

The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, August 17, 2004 in Council Chambers of City Hall.

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

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF JULY 20, 2004

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of July 20, 2004 as written.

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

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – VARIANCE REQUEST. 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 informed the Board that St. Augustine Church is in the process of filing for a special use approval and the Planning Commission is in the process of looking at the site plan and may impose certain stipulations, regarding screening their outdoor play area. Mr. Stimac suggested that perhaps the Board would like to postpone this item until the meeting of September 21, 2004 in order to determine what the Planning Commission has decided.

Motion by Courtney
Supported by Gies

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 meeting of September 21, 2004.

ITEM #2 – con't.

- To allow the Planning Commission to discuss and act on the special use approval request submitted by the Church.

Yeas: All – 7

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF SEPTEMBER 21, 2004 CARRIED

ITEM #3 – VARIANCE REQUEST. RWT BUILDING, LLC, 1309 BOYD (PROPOSED ADDRESS), for relief of the Ordinance to divide a parcel of land, which will result in two 7,200 square foot parcels, where Section 30.10.06 of the Ordinance requires a minimum lot area of 7,500 square feet in the R-1E Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to divide a parcel and construct a new single-family residence. The existing home at 1321 Boyd is located on Lot #29 with a portion of the attached garage located on Lot #28. Although these two lots are shown as two separate parcels for tax purposes, since the same individual owns them, Section 40.50.02 of the Zoning Ordinance considers this to be an undivided parcel. Individually these lots are only 7,200 square feet in area. Section 30.10.05 of the Ordinance requires a minimum lot area of 7,500 square feet in the R-1E Zoning District. The plans submitted propose to remove the garage, separate the lots creating two 7,200 square foot parcels, and build a new home on Lot #28.

This item last appeared before this Board at the meeting of July 20, 2004 and was postponed to allow the Board members to revisit the site to determine if the proposed home would create an adverse effect to surrounding property.

Mr. Courtney asked if the setback requirements would be met with the new home. Mr. Stimac indicated that the plans submitted indicate a new dwelling with 7 ½' on each side and 45' of building width, which would comply with the Ordinance. Mr. Courtney then stated that basically this variance would be creating two non-conforming lots.

Mr. Murray Deagle from RWT Building, LLC was present and stated that the proposed homes would comply with the requirements of the Ordinance with the exception of the lot area. Mr. Deagle also said this neighborhood is quite mixed in the type of homes that exist and did not feel this proposed split would cause an adverse effect to surrounding property. Mr. Deagle had approached the School District to see if they would consider selling some of the property behind this lot in order to have the lots meet the area requirement, but was told that they would not sell any of their land, however believes that this lot would conform with the other homes in the area regarding the depth of the lot. Mr. Deagle went on to say that he feels that the new construction would not only improve the neighborhood but would also add property value to the City of Troy. Mr. Deagle also said that they would be willing to move the house farther east in order to add to the side yard setback. RWT Building has been constructing new

ITEM #3 – con't.

homes in Troy for the last ten years, and the homes that they build are generally 2200 square feet, and Mr. Deagle feels this size of home is very desirable in this area.

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

There are seven (7) written objections on file. There are three (3) written approvals on file.

Mr. Kovacs stated that he had gone back to this site and noticed that there was a drainage ditch that ran along the back of the property. Mr. Kovacs also said that he did not see how a new home would obstruct the view of the school, as presently there are a number of large trees, and the school is set back approximately 200' from these trees. Mr. Kovacs also said that he did not see a problem with this request as he feels that the proposed home would fit in with the other homes in the area and feels that conforming to the Ordinance would be unnecessarily burdensome for the petitioner.

Mr. Courtney stated that he feels this is a conforming lot now and by granting a variance the Board would create two (2) non-conforming lots and the only hardship was monetary. Mr. Courtney said that he could not justify this variance.

Mr. Fejes agreed with Mr. Courtney and stated that he did not see any type of hardship at all with the land, and would not be able to justify a variance. Mr. Hutson said that he thinks that splitting this parcel would increase the congestion in the area and he could not find a practical difficulty that ran with the land.

