

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, December 16, 2003.

PRESENT:            Kenneth Courtney  
                          Marcia Gies  
                          Michael Hutson  
                          Matthew Kovacs  
                          Mark Maxwell  
                          Mark Vleck

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

ABSENT:            Christopher Fejes

Motion by Gies  
Supported by Courtney

MOVED, to excuse Mr. Fejes from this meeting.

Yeas:              All – 6

MOTION TO EXCUSE MR. FEJES CARRIED

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF NOVEMBER 18, 2003**

Motion by Courtney  
Supported by Gies

MOVED, to approve the minutes of the meeting of November 18, 2003 as written.

Yeas:              5 – Gies, Hutson, Kovacs, Maxwell, Courtney  
Abstain:          1 – Vleck

MOTION TO APPROVE MINUTES CARRIED

**ITEM #2 – APPROVAL OF ITEMS #3 THROUGH #5**

Motion by Courtney  
Supported by Hutson

MOVED, to approve Items #3 through #5 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Before a vote was taken on this item, Mr. Tony Messina, 1451 Lockmoor, was present and stated that he would like to speak on Item #4.

Mr. Messina stated that he owns the property adjacent to Shir-Tikvah and is very much in favor of maintaining the landscaping in lieu of the 4'-6" high masonry-screening wall required along the east side of the off-street parking area where it abuts residential zoned property; however, was concerned because recently a pathway was cut through this landscaping to allow parishioners to enter the church property from the surrounding subdivision. Mr. Messina asked for some direction regarding this opening. Mr. Maxwell suggested that the Building Department be made aware of this situation and investigate this opening.

Mr. Stimac stated that the Building Department would in fact go to this location and determine what has happened regarding this opening and would report back to this Board and to Mr. Messina. Mr. Stimac also indicated that if this were in violation of the Ordinance, steps would be taken to correct this problem.

**ITEM #3 – RENEWAL REQUESTED. STACY RUDITYS, PROPERTY MANAGER, SIEMENS AUTOMOTIVE, 4685 INVESTMENT DR.,** for relief to maintain a 5' high landscaped berm along the south side of the site where a 6' high decorative masonry screen wall is required.

MOVED, to grant Siemens Automotive, 4685 Investment Drive relief to maintain a 5' high landscaped berm along the south side of the site where a 6' high decorative masonry screen wall is required until January 2006.

- This variance renewal will run concurrent with renewal to maintain the 3'-6" high landscaped berm along the west side of the site.
- Variance is not contrary to public interest.
- There are no complaints or objections on file.

**ITEM #4 – RENEWAL REQUESTED. CONGREGATION SHIR-TIKVAH, 3900 NORTHFIELD PARKWAY,** for relief of the 4'-6" high masonry screening wall required on the east side of off-street parking.

MOVED, to grant Congregation Shir-Tikvah, 3900 Northfield Parkway a three (3) year renewal of relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required along the east side of their off-street parking area where it abuts residential zoned property.

- 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.
- The Building Department will investigate the concerns of Mr. Messina regarding the openings in the landscaping and report back to the Board and Mr. Messina.

**ITEM #5 – RENEWAL REQUESTED. THE CHURCH OF THE JESUS CHRIST OF LATTER DAY SAINTS, 2784 E. SQUARE LAKE**, for relief of the 4'-6" high masonry wall required along the east and west sides of off-street parking.

MOVED, to grant Church of Jesus Christ Latter Day Saints, 2784 E. Square Lake, a three (3) year renewal for relief of the 4'-6" high masonry wall required along the east and west sides of off-street parking.

- Conditions remain the same.
- There are no complaints or objections on file.

Yeas: All – 6

MOTION TO APPROVE ITEMS #3 THROUGH #5 CARRIED

**ITEM #6 – VARIANCE REQUESTED. PAUL FLECK, 2805 RANIERI**, for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 26' rear yard setback where 40' is required.

The Chairman moved this Item to the end of the agenda, Item #8, to allow the petitioner the opportunity to be present.

