

The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M on Tuesday, December 19, 2006 at 7:30 P.M. in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
 Christopher Fejes
 Michael Hutson
 Matthew Kovacs
 Mark Maxwell
 Wayne Wright

ABSENT: Marcia Gies

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

Motion by Wright
Supported by Courtney

MOVED, to excuse Ms. Gies from tonight's meeting for personal reasons.

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

MOTION TO EXCUSE MS. GIES CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF NOVEMBER 21, 2006

Motion by Maxwell
Supported by Wright

MOVED, to approve the minutes of the meeting of November 21, 2006 as written.

Yeas: 5 – Hutson, Kovacs, Maxwell, Wright, Courtney

Abstain: 1 - Fejes

MOTION TO APPROVE MINUTES CARRIED

ITEM #2 – APPROVAL OF ITEMS #3 AND ITEM #4

Motion by Wright
Supported by Courtney

MOVED, to approve Item #3 and Item #4 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

ITEM #3 – RENEWAL REQUESTED. CONGREGATION SHIR-TIKVAH, 3900 NORTHFIELD PARKWAY, for relief of the 4'-6" high masonry screening wall required on the east side of off-street parking.

MOVED, to grant Congregation Shir-Tikvah, 3900 Northfield Parkway a three (3) year renewal of relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required along the east side of their off-street parking area where it abuts residential zoned property.

- Variance is not contrary to public interest.
- There are no complaints or objections on file.
- Variance would not have an adverse effect to surrounding property.

ITEM #4 – RENEWAL REQUESTED. THE CHURCH OF THE JESUS CHRIST OF LATTER DAY SAINTS, 2784 E. SQUARE LAKE, for relief of the 4'-6" high masonry wall required along the east and west sides of off-street parking.

MOVED, to grant Church of Jesus Christ Latter Day Saints, 2784 E. Square Lake, a three (3) year renewal for relief of the 4'-6" high masonry wall required along the east and west sides of off-street parking.

- Conditions remain the same.
- There are no complaints or objections on file.

Yeas: All – 6

MOTION TO APPROVE ITEM #3 AND ITEM #4 CARRIED

ITEM #5 – VARIANCE REQUEST. KEN BURKHART, 122 MINNESOTA, for relief of the Ordinance to expand the parking lot at an existing industrial building that will result in the parking lot being within 15' of the front property line, where Section 30.20.09 of the Zoning Ordinance requires a 50' front yard setback and Paragraph L of Section 31.30.00 requires that this yard remain free of parking spaces.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to expand the parking lot at an existing industrial building. The petitioner is proposing the construction of three parking spaces in the front of an existing industrial building that will result in the parking lot being within 15' of the front property line. Section 30.20.09 of the Zoning Ordinance requires a 50' front yard setback and Paragraph L of Section 31.30.00 requires that this yard remain free of parking spaces.

The Chairman asked if both items could be presented at the same time and Mr. Stimac stated that they are identical and could be heard together, although a separate vote would be required for each item.

ITEM #5 – con't.

Mr. Mark Bortolotti representing Mr. Burkhart was present. Mr. Bortolotti stated that the problem is that they don't have any handicapped parking and because of the economy it would make it much easier to lease and/or sell this building with the extra parking. Mr. Bortolotti went on to say that the buildings next door and across the street all use the front setback for parking. Mr. Bortolotti has gone through the City records and there have been similar requests for parking in the front setback, although they have all been denied. People still park vehicles in these front setbacks and nothing has been done about it.

These buildings were constructed around 1968 and need a lot of work to make them more attractive to potential customers. The real estate market is in a definite slump right now and if they can't provide extra parking, potential customers may go elsewhere.

Mr. Hutson asked if these buildings were vacant and Mr. Bortolotti confirmed that they were. Mr. Bortolotti said that Mr. Burkhart is retiring and just wants to sell the property. A developer looked at the property and was not interested because there was not enough parking.

Mr. Hutson asked if the building to the south had received a variance. Mr. Stimac stated that he had researched the records but they are very ambiguous. When the buildings were constructed parking was allowed in the front setback. These buildings were built at the 50' setback and have come before the Board several times asking for a variance for parking in the front setback but each time they were denied.

Mr. Wright said that the property on Minnesota has parking 15' from the street, which is illegal, as they do not have variances granting this parking.

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. Kovacs questioned the 20' distance between the buildings. Mr. Stimac explained that the Ordinance had a minimum side yard setback of 10' resulting in a distance between buildings of 20' and these buildings do comply. However, the current minimum width of a two-way driveway is 22'.

