

The Chairman, James Giachino, called the meeting to order at 7:30 P.M., on Tuesday, March 20, 2001.

PRESENT: Kenneth Courtney
Christopher Fejes
Michael Hutson
Mark Maxwell
Carmelo Milia
Walter Storrs
James Giachino

ALSO PRESENT: Mark Stimac
Bob Davisson
Pam Pasternak

ITEM #1 – APPROVAL OF MINUTES OF MEETING OF FEBRUARY 20, 2001.

Motion by Courtney
Supported by Milia

MOVED, to approve the minutes of the meeting of February 20, 2001 as written.

ITEM #2 - RENEWAL REQUESTED. KMART, 100 E. MAPLE, for relief to display and sell flowers and plants in a designated area.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this board which allows for outdoor display in front of K-Mart along the north side of the fenced area and a four-foot section of the sidewalk, at the west end of the building, adjacent to the building. The display is used for plants and flowers. This relief has been granted on a yearly basis since 1978 and the variance is valid during the months of April through July. This request has also been subject to the petitioner providing corral type fence to both enclose the area of the display and maintain a safe sidewalk at the same time. Conditions remain the same. We have no objections or complaints on file.

Julie Mellen, Manager of Kmart was present and stated that she had nothing to add.

Motion by Milia
Supported by Maxwell

MOVED, to grant Kmart, 100 E. Maple a one-year variance to display and sell flowers and plants in a designated area.

- A fence be provided to enclose the display area.
- The variance is valid during the months of April through July.
- Conditions remain the same.
- There are no complaints or objections on file.

ITEM #2

Yeas: All – 7

MOTION TO GRANT VARIANCE FOR ONE YEAR CARRIED

ITEM #3 – VARIANCE REQUESTED. MR. PETRE GHIRAN, 4155 LIVERNOIS, for relief of the Zoning Ordinance to construct an attached garage in the front setback along Carter and Livernois.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct an attached garage. This lot is a double front corner lot. As such, Section 30.10.02 of the Zoning Ordinance, requires a 40' front yard setback from both Livernois and Carter. The plans submitted indicate replacing an existing one-car garage with a proposed two-car garage resulting in front setbacks of 12' from the property line along Carter and 28' from the future right of way line along Livernois.

This item first appeared before the Board at the meeting of February 20, 2001, and was tabled to allow the petitioner the opportunity to explore other possibilities for the construction of this garage.

Mr. Ghiran was present and brought along another drawing showing the construction of a 22' x 24' attached garage with an entrance off of Livernois.

Motion by Fejes
Supported by Milia

MOVED, to grant a variance to Mr. Petre Ghiran, 4155 Livernois to construct a garage in the front setback along Carter and Livernois.

- Entrance to garage would be on Livernois.
- Variance is not contrary to public interest.
- Petitioner has shown good faith in changing his plan.

Yeas: 3 – Milia, Fejes, Giachino
Nays: 4 – Hutson, Maxwell, Storrs, Courtney

MOTION TO GRANT VARIANCE FAILS

Mr. Storrs stated that he still believes safety would be a large concern and stated he would not want to see someone try to back out onto Livernois due to the high volume of traffic. Mr. Storrs felt that a driveway off of Carter would be a better solution and would not be as dangerous. Mr. Maxwell asked how far the garage would be from the pavement on Livernois and Mr. Stimac stated that the plan is to widen Livernois to five lanes or 62' of pavement in the 120' of right of way. Mr. Stimac stated that there would

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typically be 20'-25' between the property line and the curb line. Mr. Maxwell then said that he thought the distance from Livernois Road to the garage would be approximately

50'-60', however he was also concerned about the safety issue of cars going in and out of this property.

Mr. Courtney asked the petitioner if he had considered putting the entrance to the garage on the west side. Mr. Ghiran stated that he would consider changing the entrance if he would then be granted a variance. Mr. Ghiran also said that he would have to take down several large trees but would be willing to make these changes. Mr. Courtney suggested that the driveway be extended to form a loop from Carter and come into the west side of the garage thereby eliminating cars backing out onto either Carter or Livernois. Mr. Giachino asked Mr. Ghiran if he would be able to make such a change and Mr. Ghiran stated that he would.

Motion by Courtney
Supported by Storrs

MOVED, to grant Mr. Petre Ghiran, 4155 Livernois a variance to construct an attached garage in the front setback along Carter and Livernois with the following stipulation.

