

The Chairman, Matthew Kovacs, called the Board of Zoning Appeals meeting to order at 7:30 P.M. on Tuesday, September 21, 2004 in Council Chambers of the Troy City Hall.

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

ABSENT: Christopher Fejes

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

**ITEM #1 – APPROVAL OF MINUTES - MEETING OF AUGUST 17, 2004
 APPROVAL OF MINUTES – SPECIAL MEETING OF AUGUST 31, 2004**

Motion by Gies
Supported by Maxwell

MOVED, to approve the minutes of the meeting of August 17, 2004 and the minutes of the special meeting of August 31, 2004 as written.

Yeas: 5 – Gies, Hutson, Kovacs, Maxwell, Courtney
Abstain: 1 – Strat
Absent: 1 – Fejes

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – VARIANCE RENEWAL. ST. AUGUSTINE EVANGELICAL CHURCH, 5475 LIVERNOIS, for relief of the 4'6" masonry wall required along the south and west sides of off-street parking.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board for the 4'-6" high masonry wall required along the south and west sides, adjacent to the off-street parking. This relief was originally granted in 1993 based on the fact that the variance would not be contrary to public interest and conforming would be unnecessarily burdensome. This item last appeared before this Board in August 2001 and was granted a three-year (3) renewal at that time. Conditions remain the same although we have one complaint or objection on file regarding the location of the outdoor play space for the day care center.

ITEM #2 – con't.

This item last appeared before this Board at the meeting of August 17, 2004 and was postponed allow the Planning Commission to discuss and act on the special use approval request for a day care facility submitted by the Church.

Mr. Stimac stated that the Planning Commission had postponed action on this item, as they would like additional information regarding the activities that take place at the Church. Mr. Stimac suggested that perhaps this Board would also like to postpone hearing this matter for another thirty days to determine what action the Planning Commission would take.

A spokesman for the Church was present and stated he had nothing to add and would be willing to postpone this decision until the next meeting of October 19, 2004.

Motion by Courtney
Supported by Maxwell

MOVED, to postpone the request of St. Augustine Evangelical Church, 5475 Livernois, for relief of the 4'-6" masonry wall required along the south and west sides of off-street parking until the next regular meeting of October 19, 2004.

- To allow the Planning Commission the opportunity to make a decision on the special use requested.

Yeas: 6 – Gies, Hutson, Kovacs, Maxwell, Strat, Courtney
Absent: 1 – Fejes

MOTION TO POSTPONE REQUEST UNTIL TUESDAY, OCTOBER 19, 2004
CARRIED

ITEM #3 – VARIANCE REQUEST. MR. JONATHAN SHERER, 3015 CROOKS, for relief of the Ordinance to construct a new commercial building, which will include a drive-up window accessory to a restaurant use on a parcel that is only .38 acres where Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in the H-S (Highway Service) Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new commercial building. The plans submitted indicate that the development will include a drive-up window accessory to a restaurant use proposed in the building. Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in order to have a drive-up facility in the H-S (Highway Service) Zoning District. The parcel in question is only .38 acres.

ITEM #3 – con't.

This item first appeared before this Board at the meeting of August 17, 2004 and was postponed to allow the Planning Commission the opportunity to review the site plan and make recommendations as they felt were necessary. A copy of the Planning Commission minutes of August 17, 2004 was provided to each Board member. A motion was made at the meeting of August 17, 2004 to approve the request, but did not pass and the Planning Commission considers this to be a denial.

Mr. Jonathan M. Sherer was present and stated that ground at this location is considered to be contaminated and if this variance is granted, Shell Oil Company plans to come out within the next thirty to sixty days and remove the tanks and completely clean this area. This will make this a clean environment with a brand new building on this site. If this variance is not granted within a timely manner, this location will have to revert back to a gas station. Mr. Sherer stated that his family has done business in Troy for the past 35 years and they have no intention of leaving this City. He said he would be willing to sign any type of document required to insure that this site would only be used as a Starbuck's with a drive-thru and not as a fast food restaurant, which is the concern of this Board. If this variance is not granted it will definitely become a gas station. Other than the size of this parcel, this proposed Starbuck's will comply with the other requirements of the Ordinance. They will actually provide 27% more area of greenbelt and this area would definitely be improved. Starbuck's will work to bring in their most modern building, and this would be the best solution for improving both the safety factor and aesthetics of this corner.

Mr. Sherer said that there is a Consent Judgment on this property, and if they decided to tear down the existing building, or make improvements, they would be required to come before this Board for a variance for these improvements. This family owns the business and they want to keep it for a long time to come. Mr. Sherer is not looking to change this proposal from a Starbuck's to some type of fast-food restaurant and would be willing to consider some kind of development agreement. Mr. Sherer also said that they meet all the requirements of the Ordinance with the exception of the one-acre requirement.

Mr. Courtney asked if the property would need to be cleaned up if it were to remain a gas station. Mr. Sherer stated that the site would be monitored, and some sort of remediation would be in effect. Mr. Sherer said that Shell would open the ground around the tanks and the contaminated dirt removed and new dirt added.

The Chairman opened the Public Hearing.

