




500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: February 4, 2020 

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney
Julie Quinlan Dufrane, Assistant City Attorney

Subject: Tollbrook LLC v. City of Troy

Enclosed please find a copy of a Claim of Appeal and Complaint that was recently filed against the City of Troy by Tollbrook LLC. Tollbrook owns three parcels of property, located at 3086, 3114 and 3142 McClure in the City of Troy. In 2017, after being denied conditional rezoning by the Troy City Council, Tollbrook filed a federal lawsuit against the City, which was unsuccessful. This case was appealed to the U.S. Sixth Circuit Court of Appeals, and ultimately decided in favor of the City. While the federal appeal was pending, Tollbrook LLC submitted an application for a rezoning of these same parcels from R-1B to Big Beaver District. This straight rezoning application was also denied by the Troy City Council on July 22, 2019, consistent with the Planning Commission recommendation. Tollbrook then submitted a use variance application, asking the Troy Zoning Board of Appeals to grant a use variance, allowing the properties to be used for any use permitted under the Big Beaver zoning district. The Zoning Board of Appeals denied the requested use variance on November 19, 2019.

The Appeal section of Tollbrook's pleading challenges the Zoning Board of Appeals denial of the requested use variances, and it was timely filed with Oakland County Circuit Court Judge Jeffrey Matis. Tollbrook also alleges three claims that stem from the City Council's denied rezoning. Tollbrook asserts a takings claim, in violation of the Fifth Amendment of the Constitution, as well as a substantive due process violation (Count II), and a claim under 42 U.S.C. Section 1983 (Count III). They seek over \$25,000 in damages, which is the minimum jurisdictional limit for the Oakland County Circuit Court.

Subsequent to the filing, Judge Matis filed an order striking the complaint portion, essentially ruling that the appeal and the complaint need to be separate pleadings. Tollbrook has filed a Motion, asking the Judge to reconsider this matter.

Attached is a proposed resolution which authorizes our office to represent the City's interest in these matters. We have drafted the resolution to account for amended pleadings that separate the appeal and the complaint, which would be consistent with the order of Judge Matis.

Please let us know if you have any questions or concerns.

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/efiling.

20 JAN 24 PM 3:21

Approved, SCAO

Original - Court
1st copy - Defendant

2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 6th	JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 2020-178896-AA 20 - - AA JUDGE JEFFERY S. MATIS
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Court address: 1200 N. Telegraph Road, Pontiac, Michigan 48340
 Court telephone no. 248-858-0344

Plaintiff's name(s), address(es), and telephone no(s).
 Tollbrook, LLC

Defendant's name(s), address(es), and telephone no(s).
 City of Troy
 500 W. Big Beaver Road
 Troy, Michigan 48084

v

Plaintiff's attorney, bar no., address, and telephone no.
 Carson Fischer, P.L.C.
 Robert M. Carson (P11682); David E. Schlackman (P58894)
 4111 Andover Road, West - Second Floor
 Bloomfield Hills, Michigan 48302
 (248) 644-4840

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where

it was given case number _____ and assigned to Judge _____

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 1/7/2020	Expiration date* 04/07/2020	Court clerk Lisa Brown
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

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SUMMONS

Case No. 20 -

- A.

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE

OFFICER CERTIFICATE

OR

AFFIDAVIT OF PROCESS SERVER

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

- I served personally a copy of the summons and complaint,
- I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,

together with

List all documents served with the summons and complaint

on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	TOTAL FEE \$
Incorrect address fee \$	Miles traveled	Fee \$	

Signature _____
 Name (type or print) _____
 Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Date Signature: _____ Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with

Attachments
 on Friday January 24, 2020 at 3:16 pm
 Day, date, time
 Signature Cheryl Stewart on behalf of City of Troy

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/efiling.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

(ON APPEAL FROM THE CITY OF TROY
ZONING BOARD OF APPEALS)

TOLLBROOK, LLC,
Plaintiff/Appellant,

2020-178896-AA
Case No. _____-AA
Hon. JUDGE JEFFERY S. _____
MATIS

v.
CITY OF TROY,
Defendant/Appellee.

