

The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Wednesday, September 17, 2003 in Council Chambers at City Hall.

PRESENT: Kenneth Courtney
 Christopher Fejes
 Marcia Gies
 Michael Hutson
 Matthew Kovacs
 Mark Maxwell
 Dennis Kramer

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF AUGUST 19, 2003

Motion by Gies
Supported by Courtney

MOVED, to approve the minutes of the meeting of August 19, 2003 as written.

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

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

The Chairman announced that Item #5 had been withdrawn at the request of the petitioner.

ITEM #2 – VARIANCE REQUESTED. HARRY & SUNNIE KWON, 38921 DEQUINDRE, for relief of the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property.

Mr. Stimac explained that the petitioners are requesting relief of the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property. This portion of the site has an underground pipeline easement, and the holder of the easement has denied permission to place the wall within their easement.

This item first appeared before this Board at the meeting of August 19, 2003 and was postponed to allow the petitioner the opportunity to supply a copy of the easement agreement for the Board to review. A copy of this agreement along with a letter from the Assistant City Attorney was included in the member packets.

ITEM #2 – con't.

Mr. Maxwell asked Mr. Motzny to give a summary of his memo. Mr. Motzny said that they had reviewed a document entitled "right of way", which was supplied to the City Attorney's office by Mr. Kwon. It was explained that this document was the reason for a variance request. Mr. Motzny also said that upon review of that document it was determined by the City Attorney's office that the holder of the easement has no authority to prohibit a permanent structure on this property. It is the City Attorney's opinion that this would not be a basis for a variance request, because the easement does not prohibit structures on this property. Mr. Maxwell then asked if it was Mr. Motzny's opinion that Mr. Kwon could build a screen wall. Mr. Motzny said that based on the document provided to the City Attorney's office it was determined that this document did not prohibit Mr. Kwon from building a screen wall.

Mr. Kwon said that he was a little surprised by this determination, however he would do whatever the City requires. Mr. Kwon also said that he had done a search with the County and this was the only document that the County has. Mr. Kwon explained that he planned to make it very easy for everyone.

Mr. Hutson said that in his viewpoint, legally, Sunoco could not prevent him from putting up a wall, and therefore a variance was not required. Mr. Kwon said that he agreed with Mr. Hutson, but he thought that the City wanted him to put in a landscaped berm and he would be willing to do so.

Mr. Courtney asked if Mr. Kwon wanted to put in landscaping rather than a wall and Mr. Kwon said that it did not matter to him, but he would prefer to put in a landscaped berm.

Mr. Stimac said that in the original discussions with Mr. Kwon regarding this property, they were working on the assumption that there was no ability to put up the required screen wall. Mr. Stimac said that if the wall could not be put up something would have to put in its place, and it was at that time that the possibility of a landscaped berm was brought up. Mr. Stimac explained that the Ordinance requires a 6' high screening wall as long as the easement does not preclude him from putting up this wall.

Mr. Maxwell asked what was on the other side of this wall. Mr. Stimac said that there is an existing house on Wattles Road, and also a new subdivision is going in to the south of Mr. Kwon's property. Mr. Maxwell said that he thought that the same thing should go in between the sections of existing wall and he would prefer to see either all screen wall or landscaped berm.

Mr. Kwon said that they were thinking of putting in two sliding walls, which would look very much like the existing screen wall, but could be moved if Sunoco ever needed to have access to the pipeline. Mr. Kwon said that his preference was to put in a berm, but he did feel that the sliding walls would accommodate both Sunoco and meet the City requirements.

ITEM #2 – con't.

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. Hutson said that part of Mr. Motzny's opinion, and his own as well, is that if Sunoco moved the wall to get to this pipeline, they would then have to cover the costs of moving and replacing the wall. Mr. Hutson said that he feels adding the same type of wall would be more aesthetically pleasing, then putting in something else. Mr. Kwon again stated that he will follow the recommendations of the Board.

Mr. Kwon also said that he would notify Sunoco to give them advance notice of what the recommendations of the Board were, and what Mr. Kwon planned to do.

Mr. Kramer asked if the existing wall was located on Mr. Kwon's property and he said that it was. Mr. Kramer also asked if they would put up the same type of wall in order for it to look uniform. Mr. Kwon said that the sliding wall would look almost identical to the masonry wall that is already existing.

Mr. Courtney asked if he was required to put in the same type of wall as the existing wall. Mr. Stimac said that they would like the wall to look the same, however, there are types of "insert" walls that would look identical to the existing wall. Mr. Stimac indicated that the Building Department would work with Mr. Kwon to find an acceptable design for the wall.

Motion by Kovacs
Supported by Gies

MOVED, to deny the request of Harry & Sunnie Kwon, 38921 Dequindre, for relief of the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property.