Mr. Steve Sorenson, the petitioner's engineer for this project was present and stated that what they are proposing on this site will meet the requirements of the Ordinance regarding parking, landscaping, and setbacks; the only requirement that would not be met is the one acre requirement for a drive-thru. Mr. Sorenson went on to say that he believes this proposed building would make the corner safer as people will not be able

ITEM #3 – con't.

to turn left from northbound Crooks. Mr. Sorenson said that they would be willing to go with whatever requirements the City has, but they need to be able to put in a drive thru on this corner. Mr. Sorenson also said that they could work with all of the items presented by the Planning Commission. Mr. Sorenson also said that he believes the main question is whether this site can accommodate a drive-thru or not.

Mr. Doug Smith, Director of Real Estate and Development for the City of Troy was present. Mr. Smith explained that he staffs the Downtown Development Authority, sits on the EDC and Smart Zone and the Brownfield Development Authority and his responsibility encompasses a lot of things for the Planning Commission. His job is to look at the assets of the City and to look long term in order to encourage the best use and development of property. Mr. Smith stated he has been working extensively with City Council and the Downtown Development Authority to look at the entire Big Beaver corridor. This intersection is considered to be a key intersection of the City and they want to make it as attractive as possible and would like to take advantage of the consolidation of properties along the Big Beaver corridor. City Council and the DDA are looking at the entire corridor to determine the size of gas stations and now that re-development is taking place, Mr. Smith said that some of those requirements need to be changed. Mr. Smith said that he understands that this Board takes the one-acre requirement very seriously; however, he feels this property deserves a very close look and that this would be the best use for this corner and also believes that the traffic issues will actually improve. A Starbuck's on this location would add to the development of this area, and also may open some opportunity for re-development of the property to the north of this site. Mr. Smith said that he understands this is a large variance request, but believes this would be a better use for this property in the long run and deserves close attention. This is one of the top intersections in the City and this would be considered an improvement.

Mr. Maxwell asked if Mr. Smith felt that a business with a drive thru window would be the best use of this property. Mr. Smith said that with the size of the acreage of the property, he does believe that if it could be limited to a Starbuck's, this would be the best use of the property. Fast food restaurants would not fit the footprint of this property, but this would meet the requirements of both Starbuck's and the City.

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

There are no written approvals or objections on file.

Mr. Kovacs asked if this property could be changed to a fast food restaurant once the variance was granted. Ms. Lancaster explained that a variance runs with the land, and the Board should stop thinking of this as a Starbuck's or a gas station. In order for a variance to be granted the Board must find a practical difficulty that runs with that property and if a variance is granted, the variance will apply to the property and not the use. If a variance is granted it will be because the Board has found a practical difficulty

ITEM #3 – con't.

that runs with the property to allow a drive-thru lane on less than one-acre of land. In the future, if it becomes something other than a Starbuck's, the variance will still apply to the property as long as the proposed use complies with the Zoning.

Mr. Hutson stated that he felt both Mr. Smith and Mr. Sherer were eloquent, however, he does not feel that the requirements to grant a variance have been met. Mr. Hutson went over several points of the Ordinance, Section 43.72.00 – Variances, stating that the Board has the power to grant specific variances from such dimensional requirements as lot area, however, the variance cannot be excessive. Mr. Hutson said that he thought this variance was excessive because the variance is for a 2/3 or 66% reduction of the size of the property. Mr. Hutson further stated that he is very concerned about the traffic in this area, and believes this would cause an adverse affect to this area. Mr. Hutson also said that there is no practical difficulty running with the land, other than the fact that it does not meet the requirements of the Ordinance regarding the one-acre size stipulation. Furthermore, one of the requirements to grant a variance states "absent a variance no reasonable use can be made of the property" and Mr. Hutson contends that this property can be used absent a variance. Mr. Hutson also pointed out that another requirement to grant a variance was "conformance to the Ordinance would be unnecessarily burdensome", and he feels that they can make use of this property without a variance. Mr. Hutson believes that there are substantial defects in this proposal, which would make granting a variance very difficult for the Board.

Mr. Courtney stated that at the last meeting he expressed concern about the amount of stacking lane, and was told that Starbuck's does not require additional stacking lane, as they are very quick at serving their customers. Mr. Courtney said that he had just read an article indicating that Starbuck's offers 19,000 variations of coffee and believes this could create a traffic jam, if someone comes to the drive-thru that is not familiar with Starbuck's. Mr. Courtney stated that he feels that the stacking lanes are important and at this point agrees with Mr. Hutson.

Mr. Strat asked if the Board could put stipulations on a variance. Ms. Lancaster stated that conditions could be put on a variance as long as it relates to the property, and not the use. Mr. Strat stated that he is concerned about the traffic situation and said that he thought "No left turn" signs could be posted along Crooks Road, and was also concerned about a "cross access easement". Mr. Strat said that the property has a slope, which increases from the sidewalk to the rear of the property, but feels that a cross access easement would be possible at the east end of the property. Mr. Strat asked if the petitioner would be receptive to that kind of stipulation.

Mr. Sherer said it would be difficult for them to do that. Mr. Strat said that he is all for granting a variance, subject to them obtaining a cross access easement. Mr. Strat

ITEM #3 – con't.

would rather see the cross access easement and that this item is more important to him than any of the other items as it would improve the safety of this corner. Mr. Sherer said that they would be willing to look into this and Mr. Strat said that they will have to come before the Planning Commission and he is all for granting a variance, subject to this cross access agreement.

