The Chairman, Matthew Kovacs, called the special meeting of the Board of Zoning Appeals to order, at 7:30 P.M. on Tuesday, August 31, 2004, in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
Christopher Fejes
Marcia Gies
Michael Hutson
Matthew Kovacs
Mark Maxwell
Robert Schultz

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

ITEM #1 – VARIANCE REQUEST. MARC COOKE, 1985 W BIG BEAVER, for relief of the Ordinance to construct an addition to an existing office building, which would result in a 13'-10" setback where 30' is required by Section 30.20.01 of the Zoning Ordinance.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct an addition to the existing office building at 1985 W. Big Beaver. The existing building was granted a variance to have a 22' setback to the west property line along Todd Road where 30' is required by Section 30.20.01 of the Zoning Ordinance by the Board of Zoning Appeals on July 28, 1970. The new proposed addition indicates a 13'-10" setback to this property line.

Marc Cooke and Jay Cooke, owners, and Michael Van Loon, Architect, were present. Marc Cooke stated that he and his brother had purchased this building and found that it has many obvious flaws and they are attempting to make improvements, which will make it handicap accessible and bring it up to the present building code. There have been two owners in the life of this building and no improvements have been made. This building is connected to a restaurant and has some below grade office occupancy. Mr. Cooke also said that the building has many impractical features, which include a very small elevator that only serves one floor and has steps up to it that precludes it from being handicap accessible. The building also has very small hallways and also has a restroom on the lower level that is not easily accessible. Mr. Cooke further stated that the improvements they are proposing will bring this building up to the present code and also comply with the handicap requirements. Mr. Cooke also said that they did not believe they could re-work the current stairwell into the new building code.

Mr. Van Loon stated that he believes the present stairway is unsafe and in order to expand the current restrooms, they would require this variance. Mr. Van Loon explained that if they were to expand the stairway to the east, toward Big Beaver, the present tenants would be affected. Expanding to the west would require the

ITEM #1 – con't.

repositioning of the existing lavatories. By demolishing the stairway and the lower level lavatories, they would be able to construct code accessible bathrooms on all floors.

Mr. Cooke stated that the present stairway is unsafe due to the materials that were used, the height of the tread and the spacing of the spindles. Mr. Cooke also said that presently this building has a 15% common area factor, and if this variance is not granted the common space would be increased to 25% and the lease market would not bear those figures, which would not make this space competitive. Mr. Cooke also said that the elevator cannot fit a wheel chair and if it is rebuilt on the back of the building in the new expansion space, it will create barrier free access to all three floors.

Mr. Van Loon stated that the stairway cannot be brought up to code without major structural modifications to the building.

Mr. Maxwell asked if the entrance would be barrier free. Mr. Van Loon said that the improvements would bring this building up to code. Mr. Maxwell asked what access a person using a wheel chair would have entering the building from Todd Street. Mr. Van Loon said that they would be entering the building on the main floor.

Ms. Gies asked for clarification regarding the parking and handicap access. Mr. Kovacs asked why the variance was required for the side of the building, when in fact the addition was going to be added to the rear of the building. Mr. Van Loon said that this area is not up to code and they plan to bring it up to code. Mr. Kovacs asked how many entrances are required to be barrier free and Mr. Van Loon stated one entrance is required to be barrier free.

Mr. Courtney said that the object of moving the stairway out was because the petitioner indicated that they would be losing space internally, but space would be gained when the stairway was moved in the other location. Mr. Cooke said that the space was going to be replaced with hallway. The overall larger plan is to redesign this entire building but they wish to start with the first floor. Right now the area is laid out for one suite and the new configuration area would expand the common area. Mr. Courtney then said that they were adding more common area in order to break the space down into more suites. Mr. Van Loon said that currently it is a multi-tenant space and basically all they wish to do is to make it handicap accessible. Mr. Van Loon also said that they would end up with almost the same identical rentable area, the main crux of the changes is to bring the building up to a nicer look and bring it up to code.

Mr. Cooke said that the proposed stairway is larger than what is there now. Part of this is on the original building footprint and they wish to go approximately eight feet beyond that. Mr. Cooke also said that they would be enlarging the bathrooms and therefore would be giving some of that space back.

ITEM #1 – con't.

