

The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, November 16, 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 OCTOBER 19, 2004

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of October 19, 2004 as written.

Yeas: All – 7

MOTION TO APPROVE MINUTES CARRIED

ITEM #2 – VARIANCE REQUEST. FRANK ZIMMER, OF THE HONEY BAKED HAM COMPANY, 1081 E. LONG LAKE ROAD, for approval under Section 43.80.00 of the Zoning Ordinance to place two temporary storage containers outside for a period from December 10, 2004 through December 31, 2004.

Mr. Stimac explained that the Petitioner is requesting approval under the Zoning Ordinance to place two temporary storage containers outside at 1081 E. Long Lake from December 10th through December 31, 2004. Section 43.80.00 of the Zoning Ordinance requires approval from the Board of Zoning Appeals to permit temporary buildings for permitted uses for a time frame not to exceed two years.

Mr. Frank Zimmer was present and stated that they have been coming to this Board with the same request for approximately six (6) years. Mr. Zimmer apologized for not attending the meeting last year and thanked the Board for approval of this request. Mr. Zimmer stated that these containers are used for the storage of containers and plastic bags. Honey Baked Ham would rent additional space in the shopping center if it became available, as there is no storage in their space but there are no spaces currently vacant. Mr. Zimmer also asked if the Board could approve this request for two (2) years.

ITEM #2 – con't.

Mr. Strat asked if this Board could grant the variance for a period of two years. Mr. Stimac stated that the Zoning Ordinance does allow for the Board of Zoning Appeals to approve this request for up to two (2) years.

Mr. Courtney asked about the length of time these storage containers would be out and Mr. Zimmer explained that they would actually be removed on the 29th of December.

The Chairman opened the Public Hearing.

John Ungvarsky, 5063 Abington was present and stated that his property backs up to this site and both he and his wife totally support this request. Mr. Ungvarsky stated that he thinks this is a wonderful product and would like to see the Board support this request and keep this business in the location it is in.

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

There are two (2) written approvals on file. There are no written objections on file.

Mr. Hutson stated that although he is in favor of this request, he is not comfortable with granting the variance for two (2) years. Mr. Hutson said that he likes to review this file on a yearly basis as the storage containers are placed in an alleyway.

Motion by Courtney
Supported by Maxwell

MOVED, to grant Frank Zimmer, of the Honey Baked Ham Company, 1081 E. Long Lake Road, approval under Section 43.80.00 of the Zoning Ordinance to place two temporary storage containers outside for a period from December 10, 2004 to December 31, 2004.

- Variance is not contrary to public interest.
- Abutting neighbor has indicated approval of this request.
- Variance is not contrary to public interest.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #3 – VARIANCE REQUEST. MR. & MRS. ROBERT ARKING, 4705

STODDARD, for relief of Section 30.10.04 of the Ordinance to construct a 10' addition to the front of their attached garage, which will result in a 26' front yard setback where 30' is required by Section 30.10.04.

ITEM #3 – con't.

Mr. Stimac explained that the petitioners are requesting relief of the Zoning Ordinance to construct an attached garage addition. The plans submitted indicate a 10' addition to the front of the attached garage, which will result in a proposed 26' front yard setback. Section 30.10.04 requires a 30' minimum front yard setback in R-1C Zoning Districts.

Mr. and Mrs. Arking were present. Mr. Arking stated that his wife has a back condition, which is progressive and this extra space would allow them to bring up the washer and dryer. The extra space will also allow for the storage of their lawn equipment.

Mr. Kovacs asked about the size of the space and Mr. Arking indicated that they wish to enlarge this area to be approximately 26' deep and 19' wide. Mr. Arking also stated that they could not do this alteration in another area because of the location of the kitchen.

Mr. Courtney asked if this addition would comply with the requirements of the Ordinance if the road was not curved into the corner of the lot. Mr. Stimac stated that this 10' addition would comply with the Zoning Ordinance.

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

There are thirteen (13) written approvals on file. There are no written objections on file.

Motion by Maxwell
Supported by Gies

MOVED, to grant Mr. & Mrs. Robert Arking, 4705 Stoddard, relief of Section 30.10.04 of the Ordinance to construct a 10' addition to the front of their attached garage, which will result in a 26' front yard setback where 30' is required by Section 30.10.04.

