The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, June 19, 2007 in Council Chambers of the Troy City Hall.

PRESENT: Michael W. Bartnik
Glenn Clark
Kenneth Courtney
Marcia Gies
Matthew Kovacs
Mark Maxwell
Wayne Wright

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF MAY 15, 2007

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of May 15, 2007 as written.

Yeas: 6 – Gies, Kovacs, Maxwell, Wright, Clark, Courtney
Abstain: 1 - Bartnik

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – VARIANCE RENEWAL. MNAD PROPERTY II LLC, 3236 ROCHESTER ROAD, for relief of the 6' high masonry-screening wall required along the south property line where non-residential property abuts residential zoning.

Mr. Stimac explained that the petitioner is requesting renewal of relief of a six-foot high screening wall required by Section 39.10.01 along the south property line where the property abuts residentially zoned land. The variance was originally granted in 1968 and annually renewed for a number of years. In 1994 it was reported to the Board of Zoning Appeals that the variance was no longer necessary. A review of the records indicates that was not the case. The petitioner is asking that the original variance be renewed on the property.

Mr. Stimac further explained that in 1963 this property was zoned R-1D (Single Family Residential). In October 1967, Council passed a re-zoning request and re-zoned the western portion of this property to B-2. At the time of re-zoning it was still used as a single family residence. In 1968 the owner of the property petitioned to convert this property from a single family residence to an office building. As part of the conversion the screen wall requirement was imposed. At that time the petitioner applied to the

ITEM #2 – con't.
Board of Zoning Appeals for relief of the screen wall. That relief was granted in 1968 and annually renewed for a number of years. In 1994 the eastern residential portion of the property was sold off and developed as a single family residential subdivision and a screen wall was constructed at the eastern boundary of the B-2 Zoning. At that time it was reported to the Board that a variance was no longer required. However, the south property line still abuts to residential zoning and there has been no action taken on that portion of the property. A 6' high screen wall would be required along approximately the eastern 105' of the south property line.

Because this request is different from a regular variance renewal, a Public Hearing has been published and notices sent to surrounding property owners to inform them that a variance is required.

Mr. Maged Michail, the owner of the property was present and stated that he believes the variance should be continued. There is an existing screen wall along the east side of the property and a fence along one-third of the property on the south side. There is also existing landscaping along the property line.

The Chairman opened the Public Hearing.

Karen and Mike Walzak, 1031 Boyd were present. Ms. Walzak stated that the trees have been cut down and the area has not been taken care of. Ms. Walzak said that she would like to see something put up in this area.

Mr. Courtney asked what type of screening she would like in this area.

Ms. Walzak stated that she would like to see something permanent put up as people cut through her property.

Mr. Courtney asked if she would like a wall.

Ms. Walzak said that she would like to see a screening wall put up.

Mr. Clark asked if Ms. Walzak would be opposed to the Board granting renewal of this variance.

Ms. Walzak said that she would be opposed to a variance without a wall.

Mr. Kovacs asked if she was the owner of the property.

Ms. Walzak said that she has lived here for twenty (20) years and does own the property.

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

ITEM #2 – con't.

There are no written approvals or objections on file.

Mr. Michail said that he has owned this property since October and the landscaper cut the bushes and trees too much. He would be more than willing to re-install the landscaping to make Ms. Walzak happy. Mr. Michail went on to say that he owns the property running along Rochester Road to the south and at one time the City had trucks from the Engineering Department parked on the site. Relief of the screening wall was granted between 1968 and 1994 and he would like to see this relief continued.

Mr. Maxwell stated that the City requires some type of screening between a business and residential property. They can grant relief of a variance that will run between one and three years. Mr. Maxwell stated that he would like the opportunity to go and view this property again.

Mr. Kovacs asked Ms. Walzak if she thought they could come to an equitable agreement with the property owner.

Ms. Walzak said that she wants a wall separating the properties.

Mr. Bartnik asked if Ms. Walzak owned the property to the south of this site.

Mr. Stimac said that Ms. Walzak's property was to the south of this site. Mr. Stimac also stated that the Rochester Road frontage property to the south did have a building on it and as part of the development of that property was required to have a screening wall constructed. When Rochester Road was widened the City bought the property and tore the building down. As a vacant site, the wall was no longer required but remained until it fell down on a wind storm in 2003. Although no separation was required, the City agreed to put in a wooden fence.

Mr. Maxwell asked if the Board could require a screening wall.

Ms. Stimac said that according to the Ordinance a 6' high masonry screen wall is required. The Board can grant renewal of relief of this requirement. The Board can also deny this request and require construction of a masonry wall or the Board could require the petitioner to put up a berm or landscaping in lieu of the wall.