Mr. Maxwell stated that he did not think splitting this property would create a hardship and felt that the proposed homes would fit in with this area and would improve the property.

Motion by Courtney
Supported by Hutson

MOVED, to deny the request of RWT Building, LLC, 1309 Boyd (proposed address), for relief of the Ordinance to divide a parcel of land, which will result in two 7,200 square foot parcels, where Section 30.10.06 of the Ordinance requires a minimum lot area of 7,500 square feet in the R-1E Zoning District.

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

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

ITEM #3 – con't.

MOTION TO DENY REQUEST CARRIED

ITEM #4 – VARIANCE REQUEST. GEORGE KOSTOPOULOS, 2720 PINE HILL, for relief of the Ordinance to construct a garage addition, which would result in a 16' front yard setback to Bronson where Section 30.10.02 requires a 40' front setback.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a garage addition, which will result in a 16' front yard setback to Bronson. This property is a double front corner lot and requires a 40' minimum front yard setback from both Pine Hill and Bronson. The site plan submitted indicates the existing attached garage has a legal non-conforming 23'-6" front yard setback to Bronson. This garage was constructed at a time that Bronson did not go through. Section 30.50.04 of the Ordinance prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Mr. Schultz asked if the existing garage had a front entrance and Mr. Stimac stated the current garage has a setback of 23'-6" and that garage will retain that setback and the current garage door faces to the south and they are planning to modify that with an entrance to the east.

Mr. Douglas Leahy of AZD Architects was present and stated that the configuration of the lot creates a problem and although the existing garage fronts on Pine Hill, they do plan to change the location of the door to open on the side. Mr. Leahy also indicated that they plan to put an addition on this home and by adding this garage it would soften the look of the proposed addition. The proposed garage would have a low profile and would face toward Bronson and would have a 35' setback from the road.

Mr. Courtney asked what would happen to the existing garage and Mr. Leahy stated that it would remain a garage.

Mr. Kovacs asked how large this home was and if it had a basement and Mr. Leahy said it was approximately 1600 square feet and did not have a basement.

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

There is one written approval on file. There are no written objections on file.

Mr. Hutson stated that he felt the configuration of this lot created a hardship for the petitioner and there is a lot of vegetation and landscaping, which would diminish the impact to surrounding property. Mr. Kovacs agreed and stated that the double frontage of the lot also created a hardship.

ITEM #4 – con't.

Motion by Hutson
Supported by Maxwell

MOVED, to grant the request of George Kostopoulos, 2720 Pine Hill, for relief of the Ordinance to construct a garage addition, which would result in a 16' front yard setback to Bronson where Section 30.10.02 requires a 40' front setback.

- Literal enforcement of the Zoning Ordinance precludes full enjoyment of the permitted use and makes conforming unnecessarily burdensome.
- Configuration of this 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 #5 – VARIANCE REQUEST. JIM LAPLANTE, 1839 E. WATTLES, for relief of the Ordinance to construct a 980 square foot additional detached garage resulting in 1708 square foot of accessory buildings where 600 square feet of accessory building is permitted by Section 40.57.04.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an additional detached garage. The site plan submitted shows an existing 728 square foot detached garage. The proposed 980 square foot additional detached garage would bring the total area of accessory buildings to 1,708 square feet. Section 40.57.04 limits the area of all accessory buildings on a site to 600 square feet or one-half the ground floor area of the main building whichever is greater. As the home on this property is only 914 square feet on the ground floor, accessory buildings are limited to 600 square feet on this site. A request for a 980 square foot addition to the existing detached garage was approved in July of 2004. The petitioner now wishes to construct this as a separate building.

Mr. Stimac also stated that after receiving this variance, the petitioner discovered the existing garage was built on a rat wall and now that the Building Code has changed a footing would be required for the addition. Basically, it would be very difficult for the petitioner to add an extension to the existing garage.

