

The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order in Council Chambers, at 7:30 P.M., on Tuesday, March 16, 2004.

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 – APPROVAL OF MINUTES, MEETING OF FEBRUARY 17, 2004**

Motion by Courtney  
Supported by Gies

MOVED, to approve the minutes of the meeting of February 17, 2004 as written.

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

**MOTION TO APPROVE MINUTES AS WRITTEN CARRIED**

**ITEM #2 – RENEWAL REQUESTED. K-MART, 100 E. MAPLE**, for relief of the Ordinance, which will allow for an outdoor display of plant material, during the months of April through July, in front of K-Mart along the north side of the fenced area and a four-foot section of the sidewalk at the west end of the building, adjacent to the building.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board on a yearly basis since 1978, which allows for an outdoor display of plant materials in front of Kmart along the north side of the fenced area and four-foot section of the sidewalk, at the west end of the building, adjacent to the building. This display is used for plants and flowers, and the variance is valid during the months of April through July. This request has been subject to the petitioner providing a corral type fence to both enclose the area of the display and maintain a safe sidewalk at the same time. This item last appeared before this Board at the meeting of March 18, 2003 and was granted a one-year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

The petitioner was not present.

**ITEM #2 – con't.**

Mr. Hutson stated that he feels if the petitioner does not have the courtesy to attend the meeting the renewal should not be granted. A discussion began stating that usually these items were handled as a consent agenda item, however, due to the fact that there was only one renewal scheduled, it was handled separately.

Mr. Maxwell asked if anyone had spoken to the petitioner. Mr. Stimac stated that the Building Department did not have any conversation with the petitioner however, the renewal fee was paid.

Mr. Courtney asked if Mr. Hutson had any questions of the petitioner. Mr. Hutson said he did not have any questions, he feels that as a matter of courtesy the petitioner should make an effort to attend the meeting.

Motion by Kovacs  
Supported by Schultz

MOVED, to grant K-Mart, 100 E. Maple, a one-year (1) renewal for relief of the Ordinance, which will allow for an outdoor display of plant material, during the months of April through July, in front of K-Mart along the north side of the fenced area and a four-foot section of the sidewalk at the west end of the building, adjacent to the building.

- Variance is not contrary to public interest.
- There are no complaints or objections on file.
- Variance would not have an adverse effect to surrounding property.
- Petitioner will provide a corral type fence to both enclose the area of the display and maintain a safe sidewalk.

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

MOTION TO GRANT VARIANCE RENEWAL FOR ONE-YEAR (1) CARRIED

**ITEM #3 – VARIANCE REQUESTED. STEPHAN SLAVIK, 2949 VINEYARDS,** for relief of the rear yard setback to construct a new, enclosed swimming pool addition on the rear of the existing home. This addition would result in an 18' rear yard setback where Section 30.10.01 requires a 45' rear yard setback in R-1A Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a new, enclosed swimming pool addition on the rear of the existing home. The site plan submitted indicates the addition will result in an 18' rear yard setback to the south property line. Section 30.10.01 requires a 45' rear yard setback in R-1A Zoning Districts.

**ITEM #3 – con't.**

This item first appeared before this Board at the meeting of January 20, 2004 and was postponed to allow the petitioner the opportunity of a full board. This item again appeared before this Board at the meeting of February 17, 2004 and was postponed to this meeting at the request of the petitioner.

Mr. Slavik was present and stated that he does have the option of putting in an accessory building to house the pool, which would comply with the Ordinance, but does not feel it would be as aesthetically pleasing as the attached structure. Mr. Slavik explained that the attached structure would be 950 square feet however a detached accessory building would be closer to 1350 square feet. The height of the accessory structure would also be higher than the attached structure and the setback of this accessory building would be approximately 18' from the property line, whereas the addition would be 20' from the lot line. Mr. Slavik also indicated that he was planning to add extra landscaping, which would further minimize the impact of this addition to surrounding property. Both the Homeowner's Association and Mr. Slavik's neighbors have given approval for this addition.

Mr. Slavik's architect explained that the addition would be six feet lower than an accessory building because it would come off the basement slab and would also be approximately 41% smaller than an accessory building. He also explained that they have revised the plans and are now proposing a 20' setback with this proposed addition. Mr. Maxwell asked what the height of the addition would be. Mr. Slavik said that the height of the roof is approximately 15'. Mr. Maxwell then asked how far the house to the south and west would be from the proposed structure and Mr. Slavik said it would be approximately 50' to the house to the south; and approximately 32' from the house to the west.

Mr. Maxwell then asked what the side yard setback was for this property. Mr. Stimac explained that in the R-1A Zoning District, the side yard setback is 15'.