Mr. Stimac also said that in making that determination the Board can consider the current and future use of the adjacent property. Mr. Stimac did not have a written document from the Planning Director regarding this adjacent property. However, the Future Land Use Plan of the area shows that the Rochester Road frontage is planned for retail commercial use. At the current depth of the zoning, the corner of Rochester and Boyd is not large enough to build anything.

ITEM #2 – con't.

Mr. Courtney stated that in his opinion a masonry-screening wall would be out of place and he would like to see the fence extended. A fence would keep people from trespassing onto the Walzak's property and would solve the property.

Motion by Kovacs
Supported by Courtney

MOVED, to postpone the request of MNAD Property II LLC, 3236 Rochester Road, for relief of the 6' high masonry-screening wall required along the south property line where non-residential property abuts residential zoning until the meeting of July 17, 2007.

- To allow Board members to look at property in question.

Yeas: All – 7

MOTION TO POSTPONE THIS REQUEST UNTIL JULY 17, 2007 CARRIED

ITEM #3 – VARIANCE REQUEST. RANDALL A. WHINNERY, 2078 TUSCANY, for relief of the Ordinance to construct an addition on the rear of an existing residence that will result in a 29' rear yard setback where Section 30.10.05 requires a 40' minimum rear yard setback in R-1D Zoning Districts.

Mr. Stimac explained that he received a letter from the petitioner asking that this request be withdrawn.

Mr. Maxwell stated that this item had been postponed to allow the petitioner the opportunity to determine if there was any way to decrease the size of the original variance request. The petitioner did not respond to the request of the Board.

Motion by Courtney
Supported by Gies

MOVED, to accept the withdrawal request of Randall A. Whinnery, 2078 Tuscany, for relief of the Ordinance to construct an addition on the rear of an existing residence that will result in a 29' rear yard setback where Section 30.10.05 requires a 40' minimum rear yard setback in R-1D Zoning Districts.

- At the request of the petitioner.

Yeas: All – 7

MOTION TO ACCEPT WITHDRAWAL CARRIED

ITEM #4 – VARIANCE REQUEST. MR. & MRS. MICHAEL LARCH, 91 BILTMORE, for relief of the Zoning Ordinance to construct a detached garage that will result in a 3' setback from the west property line.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a detached garage. The site plan submitted indicates the construction of a detached garage with a setback of 3' from the west property line. Section 40.56.02 (D) requires a 6' minimum setback to any side or rear property line.

Mr. Bartnik asked what the distance from the property lines of the homes to the west were.

Mr. Stimac said that he thought the setback of the duplex at 103-105 Biltmore appeared to be about 10'. He also thought that the house at 81 Biltmore was approximately 16' to the property line and the garage appears to be between 3' and 5'.

Mr. David Calcaterra, of Miller Garages, representing Mr. & Mrs. Larch was present. Mr. Calcaterra said that this is a very narrow lot and the 3' difference would make a large difference in the area of the yard they would be able to utilize. Mr. Calcaterra also said that they would be willing to put in a firewall on the side of the garage that is next to the fence.

Mr. Courtney asked if this was the usual setback for detached garages in other Cities.

Mr. Calcaterra said because the lot is so narrow, this is what they had proposed.

Mr. Courtney said that he did not have a problem with the 3' side yard setback.

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.

Mr. Maxwell said that he thought that most of the garages in this area are closer to the side yards than 6'.

Motion by Kovacs
Supported by Wright

MOVED, to grant Mr. & Mrs. Michael Larch, 91 Biltmore, relief of the Zoning Ordinance to construct a detached garage that will result in a 3' setback from the west property line.

- Variance is not contrary to public interest.
- This lot is a very narrow lot.

ITEM #4 – con't.

- Literal enforcement of the Ordinance would preclude full enjoyment and would be unnecessarily burdensome.
- Variance would not have an adverse effect to surrounding property.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

Mr. Kovacs stated that he has seen a number of structures available at retail stores that would be construed as gazebos and asked if the City would allow them.

Mr. Stimac stated that the placement of these structures would still have to comply with the setback requirements of permanent structures. Mr. Stimac also stated that he has attempted to determine whether or not these structures would be able to withstand wind or a snow loads. He has been unable to get any of this information from the manufacturers and would be concerned, that although they are heavy, they may not be able to withstand a strong wind.

Mr. Kovacs asked if the City would approve them.

Mr. Stimac said that as long as they met the Ordinance requirements they would be approved.

The Board of Zoning Appeals meeting adjourned at 8:11 P.M.

Mark Maxwell, Chairman

Pamela Pasternak, Recording Secretary