Mr. Van Loon said that the rungs on the stairway are 10" and according to the code they should be 11". As soon as this is done the stairway will have to be expanded and they will be losing space there. Mr. Courtney said that they will gain space once the elevator is removed. Mr. Van Loon stated that this is a very small elevator and did not feel the amount of space they would gain would be significant. Mr. Cooke said that this extra space would be added to the existing bathroom. Mr. Cooke also said that the hallway is very narrow.

Mr. Jay Cooke said that they had explored other possibilities however, because the building has two front setbacks, it did not make sense to put the entrance in any other locations. Mr. Cooke also said this is a very old building and they are trying to upgrade this structure and if the building was located somewhere else a variance would not be required. Mr. Cooke further pointed out that this would be a much safer building for the City and without the variance makes alterations very difficult. Mr. Marc Cooke said that he feels this addition would make the building very aesthetically pleasing.

Mr. Kovacs asked if an entrance was required on the side of the building. Mr. Stimac stated that the present building code requires at least two exits. One exit has to be at least 1/3 the diagonal of the building away from the other exit. The exits have to be remote in order to meet the code requirements. Mr. Courtney asked if the exit could be placed immediately east of the proposed location. Mr. Van Loon said that the reason it cannot be there because of a large transformer in that location. Mr. Cooke also said that there is a grade difference. Mr. Cooke said that the exit in that location would require a great deal of structural changes. Mr. Van Loon also said that the sewer comes into the building on that side. Mr. Van Loon further stated that it would be very difficult to put the entrance over the underground electrical lines. Mr. Van Loon was concerned that the existing footings would be disturbed and the structural changes required could be extensive and also that the footings could not put over the electrical box.

Mr. Kovacs asked what the building would look like with the proposed stairwell. Mr. Van Loon said that presently it is brick with narrow bands of windows between it and they would make the whole front glass to break up some of the brick. Executive detailing would be put at the top of the building.

Ms. Gies asked if a larger elevator could be put into the building, rather than adding a stairwell. Mr. Van Loon said that they cannot use an elevator as an emergency exit.

Mr. Schultz asked what the side setbacks would be if this building were located in the middle of the block. Mr. Stimac said they would be 20'. Mr. Schultz then confirmed that a variance would still be required. Mr. Stimac explained that in the O-1 Zoning District, a 30' front and 20' side and rear setbacks are required. Mr. Schultz then asked if the building complies with the setback to Big Beaver. Mr. Stimac said that from the drawings it would appear that the building is setback back approximately 50' from Big

ITEM #1 – con't.

Beaver. Mr. Schultz then asked if a variance was granted for the 13'-10' setback, if it would then apply to the entire building. Ms. Lancaster explained that a variance could be granted with the stipulation that it was for the stairwell only.

Mr. Hutson asked if this stairwell had to be brought up to code if they are making improvements in other parts of the building. Mr. Stimac said that the building code has provisions for existing structures regarding levels of renovations and from talking to the petitioner, Mr. Stimac said that they are planning to make significant changes to the building and he thought that the stairways and exits would have to be brought up to minimum standards. Building code requires two exits out of the building, but only requires one elevator.

Mr. Hutson asked if there would be enough room to make the modifications required to the restrooms and stairways by removing the elevator. Mr. Van Loon stated that the elevator is not large enough to meet the capacity and they need the room to make the bathrooms handicap accessible. The location of the elevator would be taken by the lavatory additions. Mr. Hutson then asked how much larger these bathrooms would have to be and Mr. Van Loon said that he needs at least a 5' turning radius, plus each stall would have to be expanded. Mr. Van Loon also said that they would be pushing the bathrooms out another 5' or 6'. Mr. Hutson asked if they could enlarge these rooms by going farther back into the building. Mr. Van Loon said if they were to do that they would have to move the plumbing, which would be very costly. Mr. Hutson then asked if it would be cheaper with a variance and Mr. Cooke said he thought it would be more expensive if a variance was granted. The bathrooms have to be demolished because they have two steps going into them and they would not be handicap accessible. Mr. Hutson also said that he thought these modifications could be made without a variance, but would be more costly. Mr. Cooke said that they would have to restructure all three floors of the building and they would also lose three windows.

