.

Motion by Courtney

Supported by Gies

MOVED, to deny the request of Mr. Mellebrand, 1065 Hartland, for relief of the Ordinance to construct a 576 square foot detached garage that would result in 896 square feet of accessory building where 600 square feet are permitted.

- Petitioner did not demonstrate a hardship.
- The petitioner could attach this garage to his home, and a variance would not be required.

Yeas: 4 – Kovacs, Courtney, Gies, Hutson

Nays: 3 - Maxwell, Pennington, Fejes

MOTION TO DENY REQUEST CARRIED

ITEM #10 – VARIANCE REQUESTED. MURRAY SCOTT, 3831 KINGSPPOINT, for relief to construct a 50' high freestanding antenna structure.

Mr. Stimac explained that the petitioner is requesting relief of the ordinance to construct a 50' tall amateur radio antenna structure. The site plan submitted indicates a proposed 50' high freestanding antenna structure. Section 40.57.06 limits the height of this structure to 25' in the R-1C Zoning District. The Board should note the specific consideration requirements of Paragraph B, of Section 43.80.00 of the Zoning Ordinance.

This item first appeared before this Board at the meeting of May 2002 and this request was denied. In August 2002 the Board of Zoning Appeals voted to reconsider this request, based on evidence presented by Mr. Scott regarding effective communication.

Mr. Scott was present and stated that he felt that the packet he provided to the Board members was sufficient to answer any questions. Mr. Scott went on to say that he is an amateur radio operator and when he had moved into this area, he had seen two other antennas in this subdivision and did not think that putting up this antenna structure, which he has already purchased, would be a problem. Mr. Scott said that he had done a great deal of research on this matter and the extra height would be necessary for clearer communication. Mr. Scott also said that he would like to put an antenna up that would cover all of Troy. Mr. Scott further stated that the ideal height of an antenna would be 70' and he feels that he has compromised with the City in only asking for an antenna that would be 50' in height. Mr. Scott feels that it is up to the City to accommodate amateur radio operators, and would like effective height to be able to communicate. Mr. Hutson asked if Mr. Scott presently had an antenna and Mr. Scott stated that he did not, however, he was going to put up some type of antenna, and felt that the Board should allow him to put up the antenna he is requesting.

ITEM #10 – con't.

Mr. Hutson asked Mr. Murray if he could communicate with other radio operators with a 25' antenna. Mr. Murray stated that he could depending on what frequency they were on. Mr. Murray also stated that he could like to be able to cover all of Troy, and it would depend on which band was being used by other operators. Mr. Murray explained that there are bands throughout the whole frequency range. Mr. Murray stated that he could explain everything but felt that people may be confused and that was the reason he had distributed the packets to Board members. Mr. Hutson asked what the minimum tower height required is for effective communication with other amateurs. Mr. Scott stated that 25' would give him some use, but that it may not be 100% reliable and he is looking for 100% reliability. Mr. Hutson stated that he understood that the higher the tower, the more effective the communication. Mr. Scott stated that he may be able to talk to people with a tower that is 25' high, but he would be able to communicate with more people with a higher tower. Mr. Scott also stated that there have been a number of Federal court cases and variances have been granted for towers that are 75' high. Mr. Hutson stated that he understood that, however, the Ordinance states that the height would "effectively preclude" communication, and that is why he was asking what the minimum height requirement would be. Mr. Scott stated that 25' would not allow him to communicate effectively for the distances he would like.

Mr. Maxwell asked Mr. Scott what antenna height would be required to cover the City of Troy and Mr. Scott stated that he was not exactly sure, but would like to have his antenna the same height as the Police Department antennas. Mr. Scott also said that he would like to be able to talk to Oakland County and felt that a 50' tower may be sufficient. Mr. Maxwell stated that he had done some research on this topic and found companies that would provide telescopic retractable antennas and asked if Mr. Scott had explored the possibility of a tower that would retract. Mr. Scott stated that he did not feel that this type of tower would be as structurally sound as a permanent tower, and also felt that it would be left up more than it would be down. Mr. Maxwell also stated that he had come across one that could be folded down, and Mr. Scott stated that he thought the reason most people had an antenna that could be folded down, was due to the fact that they were afraid to climb up the tower to work on it.