Mr. Courtney asked what the setback was for accessory buildings and Mr. Stimac stated that the setback for all accessory buildings is 6'.

Mr. Courtney then asked the petitioner why the accessory building would be so much larger than the addition. Mr. Slavik said that if he had to put up a detached accessory structure, he would put in a larger pool. Mr. Slavik explained that the reason the addition was smaller was so that it was not invasive to surrounding property.

The Chairman opened the Public Hearing.

Mr. Curtis Bagne, 2971 Vineyards was present. Mr. Bagne said that his home is immediately to the west of this home and would be one of the most affected properties by this addition and he is in support of this request for a number of reasons. Mr. Bagne indicated that due to the layout of this property and his lot, the only way he would be

**ITEM #3 – con't.**

able to see this addition from his home would be to look down from the guest bedroom. Furthermore the landscaping around the structure would also minimize the impact of this structure. He believes that a lot of engineering work has been put into the design of this structure and was satisfied with that aspect of the structure and was also pleased with the proposed use of glass panels on the structure. Mr. Bagne also said this home is an attraction to the young children in the area and would be a benefit to these children. Mr. Slavik also contacted Mr. Bagne when he was proposing this addition and talked about the grade change that would be required and that he would cover the expense of those changes.

Mr. Makowski, 2905 Vineyards was also present. Mr. Makowski indicated that he is the president of the Homeowner's Association and the Association and the Architectural Committee have approved Mr. Slavik's first proposal. As a homeowner, Mr. Makowski's home is directly east of this property and would be more in favor of the addition rather than a detached structure.

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

There are four (4) written approvals on file. There is one (1) written objection on file.

Mr. Kovacs stated that he feels the attached structure makes more sense than a detached structure. Mr. Kovacs also stated that he did not find a hardship with the land, however, he does not feel the Zoning Ordinance is correct in this instance.

Mr. Maxwell said that this is a double front corner lot and there is quite a distance between the surrounding homes.

Mr. Hutson also said that he does not find a practical difficulty however, he does not think a detached structure would add to the symmetry to the property.

Mr. Slavik said that he does not feel there is a hardship with an enclosed pool but thinks an attached addition is a much better alternative than a detached structure. This addition would be aesthetically pleasing and being a corner lot this is the only location this addition could be constructed.

Mr. Courtney asked if this home met the setbacks of a double front corner lot. Mr. Stimac said that a variance is not required on the either front yard setback, but only the rear setback. Mr. Stimac also said this lot was wider facing east to west than north to south. They fronted the house to the north, which decreased the buildable area of the lot by about 25%, but the house style is very wide and would not have fit if it was placed in the other direction. Mr. Courtney then said that he is looking for a hardship with the land. Mr. Stimac said that the Ordinance recognizes that there are extra setbacks imposed on corner lots and therefore corner lots are required to be larger.

**ITEM #3 – con't.**

Mr. Maxwell said that this was a small lot and irregularly shaped.

Mr. Kovacs asked how large the house was. Mr. Slavik's architect indicated that it was 3,438 square feet.

Mr. Kovacs asked how many homes in Troy had enclosed pools. Mr. Stimac said there were approximately five (5). Mr. Kovacs indicated that he thought this was a unique request and believes this solution makes the most sense and will be the most beneficial to the petitioner and the area.

Motion by Fejes  
Supported by Gies

MOVED, to approve the request of Stephan Slavik, 2949 Vineyards for relief of the rear yard setback to construct a new, enclosed swimming pool addition on the rear of the existing home. This addition would result in a 20' rear yard setback where Section 30.10.01 requires a 45' rear yard setback in R-1A Zoning Districts.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Conforming to the Ordinance is unnecessarily burdensome.
- Variance relates only to the property described in the application.
- Overwhelming support of neighbors and Homeowner's Association.

Yeas: All – 7

MOTION TO GRANT REQUEST CARRIED

**ITEM #4 – VARIANCE REQUESTED. MR. & MRS. HOWARD ALEXANDER, 5186 FEDORA**, for relief of the rear yard setback to construct a sunroom addition. This addition would result in a 37.5 rear yard setback where Section 30.10.04 requires a 40' minimum rear yard setback in R-1C Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a sunroom addition. The site plan submitted indicates that the proposed sunroom addition will result in a 37.5' rear yard setback. Section 30.10.04 of the Zoning Ordinance requires a 40' minimum rear yard setback in R-1C Zoning Districts.

Mr. Keith Dara of Mr. Enclosure Sunrooms was present. Mr. Dara indicated that the home is placed back further on the lot and in fact sits back further from the houses on either side of it. The homeowners are retired and would like to be able to enjoy their property.

