

The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, June 18, 2002.

PRESENT: Kenneth Courtney
Christopher Fejes
Marcia Gies
Michael Hutson
Matthew Kovacs
Mark Maxwell
Cynthia Pennington

ALSO PRESENT: Mark Stimac
Allan Motzny
Pam Pasternak

ITEM #1 – APPROVAL OF MINUTES – MEETING OF MAY 21, 2002

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of May 21, 2002 as written.

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

MOTION TO APPROVE MINUTES OF MAY 21, 2002 AS WRITTEN CARRIED

ITEM #2 – RENEWAL REQUESTED. ZION CHRISTIAN CHURCH, 3668 LIVERNOIS, for relief of the 4'-6" high screening wall required along the south side of off-street parking.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board to maintain a 4'-6" high berm along the south property line adjacent to the off-street parking. This relief has been granted on a yearly basis since 1985. This item last appeared before this Board in June 1999 and was granted a three (3) year renewal. Conditions remain the same, and we have no objections or complaints on file. Mr. Stimac also stated that the property immediately to the south of this parcel has been purchased by the City of Troy, with the potential of becoming a park.

James Blankenship, 311 Colebrook, a member of the Church was present and stated that he had nothing to add.

Motion by Courtney
Supported by Maxwell

ITEM #2 – con't.

MOVED, to grant Zion Christian Church, 3668 Livernois, a three (3) year renewal of relief of the 4'-6" high screening wall required along the south side of off-street parking.

- Variance is not contrary to public interest.
- Conditions remain the same, and there are no complaints on file.
- Variance does not have an adverse effect on surrounding property.
- The City's purchase of the adjacent property for park development only further justifies the need for the variance.

Yeas: All – 7

MOTION TO GRANT RENEWAL OF VARIANCE FOR THREE (3) YEARS CARRIED

ITEM #3 – RENEWAL REQUESTED. FIRST PRESBYTERIAN CHURCH OF TROY, 4328 LIVERNOIS, for relief of the 4'-6" high screening wall along the south, east and north sides of off-street parking.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board for relief of the 4'-6" high wall required along the southeast and north sides of the property adjacent to the off-street parking. The original request was granted based on the fact that the adjacent property was either undeveloped or screened by dense woods. This relief has been granted on a yearly basis since 1988. This item last appeared before this Board in June 1999 and was granted a three (3) year renewal. Conditions remain the same, and we have no objections or complaints on file.

Mr. Robert Morgan, 3790 Estates, a member of the Church was present and stated that he had nothing to add.

Motion by Fejes

Supported by Pennington

MOVED, to grant First Presbyterian Church of Troy, 4328 Livernois, a three (3) year renewal for relief of the 4'-6" high screening wall required along the south, east and north sides of off-street parking.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect on surrounding property.
- Conditions remain the same.

Yeas: All – 7

MOTION TO GRANT A THREE (3) YEAR RENEWAL OF VARIANCE CARRIED

ITEM #4 – VARIANCE REQUESTED. MR. HARRY JAVENS, 3200 ESSEX, for relief of Paragraph A of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition that will expand a legal non-conforming structure.

Mr. Stimac explained that the petitioner is requesting relief of Paragraph A of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition that will expand a legal non-conforming structure. The survey submitted indicates that the existing house has a 36.6' rear yard setback and a proposed second floor addition continuing the 36.6' rear setback. Section 30.10.04 requires a 40' minimum rear yard setback for R-1C zoning. This structure is classified as a legal non-conforming structure. Section 40.50.04 prohibits expansions of legal non-conforming structures in a way that increases its non-conformity.

This item last appeared before this Board at the meeting of May 21, 2002, and was postponed to allow the petitioner the opportunity to demonstrate to his neighbors a commitment to repair and clean up his property.

Mr. Harry Javens was present and stated that in the last thirty (30) days he had put forth his best effort and removed a great deal of the debris on his property in order to show his willingness to make his neighbors happier, and also to show his commitment to this project.

Mr. Maxwell questioned Mr. Javens about the possibility of posting a bond to insure that this work was done in a timely fashion. Mr. Javens stated that he had suggested a bond as part of his commitment to clean up his property. Mr. Maxwell asked if he would be willing to increase the amount of the bond to \$10,000. Mr. Javens stated that he would be willing to consider this amount, however, was concerned that if the cost were too high it would prevent him from completing the project. Mr. Maxwell felt that a \$10,000.00 bond would insure that the project was completed within twelve months. Mr. Maxwell also stated that he saw an improvement in the condition of this property.

Mr. Fejes asked Mr. Javens what his hardship was and Mr. Javens stated that in order to comply with the 40' setback requirement, the second floor addition would not sit over the bearing wall of the building below and also he needs the room as he was hoping to have his elderly mother move in with him.

Mr. Maxwell asked Mr. Javens what he thought the cost of this project would be, and Mr. Javens stated that materials would run him about \$20,000.00 and he would do the work himself.

The Chairman opened the Public Hearing.