Mr. Maxwell asked Mr. Scott approximately how high his home was, and Mr. Scott stated that he had never measured it, but thought it was probably around 15'. Mr. Maxwell also stated that the yard narrows in the back, and asked where he was planning to place the antenna. Mr. Scott stated he wished to place it in the middle of his yard. Mr. Scott went on to say that under the present Ordinance, a homeowner with a two-story house, which would be approximately 25' high could put up a 12' antenna, which would bring the total height up to 37'. Mr. Scott stated that he did not feel his request for 50' was too excessive due to this fact. Mr. Maxwell stated that there was not any screening in either the front or rear yard and felt that this antenna would be 35' above the height of his home. Mr. Maxwell also stated that PRB-1, which was a FCC release in 1985, talked about allowing the amateur operator to communicate effectively, however, also provided for screening issues, health issues and the size of the lot. Mr. Maxwell also stated that according to this article, Mr. Scott would be limited to the height

ITEM #10 – con't.

of his antenna based on the placement of the structure in his side yard. Mr. Maxwell further went on to say that he felt he would like to see some compromise made, but was concerned due to the narrowness of this lot and also the fact that there is no screening provided.

Mr. Courtney also asked if Mr. Scott would be interested in a 50' or 75' retractable tower. Mr. Scott stated that he did not feel it was structurally sound. Mr. Courtney stated that he would prefer to see a retractable antenna, rather than one that is up all the time. Mr. Maxwell stated that the antennas he looked into would retract to only 18', which would be 3' higher than the existing home, and Mr. Maxwell felt would be more wind resistant.

At this time the Chairman opened the Public Hearing.

Mr. Mike Blust, 3881 Nash was present and stated that his home backs up to Mr. Scott's property. Mr. Blust is concerned that whether the antenna is retractable or not, it will affect the property value of his home and is also concerned that by granting this variance it may encourage more towers in subdivisions in Troy. Mr. Blust also does not feel that there is any advantage to having a retractable tower, due to the fact that it could be up most of the time. Mr. Blust stated that he is adamantly opposed to the granting of this variance request.

Mr. Ronald Kelemen, 3890 Nash was present and stated that his yard backs up to Mr. Scott's yard. Mr. Kelemen said that he is very opposed to this request. Mr. Kelemen went on to say that the neighbors have not seen what type of antenna Mr. Scott wishes to put up. Mr. Kelemen feels that a 50' antenna would be a detractor from the appearance of the neighborhood and is also concerned about the interference with regard to cable and other services.

Mr. Patrick Carr, 3945 Knox, was present and stated that he lives directly next door to Mr. Scott's residence. Mr. Carr stated that he has a number of safety concerns due to the fact that there are a number of toddlers living in the area, and is worried that they may try to climb this structure. Mr. Carr also agreed with the other residents in that he feels a 50' tower would detract from the subdivision. Mr. Carr further stated that if this 50' tower were to fall it would land on his property, and this is of great concern to him. Mr. Carr said that he is against this request for a variance and felt that the City should look very carefully into the matter before granting permission for 50' towers in densely populated areas.

Mr. Philip Ode, 4508 Whisper Way, was present and stated that he is also an amateur radio operator. Mr. Ode stated that studies have been done and that towers do not have an impact on resale value of homes in the area, and knows of one home in particular which sold at a premium price, even though it was located right next to a home which had a couple of antennas. Mr. Ode went on to say that there are a lot of issues to look into regarding the height of antennas and effective communication. Mr.