**ITEM #4 – con't.**

Mr. Maxwell indicated that the east side of the home juts out farther on the property line and asked why the room would be added to this area. Mr. Dara said it is because that is where their family room is located and this location makes the most sense. There is an existing deck that projects out 16' and this room would only project out 12'. This addition would not infringe on the line of sight from either neighbor.

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.

Mr. Courtney asked why this proposed addition would be 12' instead of 10'. Mr. Dara said that the width of the walls are 6", and if they went smaller the room would be 9' x 15' wide. The Alexander's entertain their grandchildren and the proposed sunroom would be 11 ½' x 15', which would give them enough room to add a table and make the most use of this room.

Motion by Kovacs  
Supported by Hutson

MOVED, to grant Mr. & Mrs. Howard Alexander, 5186 Fedora, a variance for relief of the rear yard setback to construction a sunroom addition, which would result in a 37.5' rear yard setback where Section 30.10.04 requires a 40' minimum rear yard setback in R-1C Zoning Districts.

- Variance request is minimal.
- Variance would not be contrary to public interest.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 7

MOTION TO GRANT REQUEST CARRIED

**ITEM #5 – VARIANCE REQUESTED. MR. & MRS. MIKE COLAUTTI, 2839 LANERGAN**, for relief of the rear yard setback to construct an addition. The proposed master suite addition would result in a 43'-8" rear yard setback where Section 30.10.02 of the Zoning Ordinance requires a 45' minimum rear yard setback in R-1B Zoning Districts.

The petitioner has submitted a letter asking that this item be withdrawn.

Motion by Schultz  
Supported by Courtney

**ITEM#5 – con't.**

MOVED, to accept petitioner's letter requesting withdrawal.

Yeas: All – 7

**MOTION TO WITHDRAW REQUEST CARRIED**

**ITEM #6 – VARIANCE REQUESTED. MR. DAVID CAMPBELL, 2730 HYLANE**, for relief of the front yard setback to construct an attached garage. This garage would result in a 26' front yard setback to Bronson, where Section 30.10.01 requires a 40' minimum front yard setback in R-1A Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct an attached garage. This lot is a double front corner lot with front yard requirements along both Hylane and Bronson. Section 30.10.01 of the Zoning Ordinance requires a 40' minimum front yard setback in R-1A Zoning Districts. The site plan submitted indicates a proposed 26' front yard setback from the garage addition to Bronson.

Mr. Campbell was present and stated that his home had been constructed in approximately 1954 and is located on the corner lot, and they have done a major reconstruction project including converting the existing attached garage to a home office. Mr. Campbell said that he would like to add the attached garage in this location in order to save a 50' maple tree, which he believes is a centerpiece of his lot. At one time Bronson was a dead end street and when the subdivision to the north was constructed it was opened. The petitioner stated that the homes behind him are closer to Bronson than his garage would be. Mr. Campbell further stated that if he has to add a detached garage, it would be totally different from the other homes in the area and he does not feel it would be aesthetically pleasing. None of the homes on this street have basements and this garage would also be used for storage.

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.

Mr. Hutson asked what the setback would be if this was not a double front corner lot. Mr. Stimac explained that in the R-1A Zoning District the side yard setback would be a minimum of 15'.

Mr. Schultz asked what the side yard setbacks would be with the subdivision to the north. Mr. Stimac said he thought the subdivision to the north was constructed first and when Bronson was extended, the lots in this area all became double front corner lots. When Bronson was a dead end subdivision street, the Ordinance required the largest of the side yard setbacks – the R-1A side yard setback would be 15'.

**ITEM #6 – con't.**

Motion by Courtney  
Supported by Hutson

MOVED, to grant Mr. David Campbell, 2730 Hylane, a variance for relief of the front yard setback to construct an attached garage, which would result in a 26' front yard setback to Bronson, where Section 30.10.01 requires a 40' minimum front yard setback in R-1A Zoning Districts.

- Variance will allow for the preservation of a large mature tree.
- The structure will not extend closer to the street than the other homes in the area.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance will not establish a prohibited use in a Zoning District.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

**ITEM #7 – VARIANCE REQUESTED. MR. JACK BRONKA, 6779 SERENITY,** for relief of the rear yard setback to construct a patio enclosure. This patio enclosure would result in a 39' rear yard setback, where Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a patio enclosure. The site plan submitted indicates the proposed patio enclosure would result in a 39' rear yard setback. Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

In December 1987, this Board granted a variance to maintain a deck, which was constructed to within 33.2' of the rear property line, where a minimum 35' rear yard setback was required. Petitioners are proposing to remove the existing deck and construct this smaller room enclosure.