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

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #4 – VARIANCE REQUEST. MR. THOMAS QUAKENBUSH, 2544 HOMEWOOD, for relief of Section 40.57.03 and Section 40.57.05 to maintain a shed installed in the side yard, 6' from the north wall of the existing home.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to maintain a shed installed without first obtaining a Building Permit. The site plan submitted indicates that the shed has been placed in a side yard, 6' from the north wall

ITEM #4 – con't.

of the home. Section 40.57.03 prohibits the placement of a shed in a side yard and Section 40.57.05 requires a 10' minimum setback from the house.

Mr. & Mrs. Quakenbush were present. Mr. Quakenbush stated that his property has two (2) front yards, and also has a 15' easement at the back of the property, which creates a hardship for them.

Mr. Kovacs asked about the location of the shed. Mr. Stimac explained that this accessory building would have to be set back behind the rear line of the house and at least 40' from the property line along Beach Road. In order to comply the shed would have to be moved back approximately 10 or 15 feet.

Mr. Kovacs asked about the height of the fence on this property. Mr. Quakenbush stated that this is a 6' high privacy fence and the peak of the shed is approximately 8' high.

Mr. Hutson asked how long Mr. Quakenbush owned this property and Mr. Quakenbush stated that it has been approximately 2 years. Mr. Hutson then asked if they had reviewed the deed restrictions pertaining to this property. Mr. Quakenbush stated that he had not. Mr. Hutson informed Mr. Quakenbush that the deed restrictions prohibited a stockade fence. Mr. Quakenbush indicated that all he had done was replace an existing stockade fence. Mr. Hutson then asked what incidents led up to Mr. Quakenbush appearing before this Board. Mr. Quakenbush stated that someone had complained and a Building Inspector came out and informed him that a permit was required to put up a shed. At the time the permit application was submitted, he was informed that a variance would be required to put the shed in this location. Mr. Hutson also stated that Mr. Stimac had indicated that a variance would not be necessary if the shed was moved back 10 – 15'. Mr. Quakenbush said that he thought there would be a spot the shed would fit.

Mr. Courtney asked if he had spoken to the neighbors to the north of his property. Mr. Quakenbush stated that they had signed the affidavit for the permit. Mr. Courtney questioned the affidavit required for the Building Permit. Mr. Stimac clarified that the affidavit is a affidavit of notification, which acknowledges that at least 50% of the neighbors are notified of the construction of the shed and does not indicate approval or disapproval.

Mr. Kovacs asked if the Building Department had determined another location for this shed. Mr. Stimac said that based upon the plans submitted, the back wall of the house is located about 63' from the rear property line and the shed could be placed 10' from the corner of the house and as much as 12' from the back of the house. Mr. Kovacs asked if the shed would be more visible if it was placed farther back on the lot. Mr. Stimac stated that he could not offer an opinion on this.

ITEM #4 – con't.

Mrs. Quakenbush stated that if they moved the shed back, it would make their back yard much smaller. Mrs. Quakenbush also said that she did not think it would change the appearance to the neighbors on the north side of their property.

Mr. Strat stated that the Planning Commission is looking at the placement of sheds and accessory structures and they want to make sure that these structures are not seen from the front yard and placed only in the back yard area. Mr. Strat said that there is a 6' concrete walk next to the shed and also stated that he has some difficulty in approving this request. Mr. Quakenbush said that the concrete pad was in place for his pool equipment and that was one of the reasons that he put the shed in this area.

The Chairman opened the Public Hearing.

Steven Stelmach, 2624 Homewood was present and indicated that he objects to the request for this shed. Mr. Stelmach said this is a relatively small subdivision and he knows that there are a number of his neighbors that also object to this request. Mr. Stelmach said that there are deed restrictions that prohibit the 6' high fence. Mr. Stelmach believes that Mr. Quakenbush has disregarded these deed restrictions and does not respect his contractual obligations to obey the deed restrictions. Approval by the Architectural Committee is required for even a 4' high fence. Mr. Stelmach drove by this site the other and the fence blocks out most of the shed, although there is a gable that is 2' – 3' above the fence line. Mr. Stelmach believes that the neighbors' rights , and deed restrictions should be respected and Ordinances should be followed. Mr. Stelmach indicated that Mr. Quakenbush has done a number of improvements to the home, but does not think he should be able to come to this Board as an afterthought. Mr. Stelmach also indicated that the Homeowners Association has the right to enter this property and "abate" this condition and could in fact remove this shed.

