

Chair Abitheira called the virtual Regular meeting of the Building Code Board of Appeals to order at 3:00 p.m. on November 4, 2020.

1. ROLL CALL

Members Present

- Gary Abitheira
- Teresa Brooks
- Matthew Dziurman
- Sande Frisen
- Mark F. Miller, City Manager

Support Staff Present

- Salim Huerta, Building Official
- Jackie Ferencz, Planning Department Administrative Assistant
- Kathy L. Czarnecki, Recording Secretary

2. SUSPENSION OF BUILDING CODE BOARD OF APPEALS BYLAWS

Chair Abitheira introduced the procedure to be followed for a remote meeting.

Moved by: Miller
Support by: Brooks

RESOLVED, That the Troy Building Code Board of Appeals hereby allows all members to participate in public meetings by electronic means as allowed by Public Act 228 of 2020, since an in-person meeting could detrimentally increase exposure of board members and the general public to COVID-19, and would also be difficult to facilitate in light of the Michigan Department of Health and Human Services epidemic orders protecting public health and safety.

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 to 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 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 (5)

MOTION CARRIED

3. APPROVAL OF MINUTES

Moved by: Brooks
Support by: Frisen

RESOLVED, To approve the minutes of the January 8, 2020 Regular meeting as submitted.

Yes: All present (5)

MOTION CARRIED

4. HEARING OF CASES

A. **VARIANCE REQUEST, Vladimir Korcari, 2904 Thames** – This property is a corner lot and a double front setback is required per Chapter 83, Section 2-A. As such, the proposed fence cannot be placed in the 25-foot required Thames Drive front setback or the 25-foot required Dover Drive setback as defined for the R-1E Zoning District. This corner lot does not have a common rear yard relationship with a lot in the same block. Therefore, the only fence height allowed is that of a maximum height of 30 inches. The petitioner is requesting a total of 106 feet, 2 inches of a 4-foot tall non-obscuring chain link fence plus a 6-foot long, 4-foot tall chain link gate variance in the required Dover Drive setback.

The petitioner was granted Building Permit PF 2019-0219 for a 6-foot PVC privacy fence that did not require a variance. However, the permit was not closed since the 6-foot fence encroaches by 9 inches into the Dover Drive setback. The petitioner must correct the encroachment.

Mr. Huerta read the variance request narrative and briefly reviewed the request. He explained that either the Board can approve the 9-inch variance to correct the encroachment or the administration will ask the petitioner to move the fence back 9 inches.

The petitioner Vladimir Korcari was present; his son spoke on behalf of his father. It was expressed that a fence would provide safety for the grandchildren and protection from neighboring dogs and traffic. It was stated the 9-inch encroachment was in error by the fence contractor.

There was discussion on:

- Information and pictures submitted with request.
- Existing 4-foot high fence.
- Fence material.

Ms. Ferencz reported no public comment on the variance request.

Moved by: Frisen
Support by: Dziurman

RESOLVED, To **approve** the variance as requested including the 9-inch extension of the obscuring PVC fence, for the following reason:

1. The variance would not be contrary to the intent of Chapter 83.

Yes: All present (5)

MOTION CARRIED

- B. **VARIANCE REQUEST, Austin and Rachael Czarnik, 2984 Cedar Ridge Drive** – This property is a double front corner lot. Since it is in the R1-C use district, as such it has a 30 foot required front setback along both Cedar Ridge Drive and West Big Beaver. The petitioner is requesting a variance to install a 6-foot high, 85 feet long privacy PVC Chesterfield, Clay fence set back from 4 to 5 feet from the property line along the West Big Beaver side where the City Code limits fences to a 48 inches height due to the back to back relationship to the neighboring lot. The total length of the fence requested by the petitioner to be permitted by the Building Department is 151 feet, which 66 feet of the fence do not require a variance.

Mr. Huerta read the variance request narrative.

Chair Abitheira disclosed he built the home at 2984 Cedar Ridge which was later sold to the Czarnik family. Mr. Abitheira confirmed he is no longer the owner of the property.

The Board voiced no objections to Chair Abitheira deliberating and acting on the matter.

The petitioner Austin and Rachael Czarnik were present. Ms. Czarnik said the fence would provide privacy and security for their dog and future child. She said the requested setback would provide more yard for play.

There was discussion on:

- Information and pictures submitted with request.
- Clarification on setback lines; relationship to driveway.
- Diagonal setback line; flows with sidewalk.
- Existing landscape, trees obscures visual of fence.

Ms. Ferencz reported one public comment and read the email message.

