

A regular meeting of the Board of Zoning Appeals was called to order at 7:30 p.m. on Tuesday, April 20, 1993.

PRESENT: Gary Chamberlain
Christopher Fejes
James Giachino
John Lovio
Carmelo Milia
Sherwood Shaver
J. Charles Swindell

ITEM #1 Approval of March 16, 1993 Minutes

Motion by Swindell
Supported by Milia

MOVED, to approve the March 16, 1993 minutes.

Yeas: 7
Nays: 0
Absent: 0

MOTION TO APPROVE CARRIED.

ITEM #2 RENEWAL REQUESTED: Troy Church of God/Troy Cathedral of Praise, 1285 E. Wattles Rd., for relief of the 4'6" high masonry wall required along the north, east and west property lines.

The Chairman moved item #2 to the end of the agenda to give the petitioner the opportunity to be present.

ITEM #3 RENEWAL REQUESTED: Petruzzello's Catering Hall, 6950 Rochester Rd., for relief of the 4'6" high masonry wall required along portions of the east and south property lines.

Mr. Shripka explained that the petitioner is requesting renewal of a variance granted, by this Board, for relief of the 4'6" high masonry screening wall required along a portion of the east and south property lines of their site. This area separates the P-1 zoning from the residential to the east and to the south. Relief has been granted on a yearly basis since 1977, primarily due to the fact the adjacent residential land is undeveloped. Conditions remain the same, we have no objections or complaints on file.

Tom Petruzzello was present and indicated that nothing had changed.

Motion by Shaver
Supported by Chamberlain

MOVED, to grant Petruzzello's Catering Hall, 6950 Rochester Road, renewal of their variance for relief of the 4'6" high masonry wall required along portions of their east and south property lines where off-street parking abuts residential:

1. Conditions remain the same.
2. There are no objections on file

Yeas: 7
Nays: 0
Absent: 0

MOTION TO RENEW VARIANCE FOR ONE YEAR CARRIED.

ITEM #4 RENEWAL REQUESTED: Republic Underwriters, Inc., 1640 Axtell, for relief of the 6' high masonry screening wall required along the north property line.

Mr. Shripka explained that the petitioner requested tabling action in that he would not be able to attend the meeting.

Motion by Chamberlain
Supported by Swindell

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ITEM #4.

MOVED, to table the renewal request of Republic Underwriters, Inc., 1640 Axtell, for relief of the 6 foot high masonry screening wall required along the north property line, until the next regular meeting (May 18, 1993) as requested by the petitioner.

Yeas: 7
Nays: 0
Absent: 0

MOTION TO TABLE UNTIL MAY 18, 1993 MEETING CARRIED.

ITEM #5 RENEWAL REQUESTED: Wattles Investment Co, 4000 Livernois, for relief of the 6' masonry screening wall required along the east property line and relief of the 30" high wall or landscaped buffer required adjacent to Crestfield.

Mr. Shripka explained that the petitioner is requesting renewal of relief from a 6 foot high masonry screening wall required at the east property line and renewal of for relief of the landscaped buffer or 30" high wall required at the paper street Crestfield, to the north. This variance was originally granted in 1985 based on the fact that the property to the east is undeveloped and is higher than the subject property, resulting in a natural barrier. Relief on the landscaped buffer or the 30" high wall on the north was due to the fact that Crestfield was not a developed street and there would be no need for this screening along the property line. Conditions remain the same, we have no objections or complaints on file.

Tom Cavanaugh, a partner, was present and had nothing to add.

Motion by Milia
Supported by Lovio

MOVED, to grant Wattles Investment Co., 4000 Livernois, renewal of their variance for relief of the 6 foot high masonry screening wall required along the east property line, abutting residential, and relief of the 30" high wall or landscaped buffer required adjacent to Crestfield:

1. Conditions remain the same.
2. There are no objections on file.

Yeas: 7
Nays: 0
Absent: 0

MOTION TO RENEW VARIANCE FOR ONE YEAR CARRIED.

ITEM #6 RENEWAL REQUESTED: Northfield Hills Baptist Church, 1800 W. Long Lake, for relief of the 4'6" high masonry wall required along the east property line.