CARSON FISCHER, P.L.C.
ROBERT M. CARSON (P11682)
DAVID E. SCHLACKMAN (P58894)
Attorneys for Plaintiff/Appellant
4111 Andover Road
West - Second Floor
Bloomfield Hills, MI 48302
(248) 644-4840

There is no other pending or resolved
civil action arising out of the
transaction or occurrence alleged in
this complaint.

CLAIM OF APPEAL AND COMPLAINT

Plaintiff/Appellant, Tollbrook, LLC, by and through its counsel, CARSON FISCHER, P.L.C., claims an appeal from the November 19, 2019 decision by the City of Troy ("City") Zoning Board of Appeals ("ZBA") as memorialized in meeting minutes approved by the ZBA at its December 17, 2019 meeting, and for its Claim of Appeal and Complaint states as follows:

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PARTIES AND JURISDICTION

1. Plaintiff/Appellant Tollbrook, LLC ("Tollbrook"), a Michigan limited liability company, is the owner of three adjoining parcels of real property on McClure Drive in Troy, Michigan having the common addresses of 3142 McClure Drive (Property Tax ID No. 88-20-20-476-007), 3114 McClure Drive (Property Tax ID No. 88-20-20-476-008) and 3086 McClure Drive (Property Tax ID No. 88-20-20-476-009) (collectively the "McClure Properties").

2. Defendant/Appellee City is a Michigan Municipal Corporation whose mailing address is 500 West Big Beaver, Troy, Michigan 48084.

3. City's ZBA was established by the City through its Zoning Ordinance and has such duties and responsibilities as are set forth in the City's Zoning Ordinance and the Michigan Zoning Enabling Act (MCL §125.3101, *et. seq.*), including the authority under City's Zoning Ordinance §15.04.F. to hear applications for use variances.

4. Jurisdiction of this Court exists in that this action arises under the Constitution and the laws of the State of Michigan, and the matter in controversy exceeds the sum or value of \$25,000, exclusive of interest and costs.

5. This case also involves an appeal as of right, pursuant to MCR 7.122(A)(1)-(3) and MCL §125.3606, from the decision of the ZBA denying Tollbrook's application for a use variance. Under Michigan law, Tollbrook may join with its appeal any other original claims that it may have arising out of the City's decisions at issue. *See e.g., Choe v Charter Twp of Flint*, 240 Mich App 662, 668 n2 (2000).

6. Venue in this Court is proper as the real property at issue in this matter is located in Oakland County.

FACTS GIVING RISE TO THE APPEAL AND CLAIMS AGAINST DEFENDANT

7. The McClure Properties are each currently zoned R-1B District (One Family Residential) under the Zoning Ordinance, but are designated as "Big Beaver Road" in the City's Master Plan.

8. The McClure Properties abut a single-family home to the north, an office and parking lot to the south which is zoned BB, Big Beaver District, a parking lot to the east which is zoned BB, Big Beaver District and single-family homes to the west in an area zoned Planned Unit Development.

9. The Planned Unit Development to the west of the McClure Properties, which was approved in 2012, permits uses that are inconsistent with the City's Master Plan.

10. The R-1B District zoning allows the following uses: one-family dwellings; public parks; family day care homes; adult foster care; adult day care home; agriculture; cemeteries; and wireless communication facilities.

11. BB, Big Beaver District, under the Zoning Ordinance, permits the following uses: one-family attached dwellings; publicly owned/operated office and service facilities; multiple-family dwellings facilities; live/work units; funeral homes; senior assisted/independent living; veterinary clinics or hospitals; child care centers; lodging; general office; financial institutions; professional and medical office; general retail; hospitals; retail, large-format; shopping centers; primary/secondary schools (private); post-secondary schools; fitness, gymnastics, and exercise centers; theatres and places of assembly; places of worship; indoor commercial recreation establishments; data centers; restaurant; technology centers/ office research; personal services; and business services.