Mr. Courtney asked if this petitioner could present his case before the Building Code Board of Appeals to receive a variance, which would not require a footing for the additional building. Mr. Stimac stated that the petitioner certainly had the option to come to the Building Code Board of Appeals and that Board could grant such a variance. Mr. Courtney stated that he thought this would look better as one building rather than two separate buildings. Mr. Stimac said that in his opinion it would be better

ITEM #5 – con't.

to build a new building with a rat wall rather than attach the new building with a footing to the existing garage, which has a rat wall and allows for movement in the building. Mr. Hutson said that he thought that this idea would be practical.

Mr. Kovacs asked what the recommended distance between the two buildings would be and Mr. Stimac stated that 6' was recommended to allow for the movement of one building without adversely affecting the other building. Mr. Kovacs then asked the petitioner what he would like to do.

Mr. LaPlante stated that all he wanted to do was to be able to build a garage. Mr. LaPlante indicated that he had spoken to several builders and they did not recommend attaching the new garage to the proposed structure. Mr. LaPlante also expressed concern that if the existing garage were to move, there was a chance that the cement would crack and he was concerned about creating additional problems. Mr. Kovacs stated that because of the size of the lot this would still look like one building.

Mr. Courtney asked if Mr. LaPlante had planned an opening between the two buildings and Mr. LaPlante stated that he had not. Mr. LaPlante said that he thought he would put his trashcans in the area between the two buildings and create some type of screening for this area. Mr. Courtney then asked if he would prefer one large building rather than two separate buildings. Mr. LaPlante said that he would just like to get started before winter and would go along with what the Board wanted him to do.

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

There is one written approval on file. There are no written objections on file.

Motion by Maxwell
Supported by Gies

MOVED, to grant Jim LaPlante, 1839 E. Wattles, relief of the Ordinance to construct a 980 square foot additional detached garage resulting in 1708 square feet of accessory buildings where 600 square feet of accessory buildings are permitted by Section 40.57.04.

- All commercial vehicles will be stored inside.
- Variance would not be contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- The large size of this lot would support this additional building.

Yeas: All – 7

ITEM #5 – con't.

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUEST. ILIR BELLO, 2874 NORTHAMPTON, for relief of the Ordinance to construct a detached garage with a 3' setback from the proposed garage to the side property line on the west where Section 40.57.05 of the Ordinance requires a 6' minimum side yard setback for accessory buildings.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a detached garage. The site plan submitted indicates a 3' setback from the proposed garage to the side property line on the west. Section 40.57.05 of the Ordinance requires a 6' minimum side yard setback for accessory buildings.

Mr. Tom Trathen of Bruno Building was present and stated that the petitioner would like more room to maneuver their cars into the garage and this 3' setback would make it much easier for them.

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. Kovacs asked Mr. Stimac if the setbacks had changed due to the fact that when he drove through this area, he thought the garages were quite close to the lot lines. Mr. Stimac indicated that in 1986 the Ordinance changed from the 3' minimum side yard setback to the 6' setback requirement, therefore if the garages were built prior to that time, they would have been constructed with less of a side yard requirement. Mr. Kovacs asked how wide this lot was and Mr. Stimac stated it was 60'.

Motion by Maxwell
Supported by Courtney

MOVED, to grant Ilir Bello, 2874 Northampton, relief of the Ordinance to construct a detached garage with a 3' setback to the side property line on the west where Section 40.57.05 of the Ordinance requires a 6' minimum side yard setback for accessory buildings.

- Variance will not have an adverse effect to surrounding property.
- Proposed garage will be in line with other garages in the area.
- Variance is not contrary to public interest.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUEST. MICHAEL AGNETTI, 1150 WOODSLEE, for relief of the Ordinance to divide a parcel of land, which will result in two 7,200 square foot parcels, where Section 30.10.06 of the Ordinance requires a minimum lot area of 7,500 square feet in the R-1E Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split a parcel of land and construct two single-family homes. The site plan submitted indicates demolishing the house at 1150 Woodslee, dividing the property into two parcels each having 7,200 square foot of area. Section 30.10.06 requires 7,500 square foot minimum lot sizes in R-1E Zoning Districts.

