The Board of Zoning Appeals meeting was called to order by Chair Lambert at 7:30 p.m. on April 19, 2011, in the Council Chamber of the Troy City Hall.

1. ROLL CALL

Present
Michael Bartnik, Vice Chair
Glenn Clark
Kenneth Courtney
William Fisher
A. Allen Kneale
David Lambert, Chair
Thomas Strat

Also Present
Paul Evans, Zoning and Compliance Specialist
Susan Lancaster, Assistant City Attorney
Stuart Filler, Recording Secretary

Chair Lambert reviewed the meeting procedure and introduced the Board members and staff. Mr. Strat is the Board liaison to the Planning Commission. Chair Lambert said that a new Zoning Ordinance was adopted last night and will soon go into effect.

2. APPROVAL OF MINUTES

Resolution #BZA 2011-04-18
Moved by Bartnik
Seconded by Strat

MOVED, To approve the March 15, 2011, regular meeting minutes with the following corrections:

p. 3 - after "Ordinance Section 39.10.03" and the sentence on the City staff presentation: delete the following paragraph and the part of the third paragraph before "appellant Harry Kwon;
p. 3 - insert a period after "and to Sunoco, to all concerned," and delete the remainder of the sentence; resume at "The wood portion is removable";
p. 4 - replace "Mr. Bartnik said the wall" with "A Board member said the wall";
p. 4 - replace "too small for a condo" with "too small for a site condo."

Yes: All present (7)

MOTION CARRIED

***Resolution* #BZA 2011-04-19**
Moved by Courtney
Seconded by Clark

MOVED, To postpone resumption of the hearing on 4820 Livernois (Agenda item 3C) to May 17, 2011, as the petitioner has requested.

Chair Lambert asked who was present for that item, and an individual present for that item chose to come back next month rather than comment tonight on the motion on the floor.

Vote on the motion on the floor.

Yes: All present (7)

MOTION CARRIED.

3. POSTPONED ITEMS

A. **VARIANCE REQUEST, HARRY KWON, 38921 DEQUINDRE** - A variance from the requirement that the required obscuring wall along the west property line be constructed of common or face brick, or of poured or precast masonry or decorative block, in order to maintain the existing wood fence

ORDINANCE SECTION: 39.10.03

Mr. Evans summarized the facts and history of the case. This continues the hearing that the Board adjourned on March 15, 2011, so that the applicant could provide more documentation. The new Zoning Ordinance, however, which the City adopted yesterday, gives the applicant an alternative. Instead of masonry screening, the ordinance requires screening by means of plantings. Plantings of the required type and distances apart could be administratively approved and would satisfy the ordinance without the need for a variance. The appellant could replace the wood portion with masonry under the old zoning ordinance, or with plantings under the new ordinance. Mr. Evans pointed out on the City GIS map where the Sunoco pipeline appears to be located in the area.

Appellant Harry Kwon said the easement documents prohibit any “permanent structure.” Sunoco Pipeline L.P. holds that this excludes any masonry wall across the easement but that it permits wooden fencing. Of the 125 foot rear property line, Mr. Kwon said the wood fence portion is about 20 feet or the approximate width of the easement.

Mr. Bartnik referred to a November 25, 2005 City Legal Department opinion, and Mr. Evans confirmed that is part of the public record of this hearing.

PUBLIC HEARING OPENED.

No one was present to speak. Chair Lambert cited one letter on file that opposes the request.

PUBLIC HEARING CLOSED.

Assistant City Attorney Lancaster and Board members reviewed documents pertaining to the case. Assistant City Attorney Lancaster said that all the practical questions cannot be answered definitively because they involve actions or inactions by another party or parties as well as factual issues. It appears, however, that the documents pertaining to the private easement, at least as understood by the easement holder, prohibit a "structure: in the easement, and that they hold that a concrete wall is a "structure."