Mr. Maxwell said that he agrees with the petitioner that this property needs help.

Mr. Courtney said he would be more inclined to grant a variance if they had a potential buyer, but right now no one is occupying the building and there is no hardship.

Mr. Hutson agreed and stated in his opinion there is no practical difficulty.

ITEM #5 – con't.

Mr. Bartoletti stated that the people across the street and to the south are already parking in the front setback and they would like to be able to do the same.

Mr. Hutson said there is nothing crucial at this time. These buildings are empty and there is no hardship. Mr. Hutson suggested that the petitioner may want to withdraw these requests until he has a definite buyer for the property.

Mr. Maxwell stated that he felt the lack of parking would be a hardship for anyone interested in these properties.

Mr. Wright agreed especially since the City is not enforcing the parking.

Mr. Kovacs stated that if the petitioner had a tenant he would agree with Mr. Maxwell, however, no one is in the building and there is not a current problem, just a potential problem.

Mr. Bortoletti stated that the real estate market is very bad right now and basically it is small companies that are interested in this type of property and they like to move very quickly.

Mr. Bortoletti stated that he would like to withdraw his request for a variance on 122 Minnesota and 224 Minnesota.

Motion by Courtney
Supported by Wright

MOVED, to accept the petitioner's request to withdraw his request to expand the existing parking lot at 122 Minnesota that will result in the parking lot being within 15' of the front property line.

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

MOTION TO ACCEPT WITHDRAWAL REQUEST CARRIED

ITEM #6 – VARIANCE REQUEST. KEN BURKHART, 224 MINNESOTA, for relief of the Ordinance to expand the parking lot at an existing industrial building that will result in the parking lot being within 15' of the front property line, where Section 30.20.09 of the Zoning Ordinance requires a 50' front yard setback and Paragraph L of Section 31.30.00 requires that this yard remain free of parking spaces.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to expand the parking lot at an existing industrial building. The petitioner is proposing the construction of three parking spaces in the front of an existing industrial building that will result in the parking lot being within 15' of the front property line. Section 30.20.09 of

ITEM #6 – con't.

the Zoning Ordinance requires a 50' front yard setback and Paragraph L of Section 31.30.00 requires that this yard remain free of parking spaces.

This request was heard with Item #5 as the petitioner and request are the same on both properties.

Mr. Bortoletti stated that he would like to withdraw his request for a variance on 122 Minnesota and 224 Minnesota.

Motion by Courtney
Supported by Wright

MOVED, to accept the petitioner's request to withdraw his request to expand the existing parking lot at 224 Minnesota that will result in the parking lot being within 15' of the front property line.

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

MOTION TO ACCEPT WITHDRAWAL REQUEST CARRIED

ITEM #7 – VARIANCE REQUEST. MR. & MRS. MICHAEL TAORMINO, 1874

WYNGATE, for relief of the Ordinance to construct a deck enclosure that will result in a 35' rear yard setback where Section 30.10.02 requires a 45' rear yard setback for buildings in the R-1B Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a room over a deck that will result in a proposed 35' rear yard setback. Section 30.10.02 requires a 45' rear yard setback for buildings in the R-1B Zoning District.

Mr. Hutson asked if the property behind this lot was part of Firefighters Park. Mr. Stimac explained that the property directly behind this parcel was platted as part of the subdivision.

Mr. Courtney asked what the size of the structure was and Mr. Stimac said that it is 14' x 13".

Mr. Courtney then asked if the deck was encroaching into the setback. Mr. Stimac explained that an uncovered deck is allowed a 15' encroachment into the required rear yard.

Mr. and Mrs. Taormino were present. Mr. Taormino said that their property backs up to the wetland and the bugs are really intolerable. Adjacent to the wetlands is a retention pond and there are a number of geese around this pond. They have two children and a dog, and it is very difficult to spend anytime outside in the summer.

ITEM #7 – con't.

Mr. Hutson asked if this room could be used year round. Mrs. Taormino said that it would be a three-season room. It would not be heated.

Mr. Courtney asked if there was any other location they could put this room. Mr. Taormino said that they had tried to put it in other locations, but because of the way the roof is it would not fit in anywhere else.

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.

Mr. Kovacs asked how large this home was. Mr. Taormino said it is approximately 3600 square feet.