- Michael and Paula Koran of 3452 Dorothea Court, Troy, in support. (email)

Moved by: Frisen
Support by: Brooks

RESOLVED, To **approve** the variance as requested, for the following reason:

1. The variance would not be contrary to the intent of Chapter 83.

Yes: All present (5)

MOTION CARRIED

C. **VARIANCE REQUEST, Joanna Gay, 4437 Yanich** – This property is a double front corner lot. Since it is in the R1-C use district, as such it has a 30 foot required front setback along both Yanich Drive and Longfellow Drive. The petitioner is requesting a variance to install a 4-foot high, 118 feet non-obscuring wood fence along Longfellow Drive with a setback of one foot away from the property line, where City Code limits fences to 30 inches high due to the fact that there isn't a back to back relationship to the neighboring rear lot. The total length of the fence requested by the petitioner to be permitted by the Building Department is 250 feet, which 132 feet of the fence do not require a variance.

Mr. Huerta read the variance request narrative.

The petitioner Joanna Gay was present (audibly only). Ms. Gay said the fence would provide privacy and security for their children and dog. She said a 48-inch high iron rod fence would provide protection and they could utilize more of their yard with a one foot setback. Ms. Gay stated the fence would also provide additional safety for their children because the neighbor to the rear has a pool with a chain link fence only.

There was discussion on:

- Information and pictures submitted with request.
- Corner triangular visual clearance.
- Requested setback; proximity to sidewalk, pedestrian traffic.
- Existing trees in relationship to property.

Ms. Ferencz reported three public comments. Ms. Ferencz read the email messages and played the voicemail message.

- Stephen and Jill Bachle, 640 Longfellow, Troy; in support. (email)
- William and Gina Sipila, 654 Longfellow, Troy; in opposition. (email)
- David and Linda Sysko, 4438 Yanich Troy; in opposition. (voicemail)

Moved by: Frisen
Support by: Dziurman

RESOLVED, To **approve** the variance request with the change that the fence line be no closer than 10 feet off of the right of way on Longfellow, for the following reason:

1. The variance would have no conflict with the intent of Chapter 83.

Yes: All present (5)

MOTION CARRIED

- D. **VARIANCE REQUEST, Carl and Jeanette Losey, 485 Booth** – This property is a double front corner lot. Since it is in the R1-B use district, as such it has a 40 foot required front setback along both Booth Road and Montclair Avenue. The petitioner is requesting a variance to install a 6-foot high, 243 feet long vinyl privacy fence with a setback of 3 feet from the property line along Booth Road and Montclair Avenue, returning the fence to the house with two gates and a 10 feet short section. The variance is requested for all sections, since all fall on the setback restricted area, and where the City Code limits fences to 48 inches high due to the fact that there is a back to back relationship to the neighboring rear lot.

Mr. Huerta read the variance request narrative.

The petitioner Carl and Jeanette Losey were present. Ms. Losey said a fence would provide privacy and security for their family and dogs. She indicated the corner is very active and people can see into their living room. Ms. Losey said their submission included photographs of similar properties in their neighborhood with fences and they have signatures of ten neighbors who stated no objections to the variance request.

There was discussion on:

- Information and pictures submitted with request.
- Fence as relates to neighborhood environment with large open lots.
- Required setback in relation to house.
- Proposed setback as relates to right of way; dimension differentials of right of way.
- Signatures of neighbors in support; one of which submitted email message in opposition.
- 12 foot easement; DTE power lines overhead.
- Landscaping to soften effect.
- Width of lot.
- Fence material; professional installation, woodgrain and taupe in color.

Ms. Ferencz reported two public comments. Ms. Ferencz read the email message and played the voicemail message.

- Erin Bridge, 472 E. Hurst, Troy; in opposition (email)
- Larry Jonas, 473 E. Hurst, Troy; in support (voicemail)

Moved by: Abitheira
 Support by: Miller

RESOLVED, To **approve** the variance request with a fence to be 6 feet off the lot line with no less than 10 bushes, for the following reason.

1. The petitioner has a hardship or practical difficulty resulting from the unusual characteristics of the property that precludes reasonable use of the property.

Yes: Abitheira, Brooks, Dziurman, Miller
 No: Frisen

MOTION CARRIED

- E. **VARIANCE REQUEST, Linda Shears, 1538 Wrenwood Drive** – This property is a double front corner lot. Since it is in the R1-C use district, as such it has 30 foot required front setback along West Big Beaver. The required setback from the property line. The petitioner is requesting a variance to install an 8-foot high, 80 feet long obscuring wood fence at the back-property line running North to South and two sections that will start at 6 feet high and will increase in height to 8 feet once connecting to the back-lot line fence section. These two fence sections will run from east to west on the side lot lines. The 68 feet east to west section on the West Big Beaver property line will require a variance that will allow for it to be re-installed at 20 feet from the property line at a 6 feet height.

