The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, October 17, 2006 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
Christopher Fejes
Michael Hutson
Matthew Kovacs
Mark Maxwell
Lawrence Littman

ABSENT: Marcia Gies

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

Mr. Hutson informed the audience that if they wished they could postpone their request until a full Board was present.

Motion by Fejes
Supported by Courtney

MOVED, to excuse Ms. Gies from tonight's meeting as she is out of town.

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

MOTION TO EXCUSE MS. GIES CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF SEPTEMBER 19, 2006

Motion by: Courtney
Supported by: Fejes

MOVED, to approve the minutes of the meeting of September 19, 2006 as written.

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

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – VARIANCE REQUEST. JAE DUK CHO, OF ADA ARCHITECTS, 1304 E. MAPLE, for relief of the Ordinance to alter an existing industrial building, that will result with a parking lot on the north side of the building to within 10' of the north property line and 21'-8" to the east property line where Section 30.20.09 requires a 50' front setback and Paragraph L of Section 31.30.00 requires that the front yard remain free of parking and maneuvering lanes.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to alter an existing industrial building. The site plan submitted indicates the removal of the existing office portion of an industrial building and the expansion of the parking lot on the north side of the building to within 10' of the north property line along Maple Road and within 21'-8" of the east property line along Allen Drive. Section 30.20.09 of the Zoning Ordinance requires a 50' front setback in the M-1 (Light Industrial) Zoning District and Paragraph L of Section 31.30.00 requires that this front yard remain free of parking or maneuvering lanes. The parking lot along the east property line farther south on the lot is currently located 21'-8" from the front property line along Allen Drive based upon a variance granted in 1992.

This item last appeared before this Board at the meeting of September 19, 2006 and was postponed to allow the petitioner the opportunity to look at other options that are available; and to allow the petitioner to demonstrate to the Board the reason this much parking will be required.

Mr. Stimac explained that new drawings had been received and indicated that they have added more landscaping along the northwest corner of the site as well as additional landscaping proposed at the northeast corner of the site. In addition they have included some actual landscape islands within the parking lot at the front of the lot. Also, at the southeast corner of the building they have added another row of parking and put in some extra landscaping. One other change would be that some of the islands at the entrances of the drives are now proposed to be totally landscaped. Although, there have been changes to the site plan, the variance request is still identical.

Mr. Courtney asked if they would still be in excess of parking if they removed all of the parking spaces along Maple Road. Mr. Stimac said that he has not done the required calculation on the required parking. The other issue is that when looking at the use of this building, if they apply the industrial standard they are over the minimum parking requirements; however, if it was a retail business open to the public they would require more parking. Since, this business is a wholesale distributor dealing with only certain customers, they would probably fall somewhere in the middle.

Mr. Dan Saleet of ADA Architects, Jae Duk Cho of ADA Architects and Craig Nardi, the real estate developer that helped to purchase the property were present. Mr. Saleet said that he thought that the safety factor was probably lost in last month's presentation. Everything south of the building line has truck interference and in their opinion creates a

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safety hazard. They have determined that out of 150 spaces on the lot, 97 spaces are south of the building line and in his opinion this would not be a safe area for parking.

Mr. Nardi, of MAI Global, was present and said that they have done a lot of creative deals taking properties that have specific challenges to them and have made them properties that do function. They took the minutes from last month's meeting and have tried to address the concerns that the Board members had. There is an abundance of parking, but the way the building was placed on the lot they put the parking at the back of the lot. Our concern is safety and if there is parking at the back of the lot there will be truck interference. There are tractor trailers that come and go, and it will be dangerous for customers leaving the building with a cart full of items. The trucks that are waiting will have a staging area at the back of the property and also off of the street. This is a fixture plan, and they have taken into consideration where the loading docks are. There are freezers and coolers and the tractor and trailers have to off-load directly into the freezer and cooler area. There are two docks that go into where the perishable goods are and they have to move the customer parking as far away from these docks as possible. On average, Restaurant Depot may have between 50 and 70 customers shopping at any given time. During the peak season such as holidays, this number would greatly increase.