**ITEM #7 – REQUEST FOR RECONSIDERATION, HARRY & SUNNIE KWON, 38921 DEQUINDRE**, for reconsideration of denial of the variance for 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 petitioner is requesting reconsideration of the request of Harry & Sunnie Kwon, for reconsideration of the denial of the variance for the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property. This request was before this Board at the meeting of November 18, 2003 and was postponed to allow the Petitioner and City Administration to contact Sunoco for a determination of what Sunoco is willing to allow to be constructed on this property. Mr. Stimac also stated that the Building Department had received a drawing of what Sun Oil would permit to be constructed in their easement, which was basically a 6' x 6' board on board wood fence.

Mr. Courtney asked if a variance would be required to put up the wooden fence, and Mr. Stimac informed him that a variance is required for anything other than the required screen wall.

Mr. Kwon was present and stated that he is more than willing to put in what will be allowed by the Ordinance and also to comply with Sun Oil's requirements in order to bring this property into compliance. Mr. Kwon also said that based on the City's recommendation he contacted Sun Oil and this is what has been negotiated between Mr. Kwon and Sun Oil to accommodate the City's requirements.

**ITEM #7 – con't.**

Mr. Hutson questioned Mr. Stimac regarding procedure on this matter. Mr. Stimac indicated that he thought it should be a two-step process; the first being the actual vote to reconsider the denial if the Board feels that sufficient new data has been presented; and the second to postpone this item until the next regularly scheduled meeting to allow for publication of a Public Hearing.

Mr. Vleck expressed concerns over the location of the dumpster. Mr. Vleck stated that he did not believe the present location was consistent with the original approval of the site plan for this building. Mr. Kwon stated that they had to revise the location of this dumpster for several reasons. The design plan was changed because the site went from 2.4 acres to 1.2 acres. Mr. Kwon said that because these were major changes to allow for additional parking, the dumpster had to be moved. Mr. Vleck said that this was an odd location for the dumpster as it is right out the back door of the building to the north. Mr. Kwon indicated that this has been submitted several times and a pass way was added on the grass between this building and the building to the north. Mr. Kwon also indicated that he was sure approval came from the Planning Commission.

Mr. Stimac also pointed out that the original location for the dumpster indicated placement on this same Sunoco easement and felt that this was the main reason the dumpster had to be relocated, and that Sunoco did not want the dumpster located on this easement. Mr. Vleck stated that the property owner to the north used this area for a lunch location, but obviously would be relocating this lunch area.

Motion by Courtney  
Supported by Vleck

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

- New evidence has been presented to allow for reconsideration.

Yeas: All – 6

**MOTION TO GRANT RECONSIDERATION CARRIED**

Motion by Courtney  
Supported by Vleck

**ITEM #7 – con't.**

MOVED, to postpone the request of Harry & Sunnie Kwon, 38921 Dequindre, for the required screen wall for a 35' long portion of the west property line where the property borders residential zoned property until the next regularly scheduled meeting of January 20, 2004.

- To allow the publication of a new Public Hearing

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF JANUARY 20, 2004  
CARRIED

**ITEM #8 – (ITEM #6) - VARIANCE REQUESTED. PAUL FLECK, 2805 RANIERI,** for relief of Section 30.10.05 to construct a patio enclosure addition, which would result in a 26' rear yard setback where 40' is required.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure addition 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 requires a 40' minimum rear yard setback in R-1D Zoning Districts. This item first appeared before this Board at the meeting of October 21, 2003 and was postponed to allow the petitioner the benefit of a full board, as well as for the petitioner to explore the possibility of adding a smaller addition; and to demonstrate to the Board the reasons the addition must be placed in this location.

This item was scheduled to be heard at the meeting of November 18, 2003 and was postponed to this meeting at the request of the petitioner.

Mr. Stimac also indicated that Mr. Fleck had provided information, which indicated a request for a smaller addition as well as reasons for placing the addition in this location.

