

A regular meeting of the Board of Zoning Appeals was called to order by the Chairman, James Giachino, at 7:30 P.M. on Tuesday, July 18, 2000.

PRESENT:	Kenneth Courtney	Mitch Grusnick
	Mark Maxwell	Bob Davisson
	Lawrence Littman	Pam Pasternak
	James Giachino	
	Carmelo Milia	
	Michael Hutson	

ABSENT: Christopher Fejes

Motion by Milia
Supported by Littman

MOVED, to excuse Mr. Fejes from this meeting as he is out of town.

Yeas: 6 – Maxwell, Littman, Giachino, Milia, Hutson, Courtney

MOTION TO EXCUSE MR. FEJES CARRIED

ITEM #1 – APPROVAL OF MINUTES, JUNE 20, 2000 MEETING

Motion by Courtney
Supported by Milia

MOVED, to approve the minutes of the June 20, 2000 meeting as written.

Yeas: 6 – Littman, Giachino, Milia, Hutson, Courtney, Maxwell

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 - RENEWAL REQUESTED. KEVIN P. SHEA, REPRESENTING LIBERTY PROPERTY TRUST, 50-100-150-200 W. BIG BEAVER, for relief of the 6' high masonry screening wall required along the north property line.

Mr. Grusnick explained that the petitioner is requesting renewal of a variance granted, by this Board, for relief of the 6' high masonry screening-wall required along the north property line of their site, which abuts residential zoned property. This relief was originally granted in July 1988, based on the fact that the existing fence provides a separation of properties and the masonry screening-wall would serve no useful purpose. Currently the property to the north is unoccupied and owned by the City of Troy. In July 1997 this Board granted a three-year renewal of this variance. Conditions remain the same, and we have no objections or complaints on file.

ITEM #2

Ms. Denise Currin, Property Manager for Liberty Property Trust was present and stated that she had nothing to add.

Motion by Maxwell

Supported by Courtney

MOVED, to grant Liberty Property Trust, 50-100-150-200 W. Big Beaver a three (3) year variance for relief of the 6' high masonry screening wall required along the north property line.

- Variance is not contrary to public interest.
- There are no complaints or objections on file.

Yeas: 6 - Giachino, Milia, Hutson, Courtney, Maxwell, Littman

Absent: 1 – Fejes

MOTION TO APPROVE VARIANCE FOR THREE (3) YEARS CARRIED

ITEM #3 - RENEWAL REQUESTED. BETHEL BAPTIST CHURCH, 1975 E. LONG LAKE, for relief to maintain landscaping in place of the 4'6" high masonry-screening wall required adjacent to off-street parking.

Mr. Grusnick explained that the petitioner is requesting relief to maintain landscaping in lieu of the required 4'6" masonry-screening wall required along the property line adjacent to off-street parking. This Board originally granted this variance in July 1989. In July 1997 this Board granted a three-year renewal of this variance. Conditions remain the same, and we have no objections or complaints on file.

Reverend Schick, Pastor of Bethel Baptist Church was present and stated that he felt that the berm provided a natural barrier and was an asset to the subdivision.

Motion by Courtney

Supported by Milia

MOVED, to grant Bethel Baptist Church, 1975 E. Long Lake, a three (3) year variance to maintain landscaping in place of the 4'6" high masonry-screening wall required adjacent to off-street parking.

- Variance is not contrary to public interest.
- There are no complaints or objections on file.

Yeas: 6 – Milia, Hutson, Courtney, Maxwell, Littman, Giachino

Absent: 1 - Fejes

MOTION TO APPROVE VARIANCE FOR THREE (3) YEARS CARRIED

ITEM #4 - RENEWAL REQUESTED. RICHARD VARKLE, 54 E. SQUARE LAKE ROAD, for relief of the requirement to provide hard surface parking and an access drive.

Mr. Grusnick explained that the petitioner is requesting relief to maintain a gravel parking lot. The Zoning Ordinance requires parking lots and drives to be hard surfaced. This Board originally granted this relief in May 1979 based on the historical significance of the site. "A Sense of Thyme" florist currently occupies the site. This Board granted a three-year renewal of this variance in July 1997. Conditions remain the same and we have no objections or complaints on file.

Mr. Richard Varkle was present and stated that he had nothing to add.

Motion by Littman
Supported by Maxwell

MOVED, to grant Richard Varkle, 54 E. Square Lake Road, a three-(3) year variance for relief of the requirement to provide hard surface parking and an access drive.

- Conditions remain the same.
- We have no complaints or objections on file.

Yeas: 6 – Milia, Hutson, Courtney, Maxwell, Littman, Giachino
Absent: 1 – Fejes

MOTION TO APPROVE VARIANCE FOR THREE (3) YEARS CARRIED

ITEM #5 - RENEWAL REQUESTED. KENSINGTON COMMUNITY CHURCH, 1825 E. SQUARE LAKE ROAD, for relief of the 4'6" high masonry screening wall required along the north and west sides of off-street parking.