Mr. Shripka explained that the petitioner is requesting renewal of relief granted, by this Board, to maintain a 4'6" high landscaped berm at their off-street parking area in lieu of the required masonry wall. This request has been granted on a yearly basis since 1980. Conditions remain the same and there are no objections or complaints on file.

Tony Wycihowski of the church's property committee, was present and indicated conditions remain the same.

Motion by Lovio
Supported by Shaver

MOVED, to grant Northfield Hills Baptist Church, 1800 W. Long Lake, renewal of their variance for relief to maintain a landscaped berm in lieu of the 4'6" high masonry wall required along the east property line where off-street parking abuts residential:

ITEM #6

1. Conditions remain the same.
2. There are no objections on file.

Yeas: 7
Nays: 0
Absent: 0

MOTION TO RENEW VARIANCE FOR ONE YEAR CARRIED.

ITEM #7 RENEWAL REQUESTED: Civic Center Associates, 290 Town Center, for relief of the 4'6" high masonry wall required along the north property line.

Mr. Shripka explained that the petitioner is requesting renewal of variance granted, by this Board, for relief of a 4'6" high screening wall required along the north property line of their site, where their off-street parking zoning abuts residential zoning. This variance has been granted on a yearly basis since 1984, primarily due to the fact that the nearest resident is well over 1000 feet away and the property is undeveloped. Conditions remain the same, we have no objections or complaints on file.

Dale Garrett was present and had nothing to add.

Motion by Millia
Supported by Fejes

MOVED, to grant Civic Center Associates, 290 Town Center, renewal of their variance for relief of the 4'6" high masonry screening wall required along the north property line where off-street parking abuts residential:

1. Conditions remain the same.
2. There are no objections on file.

Yeas: 7
Nays: 7
Absent: 7

MOTION TO RENEW VARIANCE FOR ONE YEAR CARRIED.

ITEM #8 RENEWAL REQUESTED: PPG Industries, 5875 New King, for relief of the 6' high masonry screening wall required along the west property line.

Mr. Shripka 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 west property line that abuts residential zoning. This relief was originally granted in 1988, based on the fact that the petitioner installed a berm in lieu of the wall and the adjacent property owner approved of the alternative screening. Conditions remain the same, we have no objections or complaints on file.

Mark Hoffmanner, Building Manager for PPG, was present and had nothing to add.

Motion by Chamberlain
Supported by Swindell

MOVED, to grant PPG Industries, 5875 New King, renewal of their variance for relief to maintain a berm in lieu of the 6 foot high masonry screening wall required along the west property line abutting residential:

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

ITEM #8.

Yeas: 7
Nays: 0
Absent: 0

MOTION TO RENEW VARIANCE FOR ONE YEAR CARRIED.

Item #9 VARIANCE REQUESTED: Vince and Barb Pangle, 5235 Wrights St.
for relief to maintain an undefined accessory building.

Mr. Shripka explained that the petitioner is requesting relief of the Zoning Ordinance to maintain an undefined accessory building. This item was requested by members of the Board at the last regular meeting. The petitioner had originally applied for an addition to an existing non-conforming structure which did not have the approved distance between the addition and this undefined accessory building. Since that meeting we have visited the site and determined that the building was originally constructed as a garage in the rear yard. Since that original building, the existing garage door has been filled in and a spa has been installed inside the building. The petitioner indicated that this is the way the petitioner had purchased the site. The Zoning Ordinance requires that this enclosed spa building obtain Board of Zoning Appeals approval in that it is not defined as an antenna, cabana, dog house, garage or shed, in the ordinance.

Vince Pangle was present and stated that he is requesting relief to maintain an accessory building that houses a spa. He indicated that this is the way he purchased the property and he did not do any of the work.

Motion by Milia
Supported by Chamberlain

MOVED, to grant Vince and Barb Pangle, 5235 Wright, a variance, as requested, to maintain an accessory structure used to house a spa:

1. The structure is in good taste.
2. The small size of the structure precludes its use as a garage.
3. The variance is not contrary to public interest.
4. The variance does not adversely affect the neighbors.
5. Conforming would be unnecessarily burdensome.
6. Strict compliance would serve no useful purpose.