Mr. Huerta read the variance request narrative.

Mr. Miller disclosed he has known the petitioner for many years and worked with her on the Best of Troy Committee for the Troy Chamber of Commerce. He said he has no conflict of interest in the matter.

The Board voiced no objections to Mr. Miller deliberating and acting on the matter.

Petitioner Linda Shears was present. Ms. Shears said she had a wilderness that provided visual privacy and acted as a sound barrier from Big Beaver and the church located behind her until DTE cut down all the trees. She said her property is visually wide open. Ms. Shears indicated she is asking for an 8 foot high fence only along the rear property abutting the church; the existing fence in disrepair would be replaced with a 6 foot high fence. She indicated she did not talk to surrounding neighbors about her request.

Mr. Huerta clarified the variance request is for an 8 foot high fence in the rear. A variance is not required to replace the remaining six-foot fence.

There was discussion on:

- Information and pictures submitted with request.
- Responsibility of church to provide barrier of some type; fence, wall and/or landscape treatment; administrative decision through Planning Department.
- Elevation difference between house and church.
- Locations, if any, of 8-foot high fences in residential neighborhoods.
- Landscaping along rear fence perimeter.
- Commercial use adjacent to home.

Ms. Ferencz reported one public comment. Ms. Ferencz played the voicemail message.

- No name, address given; in opposition. (voicemail)

Moved by: Miller
Support by: Frisen

RESOLVED, To **approve** the variance request, for the following reasons:

1. The property abuts a non-residential use.
2. There are existing grade issues.

Discussion on the motion on the floor

Mr. Dziurman addressed a graduation of the fence height to the setback along the church property.

Moved by: Dziurman
Support by: Brooks

RESOLVED, To **amend** the motion on the floor to include that the 8 foot high fence starts at the setback line and that the 6 foot high fence is granted on the north side as it is currently but that 10 foot of it be at 6 foot and increase to 8 foot on the back side property line facing east.

Yes: Brooks, Dziurman
No: Abitheira, Frisen, Miller

MOTION DENIED

Vote on the original motion on the floor

Yes: Abitheira, Frisen, Miller
No: Brooks, Dziurman

MOTION CARRIED

F. **VARIANCE REQUEST, Jessica Harrington, 385 Cotswold** – This property is a double front corner lot. Since it is in the R1-B use district, as such it has 40 foot required front setback along both Cotswold Drive and Folkstone Drive. The petitioner is requesting a variance to install a 4-foot high, 144 feet long non-obscuring aluminum fence where City Code limits fences to 30 inches high due to the fact that there isn't a back to back relationship to the neighboring lot. The total length of fence requested by the petitioner to be permitted by the Building permit is 307 feet, which 163 feet of the fence do not require a variance.

Mr. Huerta read the variance request narrative.

Petitioner Jessica Harrington was present. Ms. Harrington said a fence would provide privacy and security for their small children and a dog in the future. She said the existing fence is in disrepair of which a small portion of that fence was removed for the pool. Ms. Harrington said the requested setback would provide more use of their yard.

There was discussion on:

- Information and pictures submitted with request.
- Clearance for visibility of neighboring driveway.
- Requested setback as relates to pedestrian traffic.
- Existing trees; two small ornamental trees, pine trees removed.
- Similar corner lots in neighborhood.
- Pool; usable space around pool.

Ms. Ferencz reported there was no public comment on this item.

Moved by: Brooks
Support by: Abitheira

RESOLVED, To **grant** the variance request for relief of Chapter 83 for a non-obscuring 4 foot high fence, and that there be a 10 foot setback of the fence on the northwest corner and the fence along the west line be set back 5 feet, for the following reason:

1. The variance would not be contrary to the public interest or general purpose and intent of chapter 83.

Yes: All present (5)

MOTION CARRIED

G. **VARIANCE REQUEST, Karen E. Arnette, 4988 Calvert Drive** – This property is a double front corner lot. Since it is in the R1-C use district, as such it has a 30 foot required front setback along both East Long Lake Road and Calvert Drive. The petitioner is requesting a variance to install a 4-foot high, 140 feet non-obscuring metal fence, set back 17.5 feet from the property line along the East Long Lake Road side where City Code limits fences to 30 inches high due to the fact that there

isn't a back to back relationship to the neighboring lot. The total length of the fence requested by the petitioner to be permitted by the Building Department is 140 feet, which all 140 feet of the fence require a variance. At that location the East Long Lake Road is 120 feet R.O.W

Mr. Huerta read the variance request narrative.

