

Chair Abitheira called the hybrid in-person and virtual Regular meeting of the Building Code Board of Appeals to order at 3:28 p.m. on June 2, 2021. The meeting convened at a later time than scheduled due to technical difficulties.

1. ROLL CALL

Members Present

Gary Abitheira  
Matthew Dziurman  
Sande Frisen

Members Absent

Teresa Brooks  
Mark F. Miller, City Manager

Support Staff Present

Salim Huerta, Building Official  
Paul Evans, Zoning and Compliance Specialist  
David Michalik, IT Help Desk Manager  
Jackie Ferencz, Planning Department Administrative Assistant  
Kathy L. Czarnecki, Recording Secretary

2. SUSPENSION OF BUILDING CODE BOARD OF APPEALS BYLAWS

Ms. Czarnecki read the following Resolution into the record.

Moved by: Frisen  
Support by: Dziurman

**RESOLVED**, That the Troy Building Code Board of Appeals hereby allows its members and members of the public to participate in public meetings by electronic means as allowed by Public Act 228 of 2020, and in accordance with Troy City Council Resolution 2021-04-048 declaring a local state of emergency and determining that an in-person meeting could detrimentally increase exposure of board members and the general public to COVID-19. The allowance to participate in public meetings shall continue until the Troy City Council lifts the local state of emergency or through December 31, 2021, whichever is earlier. Members participating electronically will be considered present and in attendance at the meeting and may participate in the meeting as if physically present. However, members must avoid using email, texting, instant messaging, and other such electronic forms of communication to make a decision or deliberate toward a decision.

**RESOLVED**, That the Troy Building Code Board of Appeals hereby establishes public participation rules for any eligible virtual meetings to provide for two methods by which members of the public can be heard by others during meetings. Email sent to [BCBAPublicComments@troymi.gov](mailto:BCBAPublicComments@troymi.gov) and received by 9:00 am on the day of the meeting will be read during the public comment period of the meeting. Voicemail left at 248-524-3546 and received by 9:00 am on the day of the meeting will be played during the public

comment period of the meeting. Both email and voicemail public comments will be limited to three minutes each.

Yes: All present (3)  
Absent: Brooks, Miller

### **MOTION CARRIED**

### 3. APPROVAL OF MINUTES

Moved by: Frisen  
Support by: Dziurman

**RESOLVED**, To approve the minutes of the May 5, 2021 Regular meeting as submitted.

Yes: All present (3)  
Absent: Brooks, Miller

### **MOTION CARRIED**

### 4. HEARING OF CASES \*

\* *Note: The Chair opened the floor for public comment for the following cases without verbally stating the Public Hearing(s) were opened and closed. Ms. Ferencz presented email and voicemail messages into the record.*

- A. **VARIANCE REQUEST, 1525 E MAPLE** – In February 2021, the Building Code Board of Appeals granted petitioner a variance to install a ground sign that was to be set back 20 feet from the front property line. Petitioner requests to install same ground sign with a proposed 18 foot setback from the front property line. CHAPTER 85

Mr. Huerta read the variance request narrative.

Mr. Evans presented slides that addressed the location, neighboring zoning districts and the variance request before the Board for consideration on February 3, 2021. Mr. Evans said the variance granted in February relates to the area and height of the sign. He indicated the petitioner is coming back seeking approval for an 18-foot setback because of an oversight on their part in the measurement of the property line from Maple. Mr. Evans reported there are no changes to the sign itself.

Jim Fields of Allied Signs was present remotely. Mr. Fields said in measuring the property again, they realized they were a little over one (1) foot short on the 20-foot required setback.

There was discussion on:

- Confirmation there are no modifications to the sign footprint.
- Confirmation that the footing is the same.

There was no one present in the audience to speak. There were no email or voicemail messages reported.

Moved by: Dziurman  
Support by: Frisen

**RESOLVED**, To **grant** the variance request because it meets all the criteria of the Board.

The petitioner demonstrated that:

- a) Exceptional characteristics of the property make compliance with the requirements of Chapter 85.
- b) The characteristics which make compliance with the requirements of this Chapter difficult are related to the premises for which the variance is sought.
- c) The characteristics which make compliance with the requirements of this Chapter are not of a personal nature.
- d) The characteristics which make compliance with the requirements of this Chapter difficult was not created by the owner of the premises.
- e) The proposed variance is not harmful or does it alter the essential character of the area in which the property is located.

Yes: All present (3)  
Absent: Brooks, Miller

### **MOTION CARRIED**

(Mr. Evans exited the meeting.)

- B. **VARIANCE REQUEST, SASI GOWNIWARI, 1682 BURR OAK DRIVE** – This property is an interior lot of the R-1C Zoning district. Per the City of Troy Code Chapter 83 Fences section (2) Fence Construction in residential areas, item (A) It indicates that in residential areas no fence shall be constructed to a height of more than six (6') feet above the existing grade of the land. The petitioner is requesting a variance to install 280 feet of vinyl privacy fence at a height of seven (7') feet in the back yard, where City Code limits the height to six (6') feet. CHAPTER 83

Chair Abitheira recused himself from deliberating the variance request. He informed the Board that he built the home for which the petitioner is seeking the variance and he currently has homes on the market in that subdivision.

The petitioner Sasi Gowniwari was present remotely. It was explained that with the recusal of Chair Abitheira, there is not a quorum present to consider the request and the Board would postpone the item to the July meeting.