***Resolution* #BZA 2011-04-20**
Moved by Bartnik
Seconded by Kneale

MOVED, To grant a permanent variance to allow the appellant to keep an existing portion of 6 foot tall wood fencing in lieu the required masonry wall;

Preliminary Findings: That this variance:

- Relates only to the property in question;
- Would not be contrary to the public interest;
- Would not permit the establishment of a prohibited use;
- Would not cause an adverse effect on properties in the vicinity or zoning district; and
- That the appellant has demonstrated a practical difficulty, in that it would be unnecessarily burdensome to conform by means of masonry construction that would violate a recorded private easements;

Special Finding:

- That the practical difficulty results from an unusual characteristic of the property, which consists of the 1913 and 1942 Sunoco Pipeline L.P. easement.

Discussion of the motion on the floor.

Chair Lambert said that trees or shrubs, as permitted and mandated by the new Zoning Ordinance would look better than the existing wooden fencing, which some communications to the Board call an eyesore.

Mr. Clark agreed that the neighbors would prefer an alternative to the existing wood fence and said that the Board cannot guarantee that the fence, which is in good condition, would never deteriorate, even if the Board made maintenance a condition and even though the ordinances require maintenance.

Mr. Kneale said that the best option for uniformity of appearance would be to complete the concrete wall, but that he would support the motion rather than impose the additional costs of the owner's removing the fence and planting shrubbery.

Vote on the motion on the floor.

Yes: Bartnik, Fisher, Kneale
No: Clark, Courtney, Lambert, Strat

MOTION FAILED 3-4.

Mr. Evans said Mr. Kwon should contact the Planning Department, since the previous variance has expired.

Assistant City Attorney Lancaster said that Mr. Kwon should contact the easement holder to see whether they will approve the screen wall due to the denial of a variance tonight.

Mr. Kwon asked whether he is allowed to replace the entire existing masonry wall with shrubs, and requested a City letter citing the ordinance that he can show to the easement holder. Mr. Evans agreed to assist.

B. **VARIANCE REQUEST, MONSIGNOR ZOUHAIR TOMA KAJBOU, 2442 E. BIG BEAVER ROAD, ST. JOSEPH CHALDEAN CATHOLIC CHURCH** - In order to construct an addition to the church and a new driveway: 1) An 8 foot variance from the requirement that the addition be set back 50 feet from the west property line; 2) a 43 foot variance from the requirement that the proposed driveway be set back at least 50 feet from the west property line; and 3) a variance from the requirement that a landscaped berm be provided between the proposed driveway and the west property line.
ORDINANCE SECTIONS: 10.30.04 (B), (E), (F)

Mr. Evans summarized the facts and the history of the case. This matter has not yet been heard by the Board as it was postponed from March 15, 2011 at the request of the applicant.

Mr. Evans advised the Planning Commission took no action at special use approval and site plan review held January 11, 2011, pending the petitioner's seeking appropriate variances.

Mr. Evans confirmed that the apparently vacant land to the south of the property is City owned.

Ghassan Abdelnour, of G.A.V & Associates, Inc., Architects, 31471 Northwestern Highway, Farmington Hills, said that the improvements are part of a growing church community's effort to deal with traffic and circulation issues The effort has included rescheduling the interval between services and construction of a second church in Sterling Heights. The issue is traffic accumulating on Big Beaver. The property has two vehicle exits but only one vehicle entrance.

Its 321 parking spaces exceed the requirement, which is 267, but they take too long to fill. The requirement is one space for every three building occupants; building capacity is 800.

They have met with Planning, Building, and Police Departments, the Planning Commission and the neighbors about the need for a second entrance drive on the west side, about the landscaped area to the south, and about traffic circulation, and are still working on these three things.

Architect Abdelnour continued. Fr. Kajbou withdrew the plan for a second drop-off area on the west side that would have eliminated a bottleneck where a line forms at the main entrance. That was in response to community concerns. The vestibule is now a minor feature to add a cover over an existing doorway. Also in response to concerns, Msgr. Kajbou had them add a curve in the driveway as a safeguard against headlight glare, even though most masses are in the daytime. More trees have been added to the landscape site plan for the south end to provide more screening from traffic lanes. They can add still more trees. Another suggestion that was implemented is for photoelectric sensors at the concrete separation wall to guarantee that lights go out in accord with City Code. The dialogue with the City and the neighbors continues.