Mr. Maxwell asked about the property directly to the north of Mr. Fleck. Mr. Stimac indicated that this property is zoned E-P (Environmentally Protected), and as far as he was aware, is owned by William Beaumont Hospital. Mr. Stimac stated that this property has been zoned E-P to allow for a buffer between the hospital property and residentially zoned property.

Mr. Fleck was present and stated that he had discussed this structure with his wife and had determined that the additional could be made smaller from 14' to 12'-6". Mr. Fleck also explained that he did not feel that he could put this addition in any other location, due to the fact that it would be cost prohibitive due to an extensive modification of the roofline and removal of windows. Mr. Fleck also said that underground cabling and wires would have to be removed as well as the sump line and further it did not make good sense to put it in another place. Mr. Fleck said that he feels this is the best

**ITEM # 8 – con't.**

location to put this addition, although if he put the addition on the side of his home a variance would not be required. Mr. Fleck also said that if he put this addition on the other side of his home, he felt his neighbor would complain, as it would be approximately 8' from the side property line. Mr. Fleck went on to say that this addition would not have an impact on any surrounding neighbors, because the property behind him is owned by William Beaumont Hospital and is zoned E-P (Environmentally Protected), which would not allow any construction behind his home.

Mr. Kovacs stated that the original packet indicated that this addition would be an enclosed porch and had questions regarding the wording Mr. Fleck had used in his new information packet. Mr. Fleck said that this is still an enclosed porch, and that they would put a table out there as their dining room is quite small.

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

Mr. Courtney asked Mr. Fleck to demonstrate a hardship that runs with the property. Mr. Fleck said there was not a hardship other than it would be too expensive to construct this addition in another location. Mr. Courtney indicated that expense is not considered a hardship that runs with the land. Mr. Fleck said he does not feel he has a hardship, but that he bought an existing piece of property and would like to utilize it better. Mr. Courtney asked if they had outgrown their home. Mr. Fleck stated that he did not feel they had, but they would like to put a table out there as they feel the dining room is small.

Mr. Vleck stated that he feels this is a large variance request, however, does not feel that this addition would have an impact on surrounding property as the property behind the home has been zoned E-P.

Mr. Hutson indicates that this Board does not have the discretion to do whatever it feels like doing. Mr. Hutson stated that in order to grant a variance a hardship with the land would be required and by Mr. Fleck's own admission there is no hardship. Mr. Hutson also stated that he feels this request is excessive and believes that granting a variance would set a precedent for other homes in the area. Mr. Hutson also said that he did not feel there was a practical hardship.

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

Mr. Maxwell said that he feels this a tough case, as he does not think it would have an impact on surrounding neighbors. Mr. Maxwell also asked Mr. Stimac if he knew if other homes in this area had been constructed within the last five years. Mr. Stimac said that originally this subdivision was constructed in the 80's, and felt that the majority of the homes were 20 years old. Mr. Stimac also said that the builder held approximately half a dozen lots and within the last 10 years, there may have been some new construction.

**ITEM #8 – con't.**

Mr. Maxwell asked Mr. Fleck the square footage of his home. Mr. Fleck said that it is 2300 square feet of living space, not including the garage. Mr. Fleck also said that he thought there is only one buildable lot left on Ranieri, and thought that a new home was constructed within the last three (3) years.

Mr. Fleck said that he could understand the fact the Board was concerned about setting a precedent, however, he does not feel this would happen. Mr. Fleck said that putting the addition in another location, would not be practical, and did not feel that the property behind him would be used for anything else other than a buffer. Mr. Fleck indicated that he had spoken to his surrounding neighbors and they approved of his request. Mr. Fleck also said this addition would not compromise the surrounding neighbors. Mr. Maxwell asked how large Mr. Fleck's lot was. Mr. Fleck said it was 90' x 132'. Mr. Stimac pointed out that from the site plan submitted, the lot was 90' x 135.92'.