Mr. Grusnick explained that the petitioner is requesting renewal of a variance granted, by this Board in 1996, for relief of the 4'6" high masonry screening wall required along the north and west sides of off-street parking. This relief was originally granted based on the fact that the wall adjacent to the wetlands could be a problem and that a variance renewal will determine whether natural conditions provide necessary screening. In July 1997 the church was under construction and this Board granted a renewal for two years. Other than that, conditions remain the same and we have no objections or complaints on file.

Mr. John Tagle, architect for Kensington Community Church was present and stated that he had nothing to add.

Motion by Milia
Supported by Courtney

ITEM #5

MOVED, to grant Kensington Community Church, 1825 E. Square Lake Road, a three (3) year variance for relief of the 4'6" high masonry screening wall required along the north and west sides of off-street parking.

- There are no complaints or objections on file.
- Variance is not contrary to public interest.

Yeas: 6 – Courtney, Maxwell, Littman, Giachino, Milia, Hutson
Absent: 1 – Fejes

MOTION TO APPROVE VARIANCE FOR THREE (3) YEARS CARRIED

ITEM #6 - VARIANCE REQUESTED. MR. AND MRS. AL KING, ATLAS VENEER FIREPLACE, 2212 LIVERNOIS, for relief to maintain a metal fence in lieu of the 6' high masonry-screening wall required along the east property line where this commercial property abuts residentially zoned property.

Mr. Grusnick explained that the petitioner is requesting relief of the Zoning Ordinance to maintain a metal fence in lieu of the 6' high masonry-screening wall required along the east property line where this commercial property abuts residentially zoned property. This Board originally granted this relief in 1983, primarily due to the fact that the petitioner owns the property to the east, which is undeveloped. In September and October 1999, this item appeared before the Board. This renewal was denied in October 1999, primarily due to the fact that the petitioner did not appear before the Board to represent the item. The petitioners have now filed a new application for variance.

This item appeared before the Board at the June 20, 2000 meeting at which time it was tabled to allow the Board members to go out and take a much closer look at the property to determine what course of action would be best taken and also to allow Bob Davisson the opportunity to research the property regarding use of a garage for commercial use on residentially zoned property.

Mr. Davisson explained that this garage could not be used for commercial use due to the fact that it is on residentially zoned property. He further stated that the property is quite unique due to the fact that part of it is zoned commercial and part is in residential zoning. He further stated that the issue in front of the Board was regarding the variance for the fence.

Mr. Bill Cummings, Attorney for Mr. King was present and stated that he also felt that this property was unique due to the different zoning classifications and asked that the variance be granted.

Mr. Giachino asked if the petitioner has taken any action to re-zone the property. Mr. Cummings stated that at this point his client does not want to go through the process of

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trying to rezone the property as he is 72 years old and under a doctor's care. Mr. Cummings further stated that Mr. King would like to sell this property. Mr. Courtney asked if Mr. King realized that this property could become more valuable if it was rezoned. Mr. Cummings stated that he did realize this but would rather not go through the process of petitioning for rezoning.

Mr. Littman brought up the fact that if the property is to be sold it should be made clear to the buyer that the garage could not be used as part of a commercial venture. Mr. Cummings stated that as part of the disclosure statement it would be made clear that this property would have to be rezoned in order for the garage to be used for commercial use.

There is one written approval on file.
There is one written objection on file.

Motion by Milia
Supported by Hutson

MOVED, to grant Mr. and Mrs. Al King, Atlas Veneer Fireplace, 2212 Livernois, a two-(2) year variance to maintain a metal fence in lieu of the 6' high masonry-screening wall required along the east property line where this commercial property abuts residentially zoned property.

- Variance is not contrary to public interest.
- This variance applied to this property only.

Yeas: 6 – Courtney, Maxwell, Littman, Giachino, Milia, Hutson
Absent: 1 – Fejes

MOTION TO APPROVE VARIANCE FOR TWO (2) YEARS CARRIED

ITEM #7 - VARIANCE REQUESTED. MR. JAMES SCOTT, 3078 OAKHILL, for relief of the Zoning Ordinance regarding expansion of a non-conforming structure.

Mr. Grusnick explained that the petitioner is requesting relief of the Zoning Ordinance to construct an addition to an existing residence. Section 30.10.02 of the Zoning Ordinance requires a 40' minimum front setback in the R-1B Zoning District. The site plan submitted indicates that the existing structure has only a 36.42' front setback. The proposed addition would continue this 36.42' front setback. Section 40.50.04 of the Zoning Ordinance prohibits expansion of non-conforming structures in a way that increases the non-conformity.

Mr. Scott was present and stated that he and his wife had been a resident of Troy for 30 years. Mr. Scott stated that his home was built in 1955, which was prior to the ordinance regarding setbacks. Mr. Scott also stated that they needed this additional for

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the expansion of their dining room. He said that they had explored several other options, however, this was the only one they felt would work with his property.

The Chairman opened the Public Hearing.

Diane Kasunic of 3036 Oakhill was present and stated that the Scotts' home was very lovely and she would support any addition they wished to make.

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

There are two written approvals on file.

Motion by Maxwell

Supported by Courtney

MOVED, to grant Mr. James Scott, 3078 Oakhill, relief of the Zoning Ordinance regarding expansion of a non-conforming structure.