Appellant Msgr. Zouhair Kajbou, Pastor of St. Joseph Chaldean Catholic Church, 2442 East Big Beaver Road, said that they have improved the spacing of the services, have added more services to reduce human congestion, and have added three churches in five years. But the traffic congestion entering from Big Beaver causes hardship to the neighbors as well as church members.

He discussed reasons contributing to a full parking lot, possible alternatives involving modifying the existing parking lot, and the Church's efforts to communicate with Wexford Condominium residents,

Mr. Bartnik asked about changes in the proposal that occurred after the January 12 Planning Commission hearing. Architect Abdelnour said that a drop-off area at the back of the west side of the building is gone, along with a few minor revisions.

Mr. Bartnik said that the several homes to the west are so close that one can see why the homeowners would be very concerned about a driveway there.

Mr. Bartnik asked about a new west entrance with the driveway and drop-off/vestibule on the north side instead of the west side of the building. The appellant advised that substantial changes, including revising the worship area, would have to be made to the church interior. Architect Abdelnour said that most of the parking is south of the building, so that it would be difficult for people to walk from the south parking to a north entrance. In addition, there is no parking lot outlet to the west, cars would face a dead end and maneuvering would be difficult.

Mr. Clark acknowledged the effort to reduce impact on the condos on major holidays, including using shuttle buses, and asked about other alternatives. The appellant said the shuttle buses come from the Lowes around the corner, where they have an agreement for major holiday parking. New churches or new Chaldean services are offered at 3 other off site area locations, with another pending. There are more volunteer parking guides. Together with these steps, the site improvements should eliminate 75% of the problem.

The applicant noted that the Church contributes towards paying for Troy Police support on major holidays.

Mr. Kneale asked if second drive entrance connecting the north to the south parking between the church and the rectory building has been explored. The appellant advised there is a storm sewer easement between the buildings, that creating the drive would result in a loss of existing parking spaces, and that a new proposed west entrance would eliminate the need for such a drive. .

Mr. Fisher asked whether passengers would be dropped off at the new west entranceway. The appellant said no. They do proposed to expand the existing double door on the east side to facilitate additional drop offs.

Mr. Courtney asked about enlarging the existing northeast exit and converting the central two-lanes from entrance and exit into a two-lane entrance with no exit. The appellant advised they believe two exits allow cars to leave the site faster, clearing the way for other cars to enter rather than being delayed on the road.

Chair Lambert noted that Troy Police Department Lieutenant. Dave Livingston is here at the request of the appellant. Lt. Livingston said that his main role is to let the Board know that the parish is doing all it can to reduce holiday and special event backup onto Big Beaver, which sometimes extends all the way to John R. The parish pays for five officers or more, who help with this public safety concern.

Officers have helped with the high volume traffic for eight years to his knowledge, and he agrees that having a single entrance drive slows access., He believes removing the proposed drop-off point on the proposed new driveway, will help eastbound Big Beaver traffic enter the site faster.

He believes other causes of congestion include: the existing drop-off point just north of the handicapped area; and people waiting around after services to fellowship with friends arriving for the next service. The overflow vacant lot to the south is sometimes soft and thus cannot always be used. The church has staggered the schedule and has arranged for extra off-site parking. He discussed additional traffic control measures utilized for Church events.

In response to a question by Mr. Strat, he opined is that a traffic light that would force westbound traffic to wait would not be cost justified.

He believes another entranceway would help. Chair Lambert asked whether there could be a new entranceway without a new driveway along the west property line. Lieutenant. Livingston said that there could, but it might increase the rate of entry by 33% rather than 100%. The problem is getting traffic to the south parking area without a bottleneck.