- Entrance to the garage would be on the west side of the property with enough room for a vehicle to turn around.
- Petitioner will bring in revised plans showing the new configuration of driveway.

Yeas: 6 – Maxwell, Milia, Storrs, Courtney, Fejes, Giachino
Nays: 1 – Hutson

MOTION TO GRANT VARIANCE WITH STIPULATION CARRIED

ITEM #4 – VARIANCE REQUESTED. MR. DAVID DONNELLON, DONNELLON SWARTHOUT ASSOCIATES, REPRESENTING THE CHOICE GROUP, WEST WATTLES AND FINCH ROAD, for relief of the Zoning Ordinance to construct a residential townhouse development with 33 feet between buildings where 40 feet is required.

This item first appeared before the Board at the meeting of February 20, 2001 and was tabled to allow the petitioner the opportunity to explore other options in regards to the construction of these units. We have received a letter from the Petitioner stating that they are going to revise their plans to comply with the Ordinance and therefore wish to withdraw their request. No further action taken by the Board.

ITEM #5 – VARIANCE REQUESTED. MR. WILLIAM ECKSTEIN, 4264 ALLEGHENY, for relief of the rear yard setback to construct a family room addition.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct a family room addition. Section 30.10.04 of the Zoning Ordinance requires a

40' minimum rear yard setback in the R-1C Zoning District. The plans submitted indicate a 25'-1" rear yard setback to the proposed addition.

Mr. William Eckstein was present and stated that his wife had back problems and they would like to use this room as a downstairs bedroom. Mr. Eckstein also stated that this addition was consistent with other properties in the subdivision and therefore would blend in with other construction in this area. Mr. Eckstein further said that a 6' high privacy fence surrounds his property and other property owners would not see this addition. Mr. Eckstein brought in an approval letter from the homeowner at 4263 Washington Crescent.

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

There are four (4) written approvals on file. There are no written objections on file.

Mr. Stimac stated that this subdivision was developed in the 1960's and at that time a 40' front yard setback and a 30' rear yard setback were required. In the mid 1970's the setbacks were changed to 30' front yard setback and 40' rear yard setback. Mr. Stimac further stated that many of the homes in the subdivision have structures that are constructed with a 30' rear yard setback. Mr. Hutson asked if there was a mixture of setbacks in this area and Mr. Stimac stated that he believed that all of the homes in this subdivision were originally constructed at the time that a 30' rear yard setback was required.

Motion by Maxwell
Supported by Fejes

MOVED, to grant Mr. William Eckstein, 4264 Allegheny relief of the Zoning Ordinance to construct a family room addition which would result in a 25'-1" rear yard setback, where 40' is required.

- Home is not over-built for the area.
- Variance is not contrary to public interest.
- Variance will not establish a prohibited use in this Zoning District.
- The setback is not substantially different from other homes in the area.

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

MOTION TO GRANT REQUEST CARRIED

ITEM #6 – VARIANCE REQUESTED. MR. ADAM PACHANA, 6787 LOCUST, for relief of the Zoning Ordinance to maintain an existing non-conforming addition that is located 7.4' from the side property line.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to maintain an existing non-conforming addition that is located 7.4' from the side property line. An addition was constructed on this house in 1998 without first obtaining a building permit. Surveys indicate that this addition is located as close as 7.4' from the east property line. Section 30.10.02 of the Zoning Ordinance requires a side yard setback of 10'. The petitioner is requesting relief in order to keep this addition with the non-conforming setback.

Mr. Maxwell asked if the petitioner had approval to build this home within the 10' setback and Mr. Stimac stated that the petitioner was not the builder of this home. Mr. Stimac went on to say that the first indication the Building Department had that there was problem with this setback was when we received a copy of a mortgage survey, when a deck was to be constructed. Although the mortgage survey showed that the home was located closer than 10' to the property line, the plans for the deck complied with the requirements in the Ordinance. When plans came in for the addition, they indicated that the addition would meet the proper setback, however, when our building inspector went out to inspect the addition a "Stop Work Order" was placed on the job due to the fact that the setback was incorrect. Mr. Maxwell questioned Mr. Stimac as to the distance from the chimney of the existing home to the property line and it was stated that the the survey showed that the chimney is 7.95' from the property line. Mr. Stimac further stated that the "Stop Work Order" has never been lifted and this addition was constructed in spite of the fact that the "Stop Work Order" was in effect.