Mr. Jack Bertoia and Mr. Michael Agnetti were present regarding this matter. Mr. Bertoia indicated that this property is zoned R-2, and the original three (3) lots were platted as 40' lots. Several of the homes in area are in fact constructed on 40' lots. Mr. Hutson asked if Mr. Bertoia had been present earlier when the Board heard a similar request. Mr. Bertoia said that he was, however he felt this area of Troy was different in that it is a very mixed area and could support this request as there are many 40' lots as well as duplexes. Mr. Hutson asked what the practical hardship would be and Mr. Bertoia stated that there is none.

Mr. Courtney asked what Mr. Agnetti's interest in this property was. Mr. Agnetti stated that he wished to purchase the property and build on it, but before he bought it he wanted to make sure he could get a variance. Mr. Agnetti also said that all they want to do is to take these three (3) platted 40' lots and make them into two (2) 60' lots. Mr. Bertoia said that he thought other lots in this area were smaller than what they were proposing and did not feel it would create an adverse effect to surrounding property.

Mr. Kovacs asked if they were planning to build single-family homes and Mr. Agnetti stated that they did.

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 three (3) written objections on file.

Mr. Kovacs stated that he felt this was a very mixed area and said that in his opinion splitting this property would be an improvement and based on past zoning requirements, he feels that conformance to the Ordinance would be unnecessarily burdensome.

Ms. Gies asked if this property was vacant. Mr. Kovacs indicated that there was a house in the middle of the property, which would have to be demolished. Mr. Hutson said that he felt this variance would create an adverse effect and also felt that granting this variance would be heading in the wrong direction and would be eliminating green space.

ITEM #7 – con't.

Mr. Maxwell said that he had gone out to this site and because the property was located at the end of the block, he did not feel this would be detrimental to the surrounding property and would in fact be an improvement.

Motion by Courtney
Supported by Hutson

MOVED, to deny the request of Michael Agnetti, 1150 Woodslee, for relief of the Ordinance to divide a parcel of land, which will result in two 7,200 square foot parcels, where Section 30.10.06 of the Ordinance requires a minimum lot area of 7,500 square feet in the R-1E Zoning District.

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

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

MOTION TO DENY REQUEST CARRIED

ITEM #8 – 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 indicated 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.

Mr. Kovacs asked for background information regarding the requirement for a one-acre parcel. Mr. Stimac said that to the best of his knowledge it is his belief that when the language of the Ordinance was developed when they were considering fast-food restaurants such as McDonald's or Burger King, etc.; an appropriate drive up site was considered to be one-acre. Mr. Stimac also said that regarding this site, all of the other provisions in the Ordinance such as parking, the stacking lane and the green space requirement would be met. The only variance required is the minimum lot size.

Jonathan Sherer was present and said that his family has been in business in Troy for approximately thirty-four years. Mr. Sherer had been approached by Starbuck's to

ITEM #8 – CON'T.

improve this property and intersection by removing one of the driveways and moving the entrance farther from the corner of Big Beaver. Starbuck's is attempting to improve a number of their sites by adding a drive-thru window. Mr. Sherer introduced Mr. Steve Sorenson from JB McDonalds to also make a presentation regarding the engineering of this site.

Mr. Sorenson said that he had developed this site plan and he feels this corner could be improved greatly. Mr. Sorenson also said that he feels the hardship to the petitioner is the Ordinance. They would make this corner a right-turn only and would eliminate the second driveway, which he believes will increase safety on this corner. Landscaping would also be increased and would also be an improvement.

Mr. Fejes asked for an explanation regarding the entrance from Crooks Road and how the drive-thru would work. Mr. Sorenson said that it would be a right turn only from Crooks Road and the exit would be on Big Beaver. Mr. Fejes also asked if people would be able to come inside and eat. Mr. Sorenson said that there will be 22 seats inside the building and parking areas will be provided. Mr. Fejes further stated that he believes this corner is a disaster and is concerned that people will make a left leaving the property onto Crooks Road and is worried that this would be more of a safety hazard. Mr. Sorenson said that they do not want to send people out onto Crooks heading north, but believes this plan will help to clean up this area regarding traffic.