Mr. Kovacs then asked how long they had owned the property and Mr. Taormino said that have been in the house since May. This was a spec home. Mr. Kovacs said that he understands their problem with the bugs as he had lived next to a retention pond, but believes that there may be other options available. This is a very large house and there is a lot of room on the side of the house.

Mr. Taormino said if they put the room on the side of the house they would not have any access from the house. You would have to go outside in order to go back into the three-season room.

Mr. Kovacs said that in his opinion granting this request would be similar to opening "Pandora's Box". There is no problem with the land. Mr. Taormino said that they really can't enjoy their house as much as they would like to because of this bug problem.

Mr. Hutson said that he is very sympathetic with these problems. This is a new subdivision and certain setbacks are put in place for everyone in the subdivision. If this variance is granted, the Board would have more neighbors asking for the same type of variance. This Board is charged with enforcing the Ordinance and there is no hardship with the land.

Mr. Taormino said that he did not think granting this variance would cause a problem as there are only a few homes that back up to this wetland. Mr. Hutson said that the bugs are the same for all the homes.

Mr. Maxwell said that in his opinion this was a very large variance request. He feels that he would be willing to give them some type of variance but not 10' because of the fact that this lot is somewhat irregular.

Mr. Hutson asked the petitioners if they felt they would like to explore other options.

ITEM #7 – con't.

Mr. Courtney stated that if the variance was denied tonight and they came back with a large change, the Board could act on the new variance request.

Motion by Courtney

MOVED, to deny the request of Mr. & Mrs. Michael Taormino, 1874 Wyngate, for relief of the Ordinance to construct a deck enclosure that will result in a 35' rear yard setback where Section 30.10.02 requires a 45' rear yard setback for buildings in the R-1B Zoning District.

Motion dies to a lack of support.

Mr. and Mrs. Taormino said that they would like to postpone their request for a variance.

Motion by Kovacs
Supported by Hutson

MOVED, to postpone the request of Mr. and Mrs. Michael Taormino, 1874 Wyngate, for relief of the Ordinance to construct a deck enclosure that will result in a 35' rear yard setback where Section 30.10.02 requires a 45' rear yard setback for building in the R-1B Zoning District for sixty (60) days until the meeting of February 20, 2007.

- To allow the petitioners the opportunity to explore other possibilities that may reduce the size of this variance request.

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

MOTION TO POSTPONE THIS REQUEST UNTIL FEBRUARY 20, 2007 CARRIED

Mr. Wright stated that in his opinion the hardship could be considered the fact that they back up to the wetland and there are a large number of bugs. The hardship would not be with their property, but the property adjacent to them.

ITEM #8 – VARIANCE REQUEST. TROY CHURCH OF THE NAZARENE, 6840 CROOKS, for relief of side yard building setback, side yard parking lot setback, and screening requirements of Section 10.30.04 of the Ordinance to construct a multi purpose/classroom addition to the existing Church.

Mr. Stimac explained that the petitioner is requesting relief of Paragraph B of Section 10.30.04, which requires a side yard setback of 50' for a Church in the R-1B Zoning District. Paragraph G of the same Section further requires that side setback to be increased to 80' when the addition includes active indoor recreation facilities. The site plan submitted indicates that the building will be only 48.9' from the north property line.

ITEM #8 – con't.

Petitioner is also requesting relief of Paragraph E of Section 10.30.04 requires that there be no parking in these required side yards. The site plans submitted indicated new parking or driveways within 16' of the north property line and 47' of the south property line. Paragraph F of this Section also requires a 4'-6" high screening wall or landscaped berm be installed between parking areas and adjacent residential land. No screening elements are provided between the parking area and the adjacent residential land to the north or south.

David LeClair of Livingston Engineering, and Pastor Dennis Wegener of the Troy Church of the Nazarene were present.

Mr. LeClair explained that the Church is currently interested in expanding its current facility and adding a multi-purpose classroom addition. This building was built in the 70's and they would like to update and expand it in order to meet their needs. Mr. LeClair said that there are three (3) hardships: 1. There are existing natural features that include a very mature landscape buffer on the south side of the building and there is a heavily wooded area at the back of the building and there is quite a bit of landscaping on the north side of the building; 2. The Church has been in existence for a number of years and just want to expand on the existing footprint of the building in an east and west direction; 3. The site is only 200' wide and the requirements of the Ordinance create a hardship because of the narrowness of the lot.