12. The City's Planning Commission adopted the Big Beaver Road future land use for the McClure Properties in 2008 as part of its restated Master Plan and the City reaffirmed this future land use designation for the McClure Properties in 2016.

13. In 2016, Tollbrook submitted an application for conditional rezoning of the McClure Properties to BB, Big Beaver District to develop an apartment building. A copy of this application is in the City's possession.

14. This application for conditional rezoning was submitted after being approached by, and having discussions with, representatives from the City who encouraged Tollbrook to acquire some of the land comprising the McClure Properties and to submit the plan for an apartment building rather than the townhomes originally planned by Tollbrook.

15. On February 10, 2017, the City's Planning Commission unanimously recommended approval of the conditional rezoning application by a vote of 7-0, with one commissioner abstaining and another absent, to rezone the property to BB, Big Beaver District and permitting a 140 unit apartment building.

16. On April 10, 2017, City's City Council denied the motion to approve the application for conditional rezoning by a vote of 4-3.

17. In February of 2019, Tollbrook submitted its application to the City to rezone the McClure Properties from R-1B District to BB, Big Beaver District, consistent with the City's Master Plan (the "Tollbrook Rezoning Application"). A copy of the Tollbrook Rezoning Application is in the City's possession.

18. The City initially refused to accept and process the Tollbrook Rezoning Application without any legal basis or justification causing an unnecessary and unwarranted delay.

19. Section 16.03.C. of the City's Zoning Ordinance sets for the criteria for approving a rezoning request:

Standards for Approval. A rezoning may only be approved upon a finding and determination that all of the following are satisfied:

1. The proposed rezoning is consistent with the Master Plan. If the current zoning is in material conflict with the Master Plan, such conflict is due to one of the following:

- a. A change in City policy since the Master Plan was adopted.
- b. A change in conditions since the Master Plan was adopted.
- c. An error in the Master Plan.

2. The proposed rezoning will not cause nor increase any non-conformity.

3. Public services and facilities affected by a proposed development will be capable of accommodating service and facility loads caused by use of the development.

4. The rezoning will not impact public health, safety, or welfare.

5. The rezoning will ensure compatibility with adjacent uses of land.

20. On or about May 28, 2019, the City's Planning Commission recommended denial of the Tollbrook Rezoning Application.

21. Despite the fact that the Tollbrook Rezoning Application sought to rezone the McClure Properties consistent with the Master Plan and was in full conformance with all objective standards of City's Zoning Ordinance, on July 22, 2019, the City's City Council denied the Tollbrook Rezoning Application.

22. Instead of basing its decisions on the express, measurable and objective standards of its Zoning Ordinance, the City rejected the Tollbrook Rezoning Application based upon improper standards, including but not limited to, its contention that because the future use of the McClure Properties was unknown:

- a. Compatibility with the Master Plan cannot be determined;

- b. The impact of the development on the public health, safety, or welfare cannot be determined;
- c. The ability to provide services and facilities cannot be determined; and
- d. Determination of whether the rezoning will ensure compatibility with adjacent uses of land cannot be determined. The July 22, 2019 City Council Minutes are in the City's possession.

23. On or about August 19, 2019, Tollbrook submitted to the ZBA its application for a use variance to use the McClure Properties in accordance with the BB, Big Beaver District and appeal of the City Council's rejection of the Tollbrook Rezoning Application (the "Use Variance Application"). A copy of the Use Variance Application is in the City's possession.