- The variance will not establish a prohibited use within a zoning district.
- Variance is not contrary to public interest.
- This variance does not cause an adverse effect to properties in the immediate vicinity.

Yeas: 6 – Courtney, Maxwell, Littman, Giachino, Milia, Hutson

Absent: 1 – Fejes

MOTION TO GRANT VARIANCE CARRIED

ITEM #8 - VARIANCE REQUESTED. MR. THOMAS RICHARDS, 2754 DOWNEY, for relief of the side yard setback for an accessory structure.

Mr. Grusnick stated that the petitioner is requesting to allow a deck built without a building permit with a 0' side yard setback. The existing pool, with the newly constructed deck attached to it, are accessory structures by the definitions of the Zoning Ordinance. Section 40.57.05 of the Zoning Ordinance requires a 6' minimum setback from any accessory structure to a side or rear property line. The on site inspection and permit application indicates the deck was constructed right up to the north property line.

Mr. Thomas Richards was present and stated that he is faced with a unique situation in that his wife has multiple sclerosis and each time the seasons change her condition gets worse. Her doctor recommended swimming as part of her therapy, and it is very difficult for her to get in and out of the pool with the ladder. Mr. Richards further stated that if his wife were forced to use a wheel chair, this deck was built wide enough to accommodate a wheel chair and access ramp which would enable her to use this pool.

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Mr. Richards passed around pictures to show the Board how the deck was built around the pool. Mr. Maxwell asked about the posts at the top of the deck. Mr. Richards stated that when he received the "stop work" order, all the work was left as it was. His intention is to cut the railing down part way and cap it.

The Chairman opened the Public Hearing.

Mr. Jim Jablonski, 2739 Downey was present and stated that he was employed as a pool installer for twenty-six (26) years and believes that the deck as built, has three very good points: 1 – Due to the fact that the deck is wider, he believes it provides greater safety for small children walking or running along the deck; 2 – Because the deck butts up to the fence, he believes it makes the fence stronger and 3 – He considers this home one of the jewels of the neighborhood and stated that the Richards are constantly making upgrades to the property, which enhance the value. Mr. Jablonski is in support of this variance.

Mrs. Debbie Jablonski, stated that she also supports this variance.

Mr. Richard Hughes, 1321 Roger Ct., was present and stated that he felt that the Board should show compassion for Mr. and Mrs. Richards and bend over backwards to help someone with this debilitating disease.

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

Mr. Littman asked what the maximum height of this structure is in case this homeowner sells. Mr. Grusnick stated that the maximum height of accessory structures is 12' from ground level. Mr. Richards stated that his deck is just 4' high not including the height of the guardrail. Mr. Grusnick also stated that a fence on the property line is limited to 6' in height.

Mr. Davisson stated that while he sympathized with the medical hardship presented, he wished to point out to the Board that a medical hardship is not a legal hardship to grant a variance.

Mr. Richards brought in twelve (12) signed letters of approval from his neighbors.

The Building Department received six (6) written approvals; one (1) objection and two (2) written concerns from neighbors.

Mr. Courtney asked if the deck could have been placed on the south side of the property and was told that it could have been placed there without a variance, however, Mr. Richards thought that the present location would be the best location. Mr. Giachino asked if moving the pool would be an option and Mr. Richards stated that it would be easier to buy a new pool. Mr. Maxwell asked if there were any immediate plans to install a handicap ramp and Mr. Richards stated that at this time one was not needed.

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Mr. Littman stated that he also sympathized with Mr. Richards, however, he feels that there are other options available and the fact that the deck is already built is not a hardship. Mr. Littman stated that the neighbor to the north would have this deck essentially in his yard. Mr. Hutson also agreed that there were other options available and did not feel a this hardship was justified. Mr. Milia sympathized with Mr. Richards, however stated that he feels that the homes in this neighborhood like their privacy, and does not feel that this deck will grant this privilege to Mr. Richards next door neighbor. Mr. Giachino asked if the petitioner wished to table this item to allow the opportunity for a full board.

Mr. Maxwell stated that Mr. Richards neighbor to the north had some concerns and Mr. Richards stated his neighbors biggest fear was that he would sell the property. Mr. Richards stated he did not wish to sell his home and wished to keep the deck near the home to make it more accessible for his wife.

Motion by Littman

Supported by Maxwell

MOVED, to table the request of Mr. Thomas Richards, 2754 Downey to allow a deck built without a building permit with a 0' side yard setback.

- Allow the petitioner the opportunity to present his petition to a full board.

Yeas: 4 – Maxwell, Littman, Giachino, Hutson

Nays: 2 – Milia, Courtney

Absent: 1 – Fejes

MOTION TO TABLE REQUEST UNTIL THE MEETING OF AUGUST 15, 2000
CARRIED

ITEM #9 - VARIANCE REQUESTED. MR. PATRICK PISCOPO, 1369 E.

WATTLES, for relief of the Zoning Ordinance to split an existing parcel of land resulting in non-conforming lot width and area.