Mr. LeClair addressed each hardship in order beginning with the request for a setback variance for the activity center. The property to the north is occupied by Sunrise Assisted Living, the Ordinance requires an 80' setback to residential property, and although it is zoned Residential, it is not your typical type of residence. They are planning to expand the building out from the existing structure and therefore would be the same as it is today.

Mr. Maxwell asked what the intended use of the expansion was going to be. Mr. LeClair said it was going to be used as an activity center, classrooms and a fellowship hall.

Pastor Wegener stated that the proposed use of the expansion is two-fold. There will be several classrooms and the rest of the area will be used on Sundays for "kids worship" and also as a fellowship hall. Mr. Maxwell asked what they planned to put in the space. Pastor Wegener stated that they would like to put up a few basketball hoops, but it would not be full size gym, and also plan to use it for Church dinners. The primary use will be for the children. The second floor will have a loft that will be designated as an area for teens to gather.

Pastor Wegener said that they have a very good relationship with Sunrise Assisted Living and in fact have a path made of brick pavers between the two properties. Pastor Wegener submitted a letter from Sunrise Assisted Living indicating approval of this request. He goes there every morning and visits the people that live there. They also

ITEM #8 – con't.

have access to the parking and when needed they do use the extra parking on this property.

Mr. Maxwell asked what the primary use of the space would be. Pastor Wegener said that it would be used 75% for education. On Sundays it will be used for education and teaching.

Mr. Courtney asked why they wanted to put the addition on the front of the building rather than the back. Pastor Wegener stated that the building was constructed in the 60's and they are trying to make the front of the building look better than it does. The building would look more like a Church in the front and they feel this will make it more pleasant to the eye and will fit in better with Sunrise Assisted Living. The building is unattractive and the sanctuary is in the back and access to the Church is easier.

Mr. LeClair stated that even if the proposed construction took place at the back of the building a variance would still be required.

Mr. LeClair said that regarding parking within the 50' setback. If you look at the site the existing parking lot is 16' from the setback and we are asking to put in a driveway that would continue that 16' from the back parking lot to the front parking lot. This would enable an emergency vehicle to go around the entire building.

Regarding the 4' 6" high screen wall required there is natural landscaping. South of this property is a residential area but it is screened by a very mature tree line and they would have to destroy those trees in order to put up a screening wall. They would like to leave existing trees in place.

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. Kovacs asked if the variance for the berm would be permanent or renewable. Mr. Stimac stated that it would depend on how the Board acted on the request. The petitioner's request is to eliminate the screen wall and if the Board agreed, that would be a permanent variance. If the request was to maintain a berm in lieu of a screen wall, that would be a renewable item.

Mr. Wright stated that he did not see any problem with the variance requested for the south side results in a variance of a couple of inches. Mr. Wright does not have a problem with granting a variance on the north side of the building for the parking variance. He was wondering if the Board could grant a three (3) year variance for the berm.

ITEM #8 – con't.

Motion by Courtney
Supported by Wright

MOVED, to grant Troy Church of the Nazarene, 6840 Crooks, for relief of the side yard-building setback, side yard parking lot setback, required by Section 10.30.04 of the Ordinance to construct a multi purpose/classroom addition to the existing Church.

- Variance request on the south side is minimal.
- Variance would not have an adverse effect to the property on the north side of this site.
- Parking variance is in line with approved parking area.
- There are no complaints or objections on file.
- Variance is not contrary to public interest.

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

MOTION TO GRANT VARIANCE REQUESTS CARRIED

Motion by Courtney
Supported by Wright

MOVED, to grant Troy Church of the Nazarene, 6840 Crooks, relief of the screening requirements of Section 10.30.04 of the Ordinance to construct a multi purpose/classroom to the existing Church.

- Natural vegetation would have to be destroyed if the screen wall is required.
- Too many trees that already provide screening would be lost.

Yeas: 4 – Courtney, Fejes, Hutson, Wright
Nays: 2 – Kovacs, Maxwell

MOTION TO GRANT PERMANENT VARIANCE CARRIED

Mr. Kovacs said that the reason he voted no, was because he would have liked it to be renewable after a year. He was concerned about any type of future use.

Mr. Hutson informed the Board that this was his last meeting as he has been appointed to the Planning Commission. He thanked everyone for all of their help and wished all a Happy Holiday.

Mr. Wright welcomed Mr. Hutson to the Planning Commission and stated that he has enjoyed working with the Board this year and wished all a Happy Holiday.

The Board of Zoning Appeals meeting adjourned at 8:38 P.M.

Michael Hutson, Chairman

Pamela Pasternak, Recording Secretary