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Ode said that communication is done through the use of “bands” and each “band” is the length of the radio wave. Good antenna design requires that you be one-half wavelength off the ground, and so for a 40-meter band the antenna would be approximately 66’ – 70’ off the ground. Mr. Ode also stated that there are more extensive bands also, but Mr. Scott is not interested in these other bands at this time. Mr. Ode further stated that with UHF and VHF, the actual antenna itself is only a few feet long, it is in the two-meter band, but the height of the antenna above the ground determines the radiation distance. Mr. Ode also said that if you look at the top of existing buildings, you will see a number of antennas sticking up from the tops of these buildings.

Mr. Maxwell asked Mr. Ode if the fact that Mr. Scott’s home is approximately 900’ above sea level would have any effect on communication. Mr. Ode stated that the higher you are the better off you are, for long-range communication. Mr. Ode also said that the soil properties play into effective communication. Mr. Ode went on to say that if you are less than 20 meters off the ground, the ground actually becomes one-half of your antenna and some compensation will have to be allowed for. Mr. Ode also stated that when he wanted to have his teenage daughters get off the phone, he would turn up the wattage of his radio and they would hang up due to the interference. Mr. Maxwell also asked if Mr. Scott communicates with Oakland County Emergency and Mr. Ode stated that he was trained by the Federal Government in order to communicate with the Oakland County Emergency Management Center. Mr. Maxwell then asked what minimum height for an antenna would be required for effective communication. Mr. Ode stated that the hobby is more expansive than to limit it to one item, although a 50’ antenna would allow him to communicate with Oakland County but not necessarily with Lansing.

Mr. Courtney asked how far Mr. Ode lived from this property and Mr. Ode stated he was approximately 2 miles away. Mr. Courtney then asked if had ever had complaints from his neighbors and he stated that he did not.

No one else wished to be heard and the Public Hearing was closed.

There are nine (9) written objections on file. There is one (1) written approval on file.

Ms. Pennington asked Mr. Scott if the antenna that he had purchased was similar to the other antennas in his subdivision. Mr. Scott stated that his antenna would be similar to an antenna in his subdivision that has a TV antenna on the top of it. Mr. Scott said it would be the same model, same manufacturer and same height. Ms. Pennington asked if additional insurance would be required and Mr. Scott replied that he felt that his homeowner’s insurance would cover this. Ms. Pennington also stated that she had spoken with other neighbors in this area regarding the existing antennas, and they have expressed concern about the safety of them. Ms. Pennington further pointed out that one of the existing antennas is very rusty and looks very unsafe.

ITEM #10 – con't.

Mr. Courtney again asked Mr. Scott if a resolution was passed allowing for a retractable antenna, with stipulations regarding a time frame, if he would be interested in such a resolution. Mr. Scott replied that he felt that there would be a problem with the Board attempting to regulate the times he can use the antenna and he would not prefer this type of resolution. Mr. Scott also stated that sometimes things are done by remote control and he was thinking of adding a weather station that would run all the time. Mr. Scott did not feel that a retractable antenna would be feasible.

Mr. Maxwell again stated that he is very concerned about the narrowness of the property and would only be in favor of a retractable antenna operating at night. Mr. Maxwell also stated that a 50' antenna would be 35' above the house and is very concerned due to the fact that there is no screening.

Mr. Kovacs stated that he understands the neighbors concerns, however, Mr. Scott can put up an antenna that would be 25' high without a variance. Mr. Kovacs also stated that the higher tower would prevent less interference, but feels that the only viable solution would be a retractable antenna and does not think Mr. Scott would be interested in this solution.

Motion by Maxwell
Supported by Pennington

MOVED, to grant Mr. Murray Scott, 3831 Kingspoint relief of the Ordinance to construct a 40' retractable antenna.

- Antenna would not be any higher than 25' during daylight hours.
- Antenna would not be extended during daylight hours, unless there was an emergency.
- Variance would be reviewed within one (1) year.

Mr. Courtney asked Mr. Maxwell why he wanted a 40' high antenna. Mr. Maxwell then stated that he was concerned about the narrowness of the lot, and did not believe that this lot would support a 50' antenna.