Yeas: 6
Nays: 1- Lovio
Absent: 0

MOTION TO APPROVE REQUEST CARRIED.

ITEM #10 VARIANCE REQUESTED: Vince & Barb Pangle, 5235 Wright St. for relief to add to a non-conforming structure, to have a garage in a side yard, relief of the required distance between the main structure an accessory building.

Mr. Shripka explained that the petitioner is requesting relief of the Zoning Ordinance to construct an addition on the north side of an existing non-conforming residence. The house is non-conforming in that it has an existing front setback of approximately 20 feet. The Zoning Ordinance requires a 40 foot setback in this residential zoned district, and does not permit alterations to, additions to or extensions of non-conformities. The plot plan shows the proposed addition would result in the present detached garage being located in a side yard. The Zoning Ordinance permits accessory buildings in the rear yard only. The plot plan also shows the proposed addition would result in approximately a 5 foot setback between the proposed addition and an existing 18.7'x20.9' accessory building in the rear yard. The Zoning Ordinance requires a minimum separation of 10 feet. This item was tabled at our last regular meeting for two reasons: (1) To define the accessory structure, and (2) To review and possibly modify the proposed addition plans to be more in conformance with the Zoning Ordinance.

ITEM #10.

Mr. Shripka further explained that late this afternoon the Building Department was faxed a new plan that showed there would be a 10 foot setback between the house and the accessory structure.

Mr. Pangle was present and stated that they have revised their plans to give them the required distance, 10 feet, between the house and the accessory structure to the rear. Mr. Pangle indicated that the addition was to provide them with needed room as they were planning a family and the addition would bring the house more in conformance with others in the area. Mr. Pangle also stated that the house is not of an adequate size for their lifestyle. Since the house was constructed in the 1950's, setback requirements have changed. Mr. Pangle stated that the addition would conform to the present 40 foot setback requirement. The only way the present house could meet today's setback requirement would be to remove the front half of the home, which is not feasible. There are several mature trees to the rear of the existing garage which would have to be removed to relocate the garage and relocation is not feasible. Mr. Pangle stated that there are other garages in side yards in the area.

Motion by Milia
Supported by Shaver

MOVED, to grant Vince and Barb Pangle, 5235 Wright, a variance, as requested to construct an addition to an existing legal non-conforming structure, resulting in the present detached garage now being located in the side yard:

1. The variance is not contrary to public interest.
2. The variance will not cause an adverse effect to properties in the immediate area.
3. There are more pronounced non-conformities, in the area, than the setback of the petitioner's home.
4. The petitioner has presented a significant practical difficulty.
5. Strict enforcement would cause an unnecessary hardship.
6. The petitioner has made modifications, in good faith, to comply with the spirit of the code.

Yeas: 7
Nays: 0
Absent: 0

MOTION TO APPROVE REQUEST CARRIED.

ITEM #11 VARIANCE REQUESTED: Thomas Halbeisen, 1973 Livernois, for
relief of the of the front yard setback.

Mr. Shripka explained that the petitioner is requesting relief of the Zoning Ordinance to construct an addition on the north side of an existing non-conforming structure. The structure is non-conforming in that it now has a 35 foot front yard setback where the Zoning Ordinance requires a 40 foot setback. The Zoning Ordinance does not permit alterations to, additions to or expansions of non-conformities. The proposed addition would also result in a 10 foot setback from the north property line. The Zoning Ordinance requires a minimum 20 foot setback. Also, no sidewalk is shown between the drive and the east side of the new addition. The Zoning Ordinance requires a 5 foot wide sidewalk between the front of any building and any vehicular use area.

Mr. Chamberlain questioned the structure at the rear of the existing building which is used for outdoor storage.

Thomas Halbeisen and Steve Slavik, his builder, were present. Mr. Halbeisen stated that a portion of their proposed addition would be used for the storage, now located outside. The roof over the storage area is to keep tires dry until they are picked up by licensed contractors. Mr. Halbeisen stated that the number of customers serviced has expanded, they are cramped for space and have had to turn customers away. They do not have enough room to store their tune-up and alignment equipment.