Mr. Nardi said that the employees will park in the back, but they need customer parking as close to the building entrance as possible. They also looked at moving the entrance to the east side of the building, however, Mr. Nardi stated that they had drawn a 150' circle around that proposed entrance and that within that circle there are only 52 parking spaces. They also drew a 150' circle around what they want to be the entrance on the north side of the building, and this circle contains 67 parking spaces, which would give them more of what they are looking for. These examples were done to show the Board the difference between putting the entrance at the east side of the building, rather than the north side of the building.

Mr. Maxwell asked how much money each customer spends. A representative of Restaurant Depot was present and stated that the average purchase is around $250.00 and the weight varies depending on what kind of product is purchased. Mr. Maxwell asked how large the carts were and was told that they are about 4' wide x 6' long. Mr. Saleet stated that they would be similar to the flat bed carts used at a Costco or Sam's Club.

Mr. Maxwell asked if it would be conducive to the customer to have a drive up loading lane where someone could be waiting to fill their vehicles or is it more conducive for them to push the carts out to their vehicles. Mr. Nardi said that the weight issue depends on the type of product that is being purchased. If there was a loading lane you would have to provide for a backup lane. Mr. Maxwell said that he did not feel the double lane of parking was needed and thought that perhaps a lane for loading would

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be more efficient. This may be another way to help the customers pick up their products.

Mr. Nardi said that his wife owns her own catering business and only has a limited amount of time to go out and get the supplies they need. If a loading lane was there it could affect their time constraint in order to shop.

Mr. Maxwell said that there is also customer parking on the side of the building and if there was a loading lane, it would only be used by a certain number of customers. The representative from Restaurant Depot said that he did not believe this would be the most convenient way for the customer to get their items. They have found that it has worked very well for the customer to come, purchase his items and take them out to his car.

Mr. Maxwell stated that in his experience purchasing large items at Costco, it is just as convenient for him to go and get his car and bring it to the door in order to load his purchase. Mr. Cho said that this would be an inconvenience as other vehicles may be in the way. Mr. Maxwell asked if a loading lane in front of the building is a ridiculous idea and Mr. Cho said that he did not think it was ridiculous. Mr. Maxwell explained that this request is for a very large variance and it is beneficial for them to look at all options available.

Mr. Nardi said that it was not a ridiculous idea, but it could create a problem for the customer that has a time limit. They wouldn't know if there was a line or not and that might prevent them from coming to this site. The unknown could potentially cause a problem. Mr. Maxwell said that the petitioner had said that they would have between 50 and 70 customers at one time, and there are 36 parking spaces available at the front of the store.

Mr. Nardi said that was true, but during the peak seasons more parking is required. During the busy season restaurant owners could come to this location 5 – 6 times a week.

Mr. Courtney asked what the "high count" of customers was. Mr. Nardi said that typically for a store this size, you would have about 100 – 125 cars during the busy season. Mr. Courtney said he would like to know how many customers come in during this peak season. The representative from Restaurant Depot said that typically they handle about 50 customers an hour and during the busy season maybe 100 – 125 per hour.

Mr. Courtney asked how many stores they have. Mr. Nardi said that there were 55 stores around the country.

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Mr. Littman questioned the 67 parking spaces in the 150' circle that the petitioner had drawn. Mr. Nardi said that they had done this just to show how much parking would be available if they located parking on the east side of the building. Mr. Littman asked what was in the northeast corner of the building. Mr. Cho said that it was HVAC equipment, restrooms and some offices. Mr. Littman asked if it was existing or if it was going to be put in. Mr. Cho said that they were going to put it in. Mr. Littman asked if they could move the entrance to the northeast corner. Mr. Nardi said that they aren't saying the entrance couldn't be on the east side. If they could put the loading docks in the front of the building parking would not be an issue. Mr. Littman asked if they wanted enough parking spaces for the busiest time of the year, or ideally, how many parking spaces do they want. Mr. Nardi said that parking on one side creates congestion for the customers that come and go. Ms. Nardi won't shop in a place like this during the busy season.