Mr. Bronka indicated that he and his wife have always wanted to add a glass-enclosed room to enjoy their property. This property is "L" shaped and the rear of the home is exactly 45' from the rear property line. They would like a 10' x 12' room, which will go out 6' from the home and will be located on the deck.

Mr. Maxwell asked if the deck was going to be removed. Mr. Bronka explained that they are going to remove the existing deck but are going to replace it with a more structurally sound deck, which will be able to support this sunroom.

**ITEM #7 – con't.**

Mr. Fejes asked where the sunroom is going to go. Mr. Bronka said that they are going to place the sunroom on the new deck, which will look exactly like the existing deck. Mr. Bronka also indicated that the sunroom will be in the footprint of the deck and will not go past the deck.

Mr. Courtney asked when the Bronka's had moved into the home. Mr. Bronka said that they have lived there since 1994. Mr. Bronka also said that this home is approximately 1700 square feet and because their family is growing they could use the extra room for entertaining and this location is ideal because it is off the kitchen.

Mr. Kovacs asked if Mr. Stimac knew the distance of the corner of the home to the side lot. Mr. Stimac said that when the setbacks are measured they are measured perpendicularly to the lot line. Mr. Kovacs said that he wondered if this addition could be rotated and then would not require a variance. Mr. Bronka said he would still require a variance because the home is "L" shaped and still would not be in compliance. Mr. Kovacs said that he did not see a practical difficulty with the land and would have been happier if the addition could be turned. The representative from Advanced Builders stated that if the sunroom was rotated 90 degrees, the height of this room would be higher than the roof of the home and would require a saddle across the entire back of the home.

Mr. Maxwell asked if the setbacks had been changed. Mr. Stimac said at the time the original variance was granted the Ordinance only allowed for a 10' encroachment for open and unenclosed decks to the rear of the property. This setback encroachment has now been increased to 15'.

Mr. Kovacs said that he did not see a hardship with this property. Mr. Bronka said that he thinks the hardship is due to the fact that the rear of the home is exactly 45' from the rear property line. Mr. Kovacs said that he would be more inclined to grant a variance for 3' rather than 6' and thought this could be achieved if the room was rotated.

The Chairman opened the Public Hearing. No one 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. Bronka said as far as he could see his alternative would be to reduce the size of this room. These rooms are modular and it would be very difficult to make it smaller. Mr. Kovacs said that if the sunroom was rotated the variance request would be made smaller by 3' and the Board has the power to grant a lesser variance. Mr. Stimac explained that he did not think the dimension that is shown at the back of the property was measured perpendicularly to the lot line as is usually done. Mr. Stimac said that if the room was rotated it would require a 3' variance to the rear yard setback but would not require a variance for the side yard setback.

**ITEM #7 – con't.**

Mr. Kovacs said that he thinks by turning the room a lesser variance would be required and the petitioner would still get what he wants. Mr. Courtney pointed out that if the room was turned it would stick out from the side of the house and would be visible from the road. Mr. Kovacs said that it would be a nice glass building, which would be visible.

Mr. Courtney pointed out that it would not be all the way to the ground but would in fact be sticking up.

Mrs. Gies asked if a variance was required for the deck. Mr. Stimac said that a variance was granted for a 33' setback for the original deck and a new variance is not required when the new deck is constructed. Mrs. Gies said that she thought the site plan indicated that the deck was going to be completely removed. Mr. Bronka said that because of the elevation of the home a deck was required to use the door walls.

Mr. Courtney asked if Mr. Bronka would consider making this room smaller. Mr. Bronka said the next module was 9.8' and therefore would require a variance of 3.8'. The contractor indicated that the existing deck is coming down because of the age of the structure and a new deck will be able to support this structure.

Mr. Hutson asked if Mr. Bronka could change the size of this room to 9.8'. Mr. Bronka said he would be willing to change his request and therefore the variance required would be 3 feet. Mr. Stimac said that if the room dimension was reduced to 9.8' the rear yard setback would be 42' rather than the 45' that is required.

Motion by Hutson  
Supported Kovacs

MOVED, to grant Jack Bronka, 6779 Serenity, a variance for relief of the rear yard setback to construct a 9.8' patio enclosure, which would result in a 42' rear yard setback where Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

Mr. Kovacs asked that the motion be amended in case Mr. Bronka decided to rotate this addition and change the size to 10', which would result in a 41'-6" rear yard setback. Mr. Hutson agreed to this amendment.

MOVED, to grant Jack Bronka, 6779 Serenity, a variance for relief of the rear yard setback to construct a patio enclosure, which would result in a 41'-6" rear yard setback where Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

- Variance would not be contrary to public interest.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Variance would not have an adverse effect to surrounding property.