24. Section 15.04.F of the Zoning Ordinance provides the standard of review of a use variance:

F. Use Variances.

1. Use Variance Standards for Review. A use variance may be allowed by the Zoning Board of Appeals only in cases where there is reasonable evidence of unnecessary hardship in the official record of the hearing, and that all of the following conditions are met:

- a. The applicant has demonstrated that the site cannot reasonably be used for any of the uses allowed within the current zoning district designation. The Zoning Board of Appeals may require submission of documentation from professionals or certified experts to substantiate this finding.
- b. That the condition or situation of the specific parcel of property or the intended use of such property for which the variance is sought is unique to that property and not commonly present in the general vicinity or in the zoning district. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to earn a reasonable return without some adjustment. Such unique conditions or situations include:

- i. Exceptional narrowness, shallowness or shape of a specific property on the effective date of the ordinance from which this chapter is derived.
- ii. Exceptional topographic conditions or other extraordinary situation on the land, building or structure.
- iii. The use or development of the property immediately adjoining the property in question.
- iv. Any other physical situation on the land, building or structure deemed by the Zoning Board of Appeals to be extraordinary.

c. The use variance will not alter the essential character of the neighborhood or the intent of the Master Plan, or be a detriment to adjacent properties.

d. The capacity and operations of public roads, utilities, other facilities and services will not be significantly compromised.

e. The immediate practical difficulty causing the need for variance request was not self-created by the applicant.

25. On October 15, 2019, the ZBA conducted its public hearing on the Use Variance Application at which time the ZBA postponed the case until November 19, 2019 and instructed the City's attorney to prepare a resolution incorporating their comments for ZBA consideration at its November 19, 2019 meeting.

26. On November 19, 2019, the ZBA approved a resolution denying the Use Variance Application (the "ZBA Resolution") and on December 17, 2019 the ZBA formally approved the minutes of the November 19, 2019 ZBA meeting at which it adopted the ZBA Resolution. A copy of the November 19, 2019 Minutes are attached hereto as Exhibit A..

27. Besides abusing its discretion based upon misapplying subjective standards, the ZBA Resolution was also not supported by competent, material and substantial evidence. In fact, the ZBA Resolution contained multiple "findings" which were contrary to evidence in the record, including:

- a. Finding that “[t]here is no unique circumstances peculiar to [these properties]”, while ignoring the use and development of the properties immediately adjoining the properties;
- b. Finding that “[g]ranting a use variance ... will alter the essential character of the adjacent neighborhood and be a detriment to the adjacent properties”, where the properties in question are designed as BB, Big Beaver District in the Master Plan and where the McClure Properties abut an office and parking lot to the south which is zoned BB, Big Beaver District, a parking lot to the east which is zoned BB, Big Beaver District and single-family homes to the west in an area zoned Planned Unit Development;
- c. Asserting that Tollbrook failed to identify a specific use for the properties as if it was a requirement under the City’s Zoning Ordinance; and
- d. Baldly stating that the requested variance was created by the applicant. See Exhibit A.

28. The ZBA Resolution also declined to address the portion of the Use Variance Application seeking to appeal the July 22, 2019 decision on the Tollbrook Rezoning Application stating that it did not have jurisdiction over such a request.

29. The Use Variance Application satisfied all objective standards and the ZBA’s decision to reject the Use Variance Application, imposing unfettered subjective discretion to overrule those objective standards, was based upon findings that were directly contrary to the evidence in the record.

30. Tollbrook has exhausted all of its administrative remedies.

CLAIM OF APPEAL

31. The allegations contained within all of the foregoing paragraphs are realleged and incorporated as if fully set forth herein.

32. The nature of the determinations being appealed from is a resolution of the ZBA.

33. The Zoning Ordinance authorizing the ZBA to hold the hearing which gave rise to the ZBA Resolution is §15.04.F.

34. This appeal is taken pursuant to the Michigan Zoning Enabling Act, including but not limited to MCL §125.3606, as well as MCR 7.103 and MCR 7.122.

35. Venue is based on the fact that the underlying dispute relates to an application for a use variance for properties located within Oakland County and that Appellee is located in Oakland County.

36. The grounds on which relief is sought is that the ZBA erred and its decision did not comply with the requirements of MCL §125.3606 when it issued its ZBA Resolution dated November 19, 2019 denying the Use Variance Application.

37. The decision of the ZBA was improper and should be reversed because it:
- a. Did not comply with the Constitution and laws of the State;
 - b. Was not supported by competent, material, and substantial evidence on the record; and/or
 - c. Did not represent the reasonable exercise of discretion granted by the law to the ZBA.