Ms. Lancaster said that there is a problem with a cross access easement as it affects another parcel. The Board cannot put a condition on granting this variance, which will affect another property. The conditions have to relate to this parcel and if the neighbor says “no”, a condition would be put on the variance request that the petitioner cannot meet. Mr. Strat asked if he could make the grades common at the point where the asphalt is overlapping between the properties. Ms. Lancaster said that this is overlapping the Planning Commission response and the BZA, and this variance should be restricted to the fact that this property does not meet the one-acre requirement and any condition placed on the variance should apply to this size requirement and not the planning of the site.

Mr. Sherer said that they would be willing to consider this when they get to the Planning Commission. Mr. Strat said that he had developed a piece of property in Troy and was required to have a cross access, which applied to his property but not the property next to him. Mr. Strat said that his concern is to do something beneficial to all and the traffic situation is a very big concern. Mr. Strat also said that he understands the petitioner's need to get this project off of the ground, and also thought that the other concerns can be massaged along the way. Mr. Sherer said that they are more than willing to work with staff to develop this property. Mr. Strat said this a prime piece of property and would like to see it developed in the best way possible. Mr. Sherer also said that they would be willing to work with signage or whatever else is required.

Mr. Courtney stated that if a gas station goes back in at this site, the City could issue a TCO with the stipulation that there is “No Left Turn” allowed from Crooks Road into this location. Mr. Sorenson said that he would be willing to work with whatever the Board wants them to, in order to obtain this variance.

Mr. Kovacs said that he does not feel that the Ordinance is very fair regarding the one-acre size and asked if the petitioner had any recourse to try and get the Ordinance changed. Mr. Stimac explained that the petitioner has the right to petition City Council or the Planning Commission to change the text of the Ordinance. It is relatively unusual for that type of request to come from a private individual but there are procedures and processes in place to allow someone to propose a change to the Zoning Ordinance text.

Mr. Kovacs said that he felt that the Board should make a motion.

Motion by Hutson
Supported by Courtney

ITEM #3 – con't.

Moved, to deny the request of Mr. Jonathan Sherer, 3015 Crooks, for relief of the Ordinance to construct a new commercial building, which will include a drive-up window accessory to a restaurant use on a parcel that is only .38 acres where Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in the H-S (Highway Service) Zoning District.

- Petitioner did not demonstrate a hardship.

Mr. Kovacs stated that he liked the idea of a Starbuck's, but did not believe the Board has the power to grant this variance based on the facts that have been presented. Mr. Kovacs also said that he is concerned about the future use of this property. Mr. Sherer said that he would keep this property as a Starbuck's. Mr. Kovacs said that he cannot guarantee this use, and a variance would run with the land. Mr. Kovacs also said that he would like them to try and change the Ordinance.

Mr. Maxwell stated that he is concerned about the lack of information regarding how traffic would be affected if this change was allowed. Mr. Maxwell asked if City Staff had received anything from the Engineering Department regarding this proposed change. Mr. Stimac stated that the Building Department had not received any information regarding how traffic would be affected. Mr. Maxwell said that he would vote for this project, if he had any type of information available that would indicate that traffic would be improved.

Mr. Strat stated that Mr. Smith had information regarding the traffic at this corner. Mr. Smith said that he had spoken to John Abraham, the Traffic Engineer for the City and it was his recommendation that the drive to Crooks Road be designated as an "In only". Mr. Smith also said that Mr. Abraham does not recommend putting in any type of sign indicating "No Left Turn", as it gives drivers a false sense of security and could in fact increase the number of accidents in this area. Mr. Smith also said that the petitioners have worked with City staff to improve traffic off of Crooks Road, and believes that the proposed angle of this entrance would make it very difficult for people to turn left. Mr. Smith said he thought it would be an improvement to traffic along Crooks Road.

Mr. Courtney said that he did not agree with the fact that drivers would get a false sense of security from these signs and compared them to red lights in the area. Mr. Smith said that the Engineering Department has done studies and the more signs that are put up, the less attention people pay to them. Mr. Courtney said that even if more signs are put up, people will slow down and look at the signs.

Mr. Kovacs called for a vote on the motion to deny.

Yeas: 3 – Hutson, Kovacs, Courtney
Nays: 3 – Maxwell, Strat, Gies
Absent: 1 – Fejes

ITEM #3 – con't.**MOTION TO DENY REQUEST FAILS**

Motion by Maxwell
Supported by Strat

MOVED, to postpone the request of Mr. Jonathan Sherer, 3015 Crooks, for relief of the Ordinance to construct a new commercial building, which will include a drive-up window accessory to a restaurant use on a parcel that is only .38 acres where Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in the H-S (Highway Service) Zoning District, until the next meeting of October 19, 2004.

- To allow the petitioner the benefit of a full board.

Yeas: 5 – Kovacs, Maxwell, Strat, Gies, Hutson

Nays: 1 – Courtney

Absent: 1 – Fejes

**MOITON TO POSTPONE REQUEST UNTIL THE MEETING OF OCTOBER 19, 2004
CARRIED**

ITEM #4 – VARIANCE REQUEST. PAUL & LAVERNE DALLMAN, 4115

WASHINGTON CRESCENT, for relief of the Ordinance to construct a rear patio enclosure, which would result in a proposed 16' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in R-1C Zoning Districts.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a rear patio enclosure on their home. The application submitted indicates a rear patio enclosure with a proposed 16' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in R-1C zoning Districts. In 1971, the Board of Zoning Appeals granted a 20' rear setback variance for the construction of this house.

