The Chairman, Michael Huston, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, August 15, 2006 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
Marcia Gies
Michael Hutson
Matthew Kovacs
Lawrence Littman
Mark Maxwell

ABSENT: Christopher Fejes

ALSO PRESENT: Mark Stimac, Director of Building & Zoning
Susan Lancaster, Assistant City Attorney
Pamela Pasternak, Recording Secretary

Mr. Hutson informed the audience that because there were only six Board members present, they had the opportunity to ask that their requests were postponed until the meeting of September 19, 2006. No one in the audience wished to postpone their hearings.

Motion by Courtney
Supported by Gies

MOVED, to excuse Mr. Fejes from this meeting as he is out of town.

Yeas: 6 – Gies, Hutson, Kovacs, Littman, Maxwell, Courtney

MOTION TO EXCUSE MR. FEJES CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF JULY 18, 2006

Motion by Littman
Supported by Maxwell

MOVED, to approve the minutes of the meeting of July 18, 2006 as written.

Yeas: 5 – Hutson, Kovacs, Littman, Maxwell, Courtney
Abstain: 1 – Gies

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – APPROVAL OF ITEM #3 THROUGH ITEM #5

RESOLVED, that Items #3 through Item #5 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Motion by Courtney
Supported by Littman

Yeas: 6 – Hutson, Kovacs, Littman, Maxwell, Courtney, Gies

ITEM #3 – RENEWAL REQUESTED. WILLIAM NELSON, FIRE CHIEF CITY OF TROY, 4850 JOHN R., for relief of the Zoning Ordinance requirement for a 4'-6" high masonry screening wall between off-street parking areas and adjacent residentially zoned property on the east side of the property.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board of the Zoning Ordinance Requirement for a 4'-6" high masonry screening wall between off-street parking areas and adjacent residentially zoned property on the east side of the property. This item first appeared before this Board in August 2003 and was granted a three-year (3) variance at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant William Nelson, Fire Chief, City of Troy, 4850 John R., a three-year (3) renewal of relief of the Zoning Ordinance requirement for a 4'-6" high masonry screening wall between off-street parking areas and adjacent residentially zoned property on the east side of the property.

- There is an existing drain on the east side of the property.
- There are no complaints or objections on file.
- Variance is not contrary to public interest.

ITEM #4 – RENEWAL REQUESTED. ST. ELIZABETH ANN SETON CATHOLIC CHURCH, 280 E. SQUARE LAKE, for relief of the 4'-6" high masonry screening wall required on the north and northern portion of the west side of the property where the parking lot abuts residential zoned property.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board of the 4'-6" high masonry screening wall required on the north and northern portion of the west side of the property where the parking lot abuts residential zoned property. This item first appeared before this Board at the meeting of August 2003 and was granted a three-year (3) variance at that time. Conditions remain the same and we have no complaints or objections on file.

ITEM #4 – con't.

MOVED, to grant St. Elizabeth Ann Seton Catholic Church, 280 E. Square Lake, a three-year (3) renewal of relief of the 4'-6" high masonry screening wall required on the north and northern portion of the west side of the property where the parking lot abuts residential zoned property.

- Conditions remain the same.
- There are no complaints or objections on file.
- Variance is not contrary to public interest.

ITEM #5 – RENEWAL REQUESTED. MI DEV AMERICA, INC. 600 WILSHIRE, for relief of the required 6' high masonry-screening wall on the west property line abutting residential zoned property.

Mr. Stimac explained that the petitioner is requesting relief of the 6' high masonry screening wall required on the property abutting residential zoned property on the west side. The site has been constructed and occupied and landscaping berms along the west property line have been completed. This Board originally granted this variance in 1996. This item last appeared before this Board in August 2003 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant MI DEV America, Inc., 600 Wilshire, a three-year (3) renewal of relief of the 6' high masonry screening wall required on the west side of the property, which abuts residential zoned property.

- Conditions remain the same.
- There are no complaints or objections on file.
- Variance is not contrary to public interest.