Motion by Courtney
Supported by Gies

MOVED, to amend the motion to make it a 50' vs. 40' antenna.

Mr. Motzny wanted to note that there are not any cases in Michigan interpreting PRB-1, but other case laws in other jurisdictions indicated that regulating the times an amateur radio operator can operate is an unreasonable regulation. Mr. Motzny also stated that PRB-1 was a compromise that the FCC came up with, and the Federal Government believes that amateur radio operators are an effective means of emergency communication. Mr. Motzny also said that our Ordinance allows this Board to impose

ITEM #10 – con't.

conditions on variances that are granted, however, these conditions must be considered to be reasonable, and time regulations for amateur radio operators are considered an unreasonable regulation by some jurisdictions.

The Chairman then called for a vote on Mr. Courtney's request to amend Mr. Maxwell's motion.

ON THE MOTION TO AMEND THE MOTION TO MAKE IT A 50' VS. 40' ANTENNA.

Yeas: 3 – Courtney, Gies, Kovacs
Nays: 4 – Maxwell, Pennington, Fejes, Hutson

MOTION TO AMEND REQUEST FAILS

ON THE MAIN MOTION.

Yeas: 3 – Pennington, Kovacs, Maxwell
Nays: 4 – Courtney, Fejes, Hutson, Gies

MOTION TO GRANT A 40' RETRACTABLE ANTENNA FAILS

Motion by Courtney
Supported by Gies

MOVED, to grant Mr. Murray Scott, 3831 Kingspoint, relief of the Ordinance to construct a 50' retractable antenna.

- Antenna would not up be unless in personal use.
- Antenna would not be up when used by remote.

Yeas: 3 – Courtney, Gies, Kovacs
Nays: 4 – Fejes, Hutson, Maxwell, Pennington

MOTION TO GRANT VARIANCE FAILS

Motion by Fejes
Supported by Hutson

ITEM #10 – con't.

MOVED, to deny the request of Mr. Murray Scott, 3831 Kingspoint for relief to construct a 50' high freestanding antenna structure.

- Large number of neighbors object to this variance.
- Board believes that 25' high tower would be sufficient for Mr. Scott's needs.

Yeas: 3 – Fejes, Hutson, Pennington

Nays: 4 – Courtney, Gies, Kovacs, Maxwell

MOTION TO DENY REQUEST FAILS

Motion by Courtney
Supported by Gies

MOVED, to grant Murray Scott, 3831 Kingspoint, a variance for relief to construct a 50' high freestanding antenna structure.

Yeas: 2 – Gies, Courtney

Nays: 5 – Fejes, Hutson, Kovacs, Maxwell, Pennington

MOTION TO GRANT REQUEST HAS BEEN DENIED

ITEM #11 – VARIANCE REQUESTED. CHERYL WHITTON, ARCHITECTURAL CONSORTIUM, INC., ST. ANASTASIA CHURCH, 4571 JOHN R., for relief of the Ordinance to construct an addition to the existing Church, which does not include a 4'-6" high obscuring wall between the parking lot and adjacent residential property.

Mr. Stimac explained that petitioner is requesting relief of the screening requirements in relation to an addition to St. Anastasia Church. Paragraph F of Section 10.30.04 of the Troy Zoning Ordinance requires a continuous 4'-6" high obscuring wall between the parking lot and adjacent residential property. The site plan submitted does not include such a wall along the north property line where the parking lot is being expanded along the adjacent residential property.

Ms. Cheryl Whitton was present and stated that she was representing St. Anastasia Church. Ms. Whitton stated that the neighbors have indicated that they are not in favor of a 4'-6" high wall between the parking lot and their residential property and would prefer to have additional natural screening added. Ms. Whitton said that installation of the wall would compromise the existing vegetation on both the Church's property, as well as the residential property. Ms. Whitton indicated on a copy of the site plan, which she brought in that they plan to add 37 new site trees, 24 of them to be placed on the north property line and 38 additional trees within the parking area. Ms. Whitton stated these plantings would consist of Colorado Spruce, Red Maple, Austrian Pine, Summit Ash and Spring Snow Crab trees. Ms. Whitton said that they believe these additional trees along with the existing vegetation, will make a very dense screening.