Mr. & Mrs. Dallman were present and Mr. Dallman stated that the back of their home faces west, which gives them sun in this area all afternoon. The family room is located there and this is also the only exit they have to their yard. Mr. Dallman also stated that their lot is irregularly shaped, and does not have two parallel lines on any side of it, which creates a hardship and makes it difficult to put this enclosure in any other area. The Dallman's have spoken to their neighbors and brought in letters indicating their support of this project.

Mr. Maxwell asked what the dimensions of the lot were. Mr. Stimac said that the northerly property line is just over 111' in length; the rear property line, or the westerly property line is 121.39'; the front lot line, which is measured along a curve is 84.69'; and the southerly lot line is about 84' total length.

ITEM #4 – con't.

Mr. Courtney stated that there was a discrepancy in the site plans in his possession, one of which was a mortgage survey and the other, which was a sewer site plan. Mr. Stimac said that on the older drawing, which was part of the 1971 request, the dimension shown has been drawn perpendicular to the back of the house and should have been measured perpendicular to the lot line. This older drawing was submitted before the house was actually built. The mortgage survey submitted was done after the house was built. Mr. Stimac said that mortgage surveys have a disclaimer that they should be used only as a mortgage survey and not for any other purpose. Mr. Courtney then asked if a variance would be granted based on the mortgage survey. Mr. Stimac said that a variance would be granted allowing for a room to be constructed with a 16' setback, and if they found out that they did not have enough room, they would have to come back to the Board. Mr. Stimac also said that the inspectors would go out and verify the setbacks at the time they do their footing inspections.

Mr. Strat asked who prepared the drawing and asked if there were monuments on the property. The representative from Tony V's Sunrooms said that the homeowner had prepared the site plan, however, they had gotten two site measurements. Mr. Strat then asked if they were based on monuments in the corner and he stated that the measurements were not beyond what was on the survey. Mr. Strat said that the field inspectors would also have a hard time verifying the setbacks. Mr. Stimac said that their measurements would be based on the best information provided to the Building Department.

Mr. Kovacs said that he had noticed the homes in this area were setback quite far from the front property line and asked Mr. Stimac what the requirements were regarding setbacks. Mr. Stimac said that the requirements for R-1C used to be 40' front and 30' rear, but did not know if these setbacks were in place in 1971. Mr. Kovacs said that he thought these homes were pretty far setback from the road.

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 Maxwell
Supported by Gies

MOVED, to grant Paul & Laverne Dallman, 4115 Washington Crescent, relief of the Ordinance to construct a rear patio enclosure on their home, which will result in a 16' rear yard setback, where Section 30.10.04 of the Ordinance requires a 40' minimum rear yard setback in R-1C Zoning Districts.

ITEM #4 – con't.

- Shape of lot creates a hardship.
- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.

Yeas: 6 – Maxwell, Strat, Courtney, Gies, Hutson, Kovacs
Absent: 1 – Fejes

MOTION TO GRANT VARIANCE CARRIED

ITEM #5 – VARIANCE REQUEST. KARL & DEBRA MEINKE, 724 SYLVANWOOD, for relief of the Ordinance to construct an attached garage and addition on the rear of the house, which would result in a side yard setback of 9'-8" and a total of both side yard setbacks of 16'-8". Section 30.10.04 requires 10' minimum side yard setbacks and 20' total for both side setbacks in the R-1C Zoning District.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct an attached garage and addition on the rear of their house. The existing house has side yard setbacks of 7' to the east side property line and 7' to the west property line for a total of 14' of side yard setbacks. Section 30.10.04 requires 10' minimum side yard setbacks and 20' total for both side setbacks in the R-1C Zoning District. Because of the age of the home, it is classified as a legal non-conforming structure. The site plan submitted indicates removing an existing attached garage and constructing a new attached garage and house addition, with a proposed 9'-8" setback to the east side property line and a total of 16'-8" for both side yard setbacks, where 20' is required. Once the existing garage is demolished, removing the non-conforming setback to the east property line and giving a total side yard in compliance with the Ordinance, a variance is required to construct the new building with these reduced setbacks.

Mr. Jeff Danhausen, Danhausen Custom Builder, and Mr. Meinke were present. Mr. Danhausen explained that by removing the existing attached garage, they would actually be increasing the size of the setback on the west side of the property to 9.8'. Mr. Danhausen also said that they are taking a relatively small house and this addition will increase the square footage of the home from 1160 square feet to over 2100 square feet.

The Chairman opened the Public Hearing.

Patrick Joyce, 730 Sylvanwood, the neighbor to the east was present. Mr. Joyce asked if a variance on this property would affect any construction he proposed to do to his property. Mr. Kovacs explained that if a variance is granted it would only apply to the property in question and would not have an effect on Mr. Joyce's property. Mr. Joyce then said he would be in favor of granting this variance.

ITEM #5 – con't.

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

There are three (3) written approvals on file. There are no written objections on file.

Motion by Courtney
Supported by Gies

MOVED, to grant Karl & Debra Meinke, 724 Sylvanwood, relief of the Ordinance to construct an attached garage and addition on the rear of the house, which would result in a side yard setback of 9'-8" and a total of both side yard setbacks of 16'-8", where Section 30.10.04 requires a 10' minimum side yard setbacks and 20' total for both side setbacks in the R-1C Zoning District.

- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.
- Variance would not permit the establishment of a prohibited use in a Zoning District.
- Variance would reduce non-conformance.

Yeas: 6 – Courtney, Gies, Hutson, Kovacs, Maxwell, Strat
Absent: 1 – Fejes

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUEST. MAJID KESTO, 1610 JOHN R (EXISTING ADDRESS), 1634 JOHN R (PROPOSED ADDRESS), for relief of the Ordinance to construct a new gas station, which would have: a 0' rear yard setback where 30' is required by Section 30.20.07; to have an 18'-11" setback to the edge of the canopy, a 29'-7" setback to the pump island, and a 30'-10" setback to the canopy support from the front property line where Paragraph G of Section 31.30.00 requires a front setback of 25' to canopy edges, a 30' front setback to the pump islands, and a 35' setback to canopy supports; And to have no landscape greenbelt along the west and portion of the south property line where a 10' greenbelt is required by Section 37.70.02.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to demolish an existing gasoline station and construct a new gasoline station. The site plan submitted indicates that the building will be constructed right along the east property line. Section 30.20.07 of the Ordinance requires a minimum 30' rear yard setback.

The site plan submitted also indicates that the proposed new canopy will have an 18'-11" setback to the edge of the canopy, a 29'-7" setback to the pump island, and a 30'-10" setback to the canopy support from the future right of way line of John R Road. Paragraph G of Section 31.30.00 requires that service stations have a front setback of

ITEM #6 – con't.

25' to canopy edges, a 30' front setback to the pump islands, and a 35' setback to canopy supports.

Further, Section 39.70.02 of the Ordinance requires that a greenbelt, a minimum of 10' in width, be provided between the development and abutting public streets. No such greenbelt is shown along John R or along the western end of the Maple Road frontage.

Mr. Mike Kozlowski, the Architect for this project and Majid Kesto were present. Mr. Kozlowski stated that the current site overlaps the future right of way line by about 18' on each side, and they are proposing to bring everything back into the inside of the future right of way lines. They will also construct sidewalks along the site, which will be set back farther from the street and will also allow for landscaping between the sidewalks and curb along both Maple and John R. They are aware they do not have enough depth to meet the landscape requirement, the parking spaces and a reasonable depth building, but the property is unusual in shape as it is square. If all the setbacks are put together you actually would need a property that is significantly deeper than it is wide. Also, because the property is on a corner front setback variances are required. Mr. Kozlowski said that they have worked with both City Council and the Planning Commission to develop this property for months and believe this is the best plan.

Mr. Kozlowski also said that in lieu of the landscaping, they plan to construct a small decorative wall along the property line as part of the site plan approval process. The rear setback for the building is in issue because of the square lot, and if this property was an interior lot, no setback requirement would be required. The proposed plan provides a larger building, but is modest compared to other convenience stores and gas stations in the area. Regarding the canopy, in a normal circumstance variances would not be required for a single row of gas station islands, for the island placements and canopies. The newer canopies would be closer to the fascia than canopies that have been constructed in the past. Basically, the practical difficulty is a series of requirements for circulation, landscaping, parking and building, which make it impossible to meet setback requirements. Mr. Kozlowski also said that they believe the new construction would be an improvement to the City.

Mr. Courtney asked if they were changing the entrances to the gas station? Mr. Kozlowski said that they are reducing the entrances. Mr. Courtney then asked if they could make the store smaller, or not provide convenience items. Mr. Kozlowski said that they may be able to relieve the canopy variance, but would still have to put the building in the same area to provide parking area.

Mr. Hutson asked if provisions have been made for the future right of way. Mr. Kozlowski stated that this plan is well within the setbacks required for the future right of way. Mr. Hutson asked if a variance would be necessary if they had not made provisions for the future right of way. Mr. Kozlowski said he thought they would still require a variance for the setback of the building. Mr. Hutson commented on the

ITEM #6 – con't.

number of approvals the petitioner had presented to the Board. Mr. Kozlowski stated that they had polled the customers that came in. Mr. Hutson then asked if the Building Department had received any responses to the notices that were sent out. Mr. Stimac stated that there are no written approvals or objections on file based on the public hearing notices sent out. The petitioner brought in one hundred and two (102) signed approvals.

Mr. Strat stated that he was concerned about the size of the convenience store and is also concerned about the safety of the driveways to the corners. Mr. Strat also said that once they come to the Planning Commission, they could make some changes. Mr. Strat said that this is definitely an improvement to this area, but when they come before the Planning Commission he would have some real strong feelings concerning the size of the store versus the safety factor and the fact that the interior circulation is also extremely tight. Mr. Strat also said that he would probably support this petition.

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

Mr. Hutson said that he believes this is the first time he has ever seen a case come before this Board where it appears that the petitioner has voluntarily reduced the size of their proposal by taking the future right of way into consideration, and also felt that it is a burden for the petitioner to come before the Board to ask for a variance. Mr. Hutson also said that he thinks this corner is awful and this would be a great improvement.

Mr. Courtney stated that he is concerned about the size of the convenience store especially since there is another store so close to this property. Mr. Courtney then asked if a variance could be granted, which would limit the size of the building. Mr. Stimac stated that the petitioner is asking for a 0' rear yard setback and if that is not granted, they would have to change the size of the building or change the plan in some way.

