



500 West Big Beaver  
Troy, MI 48084  
troymi.gov

## CITY COUNCIL AGENDA ITEM

Date: January 20, 2021

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney  
Allan T. Motzny, Assistant City Attorney

Subject: Wendy and Thomas Boike v City of Troy and Troy ZBA



Wendy and Thomas Boike (Appellants) have filed a claim of appeal with the Oakland County Circuit Court challenging a decision of the Troy Zoning Board of Appeals (ZBA) denying a variance request. A copy of the claim of appeal is attached. The appeal involves property located on Park Manor in the Parkview on the Beach subdivision that was approved by Troy City Council on January 23, 2017 under the Cluster Option provision of the zoning ordinance. A cluster development involves grouping homes within a development so that the remaining land on the site can be preserved as open space. The developer receives a corresponding density bonus resulting in smaller lot sizes than would otherwise be permitted in a standard development.

The Appellants sought a variance from the rear yard setback provision so they could build a deck that would be within three feet of the rear property line where a twenty-five-foot setback is required. At the ZBA hearing, it was noted the developer constructed the home with an elevated door to the rear yard, but only left 25 feet between the back of the home and the rear property line. Thus, any addition extending into the rear yard would require a variance. However, it is possible to construct steps from the door to the rear yard or to a patio without a variance. The ZBA denied the variance on the ground there was no showing the applicant satisfied the criteria needed to establish a practical difficulty as required for a variance.

The appeal was assigned to Oakland County Circuit Court Judge D. Langford Morris. Under the Court Rule, the City Clerk must file all documents it has related to the the variance request (Record on Appeal) with the Court. Once the Record on Appeal is filed, appellate briefs will be filed in accordance with the Michigan Court Rules or a scheduling order if issued by the Court. The Court may schedule oral argument or it may decide the case without a hearing.

The Court must determine whether the ZBA decision is compliant with the Constitution and the laws of the State; whether it was based on proper procedure; whether it was supported by competent, material, and substantial evidence; and whether it was a reasonable exercise of discretion. The Court does not have an ability to substitute its judgment in any such appeal. After a review of the ZBA record, the Court may affirm, reverse, modify the decision of the ZBA, or remand it for more detailed findings.

The proposed resolution authorizes our office to represent the City's and ZBA's interests in this case. 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](http://www.oakgov.com/efiling).

**STATE OF MICHIGAN  
OAKLAND COUNTY CIRCUIT COURT**

WENDY AND THOMAS BOIKE,

2021-185503-AV

Appellant,

Case No.:

JUDGE D. LANGFORD

Judge:

MORRIS

v.

CITY OF TROY and the CITY OF TROY  
ZONING BOARD OF APPEALS,

Appellee.

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SIMEN, FIGURA & PARKER, PLC

By: Patric A. Parker (P30486)

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**CLAIM OF APPEAL**

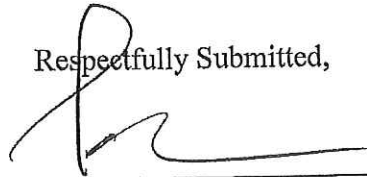
WENDY AND THOMAS BOIKE claim an appeal from the decision made in a meeting which occurred on November 17, 2020, the minutes for which were approved on December 15, 2020, by the City of Troy Zoning Board of Appeals and, in support, states:

1. Appellant's residence is at 4895 PARK MANOR, Troy, Michigan in Oakland County, and the real property for which the variance was sought (the Appellant's residence) is located in the City of Troy, Oakland County.
2. The City of Troy Zoning Board of Appeals conducted a hearing on a variance request by the Appellants to:
  - a. Allow the construction of a deck, approximately 18 feet in depth, behind the existing house;
  - b. The proposed deck would reach to approximately 3 feet from the rear line of the condominium unit;

- c. The City of Troy Zoning Ordinance requires a 25 foot setback, so the requested variance would be for 22 feet; and
  - d. This request will be referred to as the "Variance Request".
3. In its decision made in a meeting which occurred on November 17, 2020, the minutes for which were approved on December 15, 2020, the City of Troy Zoning Board of Appeals denied the Variance Request. A copy of the decision contained in the minutes for that meeting is attached as Exhibit 1.
4. Appellant appeals the decision pursuant to Section 606 of the Michigan Zoning Enabling Act, MCL 125.3606.
5. Venue in this court is based on the fact that the real property for which the variance was sought is located in the City of Troy.
6. The Variance Request was denied even though information presented at the hearing clearly showed that, pursuant to Article 15, Section 15.04 E:
- a. Literal enforcement of the provisions of this ordinance would involve practical difficulties for the applicant, in that the house as purchased contains a door in the rear of the house, which without a variance to construct a deck, drops off dangerously many feet to the ground below; and
  - b. Exceptional characteristics of property for which the variance is sought make compliance with dimensional requirements substantially more difficult than would be the case for the great majority of properties in the same zoning district.

WHEREFORE Appellants pray that this Honorable Court reverse the decision of the Zoning Board of Appeals, and grant the request for variance sought by the Applicants, and grant such additional relief as is warranted.

Respectfully Submitted,



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Dated: \_\_\_\_\_

1/5/2021

# EXHIBIT 1



On November 17, 2020 at 7:30 p.m., via remote meeting using the GoTo Meeting platform, Chairman Clark called the Zoning Board of Appeals meeting to order.