ITEM #6 - VARIANCE REQUEST. DENVER ASSOCIATES, 1010 NAUGHTON, for relief of the Ordinance to expand an existing parking lot that will be within 14' of Acacia and within 23'-7" of Naughton where Paragraph L of Section 31.30.00 requires that the 50' front yard setback required by Section 30.20.09 be free of parking.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to expand an existing parking lot. This property is located within the M-1 (Light Industrial) Zoning District. Paragraph L of Section 31.30.00 requires that the 50' front yard setback required by Section 30.20.09 be free of parking. The plans submitted indicate that the parking lot is being expanded to within 14' of Acacia and within 23'-7" of Naughton. This item last appeared before this Board at the meeting of July 18, 2006 and was postponed at the request of the petitioner. Mr. Stimac indicated that since that time a revised plan had been submitted and distributed to the Board that showed that the driveway on the north side of the building would now be eliminated. This would allow

ITEM #6 – con't.

the expansion of the parking lot as proposed while at the same time increasing the total amount of landscape on the site.

Peter Tzilos, the Architect for the landlord, and Mark Lafave, of Denver Associates were present and stated that they would answer any questions the Board wished to ask.

There were no questions from the Board and the Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written objections or approvals on file.

Mr. Maxwell asked what the building was going to be used for. Mr. Tzilos stated that they had gone back to the tenant to determine if the use was compatible to the Zoning District and how much parking would be required. This is basically an engineering company that will develop prototypes for the automotive industry. The tenant said that they would like as much parking as possible, but felt that forty-nine (49) spaces would be adequate. The Ordinance requires forty-seven (47) spaces and they will meet the requirements of the Ordinance.

Mr. Courtney said that he wished the letter would have come in last week, so the Board members could determine what the justification was for the parking. Mr. Tzilos said that forty-seven (47) spaces were required and they will actually have forty-nine (49) spaces. Mr. Courtney asked if they could eliminate the extra two parking spaces along Acacia and add more landscaping. Mr. Tzilos said that they are trying to respond to the needs of the tenant. The number of parking spaces required is based on the use of the building.

Mr. Courtney asked what type of business the tenant was in. Mr. Tzilos said that they are an Engineering firm that makes prototypes for the automotive industry and basically this is a research and development firm. There are about twenty-two (22) engineers, some people that do extra training and bring in clients for training and also management personnel.

Mr. Kovacs asked about the purpose of Acacia Street. Mr. Stimac explained that Acacia is basically a service drive for the adjacent properties in order to limit the number of driveways on Stephenson near the freeway interchange. It was not part of the original platted subdivision.

Mr. Tzilos also stated that what they are planning would be an improvement to the area.

Mr. Hutson asked if this was a non-conforming building and Mr. Stimac explained that the structure meets the 50' setback, but presently there is parking within that 50' setback. The petitioner is asking to expand the parking and therefore increase the non-conformity. Mr. Hutson then asked about the required parking and Mr. Stimac stated

ITEM #6 - con't.

that he had received a letter from the potential tenant of the building late that afternoon, and the letter breaks down the percentages of how this building is going to be used. Based on their letter, forty-seven (47) parking spaces would be required, although Mr. Stimac has not been able to confirm that based on plans received, the calculations in the letter are correct. When the office usage exceeds the 25% usage in an Industrial Zoned building, a split calculation is done applying one factor to the office usage of the building and one factor to the shop usage of the building.

Mr. Hutson asked if they had a signed lease from this tenant and Mr. LaFave said that they have a signed Letter of Intent, based on whether this variance is granted or not.

Motion by Maxwell
Supported by Gies

MOVED, to approve the request of Denver Associates, 1010 Naughton, for relief of the Ordinance to expand an existing parking lot that will be within 14' of Acacia and within 23'-7" of Naughton where Paragraph L of Section 31.30.00 requires that the 50' front yard setback required by Section 30.20.09 be free of parking.

- Landscaping to be done according to the revised plan provided by the petitioner.
- Variance is not contrary to public interest.
- Owners of this property will have the opportunity to run a viable business with this variance.
- Variance will not create a prohibited use in a Zoning District.
- Variance applies only to the property in question.

Yeas: 6 – Kovacs, Littman, Maxwell, Courtney, Gies, Hutson

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUEST. SAIF JAMEEL, 3031 CROOKS ROAD, for relief of the Ordinance to construct a new commercial building with a drive up window accessory to a restaurant use proposed in the building. Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in order to have a drive-up window facility in the H-S (Highway Service) Zoning District. This site is made up of two separate parcels that total only .53 acres in size.

The Chairman moved this request to the end of the Agenda, Item #12, to allow the petitioner the opportunity to be present.