Mr. Pachana stated that when he put the slab on his property, the City told him that the footings had to be 42" deep, and even though that permit had the stipulation that nothing could be built on this slab, he thought it would be all right for him to put the addition on it. Mr. Maxwell asked if the City had approved the framing for the addition. Mr. Stimac stated that the permit was issued in June of 1998 and the first "Stop Work Order" was issued on June 2nd. A second notice of "Stop Work Order" was issued in July 1998. Mr. Milia asked why Mr. Pachana continued to work on this addition after the "Stop Work Orders" were in effect and Mr. Pachana stated that he was concerned about cold weather coming in. Mr. Milia questioned this statement and Mr. Pachana then said that this son jumped the gun and worked on the addition. Mr. Milia then asked Mr. Pachana what his son's qualifications were and Mr. Pachana stated that he

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works as a supervisor and only did some of the work. Mr. Milia asked how long this construction took and Mr. Pachana stated that it took approximately 2-3 months and that the inside of the addition is not complete. Mr. Courtney asked why the addition was not the same color as the house and Mr. Pachana stated that he still had some work he wished to do on the addition, and when it was finished it would be the same color as the rest of the house.

Mr. Maxwell asked why it has taken the City this long to address this matter. Mr. Stimac stated that violations were written in 1998 and in going through our files in 2000, it was discovered that nothing had been done to correct this violation. At that time the Building Department once again began to pursue this matter. Mr. Stimac further stated that as of this date the "Stop Work Order" has not been lifted.

Mr. Fejes asked what the purpose of the addition was and Mr. Pachana stated there are five people living in the home and his wife wanted to use it as a dining room. Mr. Fejes then asked if Mr. Pachana if he had originally pulled a permit, could he have stayed within the limits of the Ordinance and Mr. Pachana stated that the home is angled in such a way, that he probably could not have done this. Mr. Giachino asked if Mr. Pachana had considered the consequences of the Board denying his appeal and consequently 2.6' of this addition would have to be removed and Mr. Pachana stated that he did not feel that he should have to remove any of the addition, since the original home does not currently comply with the setback. Mr. Pachana stated that he did not know how he would revise the building to comply.

The Chairman opened the Public Hearing.

Mr. Tom Pakula, 6771 Locust was present and stated that he lives next door to Mr. Pachana and is opposed to granting this variance. He stated that no permits were obtained for the addition, no plans were approved and that the work looks unprofessional. Mr. Pakula stated that a lot of this construction was done at night. Mr. Pakula also said that he believes the inside of the addition is complete, as he has seen people using it. Mr. Pakula said that as soon as he saw this addition going in he called the Building Department and the Forest Creek Homeowners Association expressing concern over this construction. Mr. Pakula further stated that he is very concerned over the fact that Mr. Pachana has done this construction despite the fact that the City has placed a "Stop Work Order" and the Homeowners Association has also sent a letter to Mr. Pachana that he was in violation of his deed restrictions. Mr. Pakula feels that if Mr. Pachana receives a variance it would be considered a reward for going against the laws of the City and Homeowners Association.

Mr. Milia asked why Mr. Pakula feels that the work looks unprofessional and Mr. Pakula stated that the color scheme doesn't match the rest of the building, mortar around the brickwork on the slab is sloppy and the windows in the addition do not match the rest of

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the house. He said it basically looks like a "lean to" was put on the back of the house. Mr. Courtney told Mr. Pakula that the Homeowners Association has the right to take Mr. Pachana to court due to the fact that he had violated his deed restrictions. Mr. Pakula stated that he did not think the Homeowners Association had the money to pursue this matter, but if necessary he would probably follow this situation up through court action. Mr. Storrs asked if Mr. Pakula feels that the addition was where the survey showed that it was and Mr. Pakula stated he could not dispute the survey but stated that the location of the addition just does not look right.

Mr. Maxwell asked Mr. Pakula what he would like to see the Board do, and Mr. Pakula replied that he would like to see Mr. Pachana comply with the Ordinance. Mr. Maxwell asked if he would be satisfied with the addition of evergreens and Mr. Pakula stated that he would not and believes that if the variance were granted, the past behavior of Mr. Pachana would be rewarded. He felt that it is not an attractive addition and downgraded his property.