Mr. Kovacs said that he was having a problem with this request because even though the land behind this property is designated as E-P (Environmentally Protected), there are no guarantees that it will always remain so. Mr. Kovacs said that all it takes is a vote by City Council to change this zoning and perhaps in 10 years, this addition would impact the surrounding area. Mr. Fleck said that he did not believe Beaumont would ever sell off this land in order to develop it in any way. Mr. Kovacs said that no one can say with a 100% certainty that this property would never be developed. Mr. Fleck said that he agreed with Mr. Fleck in that this property would not be developed. Mr. Courtney pointed out that no one can predict what will happen in the long run with any of the hospitals and one only has to look at the Medical Center downtown to see what could happen.

Mr. Kovacs said that he does not see a practical hardship with this property and feels that this is a large house, and this variance could cause over building on this lot. Mr. Kovacs also said that this addition could be added in another location, and financial costs are not considered a hardship. Mr. Fleck also said that he thought any variance could be determined by the practicality and financial difficulty. Mr. Kovacs read the reasons for granting a variance to Mr. Fleck and Mr. Maxwell offered Mr. Fleck a few minutes to think about these reasons to determine if any would apply to his request. Mr. Fleck said that he felt that he had reduced his variance request and felt it was reasonable. Mr. Fleck also said he knew of a neighbor that was granted a variance and Mr. Hutson pointed out that each case has to be taken individually. Mr. Fleck argued that this addition would not be detrimental to anyone surrounding his property, and also felt that the Board has the authority to decide on "good judgment" or "common sense" that a variance could be granted.

**ITEM #8 – con't.**

Mr. Maxwell asked the dimension of Mr. Fleck's study. Mr. Fleck said he thought it was 12' wide by 15' deep. Mr. Maxwell then asked if he could add 12' to the back of the study. Mr. Fleck said he would not consider this a possibility as there would be too many negatives.

Motion by Vleck  
Supported by Gies

MOVED, to grant Paul Fleck, 2805 Ranieri, a variance 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.

- Variance would not be contrary to public interest.
- Variance would not have an adverse effect to surrounding property.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- No objections on file.
- Property does back up to E-P (Environmentally Protected) land.

Mr. Maxwell said he felt this variance would not be contrary and would not have an impact to surrounding property. Mr. Kovacs pointed out that perhaps Mr. Fleck would like to postpone this request until a full board was present.

Motion by Kovacs  
Supported by Vleck

MOVED, to postpone the request of 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.

- To allow the petitioner the benefit of a full board.

Yeas: 3 – Kovacs, Vleck, Gies  
Nays: 3 – Maxwell, Courtney, Hutson

**MOTION TO POSTPONE REQUEST FAILS**

Vote on motion to approve request:

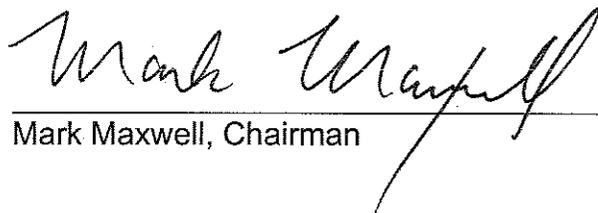
Yeas: 3 – Gies, Maxwell, Vleck  
Nays: 3 – Courtney, Hutson, Kovacs

**MOTION TO GRANT VARIANCE FAILS**

A discussion began on whether this petitioner could request a hearing before a full Board. Mr. Stimac stated that this item was placed on this Agenda and it was the duty of this Board to act on this request at this meeting. Mr. Vleck said that he thought the petitioner had the right to a full Board. Mr. Stimac said he believes that they do not have the right to a full Board, but do have the right to have their petition heard in a proper manner.

Mr. Maxwell stated that this Board could make decisions on variance requests with only four (4) members present.

The Board of Zoning Appeals meeting adjourned at 8:21 P.M.

  
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Mark Maxwell, Chairman

  
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Pamela Pasternak, Recording Secretary