Mr. Grusnick explained that the petitioner is requesting relief of the Ordinance to split an existing parcel of land and to construct a new home on the resulting vacant land. The site plan submitted indicates that the proposed lot split would result in a 78' wide lot for the existing house. Section 30.10.04 requires an 85' minimum lot width in the R-1C Zoning District. In addition, the proposed lot area of the existing home site would be 10,140 square feet. Section 30.10.04 requires a lot area of at least 10,500 square feet.

Mr. Patrick Piscopo was present and stated that he has been a resident of Troy for 24 years and is presently living in a very small home. He wishes to split his lot and build a home that would be approximately 3600 square feet, including a side entrance garage. Mr. Piscopo stated that he is in poor health and the reason he wants a larger home is to

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allow for live-in help if he should need it in the future. Mr. Piscopo also stated that he had passed out a petition and 30 of his neighbors supported him by signing same. Mr. Piscopo also said that he want to preserve as much of the acreage as possible for future development.

Mr. Littman commented on additional notes that Mr. Stimac had given the board and stated that it was indicated that the split could be done without requiring a variance. Mr. Piscopo stated that that was true but he did not wish to split his lot in this way. He stated that he wanted to leave the extra land to his heirs and felt that there could be a potential drain problem on Wattles Road.

Mr. Grusnick stated that on the preliminary drawing of the site plan for the subdivision, it is indicated that if a split is done the way Mr. Piscopo wishes a cul-de-sac will run through the proposed house. Mr. Piscopo stated that he did not want to build a home further back on this lot. Mr. Milia questioned Mr. Piscopo as to the reason for wanting a larger home with his present health problems, and Mr. Piscopo stated that he knows he would not be happy living in a condominium and pays a landscaper to take care of his property. Mr. Milia stated that he could have the same size home and split his lot very easily if he did it in another way. Mr. Courtney stated that from the site plan submitted, it is indicated that the present lot is large enough for six (6) more homes.

The Chairman opened the Public Hearing.

Ms. Kim Duford was present and stated that she is familiar with Mr. Piscopo's property and believes that if he wants a larger home, he should be allowed to have a larger home. It was explained that the size of the home is not in question, only the split of the existing lot.

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

There are six (6) written approvals on file.

Mr. Piscopo presented the Board with a petition signed by 30 of his neighbors approving this request.

Mr. Maxwell asked if Mr. Piscopo would be able to construct this same home if he split the lot the other way. Mr. Grusnick stated that if he split the lot to 103.9', which would make the west, lot 85', the change would be that he would need a front entrance garage. Mr. Piscopo stated that he would have to change the architectural plans of his home.

Motion by Courtney
Supported by Milia

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MOVED, to deny the request of Mr. Patrick Piscopo, 1369 E. Wattles relief to split an existing parcel of land and to construct a new home on the resulting vacant land, which would result in a 78' wide lot where 85' is required.

- Insufficient grounds presented to allow for variance.
- Lot can be split legally.
- No benefit to establish a lot which would be non-conforming.
-

Yeas: 6 – Littman, Giachino, Milia, Hutson, Courtney, Maxwell

Absent: 1 - Fejes

MOTION TO DENY REQUEST CARRIED

ITEM #10 - VARIANCE REQUESTED. Mr. AND MRS. ANDREW MASSON, 2856 LANERGAN, for relief of the Zoning Ordinance regarding expansion of a non-conforming structure.

Mr. Grusnick explained that the petitioner is requesting relief of the Zoning Ordinance to construct an addition at an existing residence. Section 30.10.02 requires a 10' minimum sideyard setback in the R-1B Zoning District. The site plan submitted indicates an 8.1' sideyard setback from the existing house to the west property line. The proposed addition would continue this 8.1' sideyard setback. Section 40.50.04 of the Zoning Ordinance prohibits the expansion of a non-conforming structure in a way that increases the non-conformity.

Mr. Andrew Masson was present and stated that they wanted to extend the back of the house and when they submitted their plans to the Building Department it was determined that they would need a variance.

The Chairman opened the Public Hearing.

Mr. Richard Kalt, the architect for Mr. Masson was present and stated that the plans that were submitted would make the addition look like a part of the original house, rather than an addition. He also stated that this addition would be aesthetically pleasing.

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

There are five (5) written approvals on file.

There are no written objections on file.

Motion by Milia

Supported by Courtney

ITEM #10

MOVED, to grant Mr. and Mrs. Andrew Masson relief of the Zoning Ordinance to construct an addition at an existing legal non-conforming residence.

- Improvement does not compound existing non-conformance.
- Requirement to conform to the Ordinance would be burdensome to the petitioner.

Yeas: 6 – Giachino, Milia, Hutson, Courtney, Maxwell, Littman

Absent: 1 – Fejes

MOTION TO APPROVE REQUEST CARRIED

ITEM #11 - VARIANCE REQUESTED. MR. GARY TADIAN, 2038 W. BIG BEAVER, for relief to expand a non-conforming structure and relief of the front yard setback.