Mr. Schultz expressed concern about people trying to make a left out of this driveway onto Crooks Road. Mr. Schultz also stated that the Planning Commission has not reviewed these plans at this time and wondered if a stipulation could be added to any variance granted, to limit the variance only to a coffee shop. Ms. Lancaster stated that variances run with the land and would have to go with any type of similar activity. If something were to happen at the Planning Commission that would not allow for this building, the petitioner could redesign their plans to comply with the restrictions imposed by the Planning Commission, but the variance granted by this Board would still stand.

Mr. Kovacs asked if another type of business would have to meet the parking requirements, etc., and Ms. Lancaster stated that they would have to do whatever the Planning Commission told them to do.

Mr. Schultz stated that he would be opposed to granting a variance on this property until site plan approval was obtained from the Planning Commission. Mr. Kovacs asked if his concern was based on the fact that another type of business would come in and Mr. Schultz said that he would be worried that a hamburger stand would come in and this is not something that he would like to see at this intersection. Mr. Kovacs stated that another petitioner would still have to meet the other requirements of the Ordinance.

Mr. Courtney asked Mr. Sorenson if he worked for Starbuck's exclusively. Mr. Sorenson said that he does work for all types of businesses. Mr. Courtney said that he

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thought the stacking lane for nine cars was not realistic as he believes McDonald's in the morning has a great deal more traffic waiting to get through the drive-thru. Mr. Sorenson said that the City's requirement was in excess of Starbuck's requirement, which are eight cars.

Mr. Al Haddad, the representative from Starbuck's was present. Mr. Haddad said that when they had laid out this site plan, they had a great many discussions with their office in Seattle and they have 8,000 units and have between 600 and 700 of these sites have the drive-thru, and they are trying to clean up the traffic aspects at this corner. Mr. Haddad also indicated that they did not believe they would need any more than the nine spaces as a stacking lane. Mr. Courtney asked if Starbuck's had units presently that required more than eight stacking spaces and Mr. Haddad said that they did not.

Mr. Hutson had a question about the proposed "entry only" from Crooks Road, and said that at Livernois and Long Lake one of the driveways was designated as "entry only" and at any one time has seen quite a few cars use this as an exit. Mr. Hutson asked if there was any type of configuration that would make using this drive as an exit just about impossible. Mr. Haddad said that they had tried to integrate all of the requirements of the City and the width of this drive would be 15', which would make a left turn more difficult. Mr. Hutson said that he thought the Planning Commission could address this issue.

Mr. Maxwell asked how many feet there were from the entry from Crooks Road to the drive-thru lane. Mr. Sorenson said he thought it would be 33' from the curb on Crooks Road.

Mr. Courtney asked if this item could be postponed until the Planning Commission gave the petitioner site plan approval. Mr. Stimac stated that the Planning Commission could not give site plan approval without this variance. A variance can be granted without site plan approval, but the site plan cannot be approved absent this variance.

Mr. Schultz stated that he did not believe a variance could be granted based on approval of the site plan by the Planning Commission. Mr. Stimac said that a variance could be granted per the site plan presented by the petitioner. Mr. Stimac also that he felt it would be very difficult to grant a variance and limit it to only a coffee shop. Ms. Lancaster said that the variance could be granted per this site plan, and if this site plan fails, the petitioner would have to come back. Ms. Lancaster also said that it would be better to grant the variance conditional to this site plan, rather than the type of business that is put on this site.

Mr. Courtney asked if the petitioner would have to come back to this Board if the Planning Commission made a change to the site plan presented. Ms. Lancaster stated that was true as the variance would be granted based on this site plan.

ITEM #8 – con't.