PUBLIC HEARING OPENED

Chair Lambert opened the public hearing.

Supporting, Beth C. Turner, 2924 and 2926 Roundtree Drive. , Opposed, Shannon Duke, 2930 Roundtree, with concerns that people will use the proposed west building entrance.
Opposing, Ed Piché, 2615 Parasol Drive, secretary of the Morel East Homeowners Association, questioned what is next step if proposed measures are ineffectiv

Opposed, Charles Pelzer, 2878 Roundtree Drive, believes some drivers will use a driveway to drop off passengers despite their intent, driveway as proposed is too close to condo residences

Opposed, Stanley Pilchowski, 2993 Roundtree, spoke in detail to the effect that a second driveway does nothing to shorten overlong service times and does nothing to stop the church from overcrowding, which he believes are the causes of the congestion.

Supporting, Susan Kattula, 5310 Dickson, Sterling Heights, said that she is a 24-year parish council member speaking as a church member and volunteer about adjustments that the church has made to minimize traffic and congestion. This includes an increase in parish membership from 30 families to 30,000 persons, adding masses on weekends and evenings, volunteer parking guides and hiring

the Police Department, and relocating Its 800-participant catechism program to rental space off site.

Mr. Bartnik asked the Appellant how the City could approve a driveway that carries ten, or fifty or more cars, perhaps several times weekly, that would be so close to several private homes. A person standing by the 4 foot wall can almost look into the residences. This is an imposition on their privacy.

The appellant said that there have been no incidents and that the proposed driveway would be for vehicular traffic that does not stop, only. The 4 foot wall screens people seated in cars, and enhanced landscaping and shrubs, as shown in the landscape site plan will designed to screen out both glare and sightlines.

Mr. Bartnik said it is doubtful whether any plantings can protect nearby homes from traffic noise, etc., as well as a 50 foot setback. The appellant said there are four houses that are newly affected. The others are already alongside the parking lot, exposed to hundreds of cars moving and slamming doors. Relieving traffic congestion has costs, and the appellants are willing to pay but would not encroach on the neighbors' privacy or comfort.

In response to a question, the appellant repeated that the south half of the church is really a separate building that cannot become a primary entrance, because it would require demolishing several walls and the resulting hallway would be too long.

Opposing, Sam Daya, 2541 Marcus Drive, offered technical reasons why the proposed entrance drive would not solve the traffic problems and suggested widening the existing entranceway.

Opposing, Samuel Mitchell, 2914 Roundtree Drive, said that he performs the Wexford condo maintenance and observed that there is very little traffic in the condo driveway along the separation wall, He is concerned that a driveway could drive down the property values and that 4 feet is too narrow a space for trees a driveway and the existing wall.

Chair Lambert noted one letter of support and three letters in opposition on file.

PUBLIC HEARING CLOSED

Responding to a Board Member's question, the appellant said that building another church could afford some relief through reduced church membership but that the need remains to reduce the vehicle backup onto Big Beaver, even though it happens only a few times per year.

***Resolution* #BZA 2011-04-21**

Moved by Bartnik
Seconded by Kneale

MOVED, To deny the request, because the proposed driveway along the western edge would cause an adverse effect on the properties in the immediate vicinity, based on the testimony and exhibits.

MOTION SUPERSEDED by postponement Resolution #BZA 2011-04-22.

***Resolution* #BZA 2011-04-22**
Moved by Courtney
Seconded by Clark

MOVED, To postpone the item to May 17, 2011, to enable the appellant to consult for further traffic engineering advice.

Discussion of the motion on the floor.

Mr. Evans suggested if one month was insufficient time for the Applicant, the Board, at the May 17, 2011 meeting, could extend the postponement further.

Vote on the motion on the floor.

Yes: Clark, Courtney, Fisher, Lambert, Strat
No: Bartnik, Kneale

MOTION CARRIED 5-2.