WHEREFORE, Appellant respectfully requests that upon consideration of this Appeal that the Court reverse the decision of the ZBA, declare and adjudge that City's rejection of the Use Variance Application was not supported by competent, substantial and material evidence, order

City to grant the Use Variance Application and enjoin City from preventing the development of the McClure Properties pursuant to the Application.

COUNT I
TAKING OF THE McCLURE PROPERTIES

38. The allegations contained in the foregoing paragraphs are reasserted and incorporated as if fully set forth herein.

39. A land use restriction that fails to substantially advance a governmental interest constitutes a taking without compensation in violation of the United States Constitution, Amendments V and XIV and the Michigan Constitution of 1963, Art 10, Sec 2.

40. The development of the McClure Properties in accordance with the R-1B District zoning will result in a loss of money to Tollbrook and will not yield any return on its investment in purchasing the McClure Properties.

41. As applied to the McClure Properties, the R-1B District zoning does not substantially advance a legitimate state interest.

42. As applied to the McClure Properties, the R-1B District zoning is inconsistent with the City's Master Plan.

43. The R-1B District zoning deprives Tollbrook of the economically viable use of the McClure Properties.

44. The R-1B District zoning has interfered with Tollbrook's investment-backed expectations with respect to the McClure Properties.

45. The R-1B District zoning denies Tollbrook of all economically beneficial or productive use of the McClure Properties.

46. City's arbitrary and capricious application of its Zoning Ordinances and Master Plan has prevented the McClure Properties from being developed and used as set forth in the

Master Plan, denied Tollbrook all economically beneficial or productive use of the McClure Properties, and resulted in an unlawful taking without payment of just compensation.

WHEREFORE, Tollbrook respectfully requests that the Court enter a judgment in its favor and award Tollbrook damages in such amount in excess of \$25,000 as will fully compensate it for the damages it sustained, plus costs, interest and attorney fees so needlessly sustained.

COUNT II
VIOLATION OF SUBSTANTIVE DUE PROCESS

47. The allegations contained within all of the foregoing paragraphs are realleged and incorporated as if fully set forth herein

48. As applied to the McClure Properties, City's R-1B District zoning deprives Tollbrook of its due process rights secured under the United States Constitution, Amendments V and XIV, and the Michigan Constitution of 1963, Art 1, §17.

49. The R-1B District zoning does not allow a reasonable use of the McClure Properties.

50. As applied to the McClure Properties, the R-1B District zoning does not bear a substantial relationship to the health, safety and welfare of the community as a whole.

51. The R-1B District zoning, as applied to the McClure Properties, is unreasonable, arbitrary and capricious.

52. City's application of its Zoning Ordinances as applied to the McClure Properties and its decision to reject the application for conditional rezoning, the Tollbrook Rezoning Application and the Use Variance Application by ignoring objective standards, imposing standards that are not within the Zoning Ordinances, and based upon findings that were directly contrary to the evidence in the record, was arbitrary, capricious and egregious.

53. City's application of its Zoning Ordinances as applied to the McClure Properties and its decisions to reject the application for conditional rezoning, the Tollbrook Rezoning Application and the Use Variance Application has denied Tollbrook due process of law, which is the proximate cause of substantial and continuing damages.

54. In the absence of equitable relief, Tollbrook will be irreparably harmed.

55. Tollbrook has no adequate remedy at law.

56. While Tollbrook has no adequate remedy at law for future breaches, it has sustained damages resulting from City's actionable activity prior to the issuance of injunctive relief. Accordingly, damages should be assessed against City in connection with the actions it took prior to the issuance of injunctive relief and in connection with future violations of any injunction issued in this matter.