Mr. Hutson said that he was concerned because he does not feel the Ordinance addresses interior modifications to a building, and feels that this request is excessive.

Mr. Courtney said that it appears that if they added to the Big Beaver side a variance would not be required. Mr. Stimac asked what the east – west dimension of the addition was and Mr. Van Loon stated that is was 12'-2". Mr. Stimac then asked if he was correct in assuming an existing 50' front setback to Big Beaver, that the building was more than 12'-2" from the front setback line to the building. Mr. Cooke said that initially they had thought to keep this stairway, but it takes more room than it did when the building was originally constructed. Mr. Courtney then asked why it could not be placed on the Big Beaver side. Mr. Van Loon said that they have to move utilities and it would be cost prohibitive.

ITEM #1 – con't.

Mr. Van Loon said that this building is built on step footings and he was concerned that the existing footings were not deep enough and was also concerned that due to the age of the building, the existing footings would have to be taken out and new footings put in.

Mr. Jay Cooke stated that he felt the greatest resolution would be to infringe into the setback. This side entrance would be much safer and would be brought up to code.

Mr. Schultz asked if other variances had been granted other than the west side variance that was granted. Mr. Stimac indicated that a parking variance was granted in 2003 for the restaurant, which increased the seating capacity.

Mr. Schultz asked if the proposed addition was going to be a three-story addition and perhaps handicap accessible bathrooms could be added, and they could take out the bathrooms and stairwells that are not in compliance. Mr. Van Loon stated that it would be difficult to place the bathrooms higher up as they would have to cut into the sanitary lines on Big Beaver.

Mr. Jay Cooke stated that they need this consideration as they have explored a number of other options and believe this is the only viable solution. Mr. Kovacs stated that the Board needs to make an informed decision and that is why they are trying to understand the reasoning for not putting the entrance along Big Beaver Road.

Mr. Courtney asked if there was a sewer line along Butterfield. Mr. Stimac said that there was a sewer on Butterfield, but he was not sure if it extended far enough for them to connect to it. Mr. Stimac also said that they would be able to access the sewer on Big Beaver.

Mr. Maxwell asked for clarification regarding the petitioner's statement that without the variance their common area would be increased from 15% to 25% and would be an unbearable burden to pass on the tenants. Mr. Cooke said that if you have 1,000 rentable square feet, you add the square feet of the common area to that and end up with 2400 square feet of rentable area at $20.00 a square foot. The actual rental rate is now $24.00 a square foot and that price is not competitive in today's market. Mr. Cooke also stated that some of the suggestions made by the Board would create an economic hardship for them. Mr. Kovacs stated that the Board is concerned about the land and does not look at the economics involved to the petitioner.

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

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

Mr. Schultz asked if the petitioner would look at any other options, rather than just the one presented to the Board. Mr. Van Loon stated that they have explored all the other

ITEM #1 – con't.

possibilities and was concerned that if they went out to Big Beaver, they would have to channel under the building, which could affect the existing footings. Mr. Van Loon also said that it would be very costly. Mr. Courtney said that if they went out to Big Beaver they would not have to go under the building, but around the building. Mr. Schultz said that the petitioner was already 8' closer than anyone else on Big Beaver and now is asking for an additional 8'-2" and personally does not think that all other options have been explored.

Mr. Courtney asked if the petitioner would be willing to look at the other options and ask for a postponement. Mr. Kovacs said that in his opinion the petitioner had demonstrated the need for this variance and had explored all other possibilities. Mr. Courtney said that he would like more information and would be willing to give the petitioner the opportunity to explore other possibilities. Mr. Kovacs agreed that there were some structural issues that needed to be discussed, however, the decision to ask for a postponement would be up to the petitioner.

Mr. Jay Cooke stated that he felt they had exhausted every other possibility and this was the best solution all the way around. Mr. Cooke also said that they felt if the other options were going to work they would have done that. The petitioner is trying to make the best out of the situation. Mr. Kovacs asked what the petitioner planned to do if they did not receive a variance. Mr. Cooke replied that they did not know, but they could only request what they request and understands the Board's position.