Mr. Fejes said that he thought traffic heading north on Crooks would cause a problem making a left into Starbucks. Mr. Sorenson said that if this location remained a Shell station people would still be able to make a left turn and they are attempting to eliminate this problem with the configuration of the driveway. Mr. Kovacs said that he thought people would still turn left into this property. Mr. Fejes said he was concerned that traffic would back up a great deal waiting to make the turn in during rush hour. Mr. Kovacs said that he did not feel there was a backup in this area from people making a left turn into the drive. Mr. Kovacs said he feels that they are trying to improve the current situation and even if it remains a gas station, left turns would be allowed.

Mr. Donaldson from JB Donaldson Company, asked if a variance could be granted with the stipulation that if anyone else wanted to put something in on this corner, they would have to come back to this Board. Mr. Kovacs said that basically anyone can come in with the exact same site plan submitted and if a variance is granted tonight, they would also be entitled to the same variance. Mr. Donaldson then asked if it would be possible to place a stipulation on the variance approval that it would be assigned only to this particular use.

Ms. Lancaster said that the variance would run with the site plan approved by the Planning Commission and would run with the land. Mr. Sherer said that a hamburger restaurant would have different requirements than Starbuck's and did not feel this would be a problem in the future.

Mr. Schultz said that his concern is that there are food establishments that do not provide interior seating and he does not want to see a fast food restaurant on the corner of Big Beaver and Crooks Road. Requirements for seating and parking are based on the H-S Zoning District and said that it was possible to some day have a fast food restaurant on this corner.

Mr. Kovacs asked if a time limit stipulation could be placed on the granting of this variance and Ms. Lancaster said that there is not a time limit on a variance. Normally, once a variance is granted there is no time limit, and basically the time limit would be until the Planning Commission approves the site plan as is, or, if there are changes required by the Planning Commission, the petitioner would be required to come back to the Board of Zoning Appeals. Mr. Kovacs asked if the Planning Commission had the authority to limit this site to a coffee shop rather than a fast food restaurant. Mr. Stimac said that requirements regarding drive-thru restaurants come from Section 23.25 and this particular property is 23.25.01, which means that there are a series of conditions that the Planning Commission has to find and the one condition that they are not meeting is the size of the lot. Mr. Stimac also said that if this was a restaurant without indoor seating, this would also comply with the requirements of the Ordinance with the exception of the one-acre requirement. Regarding the stacking lane, there is not a different requirement depending on the type of food served.

ITEM #8 – con't.

Mr. Courtney asked what would happen if an approval was granted and nothing happened with one year's time. Mr. Stimac said that there has been some discussion on this and officially there is nothing in the Ordinance regarding a time limit on a variance approval. Mr. Stimac also indicated that a time limit can be placed on a site approval. Mr. Courtney asked if a time limit could be added to this particular item. Mr. Stimac said that he thought you could only add a time limit if the conditions warrant a time limit restriction. Mr. Sherer said that he has been paying rent on this land since November without an operating business and he is looking at making an active profitable business there as soon as possible. Mr. Sherer also indicated that he felt this would be an improvement to this intersection and would also increase the safety. Mr. Sherer further stated that if this is not a Starbuck's, it will eventually become another gas station. Mr. Courtney asked if another gas station could go in at this location without a variance. Mr. Stimac said that a variance would not be required for a gas station.

Mr. Kovacs stated that he understood the Board's concern regarding the type of business coming into this location, however, he believes that the only matter that should be addressed is the size of the parcel. Mr. Kovacs also said that he feels the Board should be able to determine if a viable business can go in at this location.

Mr. Courtney stated that he would rather not have another gas station at this corner.

Mr. Schultz said that he feels that the responsibility of this Board as well as the Planning Commission is to make decisions, which are in the best interest of the City of Troy and is concerned that once a variance is granted for a drive-thru on this corner, any type of business could come in here. Mr. Schultz said that he is concerned that once a variance is granted, a drive-thru restaurant would always be located on this corner.

Mr. Hutson said that he did not feel there was a practical difficulty with this lot, and he feels that if the Ordinance requires one-acre for this type of facility, that is what should be required.

The Chairman opened the Public Hearing.