The petitioner Karen Arnett was present. Ms. Arnett said the proposed setback would allow for easier maintenance of the yard. The fence would separate pine trees and mulch on one side and grass on the other side.

There was discussion on:

- Information and pictures submitted with request.
- Busy intersection along Long Lake Road.
- Material and type of fence.

Ms. Ferencz reported no public comment on the variance request.

Moved by: Frisen
Support by: Dziurman

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

1. The variance would not be contrary to the public interest or general purpose and intent of Chapter 83.

Yes: All present (5)

MOTION CARRIED

- H. **VARIANCE REQUEST, Steven Rockoff, 2949 Vineyards Drive** – This property is a double front corner lot. Since it is in the R1-A use district, as such it has a 40 foot required front setback along both Vineyards Drive; (East-West) and Vineyards Drive. (North-South section). The petitioner is requesting a variance to install a 5-foot high, 70 feet long non-obscuring metal fence set back 21.5 feet from the property line along Vineyards Drive (North-South section) where City Code limits fences to 30 inches high due to the fact that there isn't a back to back relationship to the neighboring rear lot. The total length of fence requested by the petitioner to be permitted by the Building Department is 218.56 feet, which 148.56 feet of the fence will not require a variance.

Mr. Huerta read the variance request narrative.

The petitioner Steven Rockoff was present. Mr. Rockoff said the fence would provide privacy and security of their young children and the use of their pool structure. Mr. Rockoff said he would like to replace the existing fence, which is a combination of metal and chicken wire and not to code, with an ornamental fence with safety features. Mr. Rockoff said the existing two tree lines and arborvitaes and additional

arborvitaes he would plant would visually obscure the fence and property. He shared that he recently spoke with neighbors and believe they are amenable to the variance request.

Ms. Brooks asked the petitioner to use caution with any fence installation because of the geothermal borings along the west side of the property line.

There was discussion on:

- Information and pictures submitted with request.
- Landscaping; visually obscuring, aesthetically pleasing.
- Existing fence; approximate 3.5 feet in length, no record of permit.
- Homeowners Association restrictions; enforcement matter between homeowner and association.
- Hardship; unusual characteristics of property.
- Pool; security, safety features, liability to homeowner.
- Pool structure; door openings.

Ms. Ferencz reported two public comments. Ms. Ferencz read the email messages.

- Martin and Karen Makowski, 2905 Vineyards, Troy; Baileys Homeowners Association; in opposition. (email)
- William and Cecily Roney, 5164 Highmount, Troy; in opposition. (email)

Moved by: Miller
Support by: Brooks

RESOLVED, To **grant** the variance request, for the following reasons:

1. The variance would not be contrary to the public interest or general purpose and intent of Chapter 83.
2. The variance does not adversely affect properties in the immediate vicinity of the proposed fence.
3. The petitioner has a hardship or practical difficulty resulting from the unusual characteristics of the property that precludes reasonable use of the property.
4. There exists heavy growth, most of the property is built upon and the property needs proper securing for safety reasons.

Yes: All present (5)

MOTION CARRIED

The Board agreed at the request of Petitioner Anthony Tony Podsiadlik of 2374 Cumberland to move Agenda item I and Agenda item K to the end of the agenda and consider simultaneously.

- J. **VARIANCE REQUEST, Katherine Pawlowski, 2718 Renshaw Drive** – This property is a double front corner lot. Since it is in the R1-C use district, as such it has 30 feet required front setback along both Renshaw Drive and Argyle Drive. The petitioner is requesting a variance to install a 4-foot high, 150 feet non-obscuring aluminum fence, setback 1 foot from the property line along the Argyle Drive side where City Code limits fences to 30 inches high due to the fact that there isn't a back to back relationship to the neighboring lot. The total length of the fence requested by the petitioner to be permitted by the Building Department is 233 feet, which 83 feet of the fence do not require a variance.

Mr. Huerta read the variance request narrative.

The petitioner Katherine Pawlowski was present. Ms. Pawlowski said the fence would provide privacy and safety for their two small children and dog. She said placing the fence at the required setback would be close to the house and they would lose their play area.

There was discussion on:

- Information and pictures submitted with request.
- Setback in relation to curvature of road, sidewalk, existing landscaping.
- Visual barrier going north on Argyle.
- Similar lots in neighborhood, environment of neighborhood.
- Material and type of fence.

Ms. Ferencz reported there was no public comment on this item.