ITEM #8 – VARIANCE REQUEST. TONY V'S SUNROOMS, 864 QUILL CREEK, for relief of the Ordinance to construct a patio enclosure that will result in a 36.95' rear yard setback where 45' is required by Section 30.10.02.

ITEM #8 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure. The site plan submitted indicates a proposed patio enclosure on the rear of the existing residence with a 36.95' rear yard setback. Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

A discussion began regarding the size of the lots in the subdivision. Mr. Stimac explained that this property is considered to be a site condominium and must meet all the requirements of a single-family subdivision in the same zoning classification.

Mr. Littman asked if there was a patio on the rear of the home now. Mr. Stimac said that although there is not a deck presently, an uncovered wood deck could be within 30' of the rear property, the reason a variance is required is because they wish to enclose this addition.

Robert McMahon of Tony V's Sunrooms was present and stated that the rear of this home faces south and the usage for an uncovered wood deck would be minimal. The homeowners wish to add a small room so that they could use that area more, especially in the winter. The room would have the same site line as other decks in the area. Enclosing this room would increase practical usage.

Mr. Hutson asked what the practical difficulty with the land was. Mr. McMahon could not demonstrate a practical difficulty. Mr. McMahon said that he was not aware that a structure could project out farther if it was uncovered. Mr. Hutson said that he is concerned that this variance could set a precedent to other homeowners in this area to also add covered structures.

Mr. Kovacs asked if the homeowner was present. Mr. Bahl was present and Mr. Kovacs asked if they had always wanted a covered patio. Mr. Bahl said that they had talked to the builder, but the builder was behind and because the plans had already been approved, he couldn't go back and add a covered patio. Mr. Kovacs asked if they understood the setback requirements at the time they purchased the property, and Mr. Bahl said that he didn't.

Mr. Littman said that he is also very concerned about other homes in the area asking for similar variances, and the requests tend to get larger as the years go on. He believes this will create a big foot house and does not see a practical difficulty with the land that would support this variance request.

Mr. Maxwell asked what is behind this property and what the distance is between this home and the home behind it. Mr. Bahl said that he thought the distance between the houses was more than 400 feet. At the present time, there is a large thicket of trees at the back of the lot. Mr. Maxwell then asked how far the other decks projected from the other homes and Mr. Bahl said he thought one was about 13 feet and the other about 16 feet.

ITEM #8 – con't.

Mr. Maxwell said that in his opinion this is a short back yard and does not believe this would be a problem with the other homes in the area. Mr. Courtney said that he thinks this will look like a wall from one house to another, and will take away from the back yards.

Mr. Kovacs asked if the petitioner had the opportunity to buy the property behind him. Mr. Stimac said that he could purchase land behind him, as long as the other property owner was agreeable. Mr. Stimac also said that he was not sure if they could be combined together, as one property is a "site condo" and the other is considered a subdivision. Mr. Stimac also said that he would probably need the approval of the other property owners in this subdivision.

Ms. Lancaster said that it would be very difficult for this property owner to combine part of the property behind him as there would definitely be a number of legal issues regarding such an action.

Mr. Stimac also pointed out that this home actually backs up to two different lots, so the homeowner would have to acquire property from both property owners.

Mr. Maxwell said that he thought buying additional property would be a bad idea as he could build a totally different structure. In his opinion, he does not feel the original request would have an adverse effect to the other homes in the area.

Mr. Kovacs said that although the people on Ottawa have 600' lots at this time, there is no telling what will happen in the future and he does not believe they will remain as 600' lots, as this is prime property in the City. Furthermore, once the sunroom is added the homeowner could change its use to a bedroom.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Motion by Courtney
Supported by Littman

MOVED, to deny the request of Tony V's Sunrooms, 864 Quill Creek, for relief of the Ordinance to construct a patio enclosure that will result in a 36.95' rear yard setback where 45' is required by Section 30.10.02.

- Petitioner did not demonstrate a hardship that runs with the land.
- Variance would be contrary to public interest.
- Variance would have an adverse effect to surrounding property.

ITEM #8 – con't.