1. ROLL CALL

Present:

Glenn Clark  
Aaron Green  
Thomas Desmond  
David Eisenbacher  
James McCauley  
Michael Bossenbroek  
Sadek Rahman

Also Present:

Paul Evans, Zoning and Compliance Specialist  
Allan Motzny, Assistant City Attorney  
Jackie Ferencz, Administrative Assistant, Planning Department  
Bob Laux, Information Technology

2. PROCEDURE

3. MODIFICATION OF ZONING BOARD OF APPEALS RULES OF PROCEDURE

Moved by McCauley  
Seconded by Desmond

RESOLVED, to approve resolution modifying Rules of Procedure.

Yes: All

MOTION PASSED

4. APPROVAL OF MINUTES – March 17, 2020

Moved by Eisenbacher  
Seconded by Green

RESOLVED, to approve the March 17, 2020 meeting minutes.

Yes: All

MOTION PASSED

5. APPROVAL OF AGENDA – Modify variance description for item 6A

Moved by Eisenbacher  
Seconded by Desmond

RESOLVED, to approve the agenda with proposed modification.

Yes: All

MOTION PASSED

6. HEARING OF CASES:

- A. VARIANCE REQUEST, ARTHUR KALAJIAN, 2970 E LONG LAKE: A variance request to 1) to expand a nonconforming building, 2) to construct a building addition 77 feet from the Dequindre property line where the Zoning Ordinance requires a 10 foot "build to" line, and 3) to construct a building addition 13.61 feet from the west property line where the Zoning Ordinance requires a 30 foot setback.

MOTION by Eisenbacher  
Second by Desmond

RESOLVED, to approve the request.

MOTION by Clark  
Second by Eisenbacher

RESOLVED, to amend motion requesting additional screening of shrubbery to further enhance landscaping and create a greenbelt around property with emphasis on the west side of property.

Yes: Clark, Eisenbacher  
No: McCauley, Rahman, Bossenbroek, Green, Desmond

MOTION FAILS

MOTION by Eisenbacher  
Second by Desmond

RESOLVED, to approve the request.

Yes: Rahman, Clark, Desmond, Bossenbroek, Eisenbacher, McCauley  
No: Green

MOTION PASSED

- B. VARIANCE REQUEST, WENDY AND TOM BOIKE, 4895 PARK MANOR: A variance request to construct a deck 3 feet from the rear property line. The Zoning Ordinance requires the deck to be at least 25 feet from the rear property line.

Moved by Green

Second by McCauley

RESOLVED, to deny the request.

Yes: Rahman, Clark, Green, Bossenbroek, McCauley

No: Desmond, Eisenbacher

MOTION PASSED

- C. VARIANCE REQUEST, ELLEN YERKES FOR ANTONELLI LANDSCAPE, 4062 CHATWAL: A variance request to construct a portion of a swimming pool in the front yard. The Zoning Ordinance requires swimming pools to be in the rear yard, behind the front of the principal building.

Moved by Eisenbacher

Second by Green

RESOLVED, to approve the request.

Yes: All

MOTION PASSED

- D. VARIANCE REQUEST, BRIAN VAN HORN, 1086 SHALLOWDALE: A variance request to maintain a recently constructed shed in the front yard. The Zoning Ordinance requires sheds to be in rear yards. The shed was constructed without first receiving the required building permit.

Moved by McCauley

Second by Green

RESOLVED, to deny the request.

Yes: Desmond, Eisenbacher, McCauley, Bossenbroek

No: Green, Rahman, Clark

MOTION PASSED

- E. VARIANCE REQUEST, JOHN L. & LAURA ZAPTYTOWSKI, 2540 KINGSTON: A variance request to replace the sunroom with a new one that will be 36.9 feet from the rear property line. The Zoning Ordinance requires the addition to be at least 40 feet from the rear property line. The proposed replacement structure will be the same size as existing.

Moved by McCauley

Second by Green

RESOLVED, to approve the request.



Yes: ALL

MOTION PASSED

- F. VARIANCE REQUEST, LOUIE AND SHARI MESSINA, 3910 FORGE: A variance request to construct a home addition 27.5 feet from the rear property line. The Zoning Ordinance requires the addition to be at least 40 feet from the rear property line.

Moved by Eisenbacher  
Second by Desmond

RESOLVED, to approve the request.

Yes: Eisenbacher, Desmond  
No: McCauley, Green, Rahman, Clark, Bossenbroek

MOTION DENIED

- G. VARIANCE REQUEST, OLLIE APAHIDEAN, VACANT-BLACK OAK PARCEL (88-20-11-226-004): A variance to split a property into 3 properties, variance to allow two of the properties to have lot width and frontage of 30 feet, and the third to have zero lot width and frontage. The Zoning Ordinance requires each property to have 85 feet lot width and frontage.

Moved by Eisenbacher  
Second by Desmond

RESOLVED, to postpone to December 15, 2020 ZBA meeting.

Yes: ALL

MOTION PASSED

7. ELECT CHAIR AND VICE CHAIR:

Moved by Eisenbacher  
Second by Green

RESOLVED, to nominate Glen Clark Chair and Michael Bossenbroek Vice-Chair.

Yes: ALL

MOTION PASSED

8. PUBLIC COMMENT: None

9. MISCELLANEOUS BUSINESS – Mr. Evans provided an report update on items from March 2020 meeting: annual report, training/case study reviews, and sample motions
10. PUBLIC COMMENT: None
11. ADJOURNMENT – The Zoning Board of Appeals meeting ADJOURNED at 12:28 a.m.

Respectfully submitted,

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Glenn Clark, Chairman

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Paul Evans, Zoning and Compliance Specialist

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