Moved by: Brooks

Support by: Miller

RESOLVED, To **approve** the variance request, for the following reasons:

1. The variance would not be contrary to the intent of Chapter 83.
2. The variance does not adversely affect surrounding properties.
3. There is a need for the property owner for the appeal.

Discussion on the motion on the floor

Mr. Frisen brought attention to the Board that the motion does not specify a 5 foot setback off the right of way, as discussed.

Moved by: Frisen
 Support by: Brooks

RESOLVED, To **amend** the motion on the floor to provide a 5 foot setback off the right of way.

Yes: All present (5)

MOTION CARRIED

Vote on the motion on the floor as amended

Yes: All present (5)

- I. **VARIANCE REQUEST, Anthony J. Podsiadlik, 2374 Cumberland Drive** – This property is a double front corner lot. Since it is in the R1-C use district, as such it has a 30 foot required front setback along both Cumberland Drive and Greensboro Drive. The petitioner is requesting a variance to install a 6-foot high, 112 feet long vinyl privacy fence, setback 5 feet from the property line along the Greensboro Drive side where the City Code limits fences to a 48 inches height due to the back to back relationship to the neighboring lot. The total length of the fence requested by the petitioner to be permitted by the Building Department is 231 feet, which 119 feet of the fence do not require a variance.

Mr. Huerta read the variance request narrative.

The petitioner Anthony Podsiadlik was present. Mr. Podsiadlik said the fence would provide privacy and safety for their children and dog. He said there is greenery but no fence on either side of the property line to the south that is shared with Michael Sawyers, the next applicant at 2385 Hillcrescent. Mr. Podsiadlik said he and Mr. Sawyers would like to share the rear fence, and he would extend the fence on his property as outlined in the submission.

There was discussion on:

- Information and pictures submitted with request.
- Fence as relates to environment of neighborhood; open large lots, height obscurity.
- Setback distance from property line.
- Fence gate in relation to house.
- Wall effect of obscuring fence.
- Safety of pedestrian traffic.
- Visual clearance to adjacent driveway to north.

Ms. Ferencz reported no public comment on the variance request.

The Board asked the petitioner’s consideration of setting the fence back further than the requested 5 feet.

There was conversation between the two petitioners, Mr. Podsiadlik and Mr. Sawyers. They informed the Board their desire to stay with the requested 5 foot setback, and should the variance request be denied, they would go to their “Plan B” and install a chain link fence with arborvitaes.

Mr. Huerta confirmed a 4 foot non-obscuring fence along the back to back relationship between the two properties would be allowed by right and a variance would not be required.

Moved by: Frisen
Support by: Dziurman

RESOLVED, To **deny** the request, for the following reasons:

1. The variance would be contrary to the intent of Chapter 83.
2. The petitioner failed to demonstrate any hardship or practical difficulty.

Yes: All present (5)

MOTION CARRIED

K. **VARIANCE REQUEST, Michael A. Sawyers, 2385 Hillcrescent Drive** – This property is a double front corner lot. Since it is in the R1-C use district, as such it has a 30 foot required front setback along both Hillcrescent Drive and Greensboro Drive. The petitioner is requesting a variance to install a 6-foot high, 120 feet long Vinyl privacy fence section that requires a variance. It will be setback 5 foot from the property line along the Greensboro Drive side where the City Code limits fences to a non-obscuring 48 inches height due to the back to back relationship to the neighboring rear lot. The total length of the fence requested by the petitioner to be permitted by the Building Department is 200 feet, which 80 feet of the fence do not require a variance.

Mr. Huerta read the variance request narrative, correcting the narrative to read a 5 foot setback from the property line.

Ms. Ferencz reported one public comment. Ms. Ferencz played the voicemail message.

- Sue Parkinson, 2369 Hillcrescent; in support. (voicemail)

The petitioner Michael Sawyers was no longer remotely connected.

Moved by: Frisen
Support by: Abitheira

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

1. The variance would be contrary to the public interest or general purpose and intent of Chapter 83.
2. The petitioner failed to demonstrate any hardship or practical difficulty on the site.

Yes: All present (5)

MOTION CARRIED

5. COMMUNICATIONS – None
6. PUBLIC COMMENT – None
7. MISCELLANEOUS BUSINESS

There was discussion on:

- Format of public comment received for remote meetings as relates to State guidelines and Open Meetings Act.
- In-person Board meetings; administration working on feasible plan.
- Mr. Huerta announced to date there is one application on the December agenda.

8. ADJOURNMENT

The virtual Regular meeting of the Building Code Board of Appeals adjourned at 6:35 p.m.

Respectfully submitted,



Gary Abitheira, Chair



Kathy L. Czarnecki, Recording Secretary