Mr. Littman asked how many spaces they really want close to the door. Mr. Nardi said that ideally they would like 100 parking spaces close to the door. Mr. Nardi said that they require a lot of parking, not just for one busy day, but for a busy time of the year. Mr. Nardi also said that they could take out the proposed parking closest to Maple and although they would still need a variance it would not be as large. Mr. Littman said that he could see where there would be a conflict with trucks on the south side of the building.

Mr. Courtney said that on the extreme north end there are 86 spaces and asked where they would put the entrance if they did not have the extra layer or parking. Mr. Nardi said that they have not looked at that option. Mr. Courtney said that he did not see a reason for the 13 spaces on the north side of the property and it would make him happy to see those eliminated.

Mr. Fejes said that if they took out the 13 spaces on the north side, the size of the variance would be reduced by a large amount. Mr. Fejes said he would not have a problem with this variance request if those spaces were eliminated.

Mr. Littman stated that he wasn't quite as straightforward at Mr. Fejes, but he is in agreement with Mr. Fejes. Mr. Littman asked if the trucks were going and coming all day. Mr. Littman was informed that the trucks come in and out during working hours.

Mr. Hutson asked how many trucks were coming in and out all day and was told that there are between 15 and 18 trucks each day. Mr. Hutson said that he is concerned about the intrusion into the setback on the north side of the parking lot. This is a large variance and it seems that the petitioner could look at other options.

Mr. Kovacs stated that he was also concerned about the north side of the property. Mr. Kovacs also said that he thought they could move the curb cuts and add additional parking where the entrance is. Mr. Kovacs said that he thought if the petitioner were creative they could regain the 13 parking spaces and still have enough of an area for

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truck staging. They may not have enough parking during the peak season, but during the holidays most places do not have enough parking.

Mr. Nardi said that they got the message on the 13 spaces. They tried to address the concerns of the Board and the major concern was how this building looks to traffic along Maple Road. They have increased the amount of landscaping to create a buffer and keep the parked cars hidden from the traffic along Maple. If you are driving along Maple you would not see the cars parked in this row of parking. They have addressed the concerns of the Board regarding the parking along Maple.

Mr. Courtney said that if they eliminate one lane of parking this would add 10' to 18' of landscaping.

Mr. Maxwell stated that the sidewalk is about 10' from the parking lane around Maple. Mr. Nardi said that there are other properties along Maple that encroach into the 10' setback of Maple and Allen going down to I-75, they are in O-M Zoning and are allowed to go right up to the 10' area. They are trying to buffer and landscape this area so that the cars would not be visible along Maple.

Mr. Maxwell said that he did approve of the extra landscaping, but he felt that they had other options to look at that would reduce the size of the variance.

Mr. Courtney asked if the petitioner would like to explore the possibilities brought up by the Board and come back at a later time.

Mr. Nardi said he would like a few minutes to confer with the other members of his group.

Mr. Hutson 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. Nardi asked the Board if this request could be postponed another thirty days in order for them to look at the suggestions made by the Board in order to see if this variance request could be reduced.

Motion by Courtney
Supported by Maxwell

MOVED, to postpone the request of Jae Duk Cho, of ADA Architects, 1304 E. Maple, for relief of the Ordinance to alter an existing industrial building, that will result with a parking lot on the north side of the building to within 10' of the north property line and 21'-8" to the east property line where Section 30.20.09 requires a 50' front setback and

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Paragraph L of Section 31.30.00 requires that the front yard remain free of parking and maneuvering lanes until the meeting of November 21, 2006.

- Petitioner will determine if they can eliminate parking spaces in order to make reduce the size of this variance request.

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

MOTION TO POSTPONE THIS REQUEST UNTIL NOVEMBER 21, 2006 CARRIED

ITEM #3 – VARIANCE REQUEST. YEN CHEN, 4679 JOHN R., for relief of the Ordinance to construct an addition at the rear of his home that would result in a 26' rear yard setback, where Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition at the rear of his existing home. The site plan submitted indicates the proposed three-season enclosure will result in a 26' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

This item last appeared before this Board at the meeting of September 19, 2006 and was postponed to allow the petitioner the opportunity to explore other options regarding this sunroom and if possible to make the variance request smaller.