**ITEM #7 – CON'T.**

Yeas: All – 7

**MOTION TO GRANT REQUEST CARRIED**

**ITEM #8 – VARIANCE REQUESTED. MR. SCOTT BOSLEY, 3601 JENNINGS,** for relief of the rear yard setback to construct a family room addition, which would continue an existing 25' rear yard setback. Section 30.10.04 of the Zoning Ordinance requires a minimum 40' rear yard setback in the R-1C Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a family room addition. This property was granted a variance in 1966 to construct an addition with a 25' rear yard setback. The owner now wishes to construct another addition continuing this same 25' rear yard setback. Section 30.10.04 of the Zoning Ordinance requires a minimum 40' rear yard setback in the R-1C Zoning District.

Mr. Scott Bosley was present and stated that this is phase I of a complete renovation of the existing home. Mr. Bosley explained that they have been in this home 17 years and the home needs to be updated. This house does not have a basement and the existing room on the rear of the home would be enlarged. This variance is needed in order for them to proceed with the rest of the plans to remodel the home. The existing family room has a flat roof and they hope to add a vaulted ceiling.

The Chairman opened the Public Hearing.

Mr. Jerry Dennison, 3840 Jennings was present and stated that he thought this home needs updating and does not feel the addition will encroach any further than it does now. Mr. Dennison also said that Mr. Bosley is a wonderful neighbor and he would like to see him get this variance.

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.

Mr. Bosley also said that one of the reasons they want to remodel is to make provisions for his mother-in-law to live with them.

Mrs. Gies asked if Mr. Bosley had ever thought of moving. Mr. Bosley said that they like where they live and finally came up with a plan to renovate the home with a minimum amount of demo work.

Mr. Kovacs asked what the buildable area on this lot. Mr. Stimac said that there is a 30' front yard setback and officially is a 40' rear yard setback. Mr. Stimac also said that construction could take place to within 10' of the side property line. Mr. Kovacs said

**ITEM #8 – con't.**

that he thought Mr. Bosley had a lot of room to add on the north side of this home in a way that would not require a variance.

Mr. Maxwell said that after looking at the floor plan he thought some of the rooms were very small and there is no basement. He also said that these renovations would bring uniformity to the home and would give him extra space. Mr. Kovacs said that he has a very large buildable area and could add on without a variance. Mr. Kovacs is against carrying on the 25' rear yard setback. Mr. Maxwell said that he could understand what Mr. Bosley was trying to accomplish and he thinks that an addition to the north side of the home would not be aesthetically pleasing. Mr. Bosley said this addition works well coming from this side as it connects to the kitchen and if they were to put it in another location it would not flow as well.

Mr. Kovacs said that he did not see a hardship with the land and felt that an addition could be added without a variance. Mr. Bosley said that they had explored the possibility of adding on to the north, but this was the only viable plan they could come up with. Any other plan was too complicated.

Mr. Maxwell said he did not see the reason to add any additional financial burden to the petitioner. Mr. Kovacs again said that he did not find a hardship with the land. Mr. Bosley said that the real issue is with the interior layout of the house and this was the only plan that made sense.

Mr. Maxwell said that he should be allowed to construct a livable home, and Mr. Kovacs said he can construct a livable home without a variance. Mr. Maxwell said that he feels this addition would have a minimal impact to his neighbors.

Mr. Fejes stated that he is not really adding to the existing variance. Mr. Courtney disagreed and said even though there is no further encroachment he feels the variance would be doubled by adding to the size of the addition.

Mr. Schultz said that he did not feel the variance was being doubled.

Mr. Kovacs still did not agree with this request. Mr. Bosley explained that this addition would allow for them to remove the minimum number of walls and still get what they desire. An elevator would also be added at a later date for Mr. Bosley's mother-in-law. Mr. Courtney said that he thought there was a lot of revamping going on and Mr. Bosley said it would still be in the same general location.

Ms. Gies asked how long the Bosleys have been in the home and Mr. Bosley said that they have lived there 17 years and feels it is an eyesore and an embarrassment to his teenage daughters.

**ITEM #8 – con't.**

Mr. Kovacs stated that he would vote No on a motion to approve this request as he does not see a hardship with the land and believes the petitioner could use the 90' available to the north to add on to his home.

Motion by Fejes  
Supported by Gies

MOVED, to approve the request of Scott Bosley, 3601 Jennings, for relief of the rear yard setback to construct a family room addition, which would continue an existing 25' rear yard setback where Section 30.10.04 of the Zoning District requires a minimum 40' rear yard setback in the R-1C Zoning District.

- Variance will not encroach any further into the rear yard setback than the 25' allowed by the original variance.
- Variance will not have an adverse effect to surrounding property.
- Variance does not establish a prohibited use in a Zoning District.
- Variance is not contrary to public interest.