Mr. Roger Jay, 6748 Locust was present and stated that he is opposed to this variance due to the fact that he feels that Mr. Pachana has shown a blatant disregard for the requirements of the City and the requirements set forth by the Homeowners Association. He believes that granting the variance would be a disservice to other homeowners in this subdivision and feels that this addition looks like a shed which was attached to the back of a house.

Mr. Sam Crowl, 6717 Locust was present and stated that he is opposed to this variance due to the fact that he does not think this property is maintained properly and does not feel that the petitioner deserves any special consideration.

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

There are eighteen (18) written objections on file. There are no written approvals on file.

Mr. Fejes asked Mr. Pachana knowing that there were so many objections on file and no approvals how the matter could be fixed? Mr. Pachana stated that he did not want to remove the addition, but could move one of the walls. Mr. Pachana stated that he did not feel it was right if every time he wanted to add to his home he had to get approval from his neighbors. Mr. Fejes then asked about the fact that neighbors do not feel that this job is professional looking and Mr. Pachana stated that it is not finished and they could only work on it after putting in a full day of work elsewhere and also he has wanted to make other improvements to the outside of his home. Mr. Giachino stated that if the Board denied this variance, the addition would have to be removed to the 10' setback line. Mr. Fejes then raised the question as to whether this home would be considered a legal non-conforming structure due to the fact that it was constructed too close to the property line. Mr. Davisson further stated that although the home was

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not in compliance, any additions would have to be constructed which would meet the 10' setback requirement. Furthermore, any construction would have to be presented to the subdivision Architectural Committee for approval.

Mr. Courtney stated that he was currently opposed to the variance but that he might be persuaded to change his mind if the Architectural Review Committee of the subdivision were to approve of the addition or a modification of the addition. He asked Mr. Pachana if he intended to seek approval from the subdivision association and Mr.

Pachana stated that since the neighbor objecting is the president of the architectural review committee he did not feel that he would be able to get the addition approved.

Motion by Courtney
Supported by Maxwell

MOVED, to deny the request of Mr. Adam Pachana, 6787 Locust for relief to maintain an existing non-conforming addition that is located 7.4' from the side property line.

- This variance is contrary to public interest.
- Variance, if granted, would expand an existing non-conforming structure.
- Requested variance causes an adverse effect to property in the immediate vicinity.
- This is a self- imposed hardship.
- Building addition was constructed without permits.
- Has room on the site to construct an addition without the need for a variance.
- Petitioner did not demonstrate a hardship.

Yeas: All – 7

MOTION TO DENY REQUEST FOR A VARIANCE CARRIED

ITEM #7 – VARIANCE REQUESTED. MS. ELIZABETH MICHEL, 3052 OAKHILL, for relief of the Zoning Ordinance to construct a garage addition.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a garage addition. Section 30.10.02 of the Zoning Ordinance requires a 10' minimum side yard setback and a total 25' setback for both side yards in the R-1B Zoning District. The site plan submitted indicates the construction of the proposed garage addition would result in a side yard setback on the west of 7'-6". Because of the existing 14.0' side yard setback on the east, and the requirement for a total of 25' of side yard setback, an 11.0' setback is required on the west side.

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Ms. Elizabeth Michel and Mr. Brian Green were present and stated that this will be a "by homeowner" project. Mr. Green stated that the addition will be on the west side of the property and the existing attached garage will be converted to living space, which will include an expansion of both the kitchen and laundry room. The result is that a triangular portion of the garage, approximately 3'-6" wide and 10' long would encroach into the required setback. Mr. Green further stated that they cannot move the garage any further up due to the required front setback and the fact that the gables on the garage will not match the gables on the house. Mr. Green brought in several pictures of structures in the neighborhood, which pictured additions and stated that many of these homes had received setback variances. Mr. Green further stated that the proposed

addition would match the construction of the home. He further stated that they propose to add additional landscaping on the west side of the home.

Mr. Hutson asked if the garage was a 1-car or 2-car garage. Mr. Green stated that presently it is a 2-car garage and they feel that they need a 2-car garage and that the 2 car garage was necessary to be consistent with the neighborhood. Mr. Hutson again asked if the proposed construction could be moved further forward and Mr. Green stated that if they brought it farther up they would still require a variance for the front yard setback and once again stated that the gables would not match the gables on the home.