ITEM #11.

Mr. Halbeisen indicated that the addition, proposed to the north, would be the most practical way to expand. Otherwise they would have to move overhead Edison wires, phone wires and a transformer, all of which would add a great deal of expense to an addition. As part of the expansion they have purchased property to the south to provide more parking, the greenbelt will be updated to meet today's standards and the building will be more appealing. They also feel that the addition, as proposed will have less impact on the neighbors. Also they are limited to the type of vehicles they can service because of the present bay height. The addition will allow for a higher bay. The size of the addition proposed will allow them to install overhead hoists, which require more room. Underground hoists do use less room but have a tendency to leak after a while and leaking would cause ground contamination. Without a variance they cannot develop the property to its full potential and have purchased the additional property to best meet the spirit of the ordinance.

The chairman opened the public hearing.

Debra Kellelt, 53 Biltmore, was present and objected to the variance.

Alex Beagan, 1950 Livernois, was present and objected to the variance.

Rob Tasker, 41 Biltmore, was present and approved of the variance.

There were no further comments from the audience.

The chairman closed the public hearing.

There were 2 letters of approval on file: N. C. Butcher, Mid-States Petroleum, Inc., 2146, 2011, 2017 Livernois and Walter Wajda, 90 Biltmore.

There was 1 letter of objection on file: Emily and Sherwin Tukel, Owner of parcel 27-307-038.

Motion by Lovio
Supported by Fejes

MOVED, to deny the request from Thomas Halbeisen, 1973 Livernois, for relief to add to an existing legal non-conforming building, relief of the required setback from the north property line and relief of the 5 foot wide sidewalk required between the building and the vehicular use area:

1. The petitioner has not presented a practical difficulty or hardship.
2. Substantial justification necessary for the board to grant a variance has not been presented.

Yeas: 6
Nays: 1- Shaver
Absent: 0

MOTION TO DENY REQUEST CARRIED.

ITEM #12 VARIANCE REQUESTED: Thomas & Linda Dekar, 4839 Riverchase,
for relief of the side yard setback.

Mr. Shripka explained that the petitioner is requesting relief of the Zoning Ordinance to construct a fireplace and chimney. The plan shows the proposed chimney would result in a side yard setback of 8 feet along the south side of the residence. The Zoning Ordinance requires a 10 foot side yard setback in this residential zoned district.

ITEM #12

Thomas and Linda Dekar were present and stated that Mr. Dekar's job requires they entertain. The side of their living room, where the fire place addition is proposed, presently has a window that looks out into their neighbors garage, which is unpleasant. They propose to remove the window and install a fireplace. The neighbors, including the most affected neighbor, approve of their proposal. They have no other practical place to construct the fireplace. Mr. Lovio asked if the fireplace could be constructed inside, eliminating the side yard variance. Mr. Dekar stated that it would require structural changes that would not be practical. Mr. Dekar also stated that he has presented a petition signed by 5 neighbors approving of their variance request.

The chairman opened the public hearing.

There were no comments from the audience.

The chairman closed the public hearing.

There was 1 letter of approval on file: Thomas L. Giannico, 4825 Riverchase.

Motion by Swindell
Supported by Shaver

MOVED, to grant Thomas and Linda Dekar, 4839 Riverchase, a variance, as requested, for relief to construct a fireplace and chimney, resulting in a 8 foot side yard setback where a 10 foot setback is required:

1. Strict enforcement of the code would deny the petitioner full use and enjoyment of his property.
2. The variance is not excessive.
3. The variance is not detrimental to the neighborhood.
4. The variance is not contrary to public interest.
5. Literal enforcement of the ordinance is unnecessarily burdensome.

Yeas: 5
Nays: 2- Milia, Lovio
Absent: 0

MOTION TO APPROVE REQUEST CARRIED.

ITEM #13 VARIANCE REQUESTED: William H. Mack, 5010 Rochester Road,
for relief of the rear yard setback.

Mr. Shripka explained that the petitioner is requesting relief of the Zoning Ordinance to construct a 53'x24' service station and food market at the northeast corner of Long Lake and Rochester Road. The plot plan shows the proposed building would have a 25 foot rear yard setback from the east property line. The Zoning Ordinance requires a 30 foot setback.

