

The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, January 18, 2005 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
 Christopher Fejes
 Marcia Gies
 Michael Hutson
 Matthew Kovacs
 Mark Maxwell
 Tom Strat

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF DECEMBER 21, 2004

Motion by Courtney
Supported by Maxwell

MOVED, to approve the minutes of the meeting of December 21, 2004 as written.

Yeas: 5 – Hutson, Kovacs, Maxwell, Strat, Courtney
Abstain: 2 – Fejes, Gies

MOTION TO APPROVE MINUTES OF THE DECEMBER 21, 2004 AS WRITTEN
CARRIED

ITEM #2 – RENEWAL REQUESTED. HARRY & SUNNIE KWON, 38921

DEQUINDRE, for relief to maintain a 6' high wood fence in lieu of a 6' high masonry screen wall required by Section 39.10.01 for a 35' long portion of the west property line where the property borders residential property.

The Chairman moved this item to the end of the agenda, Item #8, to allow the petitioner the opportunity to be present.

ITEM #3 – VARIANCE REQUESTED. RICK HADAD, MR. ENCLOSURE

SUNROOMS, 4451 REILLY, for relief of the Ordinance to construct a patio enclosure that would result in a proposed 25.3' rear yard setback where Section 34.20.03 of the Zoning Ordinance requires a 35' minimum rear yard setback in R-1C Zoning Districts utilizing the open space option.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure that would result in a 25.3' rear yard setback. Section 34.20.03 of the

ITEM #3 – con't.

Zoning Ordinance requires a 35' minimum rear yard setback in R-1C Zoning Districts utilizing the open space option. Mr. Stimac also explained that at the time this subdivision was platted the developer created a park area that is part of the subdivision and the individual lots were reduced in size. In subdivisions utilizing the open space option rear yard setbacks are reduced to 35'.

This item last appeared before this Board at the meeting of December 21, 2004 and was postponed to allow the petitioner the opportunity of a full Board.

Mr. Hadad and Mr. Geering were present. Mr. Hadad stated that he did not believe this variance would be contrary to public interest and would not have an adverse effect to surrounding property and does not violate the legislative intent of the Ordinance. Mr. Hadad also indicated that he had brought in an approval letter from the neighbor behind this property and a letter from Mr. Geering's mother's therapist indicating that a sunroom would be very beneficial to her as she is 86 years old and has difficulty walking. Mr. Hadad stated that Joan Geering stated that she would like to add this sunroom to aid their mother as her walking is disabled and suffers from dementia and felt that this addition would add to the value of this property. Mr. Hadad clarified that Ms. Geering sister is also one of the homeowners and also resides at this address.

Mr. Hadad also said that this home is a few blocks away from the subdivision park and does not derive any benefit from this park. Mr. Hadad further stated that other cities have modified the setback requirement when a structure is predominantly glass.

The Chairman opened the Public Hearing.

Mr. Kenneth Hietikko, 4447 Reilly was present and stated that he was in support of this addition as it would enable the owners to make full use of their yard.

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

There are no additional approvals or objections on file.

Mr. Hutson stated that he does feel this variance would have an adverse effect to surrounding property and would be contrary to public interest. Mr. Hutson further stated that the developer decided to use the open space option, which then reduces the size of the lots. Mr. Hutson also stated that he feels this is a very large variance request and also that there is no practical hardship that runs with the land.

Ms. Gies stated that she agrees with Mr. Hutson's statement and does not see a practical difficulty or hardship that runs with the land. Mr. Kovacs also said that although he sympathizes with health problem of the Geering's mother, he does not see a hardship that runs with the land. Mr. Kovacs further stated that this Board cannot make a decision based on health.

ITEM #3 – con't.

Motion by Hutson
Supported by Courtney

MOVED, to deny the request of Rick Hadad of Mr. Enclosure Sunrooms, 4451 Reilly, for relief of the Ordinance to construct a patio enclosure that would result in a proposed 25.3' rear yard setback where Section 34.20.03 of the Zoning Ordinance requires a 35' minimum rear yard setback in R-1C Zoning Districts utilizing the open space option.

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

Yeas: All – 7

MOTION TO DENY REQUEST CARRIED

ITEM #4 – VARIANCE REQUESTED. MERI BORIN, 2317 VERMONT, for relief of the Ordinance to maintain a shed constructed without first obtaining a Building Permit, located in the side yard, with a side yard setback of 2.4' to the east property line and a distance of 7.5' to the attached garage.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a shed that has been constructed without first obtaining a Building Permit. The site plan submitted indicates that the shed has been constructed in a side yard with a side yard setback of 2.4' to the east property line and with a distance of 7.5' to the attached garage. Section 40.57.03 prohibits the placement of any accessory building in any yard except a rear yard. Section 40.57.05 requires a 6' minimum setback from an accessory building to any property line and a 10' minimum distance to the main structure.

This item last appeared before this Board at the meeting of December 21, 2004 and was postponed to allow the petitioner the opportunity of a full Board.