C. **VARIANCE REQUEST, MINAL GADA AND ASHISH MANEK, 4820 LIVERNOIS** - In order to split the subject parcel into 3 separate parcels, a 15 foot variance to the required 100 foot lot width requirement for 2 of the proposed parcels. (Hearing adjourned March 15, 2011, to enable the appellants to research the viability of alternatives.)

ORDINANCE SECTION: 39.10.02

ADJOURNED TO MAY 17, 2011, per Resolution #BZA 2011-04-18, above at page 2.

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4. HEARING OF NEW CASES

A. **PERMISSION REQUEST, TIMOTHY J. LeROY, SUBURBAN MOTORS COMPANY, INC. 1810 MAPLELAWN** — Permission to place a temporary sales trailer on the site while the permanent building is undergoing renovations.

SECTION: 43.80.00 (C)

Mr. Evans summarized the facts of the case

Applicant Sam Gendler, Suburban Collection, 1795 Maplelawn, said that he and Timothy LeRoy coordinated on the temporary sales trailer. It would be smaller than the permanent sales area but large enough to accommodate one porter and seven sales people. The trailer has two pairs of offices on either side of a central open area; it has drinkable water, bathroom facilities, and utilities and data lines. It will be situated about 50 feet from the permanent building, in the area of the current used car inventory.

Assistant City Attorney Lancaster said that a temporary permission has a lesser standard than the practical difficulty standard that applies to variances.

The applicant said that February 2012 is the estimated time for the completion of these major renovations and the retirement of the trailer.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted that the Board received one letter, which is in support of the application.

PUBLIC HEARING CLOSED

***Resolution* #BZA 2011-04-23**
Moved by Clark
Seconded by Fisher

MOVED, To approve the request for up to two years.

Discussion on the motion on the floor.

Assistant City Attorney Lancaster advised that a permission grant motion does not necessarily have to include a set of findings.

Vote on the motion on the floor.

Yes: All present (7)

MOTION CARRIED

B. **VARIANCE REQUEST, ALEJANDRO M. NOGOY for A. M. NOGOY CONSTRUCTION, 4951 SOMERTON DRIV**E — In order to remove the existing deck and build an addition to the home in the same location, a 5 foot variance to the required 40 foot rear yard setback.

SECTION: 30.10.04

Mr. Evans summarized the facts of the case. Mr. Bartnik established that the required public hearing notices went out, including to the Troy Swim Club immediately to the west, and they did not comment.

Appellant Alejandro Nogoy, Nogoy Construction, 3232 Helena Drive, said that the property owners hired him to do the improvements per the specifications and drawings, as well as the explanatory essay submitted with the application.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted that the two letters received both support a variance.

PUBLIC HEARING CLOSED

***Resolution* #BZA 2011-04-24**
Moved by Bartnik
Seconded by Courtney

MOVED, To grant the proposed variance.

Preliminary Findings: That this variance:

- Would not be contrary to the public interest;
- Would not permit the establishment of a prohibited use;
- Would not cause any adverse effect on properties in the immediate vicinity or zoning district; and
- Relates only to the property described in the application;

Special Finding:

- That the public health, safety and welfare will not be negatively affected;

Vote on the motion on the floor.

Yes: All present (7)

MOTION CARRIED

5. COMMUNICATIONS

There were no communications.

6. PUBLIC COMMENT

Appellant Ashish Manek thanked the Board for deferring Item 3C to May.

7. MISCELLANEOUS BUSINESS

Chair Lambert said that Board officers are elected next month.

Mr. Bartnik asked for a workshop on the newly adopted Zoning Ordinance about to go into effect. Mr. Evans agreed to provide some information and suggested a study session for the Board an hour before the May 17, 2011, meeting.

Mr. Strat suggested on-line update information.

Chair Lambert welcomed Assistant City Attorney Lancaster.

8. ADJOURNMENT

The Board of Zoning Appeals meeting adjourned at 11:31 p.m.

Respectfully submitted,

David Lambert, Chair

Stuart Filler, Recording Secretary /sf 4-28