Mr. Grusnick explained that the petitioner is requesting this Board to **reconsider** his request to construct a 21,977 square foot addition to an existing building. The existing building is only 24' from the front property line. Section 30.20.01 of the Zoning Ordinance requires a 30' front yard setback. The building is therefore a legal non-conforming structure. Section 40.50.04 prohibits the expansion of a legal non-conforming structure. In addition, the plans submitted indicate the replacement of an existing front canopy with a 19.5' front setback and the installation of new brick on the face of the building result in a further reductions of the front setback of 4". This item originally appeared before the Board at the April 18, 2000 meeting and was denied. Mr. Tadian submitted a letter asking the Board to reconsider this request. At the meeting of June 20, 2000 the board voted to reconsider this request. Public hearing notices have been sent to all property owners within 300' of the Board's decision to reconsider.

Mr. Gary Tadian, president of Tadian Homes was present and that he wished to address some of the concerns, which were brought up at the meeting in April. Mr. Tadian stated that regarding the drainage question, if the property were developed there would be no off-site drainage problems. He also said that they will work closely with the City's Engineering Department and will comply with all codes. Regarding the question of traffic using McClure and Alpine streets, he stated that there is no way for him to limit the amount of traffic that uses these streets in order to avoid Big Beaver. Mr. Tadian further stated that if the variance is not granted, he can demolish this building and construct a new building of the same size without a variance.

Mr. Maxwell asked if a retention would be put in if the variance was approved and Mr. Tadian stated that with the resurfacing of the parking lot, he felt that drainage would not be a problem. He also said that they studied this property and could not find any evidence of off-site drainage.

The Chairman opened the Public Hearing.

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Mrs. Kim Duford, 3141 McClure was present and stated that the traffic coming from Big Beaver was a major concern to her. She stated that presently there are sixty-two (62) children living on McClure Street and believes that the increased traffic poses a threat to these children. Mrs. Duford further stated that in 1998, we received an amount of rain equal to a 500-year rain and her property flooded a great deal. She stated that she feels her property is the retention pond for Michigan National Bank. She is very concerned over the fact that big businesses are allowed variances and the average citizen is forgotten in the name of progress. She believes that residents should be considered before the Board grants a variance on commercial property adjacent to residential property. Mr. Giachino asked Mr. Grusnick if Mrs. Duford had any recourse regarding posting of signs on McClure Street and Mr. Grusnick stated that she should contact Mr. John Abraham, of the Traffic Engineering Department to see if "Children at Play" signs could be erected.

Mr. Tadian stated that Mrs. Duford's property does not back up to Michigan National Bank, but to the property owned by the Auto Dealers Association.

Mr. Richard Hughes, 1321 Roger Ct., was present and stated that during the rains of 1998 water-flooded property from McClure street to Civic Center and then to the Red Run Drain. Mr. Hughes stated that he objects to the increase in traffic but does not object to progress.

Mrs. Diane Kasunic, 3036 Oakhill was present and stated that she objects to the increase in traffic all over Troy. She stated that businesses are growing contributing to the traffic problem without contributing to the City taxes. Mrs. Kasunic stated that she would be willing to pay \$100.00 to anyone that would find someone who would stop at a sign stating "Do not Block Intersection" and let traffic in. She also believes that the Board should show compassion to people with health problems before taking steps to approve variances for businesses.

Mrs. Kim Duford again spoke and stated that the parking lot of Michigan National Bank was on a slant and there is a split in the wall and when there is a build up of water it flows into her yard.

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

There is one written approval on file.

Mr. Hutson stated that even if the Board turned down Mr. Tadian's request for a variance, Mr. Tadian could then tear down the existing building and construct a new building which would not require a variance. Mr. Hutson also asked about the change in the canopy and Mr. Tadian stated that he has withdrawn his request to replace the front canopy.

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Motion by Hutson

Supported by Courtney

MOVED, to grant Mr. Gary Tadian, 2038 W. Big Beaver, relief of the ordinance to construct a 21,977 square foot addition to an existing legal non-conforming building.

Mr. Courtney and Mr. Maxwell both stated that the concerns of the citizens on McClure should be given consideration regarding flooding and the following amendment should be added to the motion.

- Petitioner is to take whatever steps are required to insure that there will be no off-site drainage on the property.

Vote on the amendment to the motion:

Yeas: 6 – Milia, Hutson, Courtney, Maxwell, Littman, Giachino

Motion by Maxwell

Supported by Courtney

MOVED, to grant Mr. Gary Tadian, 2038 W. Big Beaver, relief of the ordinance to construct a 21,977 square foot addition to an existing legal non-conforming building.

- Petitioner is to take whatever steps are required to insure that there will be no off-site drainage on the property.
- Variance is not contrary to public interest.
- This variance will not establish a prohibited use in a zoning district.

Yeas: 6 – Hutson, Courtney, Maxwell, Littman, Giachino, Milia

Absent: 1 – Fejes

MOVED TO APPROVE REQUEST CARRIED

ITEM #12 - VARIANCE REQUESTED. PASTOR LYNN SURGENER, TROY

CHURCH OF GOD, 1285 E. WATTLES, for relief to maintain a 4'6" high berm in lieu of the 4'6" high masonry screening walls required along the north and east side of the parking lot and to construct a 6' high privacy fence along the west side of the parking lot in lieu of the 4'6" high masonry screening wall required where the parking lot abuts residentially zoned property.