The petitioner was not present. Ms. Lancaster received a fax letter, addressed to Mr. Stimac, from Ms. Borin indicating that she wished to withdraw this request and planned to move this shed so that it would comply with the requirements of the Ordinance.

Motion by Courtney
Supported by Maxwell

MOVED, to accept the withdrawal request of Meri Borin, 2317 Vermont, for relief of the Ordinance to maintain a shed constructed without first obtaining a Building Permit, located in the side yard, with a side yard setback of 2.4' to the east property line and a distance of 7.5' to the attached garage.

ITEM #4 – con't.

- Petitioner has indicated that she will comply with the Ordinance.

Yeas: All – 7

MOTION TO ACCEPT WITHDRAWAL REQUEST CARRIED – NO FURTHER ACTION TAKEN BY THE BOARD

ITEM #5 – VARIANCE REQUESTED. DANIEL THOMPSON, 6867 SHELLDRAKE, for relief of Section 30.10.05 of the Ordinance to maintain a home constructed with a 24.7 front yard setback to the front property line where 25' minimum is required.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a home constructed with a 24.7' front yard setback to the front property line where 25' minimum is required by Section 30.10.05. The permit for the construction of the new home was issued with the stipulation that an as-built survey of the foundation was to be submitted before the framing was to be installed. Unfortunately, this was not done. Once the as built was done after the framing was installed it was discovered that the home was constructed 5" too close to the front property line.

Mr. & Mrs. Thompson were present and Mr. Thompson said that the variance they are requesting is for 3/10 of a foot. Ms. Thompson stated that the "as-built" requirement was not on their permit, displaying the Weather Card. Mr. Stimac explained that this stipulation is on the copy of the permit that also indicates that payment had been made. Ms. Thompson also said she did not think this was a large request and the house is totally built and they would have to knock off a few inches of the garage.

Mr. Kovacs asked if inspections are done when the foundation is poured. Mr. Stimac said that a footing inspection is done; however, the reason an as built is called for is because in an older subdivision such as this one, lot markers are very difficult to locate. Mr. Stimac also explained that the as built is required before framing to determine the correct location of the home under constructions and to alleviate such problems as this one.

Mr. Courtney asked if they had built this home. Mrs. Thompson said that they sub-contracted the work on this home.

The Chairman opened the Public Hearing.

Mr. Donegan, 1475 Cambria was present and stated that he approves of this variance request.

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

There are six (6) written approvals on file. There are no written objections on file.

ITEM #5 – con't.

Motion by Courtney
Supported by Strat

MOVED, to approve the request of Daniel Thompson, 6867 Shelldrake, for relief of Section 30.10.05 of the Ordinance to maintain a home constructed with a 24.7' front yard setback to the front property line where 25' minimum is required.

- Variance applies only to this property.
- Variance will not establish a prohibited use in a Zoning District.
- Variance request is minimal.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 7

MOTION TO APPROVE REQUEST CARRIED

ITEM #6 – VARIANCE REQUESTED. MIKE ELIAS, 5991 LIVERNOIS, PROPOSED ADDRESS 5977 LIVERNOIS, for relief of the Zoning Ordinance to construct a new gasoline/convenience store to replace the existing facility.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a new gasoline/convenience store to replace his existing facility. A similar plan appeared before the Board in May of 2004. Requests for variances on that plan were approved. A revised plan has now been submitted that requires similar, but different, variances as follows:

Paragraph B of Section 23.30.02 requires at least 15,000 square feet of land for a gasoline station in the H-S (Highway Service) Zoning District. The site plan submitted indicates that this site is only 13,382 square feet.

Paragraph G of Section 31.30.00 requires that front setbacks of 25' are provided to the edge of a pump canopy, and 35' are provided to the canopy support. The site plans submitted indicated a canopy edge setback of 23'-6" to Livernois and 22.8' to Square Lake. They also indicate a setback to the canopy support of only 31'-6" to Livernois and 33' to Square Lake.

Paragraph G of Section 31.30.00 further requires a side yard setback of 10' to the edge of a canopy and 20' to the canopy supports and pump islands. The site plan submitted indicates the canopy right on the south property line, 10'-3" to the canopy support and 9'-6" to the pump island.

In addition, a minimum of 1,138 square feet of countable landscaping is required by Section 39.70.04 for a site this size. The plans indicate that only 256 square feet of countable landscaping will be provided.

ITEM #6 – con't.

Mr. Hutson asked if these changes were a result of the Planning Commission or simply changes made by Mr. Elias. Mr. Stimac said that he believes this is a combination of both. Mr. Stimac also said that he believes this new plan is also a result of concerns regarding a cross access agreement, which have now been addressed.

Mr. Strat stated that these plans had come before the Planning Commission several times, and that this is a significant compromise but was felt by both the Planning Commission and the Planning Department that this would be an excellent solution. Mr. Strat also said that he would like to recommend that the Board of Zoning Appeals grant these variances, as he believes they completely address the safety concerns of the Board and also allows for the preservation and integrity of this corner. Mr. Strat also said that he believes this proposed plan will be an asset to this area.