Mr. Milia asked why they wanted to add this addition. Ms. Michel stated that there is no basement in the home and that the laundry room is basically a hallway and she has had an architect in to look at the home, and it could not be expanded the way it is. Ms. Michel also stated that she has two children and due to the fact that this home does not have a basement, they would use the extra space not only for a laundry room, but also for storage and a rec room improving the livability of the home. Mr. Milla asked if the existing storage shed would be removed and Ms. Michel stated that it would.

Mr. Giachino stated that he felt that this was an odd shaped lot, and therefore felt that any construction on that side of the house may be encroaching in the setback. Mr. Green stated that other homes in the area had reduced setbacks for the entire side and that only one corner of this garage will encroach into the setback. Mr. Giachino noted that the person to the west, that was most affected by the request, had voiced an objection to the variance.

The Chairman opened the Public Hearing.

Mr. Kevin Murphy and Dr. Diane Kasunic of 3036 Oakhill were present. Mr. Murphy stated that his property was the primary one effected by the request and he is opposed to this variance. Mr. Murphy stated that many trees were cut down on the adjacent property and that took away some of the privacy they had from Big Beaver. He also noted that his bedroom is located on that side of the home and he believes that this addition will further take away their privacy. Mr. Murphy also said that he would not be

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opposed if the addition was on the front or the back of the home but was opposed to an addition on this side. He noted that the construction of the garage would take place at the same time as the construction of Big Beaver. Mr. Maxwell asked how far their house was from the property line and Mr. Murphy stated that it was 6'-8".

Dr. Diane Kasunic, who also resides at 3036 Oakhill, was present and stated that she is a professor at Central Michigan and is opposed to this variance. Dr. Kasunic stated that she had supported other neighbors who had appeared at the Board of Zoning Appeals in the past requesting variances. She was concerned about the ability of planting new landscaping on the side of the garage since they had to remove existing trees on the side of their property because they were told by landscapers that the trees

were too close to house. She noted that her property was one of the smallest lots in the area and that if the variance were granted it would be even smaller. She felt that this request is very intrusive and will take away some of their privacy. Dr. Kasunic further stated that they are long time residents of Troy and don't want to live anywhere else. Dr. Kasunic stated that she did not feel that there was a hardship involving this property, there is only one person living in the house and the owner should have known the restrictions of the house when she bought it.

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

There are six (6) written approvals on file. There are two (2) written objections on file.

Mr. Courtney asked how many square feet of the building would be encroaching in the setback and Mr. Green stated that he thought it would be 15 square feet. Mr. Fejes asked how many people live in the home and Ms. Michel stated that she lived there, and her two children were there most of the time also. Mr. Giachino noted that there were eight letters of approval and two letters of objection on file. Mr. Giachino stated that he feels that the hardship is that the property has a very odd shape.

Mr. Milia asked if the garage could be made 2' narrower and therefore make the variance smaller. Mr. Green stated that they had looked at making it narrower and shorter, however Ms. Michel gets new GM vehicles approximately every 90 days and due to the fact that many of them are the large pickup trucks they will not fit in a shorter garage. Mr. Green also stated that an 18' garage would be very narrow.

Motion by Hutson to approve the request for a variance.
Motion dies to lack of support.

Mr. Courtney suggested making the garage 20' wide and 22' long and Mr. Green and Ms. Michel felt that this would be a viable solution.

Motion by Courtney
Supported by Milia

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MOVED, to grant MS. ELIZABETH MICHEL, 3052 OAKHILL, relief of the Zoning Ordinance to construct a garage addition.

- Variance is not contrary to public interest.
- Width of addition is to be changed from 22' to 20'.
- Variance will result in a setback of 9'-6" to 10' where 11 feet is required.
- The shape of the lot creates a hardship in meeting the Ordinance.
- Variance request is minimal and does not cause an adverse effect to properties in the immediate vicinity.

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

Nays: 1 – Storrs

MOTION TO GRANT VARIANCE CARRIED

Mr. Stimac asked how many members would be in attendance at the meeting of April 17, 2001 and due to the fact that only five members would be present, it was decided that the next Board of Zoning Appeals meeting would be moved to April 24, 2001.

Mr. Giachino stated that he had turned in his resignation and Mr. Milia also said that he has indicated that he will not accept another term.

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

MS/pp