Mr. Strat asked if the petitioner had obtained a cross access easement agreement. Mr. Kozlowski stated that they have. Mr. Strat also said that he is familiar with the property next door and understands that they had a problem with attempting to purchase the vacant property. Mr. Strat further stated that he appreciates the fact that they are attempting to solve the dangerous situation that exists on this property with the cross access easement.

Motion by Hutson
Supported by Courtney

ITEM #6 – con't.

MOVED, to grant Majid Kesto, 1610 John R (existing address – 1634 John R proposed address) for relief of the Ordinance to construct a new gas station, which would have: a 0' rear yard setback where 30' is required by Section 30.20.07; to have an 18'-11" setback to the edge of the canopy, a 29'-7" setback to the pump island, and a 30'-10" setback to the canopy support from the front property line where Paragraph G of Section 31.30.00 requires a front setback of 25' to canopy edges, a 30' front setback to the pump islands, and a 35' setback to canopy supports; and to have no landscape greenbelt along the west and portion of the south property line where a 10' greenbelt is required by Section 37.70.02.

- Petitioner's proposal has taken into account the future expansion of John R Road.
- Variance is not contrary to public interest.
- Literal conformance to the Ordinance would be unnecessarily burdensome.
- Variance would not have an adverse effect to surrounding property, but would be an improvement.

Yeas: 6 – Courtney, Gies, Hutson, Kovacs, Maxwell, Strat
 Absent: 1 – Fejes

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUEST. SALVATORE EIFRATE, 3521 W. BIG BEAVER, 2968 & 2984 CEDAR RIDGE (PROPOSED ADDRESSES), for relief of the Ordinance to split an existing parcel of land, which will result in a 73' wide lot where an 85' minimum lot width is required by Section 30.10.04.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split the property at 3521 W. Big Beaver resulting in a 73' wide lot where an 85' minimum lot width is required by Section 30.10.04. The petitioner is proposing to take an existing home site, fronting on Big Beaver at the southeast corner of Big Beaver and Cedar Ridge, and after removing the existing home, create two lots fronting on Cedar Ridge. While the corner lot would be 90' wide, the other lot would be only 73' in width where 85' minimum lot width is required in the R-1C Zoning District.

Ms. Marilyn Lentz representing Salvatore Eifrate was present. Ms. Lentz said that she thought that the current depth of the property is 265' and the split would actually be 192' to the front and 73' to the back, because the front piece on Big Beaver has a 102' right of way. Mr. Stimac explained that the 265' depth of the property goes all the way to the center of Big Beaver Road. Mr. Stimac also said that this was the original depth of the property when it was an acreage parcel. The Right of Way Department has already purchased part of that parcel for Big Beaver Road, and plans to purchase additional property in the future for further expansion of Big Beaver Road. The original

ITEM #7 – con't.

property dimension was in fact 265', but it goes out to the middle of the Road. Ms. Lentz also said that there is an additional 60' that has not been acquired. Mr. Stimac said that it is his understanding that 60' has been acquired for the right of way and an additional 42' will be purchased in the future.

Ms. Lentz said that the hardship is the 42' feet of future right of way, which has not been purchased by the City. The front parcel is proposed to be larger in order to meet the setback of 50' from Big Beaver Road. The house that is presently on the property is an eyesore and the owner plans to fix the house up if a variance is not granted, or if he is allowed to split this property he will put up two (2) brick homes, which will greatly improve the aesthetics in the neighborhood. Ms. Lentz also said that these two homes would become part of the Cedar Ridge Homeowners Association.

Mr. Kovacs asked if the existing house was in the current 42' right of way. Mr. Stimac said that it was and explained that he had spoken to the Right of Way Department, and one of the reasons they have not acquired the 102' is because they do not want to displace homeowners unless it is absolutely necessary and that is the reason they have only purchased 60'.

Mr. Courtney asked who was involved in this request. Ms. Lentz explained that Mr. Eifrate was the owner of the property, and she was his Real Estate Broker. Mr. Courtney asked if they had anyone interested in buying these lots from them. Ms. Lentz stated that she has an individual interested in buying one of these pieces of property.

The Chairman opened the Public Hearing.

Mr. John June, 3463 Dorothea Ct., was present and stated that he is one of the members of the Architectural Committee of the Cedar Ridge Subdivision. Mr. June also referenced a letter from Mr. Cunningham representing the homeowners in this subdivision stating that they object to the idea of a 73' lot. The person who purchased the property should have known about the 85' lot width requirement and also about the 42' buy back. Most of the lots are wider and have homes on them that are in excess of 3000 square feet. Mr. June said that they would welcome them into the Homeowners Association, as they would have some control over what type of home was constructed. Mr. June also said that they have not demonstrated a hardship, which would justify this variance. Regarding regulations for this type of Zoning, Mr. June said that the maximum dwelling unit per acre is 3.1 and this property, which is 163' x 151' for a total of 24,613' would violate the requirements of buildable space by putting two homes on the property. Mr. Stimac said that Mr. June was referring to Section 34.20 00 of the Ordinance that addresses developmental options, which is the allowance to do lot averaging or reduce lot sizes if you plat open space with the open space option. In applying that section we would probably measure out to the middle of Big Beaver Road. These restrictions cannot be applied to an individual parcel, but would be applied to a subdivision development in total.