William Mack and Len Beeman were present. Mr. Mack explained the history of the site, previous appeals and results of the appeals. Mr. Mack stated that they had received a variance for relief of the setback from Long Lake Road and that when they prepared their drawings they found out that the right-of-way was greater than shown on their original appeal drawings. Therefore, they must locate their structure further back from the Rochester Road and Long Lake Right-Of-Ways, because of the relocation of the canopy and food mart structure, their rear yard setback will be 25 feet from the east property line where 30 feet is required. Len Beeman from Sun Oil was present and presented the Board with a rendering explaining the need of 25 feet between the canopy supports and the food market.

The chairman opened the public hearing.

There were no comments from the audience.

The chairman closed the public hearing.

ITEM #13

Motion by Chamberlain

Supported by Lovio

MOVED, to grant William H. Mack, 5010 Rochester Road, a variance, as requested, for relief of the rear yard setback, 25 feet where 30 feet is required:

1. The variance is for the safety and welfare of the persons using the facilities.
2. The variance allows for the proper/required spacing between the canopy supports and the building.

Yeas: 7

Nays: 0

Absent: 0

MOTION TO APPROVE REQUEST CARRIED.

ITEM #14 (ITEM #2) RENEWAL REQUESTED: Troy Church of God/Troy Cathedral of Praise, 1285 E. Wattles Road, for relief of the 4'6" high masonry wall required along their north, east and west property lines.

The petitioner was not present.

Motion by Shaver

Supported by Lovio

MOVED, to table the request of Troy Church of God/Troy Cathedral of Praise, 1285 E. Wattles Road until the next regular meeting (May 18, 1993) to give the petitioner the opportunity to be present.

Yeas: 7

Nays: 0

Absent: 0

MOTION TO TABLE UNTIL MAY 18, 1993 MEETING CARRIED.

OTHER BUSINESSRequest from Roy E. Rathka, Jr., for a new public hearing.

Roy E. Rathka, Jr. and his attorney, Lois C. Blaesing, were present.

Mr. Shripka explained that the Building Department has received a request from Roy E. Rathka Jr., appealing the decision of the Chief Building Inspector. In January of 1993, Mr. Rathka appeared before this Board, requesting a variance of the Zoning Ordinance to combine and split lots 18 through 22 on Haldane, which would result in two 65 foot wide lots where 80 foot lots are required. At that meeting, the Board denied the request in that the petitioner had not demonstrated a hardship that runs with the land. The site is buildable and there are a number of objections from the neighborhood. Since that time Mr. Rathka has submitted, to the Building Department, an explanation of what he feels is new and important evidence regarding this request and is asking that the Board reconsider his request. Having reviewed the information provided, it was my determination, that the information was not new or important enough to bring this back to the Board. Having advised the petitioner of my decision, he has now requested that the Board review the information presented and determine if this item should, in fact, come back before this Board. If the Board decides that the evidence is, in fact, new and important, we will then prepare a new public hearing and bring this item back before this Board for the May 1993 meeting.

The Board discussed the request and indicated that they did not feel there was a substantial change to the appeal, nor was there new evidence that warranted a new public hearing.

Motion by Swindell
Supported by Milia

MOVED, to deny the request from Roy E. Rathka Jr., Lots 18 through 22,
Haldane street:

1. The petitioner has not indicated the substantial changes required
to warrant a new public hearing.

Yeas: 5
Nays: 2- Lovio, Giachino
Absent: 0

MOTION TO DENY REQUEST CARRIED.

Election of Board of Zoning Appeals Officers - 1993-94.

Motion Shaver
Supported by Fejes

MOVED, to appoint John Lovio, Chairman for 1993-94 and appoint Carmelo
Milia, Vice Chairman for 1993-94.

Yeas: 5
Nays: 0
Abstain: 2- Lovio, Milia
Absent: 0

MOTION CARRIED.

The Board of Zoning Appeals adjourned at 9:10 p.m.

A handwritten signature, possibly of the Secretary or a board member, is written in the center of the page.