WHEREFORE, Tollbrook respectfully requests that the Court: (a) declare and adjudge the R-1B District zoning, as applied to the McClure Properties, to be unconstitutional and void; (b) declare and adjudge that City's rejection of the application for conditional rezoning, the Tollbrook Rezoning Application and the Use Variance Application constituted an arbitrary, capricious and unreasonable decision and was done in violation of Tollbrook's constitutional rights (c) enjoin City from enforcing the R-1B District zoning against the McClure Properties; (d) award Tollbrook damages in such amount in excess of Twenty-Five Thousand Dollars (\$25,000.00) as the Court deems just, as will fully and fairly compensate it for its damages; (e) grant such other relief as this Court considers appropriate under the circumstances including, but not limited to, an award of damages, expenses and attorney fees in excess of \$25,000 pursuant to 42 USC 1983 and 42 USC 1988 against City; and (f) awards Tollbrook such other relief as may be appropriate under the circumstances.

COUNT III
VIOLATION OF 42 USC 1983

57. The allegations contained within all of the foregoing paragraphs are realleged and incorporated as if fully set forth herein.

58. The City's zoning and its conduct and actions, and the conduct and actions of its agents, employees and/or those acting in concert with or under City's authority, supervision and control, were carried out under the color of an ordinance, custom, policy or other law.

59. The City's zoning and its conduct and actions denied Tollbrook of its right to the use and development of the McClure Properties and its vested rights relating to the McClure Properties.

60. Tollbrook had a legitimate claim of entitlement to and justifiable expectation of the use and development of the McClure Properties and all vested rights relating to the McClure Properties.

61. City's zoning, conduct and actions have deprived Tollbrook of its rights and privileges arising under the Constitution.

62. City's zoning, conduct and actions constitute a taking of the McClure Properties in violation of Tollbrook's civil rights.

63. City's zoning, conduct and actions constitute a denial of due process in violation of Tollbrook's civil rights.

64. As a consequence of City's actions, Tollbrook sustained monetary damages including, but not limited to, unnecessary delays, additional carrying costs and lost revenues that would have been generated by the development of the McClure Properties.

65. Tollbrook is entitled to recover damages under 42 USC 1983 against City for the violation of Tollbrook's constitutional rights.

66. In addition to compensation for its damages, pursuant to 42 USC 1983, Tollbrook is entitled to recover its attorney fees incurred in bringing this action pursuant to 42 USC 1988.

WHEREFORE, Tollbrook respectfully requests that this Court enter judgment in favor of Tollbrook and award Tollbrook an amount in excess of \$25,000 against City as compensatory damages for City's violation of civil rights pursuant to 42 USC 1983, plus costs, interest and reasonable attorneys' fees pursuant to 42 USC 1988, along with such other relief as this Court considers just and appropriate.

Respectfully Submitted,

CARSON FISCHER, P.L.C.

/s/ Robert M. Carson

ROBERT M. CARSON (P11682)

DAVID E. SCHLACKMAN (P58894)

Attorneys for Plaintiffs/Appellants

4111 Andover Road

West - Second Floor

Bloomfield Hills, MI 48302

(248) 644-4840

Dated: January 7, 2020

Exhibit "A"

On November 19, 2019, at 7:30 p.m., in the Council Chambers of Troy City Hall, Chair Clark called the Zoning Board of Appeals meeting to order.

1. ROLL CALL

Present:

- Daniel Agauas
- Michael Bossenbroek
- Glenn Clark
- Tommy Desmond
- David Eisenbacher
- Aaron Green
- Orestis Kaltsounis

Also Present:

- Paul Evans, Zoning and Compliance Specialist
- Lori Grigg-Bluhm, City Attorney

2. PROCEDURE

3. APPROVAL OF MINUTES – October 15, 2019

Moved by Green
Seconded by Agauas

RESOLVED, to approve the October 15, 2019 meeting minutes.

Yes: All

MOTION PASSED

4. APPROVAL OF AGENDA – No changes.

5. HEARING OF CASES

A. VARIANCE REQUEST, SAFET STAFA FOR TOLLBROOK WEST, LLC, 3109 ALPINE AND PARCEL 88-20-20-401-020: A use variance in accordance with the Big Beaver Zoning District. If a use variance is not granted, applicant appeals the July 22, 2019 decision of the Troy City council to deny Tollbrook West's request to rezone the property from R-1B, One Family Residential District, to BB, Big Beaver District.

