

The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday October 19, 2004, in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
 Christopher Fejes
 Marcia Gies
 Michael Hutson
 Matthew Kovacs
 Mark Maxwell
 Thomas 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 SEPTEMBER 21, 2004

Mr. Hutson stated that the vote count on postponing Item #3 needed to be changed indicating that he was in favor of the postponement of this request.

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of September 21, 2004 as amended.

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

MOTION TO APPROVE MINUTES AS AMENDED

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 September 21, 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.

Larry Boeberitz, a trustee for the Church was present and stated that they would like to see this variance renewed for an additional three years.

Mr. Kovacs asked if this was a renewal item and Mr. Stimac stated that it was up for renewal in August and was postponed to allow the Planning Commission to act on the special use request.

Mr. Courtney stated that he felt a three-year renewal would not be in order due to the change in the use of this property.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

Motion by Courtney
Supported by Maxwell

MOVED, to grant St. Augustine Evangelical Church, 5475 Livernois, a one-year renewal of relief of the 4'-6" high masonry wall required along the south and west sides of off-street parking.

- One-year renewal will allow neighbors to find out if the special use would create any type of problem.

Yeas: All – 7

MOTION TO GRANT VARIANCE FOR ONE-YEAR 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 last appeared before this Board at the meeting of September 21, 2004 and was postponed to allow the petitioner the opportunity of a full board.

Mr. Kovacs stated that the Building Department had received a request from the petitioner asking that the Board postpone action on this item and that if the Board did not wish to postpone this item, they would like to withdraw their request.

A discussion ensued between the Board members as they considered their options regarding this item. Mr. Stimac stated a motion had been made at the last meeting to postpone this request to “allow the petitioner the opportunity of a full Board”, which is now present.

Mr. Fejes stated that from what he had read from previous minutes, he would vote to deny this request as presented to the Board. Mr. Fejes expressed concern because the variance would run with the land. Mr. Strat agreed with Mr. Fejes and said that he was also concerned because there is no cross access agreement and if Starbuck's were to back out of this agreement, this property could be used for any type facility with a drive-thru.

Ms. Lancaster stated that if the Board were to find that there is a hardship that runs with the land, which would allow for this drive-thru to be constructed, that variance would apply to any business that wants to go into this location.

Mr. Strat asked about the time limits regarding variances and Mr. Stimac explained that once a variance is granted by this Board, the petitioner has one-year to act upon that variance. If the petitioner does not actively seek a permit within that time frame, the variance lapses. Once acted upon, the approval of a drive up window does go with the land.

Motion by Maxwell
Supported by Gies

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.

- To allow the petitioner the opportunity to be present.

Yeas: 2 – Maxwell, Gies

Nays: 5 – Hutson, Kovacs, Strat, Courtney, Fejes

MOTION TO POSTPONE REQUEST FAILS

ITEM #3 – con't.

Motion by Courtney
Supported by Strat

MOVED, to approve the request of Mr. Jonathan Sherer, 3015 Crooks, to withdraw his request for variance 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.

Yeas: All – 7

MOTION TO ACCEPT WITHDRAWAL OF THE VARIANCE REQUEST CARRIED

ITEM #4 – VARIANCE REQUEST. D'ANNA-LATTER, LLC, 400 E. BIG BEAVER, for relief of the Ordinance to maintain an existing 4'-6" high concrete screen wall located on the east and south sides of an office building under construction where Paragraph C of Section 39.10.01 of the Ordinance requires a 6'-0" high wall where the O-1 (Office) Zoning District abuts residential zoning.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain an existing 4'-6" high concrete screen wall located on the east and south sides of an office building under construction. The existing 4'-6" high concrete screen wall was installed by the adjacent multi-family development and was installed at a time when this property was zoned in a single-family residential zoning district. Paragraph B of Section 39.10.02 of the Ordinance required a 4'-6" high screen wall at that time between the parking area of the apartment development and the adjacent single-family residential property. This property has now been re-zoned to an O-1 (Office) designation and as part of the development of that site a 6'-0" high zoning boundary wall is now required by Paragraph C of Section 39.10.01.

Mr. Frank D'Anna was present and stated that they do not want to add any additional height to the existing wall as this additional concrete would take away from the appearance of the wall and would not be aesthetically pleasing. Mr. D'Anna went on to say that there is only about 300' of the wall that would be affected and would require the extra height.

Mr. Strat asked if the current wall was on the property line. Mr. D'Anna indicated that the wall is about a foot inside the property that is owned by Charter Square. Mr. Strat then asked if there was parking right up to the wall and Mr. D'Anna stated that there was. Mr. D'Anna also said that if they did not add the extra height to the existing wall, the other option would be to put up a separate wall abutting the existing wall.

ITEM #4 – con't.

Mr. Kovacs asked if the Board could direct the petitioner to add to a wall that is on someone else's property. Mr. Stimac stated that there is already an agreement between Charter Square and the petitioner allowing them to add to the existing wall.

Motion by Courtney
Supported by Gies

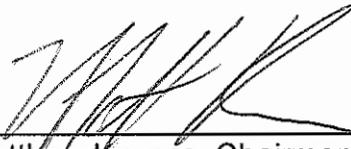
MOVED, to grant D'Anna-Latter, LLC, 400 E. Big Beaver, relief of the Ordinance to maintain an existing 4'-6" high concrete screen wall located on the east and south sides of the office building under construction where Paragraph C of Section 39.10.01 of the Ordinance requires a 6'-0" high wall where the O-1 (Office) Zoning District abuts residential zoning.

- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

The Board of Zoning Appeals meeting adjourned at 8:05 P.M.



Matthew Kovacs, Chairman



Pamela Pasternak, Recording Secretary