Ms. Gies asked how long they had owned the building. Mr. Cooke stated that they had purchased the building eight (8) months ago and did not realize the scope of work involved at the time they bought the building. They are trying to demonstrate to the Board what can be done with this building. The overall impact of footage is not enormous and thinks this would be an improvement to the area. Ms. Gies said that the buildings along Todd are very consistent in their setbacks, and this addition would stick out. Mr. Cooke said that he did not believe 8'-2" would be a significant change and thanked the Board for coming to the meeting tonight.

Mr. Maxwell said that he agrees with the petitioner that the building is antiquated and is in need of functional updating, but is concerned about the proximity to Todd Street. Mr. Maxwell also said that improving the building is a good thing, but wonders if the improvements could be made without the variance. Mr. Maxwell said that he could see good points, but did have one concern.

Mr. Jay Cooke said that the proposed bump out would be far enough from Big Beaver, and would not be an impediment to any traffic in this area. Mr. Cooke does not believe this 8'-2" would have any negative effect. Mr. Marc Cooke said that there are a number of 40-year old crabapple trees, which completely canopy the building and this bump out would not be visible from either Big Beaver or Todd Street. Mr. Cooke said that

ITEM #1 – con't.

someone allowed this building to be built and they are trying to improve this building by using the least invasive procedure possible.

Motion by Courtney
Supported by Hutson

MOVED, to deny the request of Marc Cooke, 1985 W. Big Beaver for relief of the Ordinance to construct an addition to an existing office building, which would result in a 13'-10" setback where 30' is required by Section 30.20.01 of the Zoning Ordinance.

- Petitioner has not demonstrated any practical difficulty.
- Variance would be contrary to public interest.
- Board believes there are other alternatives available to the petitioner, which will allow renovations without a variance.
- Variance would be primarily for financial reasons.

Yeas: 4 – Fejes, Hutson, Schultz, Courtney
Nays: 3 – Gies, Kovacs, Maxwell

MOTION TO DENY VARIANCE CARRIED

Mr. Schultz stated that he is not in favor of this motion, but does not believe the petitioner has exhausted every possible avenue without extending beyond the variance they already have.

Mr. Kovacs said that he is concerned about the public safety and welfare regarding the existing bathrooms, and is afraid that without the variance they will not be brought up to code. Mr. Courtney stated that they could bring the bathrooms up to code by removing the elevator and using space inside the building.

Mr. Hutson stated that he felt that the petitioner did not explain fully why the space requested is required. Mr. Hutson said that he would have liked more information on the dimensions of the physical lot and the bathrooms and stairways.

Mr. Maxwell stated that he felt that conformance to the Ordinance would be unnecessarily burdensome to the petitioner.

OLD BUSINESS

Mr. Stimac stated that at the meeting of August 17, 2004 he had stated that the Board of Zoning Appeals did not have an automatic time limit that applied to a variance granted by the Board. Section 43.85.00 of the Zoning Ordinance states that one of the conditions of approval is that construction must begin within a twelve-month period. Mr. Hutson said that he had received a variance a number of years ago which stipulated the

twelve-month time period. Mr. Stimac explained that when the petitioner receives a "results" letter from the Building Department, it is stipulated that the variance will become void if a Building Permit is not obtained within the twelve-month period.

Mr. Maxwell asked about the property on Big Beaver and Crooks and asked if he could receive information from one of the traffic engineers as he is concerned about what impact a drive-thru lane would have at that location. Mr. Stimac stated that they are moving forward to having this item presented to the Planning Commission, and as part of their review, they will have a report from the traffic engineer. Mr. Stimac also said that they would make this report available to Board members. Mr. Maxwell said that he feels this report would be necessary to make a good decision.

Mr. Hutson stated that he had noticed that there are barriers in place at the east entrance of the property. Mr. Stimac said that he was not aware of the barriers but would check into it for the Board.

Mr. Courtney asked where the one-acre stipulation came from. Mr. Stimac stated that it was determined that one-acre would be required for a restaurant with a drive thru, which would also accommodate inside dining. The examples that they had looked at, which were of the nature of McDonald's and Burger King, etc., have a seating capacity of 50-75 customers. It was determined at that time that at least one-acre would be required to accommodate restaurants of that size.

The Board of Zoning Appeals meeting adjourned at 8:42 P.M.

Matthew Kovacs, Chairman

Pamela Pasternak, Recording Secretary