Ms. Sandra Smith, 3232 Essex was present and stated that her home is located two doors away from Mr. Javens' home. Ms. Smith also stated that in the past three (3) weeks Mr. Javens has made a great improvement to his property by removing a great deal of the debris and also a junk car. Ms. Smith went on to say that even though the

ITEM #4 – con't.

property has now been cleaned up, and looks much better, it is difficult for her to get over the fact that based on past experience, the property has been unkempt. Ms. Smith also thought that a \$10,000.00 bond would be more reasonable to insure that this work would be completed in a timely manner. Ms. Smith does not believe that the work would be completed as promised, but would tend to go on for a lengthy period of time and the property would once again be unkempt. Ms. Smith thinks that this project is a tremendous undertaking for one person, and does not believe Mr. Javens will be able to complete it. Ms. Smith stated that right now she would have to be neutral on this issue, as she is afraid that this a construction project that will go on and on based on past history. Mr. Maxwell asked Ms. Smith if she would be happy if the bond were to be payable to the Homeowner's Association and Ms. Smith stated probably not, unless it was used for improvement of the property. Ms. Smith also stated that the homeowners in this area would just like to see this property properly maintained and to fit in with the neighborhood.

Ms. Laurie Monacelli, 3421 Medford, was present and stated that even though Mr. Javens had cleaned up his property she was still quite concerned that this project would not be completed properly or in a timely manner. Ms. Monacelli stated that she would be in favor of granting the variance if the Board could stipulate a time line, a plan of action and hire a project manager to monitor the situation. Without these stipulations Ms. Monacelli stated she still objected to this variance request.

Mr. Bill Carlson, 3216 Essex Ct. was present and stated that he agrees with both ladies and is against this request.

Mr. John Gielniak, 3373 Essex Ct. was present and stated that he also agrees with the other neighbors and even though the property has been cleaned up, he is concerned over the fact that the garage is also in a state of disrepair and would like to see it stipulated that this be repaired also. Mr. Gielniak also believes Mr. Javens should fix up his garage as it is unsightly. Mr. Gielniak also stated that he would be in favor of the variance request, if a stipulation could be made that the outside of the home would have to be done in six (6) months, and then Mr. Javens could take his time with the inside work.

Ms. Smith asked how the City would proceed with the open violation on file, and Mr. Motzny stated that actions on the current violations were stayed pending the outcome of the appeal. If the variance is denied the Building Department would determine what type of action would be taken and the Ordinance would be enforced.

Mr. Joseph Barone, 2574 Wexford, was present and stated that his family moved into this area in November or December. Mr. Barone stated that he would like the outside of the home fixed. Mr. Barone also stated that Mr. Javens has proved that he is trying by cleaning up his property within the last thirty (30) days. Mr. Barone stated he would like to see this variance granted, and hopefully Mr. Javens would complete the project and improve the condition of his property.

ITEM #4 – con't.

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

Mr. Stimac stated that officially the Zoning Ordinance states that the action of the Board has to be acted on within a twelve (12) month time frame, which means that the Building Permit has to be obtained within one-year. Once the project begins, the permit will remain active as long as there is no stoppage of the work for a period longer than six months. Once the permit has been obtained and the work has begun the construction may go on for some time. Mr. Stimac also expressed concern regarding the bond. Mr. Stimac explained that the Homeowners Association does not have the authority to enforce the City Code, however, they could possibly use the bond for legal fees. Mr. Stimac also stated that larger construction companies obtain a surety bond that covers 100% of the cost, but Mr. Stimac stated that he does not know if Mr. Javens would be able to get this type of bond.

There are eighteen (18) written objections on file. There are two (2) written approvals on file.

Mr. Courtney asked if a resolution could be made requiring that the outside of the home be completed within six (6) months, and if this requirement is not met, if the variance could then be dissolved. Mr. Motzny stated it was his opinion that the Board did not have the authority to impose a time limitation. Mr. Motzny also stated that the enforcement of the Building Permit falls under the jurisdiction of the Building Department.

Mr. Courtney then stated that he felt that it would be very difficult for Mr. Javens to obtain a performance bond without having the premium be the entire amount of the construction. Mr. Maxwell asked if it would be possible to get two bonds, a personal bond and a surety bond. Mr. Maxwell stated that he would like to see the neighbors get a benefit if this doesn't work out. Mr. Motzny stated that at the last meeting, he stated that the Zoning Ordinance does not provide for a bond as a condition of granting a variance and if you take a strict interpretation of what the Board can do, the Ordinance does not allow for a bond. He thought that the broad interpretation is that the Board can impose conditions on a variance for the public interest and perhaps a bond could be imposed. Mr. Motzny also stated that in his opinion this Board could not impose a bond which would be payable to the private interests of the Homeowners Association.

Mr. Fejes stated that he was concerned that there would not be enough money taken for a bond, which would insure that it would cover the cost of the complete project.

Mr. Kovacs stated that he was concerned because he thought that with the limited powers of this Board, granting a variance would cause an adverse effect to the surrounding neighbors.

Motion by Kovacs
Supported by Fejes

ITEM #4 – con't.

MOVED, to deny the request of Harry Javens, 3200 Essex, for relief of Paragraph A of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition that will expand a legal non-conforming use.

- This variance would be contrary to public interest.
- This variance would have an adverse effect to properties in the immediate vicinity.
- Large number of neighbors are opposed to this variance.