Mr. Hutson explained that the Board was in receipt of a letter asking that this item be postponed.

Motion by Courtney
Supported by Littman

MOVED, to postpone the request of Yen Chen, 4679 John R., for relief of the Ordinance to construct an addition at the rear of his home that would result in a 26' rear yard setback, where Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District until the meeting of November 21, 2006.

- At the request of the petitioner.

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

MOTION TO POSTPONE THIS REQUEST UNTIL NOVEMBER 21, 2006 CARRIED

ITEM #4 – VARIANCE REQUEST. JOHN KUHN, 2172 E. WATTLES, for relief of the Ordinance to maintain a shed constructed in the front yard, where Section 40.56.02 prohibits the location of a shed in any yard except a rear yard.

ITEM #4 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a shed constructed in the front yard of this property. Section 40.56.02 prohibits the location of a shed in any yard except a rear yard.

Mr. John Kuhn was present and stated that he and his wife had purchased this home approximately 3 years ago and the landscaping makes it almost impossible to get the shed from the front to the back. The shed is not visible from any of the roads. Construction of the addition to the house took over a year. This shed has been there for a long time and no one had ever noticed it before.

Mr. Fejes asked what the shed is used for. Mr. Kuhn said that it is pretty full with gardening equipment, which includes a garden tractor.

Mr. Hutson asked if it had a foundation. Mr. Kuhn said that originally the shed was just placed on the ground, but he had added a circular drive and added a rat wall at that time. Mr. Kuhn also said that the neighbors would rather have the shed in this location rather then at the back of the lot. There are no fences and the shed in the back would be very visible.

Mr. Kovacs said that he drives by this house everyday and has never seen the shed and asked Mr. Kuhn to explain why it can't be moved to the back. Mr. Kuhn said that there are a number of trees and shrubs and there is no way to get the shed around these trees.

Mr. Kovacs asked what will happen when the road is widened. Mr. Kuhn said that he did not think they would remove the mature trees along Wattles Road in order to widen the road.

Mr. Kovacs asked if the shed would have to be removed if Wattles Road is widened. Mr. Stimac said that if the property is purchased and the right of way line is moved to the 60' line, the City would purchase the property from the petitioner. Mr. Kovacs asked if they would go around this property. Mr. Stimac said that he was unable to say what the future design of the road would be. Mr. Kovacs said that if the trees are removed, the shed should be removed. Mr. Stimac said that if Wattles goes to five lanes it is 31' from the section line to the south curb if the road is kept centered. If it is widened as is planned, Mr. Stimac's opinion was that the trees would be removed.

Mr. Kuhn said that if the road is widened, his driveway would be taken out also. Mr. Hutson said that the Board cannot consider these options since it has not happened yet.

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

There are two (2) written approvals on file. There are no written objections on file.

ITEM #4 – con't.

Mr. Kovacs asked if they could put in a provision that the shed remain screened. Mr. Kuhn said they are evergreens and have been there a long time. Mr. Stimac said that if the Board felt that the screening of the shed by the existing trees was an existing condition justifying the variance could make a condition of the action that the shed remain screened.

Motion by Kovacs
Supported by Courtney

MOVED, to grant John Kuhn, 2172 E. Wattles, relief of the Ordinance to maintain a shed constructed in the front yard, where Section 40.56.02 prohibits the location of a shed in any yard except a rear yard.

- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surrounding property.
- Literal enforcement of the Ordinance makes conforming unnecessarily burdensome.
- Existing trees keep the shed from being seen from adjacent property.
- Shed will continue to be screened by landscaping.