Mr. Grusnick stated that the petitioner is requesting relief of the Zoning Ordinance to maintain a 4'6" high berm in lieu of the 4'6" high masonry screening walls required along the north and east side of the parking lot and to construct a 6' high privacy fence along the west side of the parking lot in lieu of the 4'6" high masonry screening wall required where the parking lot abuts residentially zoned property. In April 1986, this Board

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granted a renewable variance to construct a 4'6" high berm along the north and east property lines and to omit the 4'6" high masonry-screening wall adjacent to the west property line.

This request appeared before the Board at the April 18, 2000 meeting at which time the petitioner was not present. Mr. Kamal Dave representing the homeowners of Worthington Manor Subdivision was present and stated that they objected to this variance. It was determined at the time that conditions have changed significantly warranting a new Public Hearing on the request. The petitioner is proposing to maintain the existing berms along the north and east sides of the parking lot and to install a new 6' high wood fence along the west side of the parking lot.

Pastor Lynn Surgener was present and stated that the Church had sold off 90' of their property to Mr. Tadian for the development of the Worthington Subdivision with the understanding that the developer would be responsible for planting a tree line which would separate the subdivision from the Church property. He also said that \$5,000.00 was to be set aside for the addition of these trees. Pastor Surgener said that two large trees have been planted at the back of each lot. He stated that for the Church to now build a masonry-screening wall it would create a great hardship for the Church monetarily. Pastor Surgener stated that they had received estimates of approximately \$25,000.00 for the cost of the wall.

Mr. Hutson stated that the request is to put up a 6' high fence and stated that the Ordinance had just been modified and that the preferred method of screening would be a berm. Mr. Hutson asked if Pastor Surgener would prefer a berm instead of the wall and was told that the cost of the berm would be devastating, and required parking could not be sacrificed.

The Chairman opened the Public Hearing.

Ms. Kathy Peterson a neighbor on Garwood stated that she was speaking for the neighbors on the west side of the property and they have very concerned about cars jumping the small curb which separates their property from the Church parking lot. She stated that these same neighbors do not want a 6' high fence due to the fact that maintenance would have to be done on it, and they do not feel it would grant them enough protection if a car was speeding through the lot. Ms. Peterson stated that these neighbors would like a masonry-screening wall in this area.

Mr. Qiling Yu, 4038 Worthington was present and stated that there are a lot of cars in the parking lot and he would like to see a masonry screening wall put up. Mr. Littman asked why they would prefer a wall to a fence and Mr. Yu stated that he has observed motorcycles driving around the lot and there are several young children whose safety he is concerned with. Furthermore, Mr. Yu stated that they do not want people on their property maintaining the privacy fence.

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Mr. Kamal Dave, 4052 Worthington, was present and stated that he was against the fence as he did not feel it was as permanent as a wall.

Mr. Yongping Guo, 4080 Worthington, was present and stated that he would like to see a masonry screening wall put up.

Pastor Surgener stated that he also is very concerned about the safety of the children in the area, but also that the homeowners seem to be concerned about the traffic in the lot when the Church is empty rather than holding services. He further stated that the Police Department patrolled the lot on a regular basis, however, they do not patrol as frequently now. Pastor Surgener further stated that the purchase agreement stated that the developer was responsible for constructing screening on this property, although this was not in the final closing papers at the time the property was sold.

Mr. Courtney asked how many parking spaces would be lost if a berm was put in. The Pastor stated that it would be devastating to the Church, due to the fact that the berm would be at the entrance to the Church. Mr. Littman suggested that the Pastor contact an attorney to see if he has any recourse regarding the agreement that the developer add the trees as a buffer.

Richard Hughes was present and stated that he felt that perhaps the City should have some responsibility for creating a berm since they granted the variance in the first place, and felt that the City should pursue the person who bought the property to put up the trees.

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

There are three written objections on file.

There are two written approvals on file.

Mr. Milia addressed Mr. Hughes concerns stating that he was on the Board at the time the variance for the lack of a berm was granted and the reason it was granted was due to the fact that the property was undeveloped. Mr. Milia also stated that due to the concerns of the residents, it is time for the Church to take the responsibility for constructing a masonry wall.

Motion by Littman

Supported by Courtney

MOVED, to **deny** the request of Pastor Lynn Surgener, Troy Church of God, 1285 E. Wattles relief to construct a 6' high privacy fence in lieu of the 4'6" high masonry screening wall required along the west side of the parking lot and to **approve** the request to maintain a 4'6" high berm in lieu of the 4'6" high masonry screening walls required along the north and east side of the parking lot for a period of three years.

ITEM #12

- Conditions have changed significantly to warrant a masonry-screening wall.
- The variance for a 6' high fence in lieu of the 4'6" high masonry-screening wall would be contrary to public interest.