Moved by: Dziurman  
Support by: Frisen

**RESOLVED**, To **postpone** the variance request to the July 7, 2021 meeting.

Yes: All present (3)  
Absent: Brooks, Miller

### **MOTION CARRIED**

- C. VARIANCE REQUEST, CARY BOLTON, 1085 SHADOW – This property is a double front corner lot. Per the City of Troy Zoning Ordinance, it is in the R1-C use district. As such per Chapter 83 of the City of Troy Code, it has a 30 feet required front setback along both Shadow Drive and Harold Drive. The petitioner is requesting a variance for an existing fence 6-feet high, 100 feet obscuring vinyl fence that is three (3') feet from the property line along the Harold Drive side where City Code limits to 48 inches high non-obscuring fences due to the fact that there is a back-to-back setback relationship to the rear neighboring lot. The total length of the fence requested by the petitioner to be permitted by the Building Department is 175 feet, which 75 feet of the fence do not require a variance. CHAPTER 83

Mr. Huerta read the variance request narrative.

The petitioner Cary Bolton was present remotely. Mr. Bolton shared the circumstances that preceded the installation of the fence. He contracted with a licensed and insured fence contractor who, he was informed later by Code Enforcement, did not pull a building permit. Mr. Bolton said when he went to pull the permit himself is when he found out that he would have to seek a variance because of the back-to-back relationship to the rear neighboring property.

Mr. Huerta informed the Board that there is an open court case on this matter. He said the Judge on the case is waiting for the action taken by this Board on the variance request.

There was discussion on:

- Neighboring fence material; non-obscuring steel product with arborvitaes.
- Corner visibility clearance required at driveway.
- Clarification of fence line displayed on GIS map.
- Confirmation on fence height and existing setback.
- 4 foot non-obscuring fence permitted by right.
- Consideration by Board for forgiveness of no permit or relief of required setback.
- Potential removal of existing fence.
- Contact/ communication with fence contractor.
- Board's standpoint of setting a precedent relating to forgiveness of no permit.
- Board's consideration and action if variance request sought prior to fence installation.

Mr. Bolton said the fence contractor is not responding to any of his phone calls. He said it would be very costly to tear down the fence. Mr. Bolton offered to angle the fence to provide the required visibility clearance at the driveway and to plant arborvitaes if the Board so desired.

Chair Abitheira opened the floor for public comment.

There was no one present in the audience to speak.

- Jeremy, resident on Harold Drive; in support. (*remotely*)
- Kaj Ostergaard, President of Shallowbrook Subdivision Homeowners Association; referenced feedback from board members and neighboring residents. (*email*)
- Svitlana Morhunov, 1120 Shadow; in support. (*email*)
- Name, address inaudible; neutral. (*voicemail*)
- Ms. Bewick, 4509 Harold, in support. (*voicemail*)

The floor for public comment was closed.

Moved by: Frisen  
Support by: Dziurman

**RESOLVED**, To **deny** the variance request, for the following reason:

1. The variance request does not meet the intent of the Code.

Yes: All present (3)  
Absent: Brooks, Miller

### **MOTION CARRIED**

- D. VARIANCE REQUEST, MICHELLE LAMACCHIO, 4578 POST DRIVE – This property is a double front corner lot. Per the City of Troy Zoning Ordinance, it is in the R-1C use district. As such per Chapter 83 of the City of Troy Code it has 30 feet required front setback along both Post Drive and Waltham Drive. The petitioner is requesting a variance to install a 4-foot high, 315 feet non-obscuring aluminum fence at the property line along the [Post Drive] and the Waltham Drive where City Code limits to 30 inches high fences due to the fact that there isn't a back-to-back relationship to the rear neighboring lot. CHAPTER 83

Mr. Huerta read the variance request narrative. Mr. Huerta addressed the relationship of the petitioner's property to the neighboring property to the rear.

The petitioner Michelle Lamacchio was present remotely. Ms. Lamacchio said the fence would provide safety for their children from the street and from a neighboring dog. She said the side yard is the majority of their property in which the children can play. Ms. Lamacchio addressed the material of the fence and believes it would add value to the property.

There was discussion on:

- Placement of fence in relation to house and existing trees, arborvitaes.
- Side yard essentially the rear yard.
- Setback; petitioner voiced flexibility.
- Consideration of lower fence height; petitioner voiced not enough protection.
- No interference of existing utilities.

Chair Abitheira opened the floor for public comment.

There was no one present in the audience to speak.

- Robert Rankel, 4552 Post; in support. (*voicemail*)

Ms. Ferencz reported no email messages were received, and there was no one virtually present to speak.

The floor was closed for public comment.

Moved by: Dziurman  
Support by: Frisen

**RESOLVED**, To **grant** the variance request with a three (3) foot setback from the property line, and along the sidewalk, then follow the property line on the rear side of the property as proposed, for the following reason:

1. The petitioner has a hardship resulting from the unusual characteristics of the property.

Yes: All present (3)  
Absent: Brooks, Miller

### **MOTION CARRIED**

#### 5. COMMUNICATIONS – None

#### 6. PUBLIC COMMENT

There was no one present in the audience to speak.

Ms. Ferencz reported there were no email or voicemail messages received, and that there are no virtual attendees present.

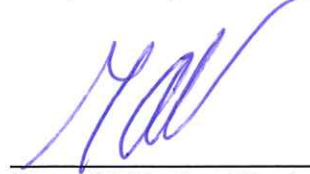
#### 7. MISCELLANEOUS BUSINESS

Mr. Dziurman announced he would not be in attendance at the July 7, 2021 meeting.

8. ADJOURNMENT

The Regular meeting of the Building Code Board of Appeals adjourned at 4:34 p.m.

Respectfully submitted,



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Gary Abitheira, Chair



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Kathy L. Czarnecki, Recording Secretary

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