Mr. Don Sherer was present and stated that he has been doing business on this corner for approximately thirty-five years and believes that the plans that have been developed would work in this area. He stated that at one time this property was probably one-acre in size, but as Big Beaver and Crooks Roads have gotten bigger, the site has gotten smaller. Mr. Sherer also said that if this variance is not granted, they will probably open another gas station at this corner.

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

There are no written approvals or objections on file.

ITEM #8 – con't.

Mr. Kovacs and Mr. Hutson began a discussion regarding the one-acre requirement for drive-thru restaurants. Mr. Hutson said that he felt this was a huge variance request and thought that more thought should be put into it.

Mr. Courtney asked if a variance was required if the drive-thru window was eliminated. Mr. Stimac explained that the one-acre stipulation only applies to restaurants with a drive-thru window.

Motion by Courtney
Supported by Maxwell

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 regularly scheduled meeting of September 21, 2004.

- To allow the Planning Commission the opportunity to study the site plan and make any recommendations they feel are necessary.
- To allow Board members to study this request again.

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

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF SEPTEMBER 21, 2004 CARRIED

ITEM #9 – VARIANCE REQUEST. BRUCE HUDALLA, OF HEARTLAND

SUNROOMS, 1183 BAKER, for relief of the Ordinance to construct a new sunroom addition and to maintain an existing awning installed without a building permit, both with 29' rear yard setbacks where Section 30.10.06 of the Ordinance requires a 35' minimum rear setback in R-1E Zoning Districts.

Mr. Stimac indicated that the petitioner is requesting relief of the Ordinance to construct a sunroom addition on an existing home. The site plan submitted indicates the new rear sunroom addition with a 29' rear yard setback. Section 30.10.06 requires a 35' minimum rear setback in R-1E Zoning Districts. Upon review of the plans we discovered that an awning was previously installed on the rear of this home without a building permit. This awning also has a 29' rear yard setback.

ITEM #9- con't.

Bruce Hudalla of Heartland Sunrooms was present and clarified to the Board that the awning had been constructed approximately 12 years ago and the homeowner was under the impression that a permit had been obtained by the contractor. Mr. Hudalla indicated they had contemplated several different sizes of building, and originally this room was proposed to be much larger. The size of the sunroom was made smaller in order to minimize the variance request once they realized that a variance was required. They have also re-located some of the equipment to other rooms in order to make this room smaller. This structure would be all glass and has a very low roof height, which would have a minimal impact to surrounding property. This room will also have a spa and rather than put up a separate building, they felt that by attaching this sunroom to the home, it will not only offer more protection for the hot tub, but will also make it easier for Mrs. Thornsberry to access it.

Mr. Courtney asked how large this building was and Mr. Hudalla said that the room is 8' x 16'.

Mr. Hutson asked about the plan for the spa and Mr. Stimac placed one on the overhead in order for the Board members to determine what would be built.

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

Mr. Hudalla presented a petition signed by ten of the neighbors on Baker indicating approval of this request. There are no written objections on file.

Mr. Courtney asked if all they were asking for was a 6' variance and Mr. Hudalla said that was correct.

Motion by Fejes
Supported by Maxwell

MOVED, to grant Bruce Hudalla, of Heartland Sunrooms, 1183 Baker, relief of the Ordinance to construct a new sunroom addition and to maintain an existing awning installed without a building permit, both with a 29' rear yard setback where Section 30.10.06 of the Ordinance requires a 35' minimum rear setback in R-1E Zoning Districts.

- Variance is not contrary to public interest.
- Variance would not have an adverse effect to surrounding property.
- Variance relates only to the property in question.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

Mr. Kovacs explained that the Building Department had received a request to hold a special meeting of the Board of Zoning Appeals on Tuesday, August 31, 2004. Mr. Kovacs then determined that a quorum would be present with six (6) confirmed board members, and one member that was questionable. This meeting will be scheduled after the Building Department determines that the petitioner still wants this meeting to be held, and the special meeting fee of \$300.00 is paid.

The Board of Zoning Appeals meeting adjourned at 9:30 P.M.

Matthew Kovacs, Chairman

Pamela Pasternak, Recording Secretary