ITEM #11 – con't.

Ms. Pennington asked if any existing trees were going to be removed. Ms. Whitton said that one of the neighbors asked that a Cottonwood tree be removed, and they plan to do this for the neighbor.

The Chairman opened the Public Hearing.

Ms. Roberta Primeau, 1802 Welling was present and stated that she had some questions regarding the additional screening. Ms. Whitton pointed out which trees would be planted near Ms. Primeau's property and Ms. Whitton stated that they would put in Colorado Spruce and a Red Maple. Ms. Primeau expressed concern over who would be responsible for maintaining the property and Ms. Whitton stated that she felt that the Church was very conscientious in making sure that the landscaping was maintained. Ms. Primeau also stated that there was a split rail fence at the back of the property, which was in a state of disrepair and Ms. Whitton stated that this fence did not belong to the Church. Mr. Hutson asked if Ms. Primeau would prefer a wall, and Ms. Primeau asked whether this would be a solid hedge. Ms. Whitton stated that they did not plan to put in a hedge, however, the Spruce trees would be between 5' and 6' in diameter, which would create quite a lot of screening.

Mr. Kovacs asked if Ms. Primeau wanted the brick wall. Ms. Primeau stated that she had seen children riding through her yard, and slam their bikes or scooters in the fence, and she is concerned about a lawsuit. Mr. Kovacs asked if she would feel better if the Board added a time line regarding this variance. Ms. Primeau stated that she would go along with the plantings, as long as the Church maintains the property.

Mr. Robert Bushnell, 1770 Welling, was present and stated that he had attempted to reach all of the neighbors in this area to get their feeling on this variance request. Mr. Bushnell stated that they are in favor of granting this variance, and would be against a screening wall.

Mr. Andy Vanhoef, 1756 Welling, was present and stated that he is against a screening wall. Mr. Vanhoef indicated that he supports this request for a variance.

Mr. Dave Lakin, 4610 Luisa, was present and stated that he is against a screening wall and would like the Board to grant this variance. Mr. Lakin also stated that they would like to see additional vegetation added to this area.

No one else wished to be heard and the Public Hearing was closed.

There are three (3) written approvals on file. There are no written objections on file.

Motion by Fejes
Supported by Courtney

ITEM #11 – con't.

MOVED, to grant Cheryl Whitton, Architectural Consortium, Inc., representing St. Anastasia Church, 4571 John R., a three (3) year variance for relief of the Ordinance to construct an addition to the existing Church, which does not include a 4'-6" high obscuring wall between the parking lot and adjacent residential property.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect on surrounding property.
- Three-year time limit will allow new planting to grow in.
- Neighbors in the immediate vicinity do not want an obscuring wall added.

Yeas: All – 7

MOTION TO GRANT VARIANCE FOR THREE (3) YEARS CARRIED

ITEM #12 – VARIANCE REQUESTED. MANISH & SONAL MEHTA, 710 SYLVANWOOD, for relief of the side yard setback to construct a second floor addition.

Mr. Stimac explained that the petitioner is requesting relief of the side yard setback to construct a second floor addition. Section 30.10.04 requires 10' minimum side yard setback in R-1C Zoning Districts. The plans submitted indicate the existing house has a 6'-1" side yard setback to the west property line. Therefore, the existing home is a legal non-conforming structure. Plans submitted for the proposed second floor addition show continuing this 6'-1" side setback. Section 40.50.04 prohibits expansions to legal non-conforming structures in a way that increases its non-conformity.

Mr. John Glister, of Fairway Construction was present and stated that this second floor addition would not encroach any further into the side yard setback. Mr. Glister further stated that they plan to build up and not out. Mr. Glister indicated that there are three bedrooms upstairs and basically all they want to do is enlarge this area.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are three (3) written approvals on file. There are no written objections on file.