Yeas: 4 – Kovacs, Courtney, Fejes, Hutson

Nays: 3 – Maxwell, Pennington, Gies

MOTION TO DENY VARIANCE CARRIED

ITEM #5 – VARIANCE REQUESTED. MR. KENT MELLEBRAND, 1065 HARTLAND, for relief of the 40.57.04 of the Ordinance to construct a 576 square foot detached garage that would result in 896 square feet of accessory building where 600 feet are permitted.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a 576 square foot detached garage. The site plan submitted indicates an existing 320 square foot detached garage and the construction of a new separate 576 square foot detached garage. Section 40.57.04 limits the total area of all accessory buildings on a parcel of land to 600 square feet or one half the ground floor area of the main building; whichever is greater. The proposed construction would result in 896 square feet of accessory buildings where only 600 square feet is permitted.

This item first appeared before this Board at the meeting of May 21, 2002 and was postponed to allow the petitioner the opportunity to be present.

Mr. Kent Mellebrand was present and stated that his home is quite small and does not have a basement. Mr. Mellebrand stated that presently he is using his garage for storage, which does not allow him to park a car inside. Mr. Mellebrand went on to say that the new garage would give him the extra room he desires.

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 if the petitioner would require a variance if the garage were to be attached to the house and Mr. Stimac replied that a variance would not be required.

Mr. Kovacs asked the petitioner if he would like to attach the garage to the house. Mr. Mellebrand stated that he thought major remodeling would be required, both to the

ITEM #5 – con't.

inside as well as the outside of the house, and he thought that there were a lot of water pipes next to the house. Mr. Mellebrand also stated that he thought the garage would look better detached.

Motion by Kovacs

Supported by Courtney

MOVED, to postpone the request of Mr. Kent Mellebrand, 1065 Hartland, for relief of Section 40.57.04 of the Ordinance to construct a 576 square foot detached garage that would result in 896 square feet of accessory building where 600 feet are permitted.

- Tabling will allow the petitioner to determine the feasibility of attaching the garage to his home.

Yeas: All – 7

MOTION TO POSTPONE REQUEST UNTIL MEETING OF JULY 16, 2002 CARRIED

ITEM #6 – VARIANCE REQUESTED. MR. JOSEPH A. HIMMELL, 2236 ISABELL, for relief to have a 4.1' side yard setback requirement where a 6' setback is required for a detached garage.

Mr. Stimac explained that the petitioner is requesting relief of the side yard setback requirement to construct a detached garage. The application submitted indicates replacing an existing 493 square foot detached garage with a new detached garage that is 600 square feet. The site plan indicates that the new garage will be placed in approximately the same location as the existing garage, which is 4'-1" from the west side property line. Section 40.57.05 requires a 6' minimum setback to the side property line for a new accessory building.

This item appeared before this Board at the meeting of May 21, 2002 and was postponed at the request of the petitioner.

Mr. Joseph Himmell and his wife Carmen Collins were present. Ms. Collins stated that she has owned the home for seventeen (17) years and wished to demolish her twenty-five year old garage and construct a new garage in the same location. Ms. Collins stated that they had tried to determine if the garage could be placed in another location, however, due to the fact that the driveway is on the right, it would make it very difficult for them to turn into the garage. Ms. Collins also stated that they have a very large mature tree that they would have to move.

Mr. Hutson asked when the Ordinance was changed and Mr. Stimac stated that the Ordinance was changed in 1987 from a 3' setback to a 6' setback.

ITEM #6 – con't.

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.

Motion by Maxwell

Supported by Pennington

MOVED, to grant Carmen Collins and Joseph Himmell, 2236 Isabell, relief of the Ordinance to have a 4.1' side yard setback where a 6' setback is required for a detached garage.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Conformance to the Ordinance is unnecessarily burdensome.
- A large existing tree may be lost if the garage were moved to comply with the ordinance.
- The existing drive and home layout would make entering a garage with a compliant setback difficult.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

Motion by Courtney

Supported by Gies

MOVED, to move Item #7, Mr. Adam Pachana, 6787 Locust, for relief to maintain an existing non-conforming addition that is located 7.4' from the side property line to the end of the agenda, Item #15.

- To allow for extra time for discussion of this request.

Yeas: All – 7

MOTION TO MOVE ITEM #7 TO ITEM #15 CARRIED

ITEM #8 – VARIANCE REQUESTED. MR. BENJAMIN TEPES, 2024 HARNED, for relief to expand a legal non-conforming structure to construct a roof over an existing front porch roof and relief to construct a detached garage in a side yard where a rear yard location is required.

Mr. Stimac explained that the petitioner is requesting relief to construct a roof over an existing front porch roof and to construct a new, detached garage. Section 30.10.05 requires a 40' minimum rear yard setback in the R-1D Zoning District. The site plan

ITEM #8 – con't.

submitted indicates that the entire house is located in the required rear yard setback. As such, the house is a non-conforming structure. The site plan submitted indicates extending a roof over the existing front porch and the construction of a detached garage in the front yard. Section 40.50.04 prohibits expansions to legal non-conforming structures in a way that increases its non-conformity. Also, the proposed detached garage is located in front of the existing home. Section 40.57.03 prohibits the placement of an accessory building in any yard except a rear yard.

Mr. Tepes was present and stated that it would be impossible for him to construct this garage in any other location.

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

Motion by Kovacs
Supported by Fejes

MOVED, to grant Mr. Benjamin Tepes, 2024 Harned, relief to expand a legal non-conforming structure to construct a roof over an existing front porch roof and relief to construct a detached garage in a side yard where a rear yard location is required.