Yeas: 6 – Courtney, Maxwell, Littman, Giachino, Milia, Hutson

Absent: 1 – Fejes

MOTION TO DENY THE REQUEST FOR A 6' HIGH FENCE ALONG THE WEST PROPERTY LINE IN LIEU OF THE 4'6" MASONRY SCREENING WALL and

MOTION TO GRANT THE REQUEST TO MAINTAIN A 4'6" HIGH BERM IN LIEU OF THE 4'6" HIGH MASONRY SCREENING WALL REQUIRED ALONG THE NORTH AND EAST SIDE OF THE PARKING LOT CARRIED FOR A PERIOD OF THREE (3) YEARS CARRIED.

ITEM #13 - VARIANCE REQUESTED. MR. AFRAM K. YERMIAN, 5818 WILLOW GROVE, for relief of the Zoning Ordinance to split an existing lot resulting in a non-conforming lot width.

Mr. Grusnick explained that the petitioner is requesting relief of the Zoning Ordinance to split an existing lot. The site plan submitted indicates that the resultant vacant parcel would have only 75' of frontage on Willow Grove. Section 30.10.04 of the Zoning Ordinance requires that lots in the R-1C Zoning District, not served by City sewer, have at least 120' of frontage.

Mr. Richard Wolk, Attorney for Mr. Yermian was present and stated that this property, which is approximately 8 acres, was sold to Mr. Garrett who is a land developer. It was discovered at this time that this portion of the land would be locked in and he would need a road to develop this land. Everyone overlooked the problem of 120' of frontage and now the hardship is that the property cannot be sold due to the fact that they cannot obtain a clear title.

Mr. Hutson stated that he was a partner of Mr. Garrett and felt that he should excuse himself from hearing this request.

Motion by Littman
Supported by Milia

MOVED, to excuse Mr. Hutson due to a possible conflict of interest.

Yeas: 5 – Courtney, Maxwell, Littman, Giachino, Milia

Absent: 1 – Fejes

MOTION TO EXCUSE MR. HUTSON CARRIED.

ITEM #13

A motion was made by Mr. Courtney to table this request to allow for a full Board, however it was withdrawn due to the fact that there were a large number of people who wished to be heard on this matter.

Mr. Littman stated that this property had come before the Planning Commission however, was withdrawn due to the fact that it was determined that the back of the property was considered to be a wetland.

The Chairman opened the Public Hearing.

Mr. Jim Ford, 5779 Willow Grove was present and stated that he has been a resident of Troy for 20 years and objects to the split of this property. He stated that presently the lot width requirement to build a home is 85' and feels that it should be kept that way. He does not want to see a new subdivision in this area and objects to the variance.

Mr. Ernest Hollifield, 5790 Willow Grove, was present and stated that this land is very wet and wants the standard of requiring 120' of frontage maintained. He also stated that he believes this property is in a flood plain.

Mr. John Abdo, 5705 Willow Grove was also present and stated that he objects to this request and would not like to see an increase in traffic in the area.

Mrs. Katherine Hollifield, 5790 Willow Grove, was present and stated that she also objects to this variance as she does not believe a house would fit into this area.

Mr. Johnny Graham, 5752 Willow Grove, was present and stated that he was the oldest resident on this street and until he knew exactly what was planned for this property, he also objects to this request. He did state that he thought a road would improve the area, but would not like to see a house go in here.

Mr. Wolk stated that he felt that the remarks made were legitimate, however he can't control what Mr. Garrett does with the property once he owns it. Mr. Giachino stated that the whole issue is whether someone is going to develop the property and wants to know if the property is going to be split for a road. Mr. Littman also stated that he would like to know if this section of the property was going to be developed into a road.

Motion by Milia
Supported by Courtney

MOVED, to table the request of Mr. Afram K. Yermian, 5818 Willow Grove, for relief of the Zoning Ordinance to split an existing lot which would result in only 75' of front on Willow Grove where 120' is required.

- To allow the petitioner the benefit of a full board.
- To allow the petitioner to present to the board the projected use of this property.

ITEM #13

Yeas: 5 – Courtney, Maxwell, Littman, Giachino, Milia

Abstained: 1 – Hutson

Absent: 1 – Fejes

MOTION TO TABLE THIS REQUEST UNTIL MEETING OF AUGUST 15, 2000
CARRIED

ITEM #14 - VARIANCE REQUESTED. MR. STEVE NEEPER, REPRESENTING MJC THE BUILDERS OFFICE, SANDALWOOD SOUTH CONDOMINIUM DEVELOPMENT, SOUTHWEST OF THE INTERSECTION OF ROCHESTER AND SOUTH BOULEVARD, for relief of the Zoning Ordinance regarding usable open space required in the front yard and also for relief of the required 5' high berm for property adjacent to a major thoroughfare.

Mr. Grusnick explained that the petitioner is requesting relief of the Zoning Ordinance to construct a new condominium development. Section 12.60.02 of the Zoning Ordinance requires that an area equivalent to 70% of a required yard be developed as usable open space and be kept free of all vehicular uses. The proposed site plan indicates that only 60% of the front yard of one of the buildings, containing units 25 through 30, is in open space. In addition, Section 12.60.03 of the Zoning Ordinance requires that a five-foot berm be placed in any yard adjacent to a major thoroughfare. The petitioner's plans do not indicate that the berm will be provided on that portion of the Rochester Road frontage, south of the entrance drive.