Moved by: Eisenbacher
Seconded by: Kaltsounis

RESOLVED, that the use variance for the property located at 3109 Alpine currently zoned R-1B, One Family Residential, be DENIED. The Applicant has presented no

evidence establishing an unnecessary hardship, and has failed to demonstrate satisfaction of all of the elements required to be considered for a use variance request.

The Zoning Board of Appeals makes the following findings and conclusions based on the written materials, comments, and testimony of the Applicant's representatives, other interested persons, professional consultants, and other factual material presented to the Board to assist with deliberation:

1. The applicant has not demonstrated that the site cannot reasonably be used for any other use allowed within the current zoning designation of R-1B. It is the explicit finding of this Board that the property can be reasonably used for the purposes permitted in the current zoning district, R-1B.
2. There are no unique circumstances peculiar to this property. The applicant has not proven that there are certain features or conditions of the land that are generally applicable throughout the zone, nor has the applicant demonstrated, through expert testimony, that these features make it impossible to earn a reasonable return without some adjustment.

Specifically,

- a. The parcel is not exceptionally narrow or shallow tending to prevent the site from being used for any other use allowed within the current zoning designation, R-1B.

- b. There are no topographic conditions or other extraordinary situations on the parcel tending to prevent the site from being used for any other use allowed within the current zoning designation, R-1B.

3. Granting a use variance where the applicant would be allowed to develop the parcel with any allowable use under BB District zoning will alter the essential character of the adjacent neighborhood and be a detriment to adjacent properties.

4. The applicant has not identified a specific use for the property within the proposed BB District zoning, therefore, it is difficult to adequately assess whether the capacity and operations of public roads, utilities, or other facilities and services will be significantly compromised. However, the BB District in general allows for more intense uses than R-1B zoning, therefore, it is reasonable to presume the impact on the adjacent road, Alpine, which is smaller and more narrow than other roads in the BB District and which does not have enough right-of-way to construct a sidewalk, will be compromised.

5. The need for the variance request is self-created by the applicant.

BE IT FURTHER RESOLVED, That this board is not addressing that portion of the application seeking to appeal the July 22, 2019 legislative decision of the Troy City Council denying Tollbrook West's request to rezone the property located at 3109 Alpine from R-1B, One Family Residential District, to BB, Big Beaver District, because this

Board does not have jurisdiction over such a request under Troy's Zoning Ordinance Section 15.04(B).

Moved by: Green
Seconded by: Desmond

RESOLVED, that the public be permitted to comment on the three cases that were postponed from the October 2019 Zoning Board of Appeals Meeting.

Moved by: Bossenbroek
Seconded by: Green

RESOLVED, to incorporate changes to the proposed resolution.

Yes: All

Vote on Mr. Green's motion:

Yes: All

Vote on Mr. Eisenbacher's motion:

Yes: All

B. VARIANCE REQUEST, SAFET STAFA FOR TOLLBROOK, LLC, 3086, 3114, 3142 MCCLURE: A use variance in accordance with the Big Beaver Zoning District. If a use variance is not granted, applicant appeals the July 22, 2019 decision of the Troy City council to deny Tollbrook West's request to rezone the property from R-1B, One Family Residential District, to BB, Big Beaver District.

Moved by Green
Second by Desmond

RESOLVED, that the use variance for the property located at 3086, 3114, and 3142 McClure currently zoned R-1B, One Family Residential, be DENIED. The Applicant has presented no evidence establishing an unnecessary hardship, and has failed to demonstrate satisfaction of all of the elements required to be considered for a use variance request.

The Zoning Board of Appeals makes the following findings and conclusions based on the written materials, comments, and testimony of the Applicant's representatives, other interested persons, professional consultants, and other factual material presented to the Board to assist with deliberation:

1. The applicant has not demonstrated that the site cannot reasonably be used for any other use allowed within the current zoning designation of R-1B. It is the explicit

finding of this Board that the property can be reasonably used for the purposes permitted in the current zoning district, R-1B.