- Determination of City Attorney's office that "right of way" agreement does not prohibit the construction of a structure on this easement.
- Petitioner has not demonstrated a hardship with this land.

Yeas: All – 7

MOTION TO DENY REQUEST CARRIED

ITEM #3 – VARIANCE REQUESTED. DAN VAN HEMM, G.J. SLAGON & ASSOCIATES, 1000 JOHN R., for relief of the 6' high masonry-screening wall required along the east and south property lines.

ITEM #3 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the 6' high masonry-screening wall required along the east and south property lines. This relief has been granted since 1981 due to the fact that the easterly portion of the property line has a retention pond adjacent to it and the south property line abuts the parking lot for the senior citizen complex. This item last appeared before this Board at the meeting of August 2003 and was postponed to allow the petitioner the opportunity to be present.

Mr. Dan VanHemm, property manager for G.J. Slagon was present and thanked the Board for considering making this a permanent variance. Mr. VanHemm also apologized for missing the other meetings, but said there was a miscommunication within his company.

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

There are no written objections or approvals on file.

Motion to approve from the meeting of August 19, 2003.

Motion by Courtney
Supported by Vleck

MOVED, to grant G.J. Slagon & Associates, 1000 John R., a permanent variance for relief of the 6' high masonry-screening wall required along the east and south property lines.

- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a zoning district.
- Variance applies only to the property described in the petition.
- The adjacent property to the south and east is not utilized for single-family residential uses.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #4 – VARIANCE REQUESTED. MR. & MRS. JOHN MCCURDY, 121 HAMPSHIRE, for relief of the rear yard setback to construct a patio enclosure resulting in a 37' rear yard setback where 45' is required by Section 30.10.02.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a patio enclosure at the rear of their home. The site plan submitted indicates a rear patio enclosure with a proposed 37' rear yard setback. Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoned Districts.

ITEM #4 – con't.

Mr. & Mrs. McCurdy were present. Mr. McCurdy said that presently they have a retractable awning and it is getting more and more difficult to take the awning up and down. Mr. McCurdy went on to say that the sunroom would actually be smaller than the awning. Mr. McCurdy also said that they would like some relief from the sun and the bugs that are in the yard. Mr. McCurdy also said that there are four (4) pools located to the rear of their property and they would like some privacy from these pools.

Mr. Maxwell asked how large the sunroom would be and Mr. McCurdy said that it would be 12' x 17'. Mrs. McCurdy said that the room would be all glass.

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

There are five (5) written approvals on file. There are no objections on file.

Motion by Fejes
Supported by Gies

MOVED, to grant Mr. & Mrs. John McCurdy, 121 Hampshire, relief of the rear yard setback to construct a patio enclosure resulting in a 37' rear yard setback where 45' is required by Section 30.10.02.

- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property described in the petition.
- Variance will allow petitioner privacy while enjoying their backyard.

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

MOTION TO GRANT VARIANCE CARRIED

Mr. Maxwell stated that he thought this yard was quite small and thought that this was a large variance request. Mr. Hutson also felt that the petitioner demonstrated no hardship and that this was a very large request for this area.

ITEM #5 – VARIANCE REQUESTED. MR. & MRS. HELMUT WOELK, 4342 BEACH ROAD, for relief of the Ordinance to split their existing lot which would result in a lot that has 53.37' of frontage where 100' is required by Section 30.10.02.

The petitioner has submitted a letter to the Building Department asking that this request be withdrawn. No further action taken on this item.

ITEM #6 – VARIANCE REQUESTED. MR. & MRS. EDWARD MURPHY, 3851 WOODMAN, for relief of the rear yard setback to construct an addition to their home resulting in a 41.67' rear yard setback where 45' is required by Section 30.10.02.

Mr. Stimac explained that the petitioners are requesting relief of the rear yard setback to construct an addition to their home. The plans submitted indicate an addition across the rear of the home with a proposed 41-67' rear yard setback. Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

Mr. & Mrs. Edward Murphy were present and stated that they wished to maintain the existing rooms in the home as well as to bring their home up to more modern standards. This addition would allow them to add both a first floor laundry as well as a mudroom. Mr. Murphy also said that that they had looked at other areas to put this addition, but felt that the best area would be at the rear of the home so as not encumber any views from the street side of the home.

Mr. Maxwell said that based on the drawings provided it appeared that part of this addition extended eleven (11) feet, and on the other side of the home it did not come out that far. Mr. Murphy said that the total extension would vary anywhere from 3 ½' on the northern property limits to the southern section, which would require about a 1 ½' variance.

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

There are four (4) written approvals on file. There are no written objections on file.

Motion by Hutson
Supported by Courtney

MOVED, to grant Mr. & Mrs. Edward Murphy, 3851 Woodman, relief of the rear yard setback to construct an addition to their home resulting in a 41.67' rear yard setback where 45' is required by Section 30.10.02.

- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a zoning district.
- Variance would not have an adverse effect to surrounding property.
- Conformance to the Ordinance would be unnecessarily burdensome.
- The lot is unusually shallow for an R-1B lot.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUESTED. MS. KATHLEEN CASCIANELLI, 2226 PRESCOTT, for approval to maintain a gazebo as required by Section 40.57.10 of the Ordinance and to allow this accessory structure to be within 9'-4" of the main structure where a 10' minimum distance is required by and Section 40.57.05.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to be allowed to maintain a hot tub enclosure at 2226 Prescott. An inspection of the property indicates a hot tub enclosure has been constructed, without first obtaining the required permits, in the rear yard, 9'-4" from the back wall of the house. The Troy Zoning Ordinance defines this structure as a gazebo. Section 40.57.10 requires Board of Zoning Appeals approval for placement of gazebos and Section 40.57.05 prohibits placement of any accessory structure within 10' of the main building.

Ms. Kathleen Cascianelli was present. Mr. Cascianelli said that the spa was installed in the summer of 1999 and the enclosure was installed in the spring of the following year. Mr. Cascianelli also said that the store where these items were purchased said that these items were considered portable and therefore did not require any permits from the City. Mr. Cascianelli said that they had tried to find any Ordinances that would address these items, but said that he could not find any. Mr. Cascianelli also said that only 1' of the 120' structure does not comply with the setback requirements.

Mr. Courtney asked Mr. Cascianelli where he looked for the Ordinance, which would cover this hot tub and spa. Mr. Cascianelli said that he had looked in the paperwork from the City and was unable to locate anything relating to these items.

Mrs. Gies asked if they were sure that this was installed properly and if all the requirements were met at the time of installation. Mr. Cascianelli said that he thought they were installed by licensed contractors and felt that they were installed correctly. Mrs. Gies said that she was questioning these contractors, as most of the licensed contractors know that permits are required. Mr. Cascianelli said that if any violations were found at the time of inspection, he would correct them.

Mr. Maxwell asked if this structure would be inspected. Mr. Stimac explained that the Cascianelli's had made an application for a Building Permit, and once the Board acts on this variance request, and a Building Permit is issued all work will be field verified by our Inspectors.

Mr. Hutson asked if the Ordinance has an index, which contains the word Spa. Mr. Stimac said that he did not believe that this word was actually used, however, it would fall under the classification of accessory structure. Mr. Maxwell said that he thought that this would cause some confusion in terms.

Mr. Courtney suggested that if someone came to the City Clerk's office and told them what they were looking for, they would then come to the Building Department and be given the proper information.

ITEM #7 - con't.

Mr. Cascianelli then stated that he had brought in a petition with seven (7) additional signatures indicating approval of this request.

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

There are also two (2) written approvals on file and one (1) written objection on file.

Mr. Courtney asked how the depth of the footings would be determined once a Building Permit was issued. Mr. Stimac said that the Building Department would field verify that the footings comply with the Ordinance.

Motion by Hutson
Supported by Kovacs

MOVED, to grant Ms. Kathleen Casianelli, 2226 Prescott, approval to maintain a gazebo as required by Section 40.57.10 of the Ordinance and to allow this accessory structure to be within 9'-4" of the main structure where a 10' minimum distance is required by Section 40.57.05.

- Structure location is very close to complying with the Ordinance requirements.
- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a zoning district.
- Conformance to the Ordinance is unnecessarily burdensome as encroachment is minimal.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #8 - PROPOSED ZONING ORDINANCE TEXT AMENDMENT, HEIGHT LIMITS FOR AMATEUR RADIO ANTENNAS.

Mr. Stimac explained that the Planning Commission has reviewed and proposed changes to the criteria to height limits for amateur radio antennas. Although the Board of Zoning Appeals does not usually review and comment on Zoning Ordinance Text amendments, these changes are specific to the Zoning Board of Appeals criteria for hearing variance for such antennas.

Mr. Stimac also said that the Planning Commission has asked that the Board of Zoning Appeals review these proposals and provide comments as to the effectiveness of these new proposals. Mr. Stimac said that most of the language in Section 43.77 deals with the specific requirements of the Board of Zoning Appeals and is somewhat similar with

ITEM #8 – con't.

the current language in 43.80. Mr. Stimac explained that it basically sets out how the Board can go about determining if effective communication would be obtained. Mr. Stimac also said that it requires that the petitioner provide the Board with a current Amateur Radio license, it specifically states that the petitioner must provide evidence that a higher antenna is required for effective communication and it allows the Board of Appeals to enlist the aid of Radio Engineers to help the Board determine the need for a variance request and also allows the Board to grant a lesser variance. Mr. Stimac said that it gives specific powers to the Board as to screening, and hours of operation. Item G has specific requirements for a "fall zone setback, meaning that the height of the antenna must be setback at least the height of the antenna from the property line.