Mr. Kovacs asked if sheds in this subdivision were prohibited by the deed restrictions. Mr. Stelmach said that his understanding is that approval by the Architectural Committee is required and does not believe Mr. Quakenbush received approval from this Committee before putting up the shed. Mr. Kovacs also said that this Board does not have control over the deed restrictions regarding the fence or the shed. Mr. Kovacs asked if there were any other sheds in this subdivision and Mr. Stelmach said he could not say for sure whether there were other sheds or not.

Bonnie Katschanow, 2704 Homewood was present. Ms. Katschanow said that the Subdivision deed restrictions, Section 2, paragraphs A & D, were written with the Zoning laws and City Ordinances in mind, and sheds are prohibited by these restrictions. Even if the City allows him to move the shed, it is possible that the rest of the residents would not accept this variance. There is a lot of openness between the homes in this subdivision and this is the way she would like the area to remain. Ms. Katschanow believes this variance would set a precedent and she objects to this request.

ITEM #4 – con't.

Wayne Wright, 2525 Homewood was present and stated that Mr. & Mrs. Quakenbush have done a lot to improve the appearance of this home. Mr. Wright cannot see the shed from his home, but knows that the neighbors to the north were adamantly opposed to this shed. Mr. Wright also said that he has a problem with something being constructed without the required permits. Mr. Wright objects to this variance.

Felimar Latif, 2513 Homewood was present and stated that she agrees with the neighbors and is opposed to this variance request. Ms. Latif was one of the first homeowners in this subdivision and has not seen any sheds being constructed in this area.

John Zawislak, 4582 Odette Ct. was present and although he does not live in this subdivision, he is opposed to this request. There are deed restrictions against sheds, and thinks that one of the reasons Troy is an outstanding City is because the Zoning Ordinances are strictly enforced. Mr. Zawislak also stated that he felt this would set a very bad precedent.

Martin and Linda Vittands, 2528 Homewood were present and stated that the Quakenbush's have done a lot of improvements to this property, but they are against this variance. Mr. Vittands also said that the deed restrictions do allow a 4' fence and the Quakenbush property now has a 4' chain link fence and a 6' high privacy fence. Mr. & Mrs. Vittands feel that this area is a very upscale area and believes that sheds will drop the property values. Mrs. Vittands also thinks this shed would open the door to other property owners putting up sheds.

Nancy Gross, 2656 Homewood was present and stated that she objects to this variance. Ms. Gross said that she feels this would set a bad precedent for the area and it does go against the deed restrictions.

Mr. Quakenbush stated that he wanted to clear up some inaccuracies. Mr. Quakenbush is a licensed builder but does not build homes. The stockade fence was existing and he replaced the fence with a cedar dog-eared fence. Mr. Quakenbush also said that he contacted the president of the homeowners association, Mary Strowbridge, and she gave him approval and told him to also contact the neighbor next to him.

Mr. Quakenbush also said that he had gone on line to see what the requirements were for sheds in the City of Troy, but went to the wrong web site and admits he did make an error but did not blatantly ignore the City Ordinance.

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

There are nine (9) written approvals on file. There were eight (8) verbal objections.

ITEM #4 – con't.

Ms. Latif questioned the number of objections and approvals. Mr. Courtney explained that the views expressed by the neighbors were a part of the record, but are not considered to be a vote deciding the variance request.

Mr. Kovacs asked for clarification regarding the area that Public Hearing notices are sent to. Mr. Stimac stated that Public Hearing notices are sent to property owners and residents within 300' of the subject property.

Mr. Fejes asked what would happen if this Board approved the variance. Ms. Lancaster stated that the deed restrictions over rule any decision of this Board. If the homeowners association wants to file a lawsuit, they can and make Mr. Quakenbush take the shed down. Mr. Fejes then stated that he did not believe that the actions of this Board would mean anything. Ms. Lancaster said that from these deed restrictions, the homeowner could go to the architectural committee and ask for permission to put up this shed, but that decision would have nothing to do with this Board. Ms. Lancaster also indicated that if this Board were to grant the variance because of a hardship with the land, and the court decided in favor of the homeowners association, the homeowners deed restrictions would supercede any decision made by this Board.

Mr. Fejes asked Mr. Quakenbush if he wanted this item postponed. Mr. Quakenbush said that a number of his neighbors had come over and told him they were sorry he had to go through all of this and did in fact support his request for the shed. Mr. Quakenbush also stated that before putting up the shed, he contacted the president of the Homeowners Association and was given approval. Mr. Quakenbush said that this shed helps him keep his property neat.