- Variance is not contrary to public interest.
- Conforming is unnecessarily burdensome.
- Variance does not cause an adverse effect to properties in the immediate vicinity or zoning district.
- Location of the existing home makes compliance very difficult.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #9 – ITEM WITHDRAWN**ITEM #10 – VARIANCE REQUESTED. MR. STEPHEN J. PAVER, 3086**

MYDDLETON COURT, for relief to construct an addition on the west side of an existing home with a 25.2' front setback where a 40' front setback is required by Section 30.10.02.

Mr. Stimac explained that the petitioner is requesting relief to construct an addition on the west side of his home. The petitioner's property is located at the northeast corner of Myddelton Drive and Myddleton Court. Based upon the orientation of this home and the others adjacent to it, this lot is a double front corner lot. Section 30.10.02 requires a 40' minimum front yard setback along both Myddleton Drive and Myddleton Court in the R-1B Zoning District. The site plan submitted indicates a 31.2' front yard setback from Myddleton Drive to the existing house. As such this structure is classified as a legal

ITEM #10 – con't.

non-conforming structure. The proposed addition results in a 25.2' front yard setback from Myddleton Drive. Section 40.50.04 prohibits the expansion of a non-conforming structure in a way that increases its non-conformity.

Mr. Paver was present and stated that his family is growing and they have run out of room. Mr. Paver also stated that they explored the possibility of adding this addition in another area, but found it was physically impossible as well as cost prohibitive. Mr. Paver also pointed out that he had brought in signed approvals from his adjacent neighbors.

Mr. Courtney asked what the setback would be if this were not considered to be a double-front corner lot. Mr. Stimac indicated that the ordinance would require at least 15 feet.

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

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

Motion by Fejes

Supported by Courtney

MOVED, to grant Stephen Paver, 3086 Myddleton Court relief to construct an addition on the west side of any existing home with a 25.2' front setback where a 40' front setback is required by Section 30.10.02.

- Variance is not contrary to public interest.
- Variance does not cause an adverse effect to surrounding properties.
- Variance does not establish a prohibited use in a zoning district.

Yeas: All – 7

MOTION TO GRANT VARIANCE REQUEST CARRIED

ITEM #11 – VARIANCE REQUESTED. MR. & MRS. CHARLES KELLER, 2063 GULLIVER, for relief to construct an above ground swimming pool in the side yard setback where a rear yard location is required.

Mr. Stimac stated that the petitioner is requesting relief to construct an above ground swimming pool. The site plan submitted indicates the placement of the proposed pool in the side yard on the west side of the property. Section 40.57.03 prohibits the placement of an accessory structure in any yard, except a rear yard.

ITEM#11 – con't.

Mr. Charles Keller was present and stated that he owns three (3) lots and because of the configuration of his property this area is their only back yard. Mr. Keller also stated that there is a full berm with considerable landscaping. Mr. Maxwell asked if they planned on additional screening, and Mr. Keller stated that he would be willing to put up a fence if this is what the Board wanted him to do. Mr. Keller also stated that the pool would be visible to traffic heading eastbound. Mr. Maxwell stated that this property is very well maintained.

The Chairman opened the Public Hearing.

Mr. Kirk Dale, 2062 Gulliver was present and stated that he is against this request. Mr. Dale said that he lives across the street from this property, and he objects to this request because he thinks pools should only be erected in rear yards. Mr. Dale also said that this petitioner has been granted two other variances and he is against another one. Mr. Hutson asked if he would approve of this variance if Mr. Keller added more screening and Mr. Dale stated that he would still be against this request.

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

There are two (2) written approvals on file. There is one written objection on file.

Mr. Courtney asked Mr. Stimac if there was enough room for this pool to be placed in the back yard and Mr. Stimac stated that the pool is required to be at least 6' from the rear property line and although it was not mandatory, the Building Department recommends that a pool be placed 10' from a home as a safety factor. Mr. Stimac went on to say that if the pool were placed at the rear of the home meeting the 6' setback to the property line, it would be approximately 2' from the home.

Ms. Gies asked if a fence would be required around the pool and Mr. Keller stated that there is a locking ladder that comes with the pool, however he would be willing to add whatever would be required if this was not sufficient. Mr. Maxwell stated that he would encourage Mr. Keller to add more screening on the east side of this property.

Motion by Kovacs
Supported by Gies

MOVED, to grant Mr. & Mrs. Charles Keller, 2063 Gulliver a variance for relief to construct an above ground swimming pool in the side yard setback where a rear yard location is required.

- Variance is not contrary to public interest.
- Variance will not cause an adverse effect on surrounding property.
- Compliance with the Ordinance may cause an unsafe condition.

Yeas: All – 7

ITEM #11 – con't.

MOTION TO GRANT REQUEST CARRIED

ITEM #12 – VARIANCE REQUESTED. MR. CLIFFORD ROSE, 2103 GARRY DRIVE, for relief to maintain a detached garage resulting in 1464 square feet of accessory building and 33.5% lot coverage where 815 square feet of accessory building and 30% lot coverage is permitted.

Mr. Stimac explained that the petitioner is requesting relief to maintain a detached garage, which has been constructed without first obtaining a building permit. The site plan submitted indicates that this new 500 square foot building brings the total area of all accessory buildings on this property to 1,464 square feet. The ground floor area of the house is shown to be 1,483 square feet. Section 40.57.04 limits the total area of all accessory buildings on this property to one-half the ground floor area of the house, which in this case is 741 square feet.