Mr. Ken Strobel representing MJC The Builders Office, was present and stated that this property is unique because it is located in a significant flood plain and wetland. They are trying to preserve as much of the natural woodlands as possible in developing this property and due to the design of the development, they have eliminated the need for all open space area variances with the exception of this one building. In addition, the Ordinance requires a 5' berm along Rochester Road and they cannot achieve this on the south side of the property. Mr. Strobel stated that he felt it would be impossible to obtain a permit from the DEQ to allow them to put a berm in this area, and if they did, they would destroy more of the natural vegetation than needed.

Mr. Strobel also stated that 57% of the site is open space and that basically most of this development far exceeds the standards for open space. Mr. Courtney asked if the variance was not granted, what the result would be and Mr. Strobel stated that they had tried to shift the building to a different location however it was not a workable solution. He further stated that if the variance were not granted they would lose one unit at this building. Mr. Steve Neep, of MJC The Builders Office, was also present and stated that presently this is a six unit building and if they were to lose one unit it would change the look of the entire structure. He said that this would be the only building in the complex with five units.

The Chairman opened the Public Hearing.

ITEM #14

Mr. Cliff Powell, 851 Lovell was present and stated that he was concerned due to the fact that this property was rezoned to R1C. Shortly after that, the property was again rezoned to R1T. Mr. Powell feels that this is a massive contradiction in zoning and feels that it is the City's responsibility to protect the quiet and useful use of his property. He asked what the Ordinance calls for in such divergence in zoning. Mr. Giachino stated that the petitioner must comply with all the ordinances and that applying for a variance on the basis of profit is not considered a hardship. Mr. Giachino stated that it is the petitioner's responsibility to comply with Zoning. Mr. Powell stated that nothing has been done by this company to protect himself and his neighbors from what they are planning to construct. He objects to this variance.

Mr. John Khami, 5364 Cheltenham, was present and stated that he owns the property to the south of this property which is also zoned residential. He also stated that it would be wise to keep water on the property. He had no objection to the variance for this property.

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

Mr. Strobel stated that the point is that overall they have far exceeded 70% of open space for a building with attached units. He stated that the property could have been developed as a subdivision with a R1C zoning classification but felt that this was the best way to preserve the natural features.

Mr. Powell asked if there could be buffer guards between his property and this new development. Mr. Courtney asked if the State would let them put a berm in. Mr. Giachino stated that a berm is allowed in a wetland and flood plain but with approval. Mr. Pangori, Engineer for the property stated that they have not applied for the DEQ permit yet due to the fact that it would take approximately three months and they would like to start this development. Mr. Giachino asked why the Board should be asked to act on this matter when they have not even applied to the DEQ for a permit. Mr. Strobel stated that they have not applied because they wished to develop this property as quickly as possible and a lot of the natural buffers would have to be removed in order to put a berm in.

Motion by Courtney
Supported by Littman

MOVED, to approve Mr. Steve Neeper, representing MJC The Builders Office, relief of the required 5' high berm for property adjacent to a major thoroughfare on the south side of the entrance street.

- The required berm would disrupt the existing wetlands.
- The variance is not contrary to public interest.

ITEM #14

Yeas: 5 – Maxwell, Littman, Milia, Hutson, Courtney
Nays: 1 – Giachino
Absent: 1 – Fejes

MOTION TO APPROVE REQUEST FOR RELIEF OF THE BERM ON THE SOUTH SIDE OF THE PROPERTY CARRIED

Motion by Littman
Supported by Courtney

MOVED, to grant Mr. Steve Neeper, representing MJC The Builders Office, relief of the Zoning Ordinance regarding usable open space required in the front yard.

- Remainder of site greatly in excess of open space requirement.
- Developer has done a lot less than they could have done.
- Petitioner has done everything possible to keep natural features.
- This variance is not contrary to public interest.

Yeas: 3 – Littman, Hutson, Courtney
Nays: 3 – Giachino, Milia, Maxwell
Absent: 1 – Fejes

MOTION TO APPROVE REQUEST FOR RELIEF OF USABLE OPEN SPACE FAILS

Motion by Littman
Supported by Courtney

MOVED, to table the request of Mr. Steve Neeper, representing MJC The Builders Office, relief of the Zoning Ordinance regarding usable open space required in the front yard until the next regular meeting of August 15, 2000.

- To allow the petitioner the opportunity of a full board.

Yeas: 4 – Giachino, Hutson, Courtney, Littman
Nays: 2 – Milia, Maxwell
Absent: 1 – Fejes

MOTION TO TABLE REQUEST UNTIL THE MEETING OF AUGUST 15, 2000 CARRIED

During the Public Hearings, one of the citizens expressed concern over the delays in receiving the Public Hearing notices. Ms. Pasternak discussed this matter with the City Manager's office and we were informed that a study has been done and unfortunately, there is nothing that can be done to expedite the delivery of the mail.

The Board of Zoning Appeals meeting adjourned at 10:55 P.M.

MG/pp