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

MOTION TO GRANT VARIANCE CARRIED

**ITEM #9 – VARIANCE REQUESTED. SHARON MANNING, 2637 E. SQUARE LAKE (PROPOSED ADDRESS)**, for relief of the setback to construct a single family home. This proposed home would have a 29.33' front yard setback to the future right of way line. Section 10.60.03 of the Zoning Ordinance requires a 50' minimum setback from the East Square Lake master thoroughfare plan right-of-way line.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new single-family home at 2637 E. Square Lake Road (proposed address). Section 10.60.03 requires a 50' minimum setback from the East Square Lake master thoroughfare plan right-of-way line. The site plan submitted indicates a proposed 29.33' front yard setback to this future right-of-way line.

Sharon Manning was present and stated that she believes that the location of this proposed home would be the most aesthetically pleasing location and would increase the property value. Ms. Manning's goal is to building a small colonial home on the corner of Square Lake and Evanswood, which would clean up this property which is now a vacant lot and is collecting quite a bit of debris.

Ms. Manning's son was also present and said that he had been involved with this project since the beginning. Mr. Manning indicated that at the time they split the lot they did not know that the right of way was increasing.

**ITEM #9 – con't.**

Mr. Hutson asked if there have been any resolutions passed by Council as to the widening of Square Lake Road. Mr. Stimac said that there has not been any authorization to widen Square Lake, however, authorization has been given to purchase the 60' right of way to install the sidewalk this year. Mr. Hutson asked about the sewer and water easements and Mr. Stimac said that the sewer and water mains would be located in the right of way.

Ms. Lancaster said that she was not aware of what the plan is for Square Lake, but if the City acquires the 60' it will affect this variance request. Mr. Hutson said he was trying to figure out how soon Square Lake would be widened. Mr. Manning said that the home to the right of this property is at the same setback as this proposed construction. Mr. Manning also said that the plans had been redrawn taking the 60' right of way into account.

Mr. Courtney asked if this was going to be rental property. Ms. Manning stated that she plans to live in this home.

Mr. Kovacs asked what the buildable area of the lot was. Mr. Stimac explained that with a house fronting on Square Lake Road, the dimension of the building envelope would be about 16' in the north/south dimension and about 62' in the east/west dimension. If the proposed home was turned and fronted on Evanswood, the building envelope would be approximately 30' in the east/west dimension and 48' in the north/south dimension. Mr. Kovacs then asked if the petitioner presented this plan to the Assessing Department when this lot was split. Mr. Stimac said that the Assessor's Office determines if there is enough lot area to meet the minimum area requirements of the Ordinance and also determines that there is sufficient lot width, and must determine that there is a least enough buildable area to support a 24' x 24' house, which is the bare minimum to meet the Ordinance. Mr. Stimac also said that by definition in the Zoning Ordinance this is a buildable lot in the R-1D Zoning classification.

Mr. Manning said that he was the one who originally went to the City Assessor with this plan, and this is how they based their request to split this lot. Mr. Manning said that if they had known from day one that the right of way was 60', they would not have split the lot. Ms. Manning stated that she has made a large financial investment in this endeavor.

The Chairman opened the Public Hearing.

Mr. Paul Fleck, 2805 Ranieri, was present and stated that he would be in favor of this request as he believes it would fit in with the other homes in the area and would maintain continuity. Mr. Courtney asked if he would feel the same if the front of the house was facing Evanswood. Mr. Fleck indicated that he thought it would look out of place.

**ITEM #9 – con't.**

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

There is a petition with nine (9) signatures indicating approval. There are four (4) written objections on file.

Mr. Kovacs asked for clarification on what the impact would be if the City widened Square Lake Road. Mr. Stimac explained that the petitioner has proposed to build a home with a 29' setback from the 60' right of way. If Square Lake is improved, there would be 32' of pavement on each side of the section line, which would result in 28' from the edge of the pavement to the property line. Petitioners are proposing an additional 29' setback from the property line to the front of the house, which would be approximately 57' from the front edge of the house to the edge of the pavement.

Mr. Schultz asked if the houses that are currently on Square Lake will become legal non-conforming structures when the City acquires the additional right of way. Mr. Stimac said that he could not confirm the setback of the homes that are east of this property. Mr. Schultz then asked how the acquisition of right of way would affect this property. Mr. Stimac said that the act of acquiring right of way cannot make a structure a legal non-conforming structure, it can make it non-conforming. The Right of Way Department does not have the power to grant setback variances. Mr. Schultz asked what the ramifications would be if the structure was non-conforming. Mr. Stimac said that if the home were to be destroyed, they would not be able to rebuild it without some type of variance. Mr. Schultz said that if he understood this request correctly they would not need a variance to construct this home.