Yeas: 5 – Courtney, Gies, Hutson, Kovacs, Littman
Nays: 1 – Maxwell

MOTION TO DENY REQUEST CARRIED

ITEM #9 – VARIANCE REQUEST. JAY COOKE, 1985 W. BIG BEAVER, for relief of the Zoning Ordinance to alter an existing tenant space for a jewelry store resulting in 27% of the building being retail support services where Section 24.25.01 limits these uses to 20%.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to alter an existing office tenant space for a jewelry store at Suite 100 of 1985 W. Big Beaver. Section 24.25.01 of the Zoning Ordinance allows support service retail uses within an office building in the O-1 (Low-Rise Office) Zoning district up to a maximum of 20% of the floor area of the building in which they are located. Currently the restaurant in this building, approved under a previous Ordinance provision, occupies 23% of the floor area of the office building. As such, it is classified as a legal non-conforming use. Adding more square footage of support service retail up to 27% of the floor area would constitute an expansion of the non-conforming use. Section 40.50.05 prohibits the expansion of non-conforming uses.

Mr. Courtney asked how a jewelry store would be considered a support usage in the Zoning District. Mr. Stimac explained the special uses that are allowed within the O-1 District according to Section 24.25.01 of the Ordinance and included provisions for an art gallery. This jewelry store would be comparable to an art gallery.

Jay Cooke and his brother, Marc Cooke were present. Mr. Jay Cooke stated that this is a very unique building, has two separate tax I.D. numbers, and the existing buildings are co-joined. When entering the lobby, there is an empty space on the left and on the right side is the Benihana Restaurant. They have completed an extensive remodeling of the building within the last six months and their leasing agent suggested putting a jewelry store in this empty location to give the building some balance. The gentlemen involved in this jewelry store are from Sydney Krandall and they do not usually deal with walk-in traffic, as their customers are repeat customers. This is not a typical jewelry store, but more of a high-end jewelry store and Benihana's is considered to be an upscale restaurant. A physical therapy group is going to lease the rest of the 1st floor. They are only adding 4% more retail usage to this building.

Mr. Littman asked about signage. Marc Cooke stated that presently there is a monument sign and the Benihana Restaurant takes up half of that sign, and they plan to split the rest of the sign into four (4) spaces.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

ITEM #9 – con't.

There are no written approvals on file. There is one (1) written objection on file.

Motion by Kovacs
Supported by Littman

MOVED, to grant Jay Cooke, 1985 W. Big Beaver, relief of the Zoning Ordinance to alter an existing tenant space for a jewelry store resulting in 27% of the building being retail support services where Section 24.25.01 limits these uses to 20%.

- A jewelry store would be a good fit in this location.
- Variance is necessary for the preservation and enjoyment of substantial property rights possessed by the subject property.
- Variance is not detrimental to the preservation and enjoyment of substantial property rights possessed by other properties in the City or Zoning District.

Yeas: 6 – Courtney, Gies, Hutson, Kovacs, Littman, Maxwell

MOTION TO GRANT VARIANCE CARRIED

ITEM #10 – VARIANCE REQUEST. MR. & MRS. ROBERT ALDAPE, 2938 SARATOGA, for relief of the Ordinance to construct a new covered porch on the front of the existing home, resulting in a 22-'10" setback where Section 30.10.06 of the Zoning Ordinance requires a 25' front setback.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new covered porch on the front of the existing home. The porch will have a 22'-10" front setback. Section 30.10.06 of the Zoning Ordinance requires a 25' front setback in the R-1E Zoning District. There is an existing aluminum awning in this location however a search of the Building Department records finds no permits of approvals for this awning.

Ryan Morin of Italy America and Mr. & Mrs. Robert Aldape were present. Mr. Morin stated that basically they are looking to rebuild and cover the existing porch. The existing porch is in a state of disrepair and even if they were to cover the existing porch a variance would still be required.

Mr. Courtney asked if the new porch would be the same size and Mr. Morin stated it would be slightly larger. The existing porch is approximately 5'-8 ½" x 5'-5" and the new porch would be about 6'-2" x 7'.

The Chairman opened the Public Hearing.

Paul Reisdorf, 2939 Saratoga was present and stated that he is in favor of this request. He lives across the street from the Aldapes and thinks it will improve the aesthetics of Saratoga.

ITEM #10 – con't.

Lila Reisdorf, 2939 Saratoga was also present and is also in favor of this request. Ms. Reisdorf believes this will be an improvement for the City and will improve the value of the homes on Saratoga.

No one else wished to be heard and the Public Hearing was closed.