ITEM #7 – con't.

Mr. June also stated that the City requirements are much smaller regarding house sizes compared to the requirements of the Cedar Ridge Subdivision – 1200 square feet to 2200 square feet for the size of a home. Mr. June said that there are only one or two homes in the subdivision that are close to that minimum. Mr. Kovacs asked what the Zoning of this parcel was and Mr. Stimac stated that it was and 1200 square feet is an allowable size of home in this District. Mr. Kovacs stated that whether a variance was granted or not, a 1200 square foot home could be built in this area, which would comply with the requirements of the Ordinance.

Mr. Hutson stated that he had reviewed Mr. Cunningham's letter and although Mr. Cunningham had stated that his ex-wife concurred with Mr. Cunningham's objection, Ms. Marcy had in fact sent in a signed approval for this request.

Mr. James Rocchio, 2810 Waterloo, was present and stated that he also lived in this subdivision. Mr. Rocchio stated that Ms. Marcy did not understand the Public Hearing notice and she does object to this request. He said that he objects to this request because he believes the size of the lot would be too small and would not be consistent with other lots in the area. Mr. Hutson stated that because the City has not condemned this property the petitioner had enough property to split this lot. Mr. Rocchio said that one of the lots would be eliminated and would probably require another variance as the petitioner would have two lots very close to Big Beaver. Mr. Rocchio said that this is also the entrance to the subdivision and believes that smaller homes would detract from the look of this subdivision. Mr. Rocchio also said that most of the lots in this area are between 90' and 110' wide and did not feel a 73' lot would be fair to the other homeowners. A very large home could be built on the existing lot and Mr. Rocchio feels this solution would be economically advantageous for the petitioner.

Mr. Strat stated that he did not feel it was fair for the City to expand Big Beaver and take part of this property for the right of way. Mr. Rocchio said that the owner of the lots was reimbursed by the City and believes the Board should consider what is going to happen to the property. Mr. Rocchio said that when you buy a piece of property you should understand what is going to happen to it and not come back to government to ask for relief of the Ordinance requirements. Mr. Strat asked how old Mr. Rocchio's home was and he stated it was about 20 years old.

Mr. Courtney said that if Ms. Marcy had changed her opinion she needed to state that in writing. Mr. Rocchio said that Mr. Cunningham and Ms. Marcy have remained friends and does object to this request. Mr. Kovacs explained that the record will reflect the fact that there is one approval for this request.

Ms. Helen Constantine, 2952 Cedar Ridge, was present and stated that she lives next door and that she objects to this request and is concerned that a smaller lot would infringe on her property. Ms. Constantine also said that she had spoken to Ms. Marcy

ITEM #7 – con't.

and she did not want this variance granted. Mr. Kovacs again explained that because Ms. Marcy was not present, her written approval would stand.

Mr. Kovacs asked if the owner could chop off the back of this property and build on that since the City has not purchased the additional 42' for the future right of way. Mr. Stimac explained that the minimum lot width in the R-1C Zoning District was 85' and was not sure if they would meet the setback requirement from the existing house. Mr. Stimac stated that there is a detached accessory structure and the property line would go right through that and therefore it would have to be removed. In order to get a split they would have to meet the minimum rear yard setback off the existing house and was not sure if they would be able to meet the 40' rear yard setback.

Mr. Stimac also said that the Cedar Ridge Subdivision was developed using the lot averaging standard, which allows lots in the R-1C Zoning District to go down to 75'. There are existing lots in this subdivision that are 74.35' in width and are not part of this subdivision and 73' lot width is not significantly different from these lots.

Mr. Courtney stated that from the paperwork he had it appeared that the original request was for this lot split was different from the one in front of the Board tonight. Mr. Stimac explained that the original request submitted was for the new lot line to be 78' from the south property line. They revised their plans to make it 90' and 73', which allowed for the larger setback along Big Beaver.

Diane Studinski, 3451 Dorothea Ct. was present and asked for clarification on Mr. Stimac's statement that some of the lots in this area were 73'. Mr. Stimac said that Lot #36 was 78' in width, the next lot down was 77' in width. Mr. Stimac said that they have to meet a 76.5' width with a 30' setback. Ms. Studinski stated that her concern is a safety factor. She stated that traffic cuts through their subdivision all the time, and if there were two additional driveways near Big Beaver, traffic would increase and make it dangerous for the children in the area.

Ms. Lentz said that if you take the proposed 73' lot and take 20' off of that you would end up with 53' of buildable area. If you take 80' off of the back of the property you would end up with a 3700 square foot buildable area, which she believes would end up with a home that would be in the \$600,000.00 price range. Ms. Lentz also said that Mr. Eifrate bought this property with the full knowledge of the ramifications involved.

Mr. John Snabb, 3440 Dorothea Ct. was present. Mr. Snabb asked if anyone could guarantee the size of the home going in. Mr. Snabb stated that he objects to this variance request. Mr. Kovacs asked if he were concerned that someone would come in and erect a 1200 square foot home. Mr. Snabb stated that in fact that was a concern of his. Mr. Snabb also said he would approve this request if he was guaranteed that they would put up a 3000 square foot house; and would object if the house was a 1200 square foot home.

ITEM #7 – con't.