Ms. Lancaster said that the way the Ordinance is written and if the variance was granted tonight, and the City proceeds with the acquisition of the right of way, this home would be considered legal non-conforming and additions would be allowed on the side or back of the home, but not on the front of the home. In order to be legally conforming to the Ordinance, they require a 110' setback.

Mr. Courtney asked if a variance was required if the home was built fronting Evanswood. Mr. Stimac said they are able to construct a structure without a variance if the house were to face Evanswood. Mr. Stimac further explained that the home plan submitted by the petitioner would not fit in the buildable area of a lot fronting along Evanswood.

Mr. Maxwell stated that he did not see a reason to deny this request since this home would in line with the other homes along Square Lake Road.

Motion by Kovacs  
Supported by Schultz

**ITEM #9 – con't.**

MOVED, to grant Sharon Manning, 2637 E. Square Lake Road (proposed address), relief of the front yard setback to construct a single family home, which would result in a 29.33' front yard setback to the future right of way line where Section 10.60.03 of the Zoning Ordinance requires a 50' minimum setback from the East Square Lake master thoroughfare plan right of way line.

- This home would conform to other homes along Square Lake Road.
- Literal enforcement of the Ordinance does preclude full enjoyment and conformance to the Ordinance would be unnecessarily burdensome.
- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Variance applies only to the property described in this petition.

Yeas: All – 7

**MOTION TO GRANT VARIANCE CARRIED**

**ITEM #10 – REQUEST FOR FINAL ACTION. PAUL FLECK, 2805 RANIERI**, for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 27'-6" rear yard setback where 40' is required.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure on the rear of his home. The site plan submitted indicates a 26' rear yard setback to the proposed patio enclosure. Section 30.10.05 of the Ordinance requires a 40' minimum rear yard setback in R-1D Zoning Districts. This item last appeared before this Board at the meeting of December 16, 2003. At that time, motions both to approve the request and to table the item failed on a 3 – 3 tie vote. No motion on this request has been passed by a majority of the Board. In effect, the Board has not taken any action on this request. Therefore, the item was brought back to the Board for final disposition.

Mr. Stimac suggested that if the Board cannot come to a majority decision on a request it may be beneficial and prudent to table the item to give the petitioner the opportunity of a full Board.

Mr. Hutson said that he feels: 1 – Motion by the Board was to postpone, and petitioner was asked whether he wished to postpone the vote. Mr. Fleck decided to have the Board proceed with his request. Mr. Hutson feels that the burden is on the petitioner to convince the Board to vote affirmatively on his request. 2 – This Board is allowed to have two (2) alternates to serve on this Board. City Council has elected not to fill these alternate positions, and it will happen that seven (7) members may not be present. In this case, Mr. Fleck was aware that a full Board was not present and was asked if he wished to postpone his request and chose not to postpone. Mr. Hutson also said that

**ITEM #10 – con't.**

he feels a tie vote to approve means that this motion fails. 3 – Regarding a motion for reconsideration according to Roberts Rules of Order, a motion for reconsideration must be made at the meeting where the item is presented. The Ordinance states that reconsideration can be considered when a substantial change has been made. Mr. Hutson said he does not feel a 5% or even 15% change is substantial enough to allow for the reconsideration of a request. Mr. Hutson feels this issue should be separated from Mr. Fleck's request and the Board should act on the language contained in the Ordinance regarding the word "substantial". Mr. Hutson also suggested that the Board defers answering Mr. Fleck's question until the Board determines what a tie vote means.

Mr. Maxwell asked Ms. Lancaster to comment on this. Ms. Lancaster said that she does not have a problem with the resolution and although it is true with this particular Board, all you need is a quorum in order to pass a request, however, it may be a good idea to clarify what a tie vote means. Ms. Lancaster also said that according to Roberts Rules, a tie vote to approve means that the motion fails, a tie vote to deny a request does not mean that the motion passes. Mr. Maxwell asked if the 3-3 vote on Mr. Fleck's request meant that the motion had failed, and Ms. Lancaster said that according to Roberts Rules, this would mean that the request had failed. It was also pointed out that Robert Rules are written for parliamentary procedure and most of the Boards use these rules with some modification. If a procedure was started that a tie vote automatically means a motion fails then that is how the Board would proceed and remain consistent. Mr. Maxwell stated that he felt that Mr. Fleck deserved an answer on his request. Ms. Lancaster said that if the Board wished she thought that they could act on Mr. Fleck's request. Mr. Maxwell asked if he could reopen the public hearing, and Ms. Lancaster said that she thought it would be up to the Board to hear this request again.