Mr. Maxwell said that a lot of the ordinances and laws are a result of the PRB1 – Limited Preemption from the FCC. Basically the intent is to find a balance between effective communication and health, safety and welfare concerns. PRB1 does not cover covenants, conditions and restrictions contained in deeds, by-laws of homeowner associations or in the regulations of an architectural control committee.

Mr. Maxwell also asked if the maximum height of a residence was 25'. Mr. Stimac said that there are conditions in the R-1A and R-1B districts, where you may actually get a house taller than that, up to 32' under certain circumstances. Mr. Maxwell also said that there have been a number of studies done for effective communication and one of them indicates that it would be 20 meters, and he feels that a height of 30' – 40' would be difficult to defend. Mr. Maxwell also said that besides the "fall-zone" requirement he would like to see an additional setback of 5' – 10' added as part of this requirement.

Mr. Kramer said that this item was referred to the Planning Commission by City Council and the Planning Commission took this task very seriously. Mr. Kramer explained that a sub-committee was formed that consisted of a three (3) person panel, who met at least half a dozen times, and listened to amateur radio operators, the public, professional Radio Frequency consultants and went over a large amount of documentation. Mr. Kramer said that issue comes down to this Board on a case-by-case basis to determine whether or not a variance should be granted. Mr. Kramer also indicated that when you look into the technical aspect of the antennas, the information mushrooms at that point. Mr. Kramer said that one amateur may communicate on a low frequency and another on a very high frequency. Mr. Kramer also said that transmitter power, specific frequency and band also can determine how effective the communication can be. Mr. Kramer said that a requirement for one petitioner may be totally out of context for another. Mr. Kramer indicated that there are many variables, which will determine effective communication. Mr. Kramer further stated that this is a hobby and not a utility although it still helps the public in many instances. Mr. Kramer said that he will take back any comments from the Board to the Planning Commission.

ITEM #8 – con't.

Mr. Courtney asked if an antenna that goes up 5' higher than the house would have a different "fall-zone" than an antenna that is mounted to the roof of the house. Mr. Stimac indicated that as written the "fall-zone" is only required on a ground-mounted antenna.

Mr. Courtney asked about Section B, which relates to hiring a consultant to determine the need for a higher antenna. Mr. Hutson said that he feels that if a consultant is hired to help the Board on some issue, the burden of cost of this consultant would fall to the petitioner as part of the application fee. Mr. Hutson also said that he felt this document gives the Board a lot of leeway and was extremely helpful in dealing with these requests on a case-by-case basis.

Mr. Kramer said that when you talk about amateur radio antennas, they are not talking about just the tower, and therefore you must consider any structure on top of the tower for a "fall-zone" requirement.

Mr. Maxwell again stated that he would like to see a setback requirement added to the "fall-zone". Mr. Maxwell said that he is in favor of people pursuing a hobby, however, he felt that the lot for which an antenna was requested should be able to support the height of the antenna. Mr. Courtney asked if Mr. Maxwell wanted the fall-zone setback plus 5' to 10' additional for a setback. Mr. Maxwell indicated that this was correct.

Mr. Kramer said that there are engineering specs that will indicate how the antenna is designed to fail, although not necessarily at the base. Mr. Hutson said that he had seen communication towers that were camouflaged very well and asked if the Planning Commission had considered any type of requirement regarding camouflage. Mr. Kramer said that they had not seen any type of camouflage that would work for these type of residential towers.

Mr. Kovacs asked if there were "fall-zone" conditions on a flagpole. Mr. Stimac explained that the Ordinance does not have specific requirements regarding flagpoles; however, there are requirements in the Sign Ordinance, which address identification flags. Mr. Stimac also said that the Building Department does recommend to anyone that inquires that a flagpole should be located within a "fall-zone" on their property.

Mr. Maxwell then asked if the Board was satisfied with the height of antennas as proposed by the Planning Commission. The Board agreed with the proposed language. Mr. Maxwell then asked if anyone would agree with him in adding another setback requirement to the fall-zone. Mr. Kovacs said that he felt the fall-zone requirements were sufficient. Mr. Maxwell said that he feels if you are going to have a large antenna you should have a large lot to support it.

Mr. Courtney said that he was more in favor of taller antennas due to the fact that there is less interference with television.

ITEM #8 – con't.

Mr. Maxwell asked Mr. Kramer to take the Board's comments back to the Planning Commission. Mr. Courtney said that he would be in favor of adding 5' or 10' to the fall-zone requirement.

Mr. Hutson asked that the Planning Commission be advised that the Board feels that this was very well done.

The Board of Zoning Appeals meeting adjourned at 8:46 P.M.


Mark Maxwell, Chairman


Vice Chair


Pamela Pasternak, Recording Secretary

MS/pp