Ms. Marilyn Grozier, 2945 Cedar Ridge was present. Ms. Grozier asked if this property was governed by City rules, or since this subdivision was developed with pre-existing conditions, if the homeowner would also be governed by the deed restrictions of the Cedar Ridge Homeowners Association. Mr. Stimac explained that deed restrictions are a private agreement between the buyer and seller on the property. The developer places restrictions on the deeds and when the buyer purchases the property the buyer agrees to abide by those conditions. This property is not part of the plat of the Cedar Ridge Subdivision, and these parcels are not subject to the deed restrictions. Mr. Stimac explained that there are other parcels within the subdivision that are exceptions to the plat of the subdivision and are not part of the purchase agreement and therefore not part of the deed restrictions. It is up to the private individual to either agree to accept the deed restrictions or not. The City cannot make them part of the association because it is a private agreement. The only restrictions the City can enforce are the resolutions promulgated by the City.

Ms. Grozier then stated that they are concerned because they have been told that Cedar Ridge does not have any control over these pre-existing conditions. Mr. Stimac further stated that the developer did not get to make up rules on property that were not under his control and the Homeowners Association would not have the power to dictate rules to someone that was not part of this Association. The Home Rule City Act gives the City the authority to adopt rules to apply to a property. Ms. Grozier then stated that she is concerned that someone will come in and put up a small home, and as this is the entrance to their subdivision it would not fit in with the other homes in the area. Ms. Grozier also stated that if there are no guidelines set up anything could be put up on the property.

Mr. Strat stated that it may be wise for the homeowners to check to see if there are any deed restrictions, which would apply to this property. Mr. Strat also said that they would have to do a title search on this property. If deed restrictions do exist the Homeowners Association would have the ability to enforce these restrictions. If there are not deed restrictions the Homeowners Associations would have no control over this property.

Ms. Virginia Snabb, 3440 Dorothea Ct. was also present. Ms. Snabb stated that she is opposed to this request and asked if her objection would have any influence as to what the decision of this Board would be. Mr. Kovacs stated that the Board is there to listen to all the concerns of the neighbors and the objections would in fact become part of the permanent record and is taken into consideration before the Board makes its decision.

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

There are seven (7) written objections on file. Mr. Cunningham's letter has eighteen (18) names listed stating that they object to this variance, although some of these signatures are duplicates of the written objections received.

ITEM #7 – con't.

There is one (1) written approval on file.

Ms. Lancaster stated that the neighbors should understand that because this lot was not included in the original subdivision plat, they will never have control over what is allowed to be built on this parcel. If that is their hope, it would not happen. If something was built it would have to be with the good will and cooperation of the developer and the Homeowner's Association. They could join the Homeowner's Association, but it would not be with the same restrictions that are on other properties in the sub. Their membership would be for snow removal, road upkeep and things like that. They will never be like the rest of the subdivision. That plat has already been approved by the state.

Mr. Strat asked if this property had two front yard setbacks. Mr. Stimac explained that officially the front yard setback from Cedar Ridge Dr. would be 30' and the 50' setback is only along major thoroughfares. The buildable depth for both of these lots would in fact be 81'. Mr. Strat said that he thought it would be impractical to have a home that would front on Big Beaver. Mr. Stimac stated that they could front the house in either direction. In most cases, on corner lots, it is very typical to have the home face one street and the driveway front on the other street. Mr. Strat also said that after a quick calculation the buildable square area would be approximately 1500 square feet and thought that it could be increased. On the 73' lot it could be about 2000 or 2500 square feet taking 500 square feet off for a garage. Mr. Strat also said that he thought they could potentially build a home on the 73' lot that would be 4000 square feet. Mr. Stimac stated that the buildable area on the southern parcel would be 53' x 81' that would be approximately 4200 square foot ground floor area. Mr. Stimac also said that a 50' front setback only applies to the northernmost lot, which is along Big Beaver. Mr. Stimac went on to say that the 90' lot is 30' x 81' buildable area, which would be 2400 square feet of ground floor area. Mr. Strat stated that these facts should give the homeowners some comfort.

Motion by Courtney
Supported by Maxell

MOVED, to deny the request of Salvatore Eifrate, 3521 W. Big Beaver, 2968 & 2984 Cedar Ridge (proposed addresses) for relief of the Ordinance to split an existing parcel of land, which will result in a 73' wide lot where an 85' minimum lot width is required by Section 30.10.04 of the Ordinance.

- Petitioner did not demonstrate a hardship.
- Variance would be contrary to public interest.
- Variance would have an adverse effect to surrounding property.

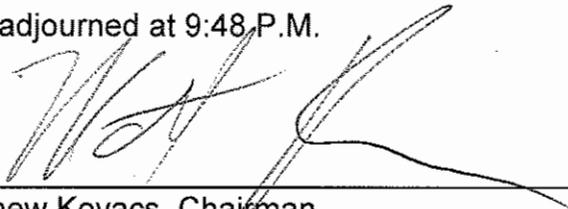
Yeas: 4 – Courtney, Gies, Hutson, Maxwell
Nays: 2 – Kovacs, Strat

ITEM #7 – con't.

Absent: 1 – Fejes

MOTION TO DENY REQUEST CARRIED

The Board of Zoning Appeals meeting adjourned at 9:48 P.M.



Matthew Kovacs, Chairman



Pamela Pasternak, Recording Secretary