A previous variance granted by the Board to this petitioner in 1991 allowed construction of a 12' x 22' addition to the side of an existing garage and a 20' x 5' addition to the rear of an existing garage, which allowed accessory buildings totaling 815 square feet where, at that time, 600 square feet were allowed.

Also, Section 30.10.06 limits the amount of the lot covered by all buildings on the property to a maximum of 30% of the lot area. The addition of the proposed garage would result in a total building area of 2,947 square feet, which is 33.5% of the property.

Mr. Clifford Rose was present and stated that the salesman who sold him this building said a Building Permit was not required due to the fact that this building could be moved at any time. Mr. Rose also said that he needs the extra room for a hoist, which enables him to work on vehicles. Mr. Rose further stated that if this variance were to be denied, he would have to leave Troy, although he has been a resident for 30 years.

The Chairman opened the Public Hearing.

Mr. Don Townson, 2127 Garry was present and stated that this property is very well maintained and he does not have a problem with this request. Mr. Townson also stated that this building is shielded on one side by bushes and on the east side by a fence. Mr. Townson is in favor of this request.

Mr. Michael Kerr, 2120 Garry was present and stated that he has lived in this area for 30 years and Mr. Rose is a wonderful neighbor. Mr. Kerr also stated that this property is very well maintained and is in favor of this request.

Ms. Mary Steflja was present and stated that although Mr. Rose thinks she was responsible for reporting this building to the City, she was not and is very much in favor of this request. Ms. Steflja stated that she thinks Mr. Rose is a very good neighbor and needs the extra room to work on his cars, as well as a place to store his two (2) classic

ITEM #12 – con't.

Corvettes. Ms. Steflja also said that this property is one of the nicest in Troy and does not see this variance creating a problem.

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

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

Mr. Kovacs stated that although he thinks the property is very well maintained, he is concerned about the amount of buildings that cover this lot. Mr. Rose stated that if he were to move, he would offer to purchase this building and if the buyers did not want it, he would take it with him.

Motion by Courtney
Supported by Gies

MOVED, to grant Mr. Clifford Rose, 2103 Garry Drive, a variance for relief to maintain a detached garage resulting in 1464 square feet of accessory buildings and relief to have 33.5% lot coverage where 815 square feet of accessory buildings and 30% lot coverage is permitted.

- Variance is not contrary to public interest.
- Variance does not have an adverse effect on surrounding property.
- Variance has support of surrounding neighbors.

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

Nays: 1 - Kovacs

MOTION TO GRANT VARIANCE REQUEST CARRIED

ITEM #13 – VARIANCE REQUESTED. P.M.P. MARBLE & GRANITE, 1200 E.

MAPLE, for relief of the Ordinance to construct a new parking lot on the west side of an existing industrial building with a 6'-10" front yard setback where 50' front yard is required by Section 30.20.09.

Mr. Stimac explained that the petitioner is requesting relief to construct a new parking lot on the west side of an existing industrial building. Section 30.20.09 of the Troy Zoning Ordinance requires a 50' front yard setback in the M-1 (Light Industrial) Zoning District. Paragraph L of Section 31.30.00 further states that this yard shall be kept free of off street parking. The site plan submitted shows parking in this yard within 6'-10" of the front property line along Souter Drive. A somewhat similar request for a reduction of the front yard setback for parking in the yard adjacent to Souter in conjunction with a proposed building addition was heard and denied by the Board in February of 1992.

ITEM #13 – con't.

Mr. Thomas Strat, Architect and Mr. Harry Partalis, the owner of P.M.P. were present. Mr. Strat stated that this is quite a unique operation and they want to renovate and upgrade this property as it is a showroom for builders, architects and designers. These people would come to this building to not only look at the product, but also to select the actual product they would like. Mr. Strat also went on to say that outside storage is required as part of this kind of business and the changes they would make would also improve the appearance of the building along Souter Drive. Mr. Strat further stated that although the Ordinance has a 10% minimum greenbelt area, they would actually have landscaping which would bring the total of the greenbelt area to around 20%. Mr. Strat indicated that they would be adding a canopy to the building as well as a berm along Souter, and therefore the parking area would not be visible.

Mr. Maxwell asked how many employees were at this location, and Mr. Partalis stated that they have nine (9) employees. Mr. Maxwell then asked how many parking spaces were provided and Mr. Strat stated that presently there are 37 spaces in the rear but they were going to take away all but eight (8). With the proposed improvements in the front they would have 21. Mr. Maxwell asked if the petitioner could ask for a lesser variance, and Mr. Strat stated that they are planning to provide two driveways and this variance would give them more space along Souter.

The Chairman opened the Public Hearing. No one 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.

Motion by Kovacs

Supported by Maxwell

MOVED, to grant P.M.P. Marble & Granite, 1200 E. Maple, relief of the Ordinance to construct a new parking lot on the west side of an existing industrial building with a 6'-10" front yard setback where 50' front yard is required by Section 30.20.09.

- Petitioner will put in landscaping as depicted on site plan submitted.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect on surrounding property.

Yeas: 6 – Maxwell, Pennington, Courtney, Fejes, Gies, Kovacs

Nays: 1 – Hutson

MOTION TO GRANT VARIANCE CARRIED

ITEM #14 – VARIANCE REQUESTED. LEONARD REALTY LLC, 1095 NAUGHTON, for relief to construct an addition on an existing industrial building including a parking lot expansion with a 3' setback to the I-75 Right of Way where 50' is required by Section 30.20.09.