Mr. Courtney said that he would like to approve this request, but cannot find a hardship that runs with the land.

Motion by Courtney
Supported by Strat

MOVED, to deny the request of Mr. Thomas Quakenbush, 2544 Homewood, for relief of Section 40.57.03 and Section 40.57.05 to maintain a shed installed in the side yard, 6' from the north wall of the existing home.

- Petitioner did not demonstrate a hardship.
- Variance would be contrary to public interest.
- Variance would have an adverse effect to surrounding property.
- Location of shed could be changed to comply with the requirements of the Ordinance.
- Petitioner's difficulties are not the result of any unusual characteristics of the property.

ITEM #4 – con't.

Yeas: 6 – Maxwell, Strat, Courtney, Fejes, Gies, Hutson

Nays: 1 – Kovacs

MOTION TO DENY VARIANCE CARRIED

Mr. Strat said that there are other alternatives available to this petitioner that would not cause an adverse effect to surrounding property. Mr. Strat also said that he has a great deal of difficulty in that the shed is visible from the street. Mr. Strat further stated that the Planning Commission is looking into these types of structures and is in the process of modifying the Ordinance regarding the location of sheds and accessory structures.

ITEM #5 – VARIANCE REQUEST. STEVEN CERRONE, 2103 PIPPIN, for relief of Section 30.10.02 of the Ordinance to maintain a covered front porch, which has a 34'-11" front setback where 40' is required.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a covered front porch that was constructed without first obtaining a Building Permit. The site plan submitted indicates this construction has resulted in a 34'-11" front yard setback. Section 30.10.02 requires a 40' minimum front setback in R-1B Zoning Districts.

Laura from AZD Architects, and Mr. Cerrone were present. Laura indicated that this had started as a maintenance project in 1994 due to problems with water backing up on the porch. Mr. Cerrone had hired a contractor and found the problem was more extensive than originally thought. AZD Architects worked with him to not only fix the original problem, but also to provide shelter for his elderly mother-in-law and medical personnel going in and out of the house. This new covered entry does not project any further into the setback than the original porch. The porch is not enclosed but just creates a covered area. A number of the neighbors have indicated approval of this covered porch.

Mr. Courtney asked how a wheel chair gets in and out of this door. Mr. Cerrone indicated that they are able to get his mother-in-law right to the edge of the porch, and into the cars. The way the garage is configured makes it impossible to get her in and out of that door. Mr. Courtney also stated that he feels the porch looks much better with the roof. Mr. Cerrone also stated that the roof over the porch helps protect medical supplies that are delivered to him.

Mr. Hutson asked what the setbacks were based on the site plan. Mr. Stimac said that he thought this was a somewhat unusual shaped lot, and thought that it was approximately 70' to the rear property line. Mr. Hutson said that he thought that the placement of this house on the lot creates a hardship in dealing with the front yard setback.

ITEM #5 – con't.

Mr. Strat stated that Mr. Cerrone has been his personal dentist for a number of years, and if the Board felt that this was a conflict of interest, he would abstain from the vote. The Board did not make any motion indicating that this would be a conflict of interest.

There are twenty-four (24) written approvals on file. There are no written objections on file.

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

Motion by Courtney
Supported by Hutson

MOVED, to grant Steven Cerrone, 2103 Pippin, relief of Section 30.10.02 of the Ordinance to maintain a covered front porch, which has a 34'-11" front setback where 40' is required.

- Variance is not contrary to public interest.
- Roof over porch is aesthetically pleasing.
- Variance would not have an adverse effect to surrounding property.
- Irregularly shaped lot creates a hardship.

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

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUEST. SAM ASKAR, 2970 E. LONG LAKE, for relief of Section 40.50.04 of the Ordinance to construct an addition to an existing legal non-conforming structure.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition on an existing service station. The property is located in the H-S (Highway Service) Zoning District, and Section 30.20.07 requires a minimum rear yard setback of 30'. The site plan submitted indicates that the setback to the existing rear building line is only 19'-7". The proposed addition will continue this existing wall line out to the east with the addition. Because this building existed before the zoning of the property was changed to H-S, it is classified as a legal non-conforming structure. Section 40.50.04 of the Zoning Ordinance prohibits the expansion of a non-conforming structure in any way that increases the non-conformity.

ITEM #6 – con't.