Motion by Pennington
Supported by Maxwell

MOVED, to grant Manish & Sonal Mehta, 710 Sylvanwood, relief of the side yard setback to construct a second floor addition.

- The variance only extends the existing wall of the home
- Variance is not contrary to public interest.
- Variance would not have an adverse effect on surrounding property.
- Conformance to the Ordinance would be unnecessarily burdensome.

ITEM #12 – con't.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #13 – VARIANCE REQUESTED. HAROLD & BETTY MALAKINIAN, 2345 FOREST TRAIL, for relief of the rear yard setback to construct a sunroom addition.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct a sunroom addition. In 1991, the Board of Zoning Appeals granted a variance for a bedroom addition on the other corner of the home with a 28' rear yard setback. The application submitted now indicates a sunroom addition with a proposed 26.05' rear yard setback. The Zoning Ordinance requires a 40' rear yard setback in a R-1C Zoning District.

Mr. Rick Haddad, a representative of Mr. Enclosure was present and stated that Mrs. Malakinian suffers from a degenerative joint disease and her physician had stated that a hot tub would be beneficial for her condition. Mr. Haddad also stated that the new addition would not encroach any closer to the rear lot line than the existing structure. Mr. Haddad said that the neighbor next door to this property had given a letter of approval, and also obtained two approvals from the neighbors across the street.

Mr. Courtney stated that the person directly behind the home has objected to this request and Mr. Haddad said that he had spoken to them and discussed their concerns with them.

Ms. Pennington asked what size the sunroom would be and Mr. Haddad said it was 11' in order not to encroach any further into the rear yard setback.

Mr. Malakinian stated that he wished the variance for a sun porch with a hot tub due to the fact that his wife's physician recommended this as a form of treatment for his wife's arthritis. Mr. Malakinian further stated that it was difficult for his wife to go up and down stairs and this sunroom would be convenient for her. Mr. Malakinian also said that he has a 6' high fence around his property and therefore, this sunroom would not be visible to the neighbors. Mr. Malakinian said that he and his wife had spoken to the neighbors behind them, and he thought that their main concern was if this variance request was granted, it would make it difficult for them to obtain a variance if they needed one. Mr. Malakinian also said that he would like to make this hot tub as convenient as possible for his wife. Mr. Hutson asked Mr. Malakinian about the variance that was requested in 1991 and Mr. Malakinian replied that this room was added on as a bedroom for his sister who was ill, and eventually he and his wife will use this room as their bedroom.

The Chairman opened the Public Hearing.

Mr. Brian Mitchell, 2344 Hillcrescent was present and stated that his home directly backs up to this home. Mr. Mitchell stated that he thinks that the more space between

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homes, the better the appearance and supports the Zoning Ordinance. Mr. Mitchell also stated that this home is one of the largest in the area and there are only two people living in it. Mr. Mitchell pointed out that he and his family total five people and live in a home that is only 1800 square feet, while he believes that this home is approximately 3,000 square feet. Mr. Mitchell expressed concern that the approval of a second variance for this home, would make it more difficult for him to obtain a variance in the future if he so desired. Mr. Mitchell also stated that they had approved of the request in 1991 due to the fact that they thought it would be helpful for the Malakinians, however, they do feel that the request for a second variance is excessive. Mr. Mitchell pointed out that this sunroom is a solution to the existing physical problem, but the variance will continue no matter who lives in the home. Mr. Mitchell also said that although the fence is supposed to be 6' high, due to the grade of the property, it drops lower than that in some sections.

Mr. Courtney asked if Mr. Mitchell thought an encroachment of 1.95' was excessive. Mr. Mitchell said he feels that Mr. Malakinian is actually asking for an encroachment of 14'. Mr. Mitchell again stated that he feels two variances on the same property are excessive. Mr. Mitchell also asked if the hot tub couldn't be built within the existing structure.