ITEM #14 – con't.

Mr. Stimac explained that the petitioner is requesting relief to construct an addition on an existing industrial building. Section 30.20.09 of the Troy Zoning Ordinance requires a 50' front yard setback in the M-1 (Light Industrial) Zoning District.

Paragraph L of Section 31.30.00 further states that this setback applies to all road frontages, including freeway frontage, and that this yard must remain as landscaped open space.

The site plan submitted indicates that the existing site has only a 14' front yard setback to the parking lot on the north side where it fronts on I-75. As such, this is a non-conforming setback. Section 40.50.04 prohibits the expansion of a non-conforming structure. The site plan submitted indicates that the green belt area is to be reduced to 3' and that it is to be expanded across the western, undeveloped, portion of the site at this 3' setback.

In February 2000 this petitioner received approval for the construction of the addition with the reduced green belt. The petitioner, however, failed to build the addition within the one-year time frame allowed on the Boards action, and is therefore back before this Board seeking this relief again.

Mr. Tom Leonard was present and stated that the current tenant wanted to wait to determine if the economy was going to affect his business before he went ahead with this addition. Mr. Leonard said that this tenant's business was doing well and now wished to go ahead with this project.

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

There are no written approvals or objections on file.

Motion by Maxwell
Supported by Kovacs

MOVED, to grant Leonard Realty LLC, 1095 Naughton relief to construct an addition on an existing industrial building including a parking lot expansion with a 3' setback to the I-75 Right-of-Way where 50' is required by Section 30.20.09.

- Variance is not contrary to public interest.
- Variance would not have an adverse effect on surrounding property.
- Variance would not establish a prohibited use in a zoning district.

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

MOTION TO GRANT VARIANCE CARRIED

ITEM#15 (ITEM #7) – VARIANCE REQUESTED. MR. ADAM PACHANA, 6787 LOCUST, for relief to maintain an existing non-conforming addition that is located 7.4' from the side property line.

Mr. Stimac explained that the petitioner is requesting relief to maintain an existing non-conforming addition that is located 7.4' from the side property line. An addition was constructed on this house in 1998 without first obtaining a building permit. Surveys indicate that this addition is located as close as 7.4' from the east property line. Section 30.10.02 of the Zoning Ordinance requires a minimum side yard setback of 10' in the R-1B Zoning District. The petitioner is requesting relief in order to keep this addition with the non-conforming setback.

This item first was denied by the Board of Appeals at the meeting of March 20, 2001, and as a result of an appeal by the petitioner, was referred back to the Board of Zoning Appeals by the Circuit Court.

This item last appeared before this Board at the meeting of May 21, 2002 and was postponed to allow the petitioner's attorney to present new evidence relating to this item.

Mr. Maxwell asked Mr. Stimac what the status of the Stop Work Order was. Mr. Stimac stated that the Stop Work Order was placed on the property on June 1, 1998 for construction without a Building Permit. Subsequent to the posting of that Stop Work Order, the petitioner applied for a Building Permit for the addition. Based on the site plan submitted by the petitioner a Building Permit was issued due to the fact that the proposed addition was located at least as far away from the property line as the existing structure. The field inspector did not remove the Stop Work Order, due to the fact that based upon his observations, it was determined that the addition was too close to the property line. The Stop Work Order remained in effect. The survey provided by the petitioner indicates that the addition is two feet closer to the property line than the existing house and ultimately citations were issued requiring that the addition be removed from the setback. Mr. Pachana then came to the Board of Zoning Appeals in 2001 asking for a variance so that the structure could remain within the setback. The Board of Zoning Appeals denied this request, and Mr. Pachana then took his request to Circuit Court, at which time, this request was remanded back to the Board of Zoning Appeals. Mr. Maxwell then stated that he feels that the addition now looks complete as compared to the appearance in March 2001.

Mr. William Cohen, Attorney, and Mr. Adam Pachana were present. Mr. Cohen stated that he would like to thank the Board and Mr. Motzny for his professionalism and courtesy in dealing with this matter. Mr. Cohen stated that this home was built in 1985, and a Certificate of Occupancy was issued and Mr. Pachana moved in the home in January. Mr. Cohen also stated that Mr. Pachana believed that because he was given a Building Permit for a 42" slab, in 1986, and believed that after a certain time period had passed which would allow this slab to settle he would be allowed to construct an addition at some time in the future. Mr. Cohen also stated that he felt that the Circuit

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Court had reversed the decision of the Board of Zoning Appeals, although this was not reflected as an order from the Court. Mr. Cohen brought in pictures, which he stated that he had taken today, showing how the addition looks. Mr. Cohen stated that although it was stated that no Building Permit was issued, however, in fact a Building Permit was issued. Mr. Cohen also stated that in January of this year, an inspector from the Building Department had come to this address for a final heat inspection and was turned away. Mr. Cohen believes that this proves that this addition was in compliance and that was the reason for the inspection. Mr. Cohen went on to say that he did not have “new evidence” as such, however, information that was not provided by the City. Mr. Cohen also said that although he had asked for the complete file on this matter, he did not believe it was given to him as he discovered information after going through the files. This information was in the form of an approved rough heating inspection.