Mr. Courtney stated that he did not think the Board had the right to reconsider this request because the Ordinance states an item would be reconsidered only with a "substantial" change and there has not been a change made to this request. Ms. Lancaster said that according to Roberts Rules she thought the item could be reconsidered and Mr. Courtney stated that Roberts Rules are different than the Ordinance and this Board needs to go by the Ordinance.

Mr. Stimac stated that he did not feel the Board had taken a final action on this item and feels that there are several motions that could be made, and perhaps have a majority decision by the Board. Mr. Courtney said that he feels the Board has taken a final action because the motion to approve failed and therefore would constitute a denial. Mr. Hutson stated that the minutes that were approved stated very specifically that the "Motion to approve failed" and feels that this should be construed as a denial. Mr. Stimac said that other motions could have been made and Mr. Courtney said perhaps other motions should have been made, however, the Board did not make any other motions.

**ITEM #10 – con't.**

Mr. Maxwell said that he felt they should address how this Board would handle tie votes in the future and he feels that Mr. Fleck should be able to address the Board. Mr. Hutson objected and stated that Mr. Maxwell did not have the power to reopen this hearing, because the minutes that were approved had denied his variance. Mr. Hutson also said that he feels that the Board should separate this request from the approval of new verbiage regarding tie votes. Mr. Maxwell said he still felt that other motions should be made regarding Mr. Fleck's request at this meeting.

Motion by Courtney  
Supported by Hutson

MOVED, to adjourn the meeting of the Board of Zoning Appeals.

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

**MOTION TO ADJOURN THE MEETING FAILED**

Mr. Stimac suggested that at this point there were many different opinions regarding this matter and felt that the procedure and policy should be separated from this request, and said that it would be beneficial to postpone hearing of this request to allow staff to research the Ordinance and suggest appropriate language.

Mr. Maxwell asked Mr. Fleck if he had anything to say. Mr. Fleck said he was just a citizen and was not familiar with Roberts Rules of Order and also was not familiar with the rules of the Board regarding the granting of a variance. It turns out you have to have four (4) people and he had a situation where he did not have the benefit of a full Board and would like to have a vote taken on his variance so he would know what the final determination was. Mr. Maxwell pointed out that it had been made very clear to Mr. Fleck at the time of the meeting that he had the option of postponing for the benefit of a full Board and he chose not to exercise that option. Mr. Maxwell then asked Mr. Fleck if he had a problem with postponing this request and Mr. Fleck said he did not have a problem with a postponement.

Mr. Courtney said that he felt that perhaps the Board should make an amendment to their Rules of Procedure stating that if a tie vote is reached, the Board would automatically postpone the request until the next meeting. Mr. Maxwell stated that due to the lateness of the hour, he thought it would be better to research this option and bring it back to the next meeting. Mr. Courtney also said that he thought this Board should give City staff some idea of what type of resolution the Board would be looking for.

**ITEM #10 – con't.**

Ms. Lancaster said that she thought perhaps Mr. Stimac and she could go over the Rules of Procedure and the Ordinance and come back to the Board with some suggestions on how to handle these requests.

Motion by Courtney  
Supported by Gies

MOVED, to postpone a decision on changing the Rules of Procedure for the Board of Zoning Appeals; **and** to postpone a hearing of Mr. Paul Fleck, 2805 Ranieri, request for a rear yard setback until the next scheduled meeting of April 20, 2004.

- To allow City Staff to determine what changes could be made.

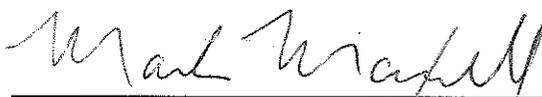
Yeas: All – 7

MOTION TO POSTPONE BOTH REQUESTS CARRIED UNTIL THE MEETING OF APRIL 20, 2004

Mrs. Gies informed the Chairman that she will not be at the meeting of May 18, 2004.

Mr. Maxwell asked if the Board wished to give City Staff any direction on these changes. Mr. Hutson said that he was puzzled as to why Council has never filled the alternate positions available to this Board, so that a tie vote would not happen. Mr. Courtney said he did not feel an alternate was necessary, as only four votes are needed. Mr. Hutson said that he did not think an item should automatically be postponed each time there is a tie, and felt that this decision should be construed as a denial. Mr. Stimac said that he sees problems with either decision, postponement or the acceptance of a tie as a denial. Mr. Maxwell said that he thought that the motion to approved was denied when a tie vote was reached.

The Board of Zoning Appeals adjourned at 10:09 P.M.

  
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Mark Maxwell, Chairman

  
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Pamela Pasternak, Recording Secretary