Mr. Stimac stated that the variance granted in 1991 allowed the addition at the northwest corner of the house with a 28' setback. Mr. Stimac further stated that this Zoning District requires a 40' rear yard setback.

Mr. Kovacs asked Mr. Haddad what this structure would look like. Mr. Haddad said it was a glass structure on all sides. Mr. Kovacs then asked if Mr. Mitchell would prefer to have this hot tub built outside the home.

Mrs. Mitchell, 2344 Hillcrescent was also present and stated that because their windows directly face the yard, their home completely faces the original addition as well as the proposed addition. Mrs. Mitchell also said they would rather see this sunroom on the side of the home. Mrs. Mitchell further stated that a hot tub which is constructed on a deck or outside of the home, can be removed, however, she did not feel that anyone would ever remove an addition. Mrs. Mitchell also stated that her property is the one that is most directly affected by this request and was upset that a second variance was requested. Mrs. Mitchell also stated that she feels that this addition would negatively affect their property due to the fact that this variance would be permanent. Mrs. Mitchell said that she thinks that there are other alternatives available without a variance.

No one else wished to be heard and the Public Hearing was closed.

Mr. Kovacs commented on how large this home was and asked how many bedrooms it has. Mr. Malakinian stated that there are four bedrooms upstairs, and one bedroom downstairs. Mr. Kovacs asked if there were any rooms inside the home that could be used for the hot tub. Mrs. Malakinian stated that it is very difficult for her to negotiate

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the stairs, and she does not feel that any of the rooms on the first floor could be converted to accommodate this hot tub.

Mr. Courtney suggested that perhaps a small elevator or stair lift could be installed for Mrs. Malakinian's use, and the first floor bedroom could possibly be converted to contain the hot tub.

Mr. Stimac said that the variance granted in 1991 indicated a 14' room addition would result in a 28' setback. Mr. Stimac also said that this setback was determined by a survey, which was done in 1967; although when all the numbers are added up, he would guess that the setback is actually 25'. Mr. Stimac also said that Building Department personnel had not gone out and field verified these measurements, but would suggest that if the Board were to grant this variance request, it would be with the stipulation that the new addition would not encroach any further than the existing addition. Mr. Stimac also said that the Building Department would go out and verify the existing setbacks. Mr. Stimac pointed out that this home is on a lot, which is considered a double front corner lot, and the existing house is 44' from the front property line along Gatesford Circle and a 14' addition could be added there without a variance.

Mr. Kovacs asked the builder if it would be possible to put this addition in the side yard. Mr. Haddad stated that a door wall would have to be added, and he thought that the other neighbors would probably object to an addition in the side yard. Mr. Haddad also said that they are not asking for any additional encroachment, and the sun room will not be any closer to the rear lot line than the existing addition. Mr. Haddad further stated that he thought that the addition would be more aesthetically pleasing in this location, rather than at the side of the house.

Mr. Courtney asked if a deck and hot tub could be added without a variance. Mr. Stimac stated that an uncovered, unenclosed deck can project up to 15' into the rear setback. Mr. Courtney also asked if the neighbors would prefer to see an uncovered deck with a hot tub. Mr. Mitchell stated that they would rather it were put in the side yard.

Mrs. Gies asked if it would be possible to put the hot tub in the garage and move part of the garage over. Mr. Stimac stated that he thought that the garage could be moved out about 12'-6", based on the original survey.

There are three (3) written approvals on file. There is one (1) written objection on file.

Motion by Maxwell
Supported by Fejes

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MOVED, to deny the request of Mr. and Mrs. Malakinian, 2345 Forest Trail, for relief of the rear yard setback to construct a sunroom addition.

- Sunroom could be added in side yard without a variance.
- Variance would cause the property to be over built.
- Variance would have an adverse effect to surrounding property.

Yeas: 4 – Kovacs, Maxwell, Pennington, Hutson

Nays: 3 – Courtney, Fejes, Gies

MOTION TO DENY REQUEST CARRIED

The Board of Zoning Appeals meeting adjourned at 9:35 P.M.

MS/pp