2. There are no unique circumstances peculiar to this property. The applicant has not proven that there are certain features or conditions of the land that are generally applicable throughout the zone, nor has the applicant demonstrated, through expert testimony, that these features make it impossible to earn a reasonable return without some adjustment.

Specifically,

a. The parcel is not exceptionally narrow or shallow tending to prevent the site from being used for any other use allowed within the current zoning designation, R-1B.

b. There are no topographic conditions or other extraordinary situations on the parcel tending to prevent the site from being used for any other use allowed within the current zoning designation, R-1B.

3. Granting a use variance where the applicant would be allowed to develop the parcel with any allowable use under BB District zoning will alter the essential character of the adjacent neighborhood and be a detriment to adjacent properties.

4. The applicant has not identified a specific use for the property within the proposed BB District zoning, therefore, it is difficult to adequately assess whether the capacity and operations of public roads, utilities, or other facilities and services will be significantly compromised. However, the BB District in general allows for more intense uses than R-1B zoning, therefore, it is reasonable to presume the impact on the adjacent road, McClure, which is smaller and more narrow than other roads in the BB District and which does not have enough right-of-way to construct a sidewalk, will be compromised.

5. The need for the variance request is self-created by the applicant.

BE IT FURTHER RESOLVED, That this board is not addressing that portion of the application seeking to appeal the July 22, 2019 legislative decision of the Troy City Council denying Tollbrook LLC's request to rezone the property located at 3086, 3114, 3142 McClure from R-1B, One Family Residential District, to BB, Big Beaver District, because this Board does not have jurisdiction over such a request under Troy's Zoning Ordinance Section 15.04(B).

C. VARIANCE REQUEST, OLIMPIU JR. & ADRIANA L. APAHIDEAN, 826 MARENGO: A variance to allow a parcel of land to be divided into two parcels, each having 80 feet of width and frontage. The Zoning Ordinance requires the new parcels to have 100 feet of width and frontage.

Moved by Agauas

Second by Desmond

RESOLVED, to grant the request.

Moved by Bossenbroek
Second by Agauas

RESOLVED, to amend the motion that, before lot split approval, portions of the existing home be removed to comply with building setbacks for the proposed parcels.

Yes: All

MOTION PASSED

Vote on the Agauas motion:

Yes: All

MOTION PASSED

D. VARIANCE REQUEST, KENNETH SHAHEEN, 2395 KINGSBURY: 1) a variance to allow a 17 foot tall garage where 14 feet maximum is allowed, 2) a variance to allow a two story garage where only one story is allowed, 3) a variance to allow a 3 foot setback from the property line where 6 feet minimum setback is required, and 4) a variance to allow the building to be in the front yard where the Zoning Ordinance allows it only in the rear yard.

Moved by Eisenbacher
Second by Desmond

RESOLVED, to postpone the request to the next meeting.

Yes: Agauas, Desmond, Eisenbacher, Kaltsounis, Green, Bossenbroek
No: Clark

MOTION PASSED

E. VARIANCE REQUEST, BRENDA SCHLUTOW, 23 SHEFFIELD: A variance to allow an addition to the home that will be 7 feet from the rear property line. The Zoning Ordinance requires the addition to be 35 feet from the rear property line

Moved by Eisenbacher
Second by Desmond

RESOLVED, to grant the request.

Yes: Desmond, Eisenbacher, Kaltsounis, Clark
No: Agauas, Green, Bossenbroek

MOTION PASSED

6. COMMUNICATIONS – None.
7. MISCELLANEOUS BUSINESS – None
8. PUBLIC COMMENT – One comment.
9. ADJOURNMENT – The Zoning Board of Appeals meeting ADJOURNED at 9:35 pm.

Respectfully submitted,



Glenn Clark, Chair



Paul Evans, Zoning and Compliance Specialist