There are two (2) written approvals as well as a petition signed by six (6) property owners indicating approval of this request. There are no written objections on file.

Motion by Kovacs
Supported by Gies

MOVED, to grant Mr. & Mrs. Robert Aldape, 2938 Saratoga, relief of the Ordinance to construct a new covered porch on the front of the existing home, resulting in a 22'-10" setback where Section 30.10.06 of the Zoning Ordinance requires a 25' front setback.

- Covered front porch will increase public welfare and safety in inclement weather.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property described in this application.

Yeas: 6 – Courtney, Gies, Hutson, Kovacs, Littman, Maxwell

MOTION TO GRANT VARIANCE CARRIED

ITEM #11 – VARIANCE REQUEST. TOBY BUECHNER OF TROY GYMNASTICS, 1600 W. MAPLE, for relief of the Ordinance to reduce the amount of countable landscaping to 4,923 square feet where Section 39.70.04 of the Ordinance requires a minimum of 7,062 square feet of landscaping.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to reduce the amount of landscaping on a commercial building site. The revised site plan submitted shows that 4,923 square feet of countable landscape will be provided on this site. Section 39.70.04 of the Zoning Ordinance requires that a minimum of 7,062 square feet of landscape is required.

Toby Buechner and his brother, Tim Buechner were present. Toby Buechner said that they are just average people trying to create a nice business. They have tried to meet as many of the Ordinance requirements as possible, but there is just so much space on the lot and they are trying to maximize the amount of land on the property. Mr. Buechner also stated that there is a storm drain at the back of the property and he is concerned about the run off in this area.

ITEM #11 – con't.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written approvals or objections on file.

Mr. Courtney asked if they planned to pave all of the spaces indicated on their plan. Mr. Buechner stated that City Council asked them to come up with additional parking and they did it. One of the spots that presently shows landscaping is right in front of their front door. Mr. Hutson said that in his opinion removing the landscaping shown will not cause an adverse effect. Mr. Buechner said that they are taking an old warehouse and attempting to fix it up.

Motion by Littman
Supported by Courtney

MOVED, to grant Toby Buechner of Troy Gymnastics, 1600 W. Maple, relief of the Ordinance to reduce the amount of countable landscaping to 4,923 square feet where Section 39.70.04 of the Ordinance requires a minimum of 7,062 square feet of landscaping.

- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surround property.

Yeas: 6 – Gies, Hutson, Kovacs, Littman, Maxwell, Courtney

MOTION TO GRANT VARIANCE CARRIED

ITEM #12 (ITEM #7) - VARIANCE REQUEST. SAIF JAMEEL, 3031 CROOKS ROAD, for relief of the Ordinance to construct a new commercial building with a drive up window accessory to a restaurant use proposed in the building. Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in order to have a drive-up window facility in the H-S (Highway Service) Zoning District. This site is made up of two separate parcels that total only .53 acres in size.

The Chairman moved this request to the end of the Agenda, Item #12, to allow the petitioner the opportunity to be present.

The petitioner was not present. Mr. Stimac explained that the Building Department and the City Attorney's office have been in contact with the owner and are attempting to amend the Consent Judgment on this property. Mr. Stimac said that this is an ongoing situation and asked the Board to consider postponing this request until the meeting of September 19, 2006.

ITEM #12 – con't.

Motion by Courtney
Supported by Gies

MOVED, to postpone the request of Saif Jameel, 3031 Crooks Road, for relief of the Ordinance to construct a new commercial building with a drive up window accessory to a restaurant use proposed in the building until the meeting of September 19, 2006. Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in order to have a drive-up window facility in the H-S (Highway Service) Zoning District. This site is made up of two separate parcels that total only .53 acres in size.

- To allow the petitioner the opportunity to be present.

Yeas: 6 – Littman, Maxwell, Courtney, Gies, Hutson, Kovacs

MOTION TO POSTPONE REQUEST UNTIL SEPTEMBER 19, 2006 CARRIED

Ms. Lancaster informed the Board that this was her last meeting and Chris Forsyth would be present in September. She said that she had enjoyed the experience. Mr. Hutson told her the Board had enjoyed having her as our Legal Representative.

Mr. Littman informed the Board that Mr. Wright would be back for the September meeting.

The Board of Zoning Appeals meeting adjourned at 8:45 P.M.

_____
Michael Hutson, Chairman

_____
Pamela Pasternak, Recording Secretary