Mr. Cohen then read a letter written by Mr. Pakula to his neighbors, in which he stated that several of the statements were incorrect or misleading. Mr. Cohen stated that Mr. Pachana did not ignore the Stop Work Order and was in compliance. Mr. Cohen stated that the majority of the information contained in this letter is false. Mr. Cohen also stated that he did not believe that he had received the complete file from the City and the City submitted false information to the Court. Mr. Cohen stated that the permit taken out in 1998 allowed the construction of this addition. Mr. Cohen also stated that Mr. Pachana complied with the requirements of the Building Department and Mr. Pakula was wrong in stating the Stop Work Orders were ignored. Mr. Cohen went on to say that the Building Department was aware that the slab was in existence for 18 years and was in compliance.

Mr. Maxwell asked Mr. Cohen if he was stating that this project was built and completed under permit. Mr. Cohen stated that there was a small time gap between the start of the project and the actual obtaining of the Building Permit, however, he did believe that Mr. Pachana did comply. Mr. Maxwell then asked how this project was completed when in fact, this request was denied by this Board in March 2001. Mr. Cohen stated that he could not, however, if he wished Mr. Maxwell could ask Mr. Pachana. Mr. Cohen also stated that staining was done, in order to make the addition match the rest of the house and did not believe this was in violation of the denial by the Zoning Board.

Mr. Hutson questioned Mr. Cohen as to his statement regarding the fact that the City “hid” information. Mr. Cohen stated that he may have used the wrong word, except that when the record was produced he had confirmed that this was a “full record” and the fact that the rough approval was not given, and he thought that the City had been careless with the information in the file. Mr. Courtney asked why Mr. Cohen referred to this addition as a “deck addition” in his papers, when in fact in the minutes it is referred to as a non-conforming addition. Mr. Courtney took exception to the derogatory remarks that Mr. Cohen had made regarding the City files.

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Mr. Kovacs asked Mr. Cohen if he felt that the objections in the file were there because of the false information given by Mr. Pakula. Mr. Cohen stated that he believes that there was a personal problem between Mr. Pachana and Mr. Pakula, which brought up these complaints.

Mr. Maxwell asked under what authority the structure was completed. Mr. Pachana stated that the addition is not complete as it still needs heating and cooling. Mr. Pachana stated that he stained the outside. Mr. Pachana also stated that this home was built within 7.9' of the property line. Mr. Maxwell again stated that even though the Board had denied the variance request he thought additional work had been done. Mr. Cohen stated that no additional construction had been done on this addition, but he believed the only thing completed was the staining of the structure.

Ms. Pennington asked if nothing else had been done why the heating inspector would have come out to make an inspection. Mr. Cohen stated that the inside is still the same, only the outside staining and painting has been completed.

The Chairman opened the Public Hearing.

Mary Pakula, the mother of the adjacent neighbor, Tom Pakula was present and stated that regarding Mr. Cohen's statement that Mr. Pakula lied in his letter was false. Mr. Pakula's sister, Karen, was also present and stated that they were there to represent Mr. Pakula as he was out of town. Mr. Kovacs asked if Mr. Pakula was still against this variance request, and what his main objection was. Ms. Mary Pakula stated that his objection was that it was too close to his property line, and was concerned that it would affect his property if he were to attempt to sell. Mr. Kovacs stated that he wished Mr. Pakula had been here. Mr. Kovacs explained that the Board looks at how the neighbors are affected by a request, and wondered if Mr. Pakula had withdrawn his objection. Mr. Kovacs also stated that because there were not a lot of people who had objected to this request at this meeting and he stated that perhaps these people had changed their minds, and were now in favor of this request. Ms. Pakula said that she could not speak for them, however, she knew her son was still against this request. Mr. Pakula had also turned in another written objection to this request.

Louise Arnett, 6761 Forest Park, stated that she does not have a problem with this addition, and can see this addition from almost every window in her home. Ms. Arnett also stated that she has never received any notice of these Public Hearings regarding this matter. Ms. Arnett also stated that because this was his property Mr. Pachana had the right to do whatever he wished.

Mr. Maxwell asked Ms. Arnett how she thinks the condition of the property has changed within the last fifteen months. Ms. Arnett stated that she thinks the appearance of the home has improved within this time frame.

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Robert Pachana, Mr. Pachana's son was present and stated that he was responsible for this addition to his father's home and has a phenomenal reputation as a builder. Robert Pachana states that the front of the house had an addition added to it and you cannot tell that an addition was put on.

Mr. Hutson asked Mr. Cohen for the evidence that meets the requirements of this Board to grant a variance. Mr. Cohen stated that he would like to take one requirement at a time. Regarding the statement "not contrary to public interest or general purpose and content of Chapter 39", Mr. Cohen stated that although he understands that each municipality is trying to prevent non-conformance, he believes that because the slab was poured when this property was not a non-conforming use and has been in place since 1986 this addition would be conforming. Regarding the statement "would not permit the establishment of a prohibited use as the principal use", Mr. Cohen stated that his non-conforming use has been around for 18 years and those dimensions have not increased or decreased for seventeen years. At the time the slab was poured an approval was given. Regarding a variance which would not "cause an adverse effect to properties in the vicinity or immediate district". Mr. Cohen stated that this is more difficult to address, however, he knows Ms. Arnett's property has increased in value, and based on his tax bill, Mr. Pachana's property value has increased also. Mr. Cohen went on to say that a number of variances are granted by this Board for lesser setbacks, and does not believe that these variances have an adverse effect on surrounding property.