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

MOTION TO GRANT VARIANCE CARRIED

ITEM #5 – VARIANCE REQUEST. DENNIS SIAVRAKAS, 338 OLYMPIA (PROPOSED ADDRESS), for relief of the Ordinance to split an existing parcel of land that will result in a 59.27' lot width, where Section 30.10.09 requires a 60' wide minimum lot width for single-family homes at this location, which is zoned R-2.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split a 158.77 wide parcel of land at 330 Olympia into two parcels, one 99.5' wide containing the existing home and the other 59.27' wide proposed to be the site for a new single family residence. Section 30.10.09 requires a minimum lot width of 60' for single-family homes constructed in R-2 Zoned property.

Mr. Courtney asked if the petitioner could put the house on a 60' lot and have the variance given to the setback of the existing house. Mr. Stimac said that there are two ways that the petitioner could request a variance. The first way is to consider a setback variance from the existing house, and the second is to ask for a lot that will result in a 59.27' lot width. Mr. Courtney said that he personally would rather see a 60' lot.

ITEM #5 – con't.

Mr. Siavrakas was present and stated that they have an opportunity to build a beautiful home in a vibrant community. The plat was recorded in 1917 with the intent of having a new home on each of three (3) lots. If the variance is granted, this lot would fit in well with the neighborhood, as there are lots that are only 50' wide. All other setbacks will be met and they do not plan to add a big home. The home that is proposed is a two-story home with a two-car attached garage. They are trying to leave a buffer between this house and the property to the west that is zoned Industrial. All utilities are available and Mr. Siavrakas said that he had spoken to the neighbors and has received approval from them as they believe this will be an improvement to the area. Mr. Siavrakas said that he lives in a home that is on a 40' wide lot and when adding, fences, air conditioners, etc., the area between the homes becomes very close.

Mr. Courtney said that they could take 1' away from the house next door and he did not believe this would be a hardship. Mr. Siavrakas said that they would not be opposed to this solution.

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

There is one (1) written approval on file. There are no written objections on file.

Motion by Kovacs
Supported by Maxwell

MOVED, to grant Dennis Siavrakas, 338 Olympia (proposed address), relief of the Ordinance to split an existing parcel of land that will result in a 59.27' lot width, where Section 30.10.09 requires a 60' wide minimum lot width for single-family homes in the R-2 Zoning District.

- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.
- Variance will add a buffer for this home, which is next to Industrial property.
- Variance will not have an adverse effect to surrounding property.
- Denial will preclude full enjoyment of the permitted use of the property.

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

MOTION TO GRANT VARIANCE CARRIED

Mr. Stimac informed the Board that he had given them a copy of the updates for Chapter 39. Two text amendments have recently been approved by City Council. One of them has an effective date of October 1st and involves changes in procedure brought on by changes in the State Zoning Enabling Act. The second change that was

approved by City Council on September 18th does not go into effect until January 1, 2007. This is Section 43.74.00, and is a new provision of the Ordinance that gives the Board of Zoning Appeals the power to grant variances to allow the parking of commercial vehicles on residential property. There are specific standards that apply to the parking of commercial vehicles. Also, there is the deletion of Article 44, which is the power of City Council to hear commercial vehicle appeals and also the deletion of the power of City Council to hear parking variances.

Mr. Courtney asked if there is a new definition of commercial vehicles. Mr. Stimac said that at this time there is not, but what is being looked at is what commercial vehicles are allowed on the site and what commercial vehicles would require a variance. It is hoped that these revisions will be in place as of January 1st.

Mr. Fejes asked how this procedure will work, if it is an existing vehicle or if it is a vehicle coming into the area. Mr. Stimac said that in the past we have had people come in that are looking at buying a house and asked in advance for permission to park a commercial vehicle on the property. There are also many times that there are violations already on the site determined by the Code Enforcement officers at that time a variance is requested. There is a two-year maximum time frame on these variance requests and the Board will act on any existing approvals as they expire.

Mr. Littman said that it is not always obvious whether a vehicle is a commercial vehicle or not. Mr. Stimac said that the Planning Commission is developing the Ordinance language under which the requirements for appeals will be based.

The Board of Zoning Appeals meeting adjourned at 9:00 P.M.

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Michael Hutson, Chairman

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Pamela Pasternak, Recording Secretary