Mr. Art Kalasian, Sam Askar and Maan Askar were present. Mr. Kalasian stated that the structure they are talking about adding onto is part of the original building. This addition would give the owner the opportunity to expand his display area. Right now he has about 300 square feet and this addition would expand this area to about 750 square feet. They would not add any footings, but would continue the existing structure. This addition would also make the area more usable and would update the look of the building. The hardship would be the existing condition that is already there and this would enable him to make the best use of this property.

Mr. Sam Askar stated that he has managed this gas station since 1993 and recently had the opportunity to purchase it. Mr. Askar stated that this gas station supports seven (7) families and they have a lot of plans to improve their image and update this property.

Mr. Strat asked if he owned the property and Mr. Askar said that he now owns the property.

Mr. Strat then asked if this was going to go before the Planning Commission. Mr. Stimac stated that he had met with Mark Miller, but could not remember if a determination had been made to take this item to the Planning Commission. Mr. Strat said that he was concerned about the wall that is going in right next to the sidewalk. Mr. Strat stated that if a truck hit this wall it would be possible that people walking by could be injured. Mr. Strat also asked if the wall would be repaired if it was damaged. Mr. Askar said that he plans to put in a brick wall and would keep it in good condition.

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 Maxwell
Supported by Fejes

MOVED, to grant Sam Askar, 2970 E. Long Lake, relief of Section 40.50.04 of the Ordinance to construct an addition to an existing legal non-conforming structure.

- Variance is for an area that is already covered by a roof.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property in question.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUEST. BRUCE HUDALLA OF THE HEARTLAND GROUP, INC., 2003 BRIARGROVE, for relief of the Ordinance to construct a sunroom addition that will result in a 34' rear yard setback, where a 45' minimum rear yard setback is required by Section 30.10.02.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a sunroom addition that would result in a proposed 34' rear yard setback. Section 30.10.02 of the Zoning Ordinance requires a 45' minimum rear yard setback in the R-1B Zoning District.

Mr. Bruce Hudalla of the Heartland Group, and Mr. Bernardo Duller were present. Mr. Hudalla explained that originally they had planned to make this sunroom much larger because Mr. Duller and his wife have four (4) children and the extra space is very much needed. Mr. Hudalla stated that after discussion it was determined that the room needed to be made smaller. They had looked at an alternative location to the east, but if the sunroom was put there it would diminish the light coming in from the windows in the basement and would also block an egress door. This home is located on a corner lot and Mr. Hudalla believes that this creates a hardship for the homeowner.

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

There are eight (8) written approvals on file. There are no written objections on file.

Motion by Maxwell
Supported by Fejes

MOVED, to grant Bruce Hudalla of the Heartland Group, Inc., 2003 Briargrove, for relief of the Ordinance to construct a sunroom addition that will result in a 34' rear yard setback where a 45' minimum rear yard setback is required by Section 30.10.02.

- Shallower lot creates a hardship for the petitioner.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

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

MOTION TO GRANT VARIANCE CARRIED

Mr. Kovacs stated that he would like the record to reflect that the reason he voted No on Item #4, was because he felt that the shed could be moved farther back on the property, which would then comply with the Zoning Ordinance. Mr. Stimac said that if the shed was moved behind the rear line of the house and was setback 6' from the side property line, 10' from the house and 40' from the rear property line it would comply with the Ordinance.

Mr. Strat asked how the new ZOTA going before Council would affect this type of request. Mr. Stimac stated that the changes as proposed would not have any changes on this request. The only way it would affect this building was if it was a cabana, which sole purpose and use was to house pool equipment and supplies. Under the new Zoning regulations it could be located in a side yard, but would have to comply with the side yard requirements. Mr. Courtney asked if a cabana would have to be put near the pool and Mr. Stimac said it would not.

Mr. Strat also commented on the very large signs, one of which is on Long Lake and Crooks and other that is on Crooks and Big Beaver. Mr. Stimac explained that both of these signs were granted variances by the Building Code Board of Appeals. Mr. Stimac stated that one of the reasons these variances were granted was because of the distance of the building from the road, and the percentage of the sign area compared to the area of the building. Mr. Strat said that he felt these signs were huge.

Ms. Lancaster said that she wished to be the first to wish everyone a happy Thanksgiving.

Ms. Gies asked what the occupancy rate was now in Troy. Mr. Stimac said he did not know, but stated that there are members of staff that are working on these statistics. Ms. Gies also said that the company she is employed by would also like more signs.

The Board of Zoning Appeals meeting adjourned at 9:15 P.M.

Matthew Kovacs – Chairman

Pamela Pasternak, Recording Secretary