Mr. Elias said that he was very pleased with this plan and believes that it does address the safety issues and is a much better design. Landscaping will be added, and a newer building will be consistent with the surrounding area. Mr. Elias is very pleased with the cross access easement also.

Mr. Courtney stated that he thinks that this plan is much better than the original plan.

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 Fejes
Supported by Gies

MOVED, to approve the request of Mike Elias, 5991 Livernois, proposed address 5977 Livernois, for relief of the Zoning Ordinance to construct a new gasoline/convenience store to replace the existing facility with the following variances: Site is only 13,382 square feet where 15,000 square feet of land is required by Paragraph B of Section 23.30.02; Canopy edge setback of 23'-6" to Livernois and 22.8' to Square Lake, where 25' are required by Paragraph G of Section 31.30.00; setback to the canopy support of only 31'-6" to Livernois and 33' to Square Lake, where 35' are required by Paragraph G of Section 31.30.00; canopy right on the south property line, 10'-3" to the canopy support and 9'-6" to the pump island where Paragraph G of Section 31.30.00 requires a side yard setback of 10' to the edge of a canopy and 20' to the canopy supports and pump islands; and, 256 square feet of countable landscaping where Section 39.70.04 requires 1,138 square feet for a site of this size.

- Variances are not contrary to public interest.
- Variances will not have an adverse effect to surrounding property.
- Variances will not establish a prohibited use in a Zoning District

ITEM #6 – con't.

- This site plan addresses both the safety concerns and integrity of this corner.

Yeas: All – 7

MOTION TO APPROVE VARIANCES CARRIED

ITEM #7 – INTERPRETATION REQUESTED. JOHN PITRONE, OF THE HAYMAN COMPANY, 5700 CROOKS, SUITE 219, for an interpretation that the proposed use of an office space is permitted in the R-C Zoning District.

Mr. Stimac explained that he had received a written request from Honigman Miller Schwartz & Cohn LLP, representing Mr. Pitrone asking that this request be withdrawn.

Motion by Courtney
Supported by Gies

MOVED, to accept the request for withdrawal of Honigman Miller Schwartz & Cohn LLP, representing Mr. Pitrone of the Hayman Company, 5700 Crooks, Suite 219, for an interpretation that a proposed use of an office space is permitted in the R-C Zoning District.

Yeas: All – 7

MOTION TO ACCEPT WITHDRAWAL REQUEST CARRIED

ITEM #8 (ITEM #2) – RENEWAL REQUESTED. HARRY & SUNNIE KWON, 38921 DEQUINDRE, for relief to maintain a 6' high wood fence in lieu of a 6' high masonry screen wall required by Section 39.10.01 for a 35' long portion of the west property line where the property borders residential property.

Mr. Stimac explained that the petitioners are requesting renewal of a variance granted by this Board to maintain a 6' high wood fence in lieu of a 6' high masonry screen wall for a 35' long portion of the west property line where the property borders residential zoned property. This item last appeared before this Board at the meeting of January 2004 and was granted a one-year variance to allow the Board to study both the appearance and need for maintenance of the fence installed. Conditions remain the same and we have no complaints or objections on file.

Mr. Kwon was present and stated that he had nothing to add.

Motion by Courtney
Supported by Fejes

ITEM #8 (ITEM #2) – con't.

MOVED, to grant Harry & Sunnie Kwon, 38921 Dequindre, a three (3) year renewal of relief to maintain a 6' high wood fence in lieu of a 6' high masonry screen wall required by Section 39.10.01 for a 35' long portion of the west property line where the property borders residential property.

- To allow enough time for the adjacent subdivision to be constructed.
- To make sure that maintenance is kept up on this fence.

Yeas: All – 7

MOTION TO GRANT RENEWAL FOR A PERIOD OF THREE (3) YEARS CARRIED

Mr. Hutson asked if this variance could be made a permanent variance because of the fact that this property is on an easement and Sun Oil will not allow any type of permanent structure to be put in this location. Mr. Stimac explained that Section 43.76.00 of the Ordinance requires that a variance on a screen wall be established for a period of three (3) years first, and after the initial three (3) years it could then be changed to a permanent variance. Mr. Stimac also said that one of the reasons for the three-year limit is to make sure that the petitioner is maintaining this screen wall.

Mr. Hutson then asked what would happen if this fence were not maintained. Mr. Stimac said it would then be in violation of the Zoning Ordinance and ultimately the Courts would require maintenance of this fence. Mr. Stimac further explained that the Building Inspection Department is responsible to make sure that these fences and/or walls are maintained.

Mr. Kwon said that part of their business is to provide customer satisfaction and they would maintain this wall.

Mr. Strat said that there are no reassurances that some time in the future this property would be sold and Mr. Kwon would not own it any longer.

The Board of Zoning Appeals adjourned at 8:28 P.M.

Matthew Kovacs – Chairman

Pamela Pasternak – Recording Secretary