Regarding "applies only to the property described in the application". Mr. Cohen stated that the property at issue is only Mr. Pachana's property and does not affect any other property. Mr. Hutson then asked what the practical difficulties were with the unusual characteristics of the property were. Mr. Cohen stated that there is always a reasonable use for the property, but if you look at the general footprint of the original home indicates that this home was already at a 7.9' setback, which make this home unique to this land. Mr. Cohen also said that back in 1985 the City approved this home.

Mr. Courtney addressed the Board, and stated that on the permit which was issued for the slab back in 1986, it is stipulated that nothing could be built on the slab. Mr. Cohen stated that the footprint of the home has always been close to the property line, and therefore this is unique to the land. Mr. Pachana stated that he had told the Building Inspector that he may want to build an addition in the future, and stated that the Building Inspector told him how deep his footing would have to be. Mr. Courtney stated that he felt this was irrelevant, due to the fact that it states on the Building Permit that "no construction was to be put on slab". Mr. Cohen did agree that this is what the Building Permit states.

Mr. Hutson then read the statement "absent a variance a natural feature would be destroyed". Mr. Cohen stated that this did not apply. Mr. Hutson said "absent a variance the public health, safety and welfare would be negatively affected". Mr.

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Cohen also stated that there are no health or safety concerns with this property which he believes this variance would negatively affect.

The next statement Mr. Hutson brought up was “literal enforcement of the Zoning Ordinance precludes full enjoyment as a permitted use and make conformance unnecessarily burdensome”. Mr. Cohen stated that he would have to go back to the original permit. At the time the original time the slab was poured and approved, it was poured to a thickness to allow additional construction on it. In 1998 the petitioner applied for and received an additional permit for construction. Mr. Cohen also stated that he believes that the hardship with the land is the fact that the home was originally built too close to the property line, and also when someone spends a lot of money on his home, that too can be considered a hardship.

Mr. Courtney asked Mr. Cohen if it would be a problem for him if this item were to be postponed another thirty days in order to allow Mr. Pakula to come to the meeting.

Mr. Cohen stated that he would rather not postpone for another thirty days, but if necessary he would come back again.

Mr. Stimac addressed the comments of Mr. Cohen and stated that the slab was in fact a 4” slab with 42” footings. Mr. Stimac also stated that on the drawings supplied with that permit for the slab there is a note on the drawing that shows a future brick knee wall. Mr. Stimac explained that that is the only indication that any future building would take place on that slab. Mr. Stimac also stated that the requirement for a 24” rat wall was in fact is the requirement for a detached building such as a shed. Mr. Stimac pointed out that the code specifies a minimum building requirement, and if someone chooses to add more than is required, that is the person’s choice. There is no stipulation on the Building Permit, which would preclude someone to do more than the Building requirement, nor does it imply any future approval. Mr. Stimac stated that the Building Department only approves what is applied for on the Building Permit application.

Mr. Stimac also stated that the first Stop Work Order was placed on the job on Monday, June 1, 1998, after a considerable amount of work was done. Mr. Stimac went on to say that the permit for the building was issued on June 9, 1998. A Stop Work Order was posted on the site on June 1, 1998, and a written notice of this Stop Work Order was sent to the property owner on June 2, 1998. The permit application was submitted on June 1, 1998 after the Stop Work Order was issued. Mr. Stimac also stated that a rough heating inspection had been done after the Stop Work Order was issued, and could not say whether this Stop Work Order was posted on the site when the heating inspector got there. Mr. Stimac further stated that a rough heating approval does not relieve the homeowner of complying with the Stop Work Order. Mr. Stimac also said that if there was some confusion, the written notice sent on July 8, 1998, should have removed any misconception about work on going after the Stop Work Order had been issued. An additional notice regarding the Stop Work Order was sent out in August, because the Building Department had not received the survey of the property as

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requested. At the time the survey was received, the deficiencies were noted and as of this date the Stop Work Order has never been lifted.

Mr. Motzny also noted that the original suit was “dismissed without prejudice” by the District Court in order for this matter to go to the Circuit Court.

Mr. Stimac explained that regarding the final heating inspection, the Building Department is charged with enforcing the health safety and welfare of the City's residents, and the way that is carried out is by determining that the work performed, is done according to Code. As part of the standard procedure, the Building Department tries to clear up old permits and perform final inspections. Again, a final heating inspection does not resolve the violations for the Building code. Mr. Stimac also stated that although he did not have Mr. Cohen's letter available, if all Mr. Cohen had requested were building permit records, a rough heating inspection would not have been given to him. The heating inspector does not check setbacks, that is up to the building inspector.

Mr. Kovacs asked how much of this addition is over the setback requirement. Mr. Stimac stated that approximately 25 square feet of the building are over the setback requirement. Mr. Stimac stated that the far corner of the building is at the 9' line, the mid point is 7.4' and approximately 8.35' to the corner of the existing building.

Mr. Kovacs then asked if this addition met the City Code and Mr. Stimac stated the City has not performed any final inspections at this time, and therefore could not say if this addition was built according to code.

Mr. Maxwell stated that he feels that the footprint of the home creates an unusual hardship with the land, and believes that the distance between the chimney and Mr. Pakula's home is approximately 20'. Mr. Maxwell stated that he believes that this lot is very unusual and also thinks that if the addition would be to torn down it would create an adverse effect to surrounding property. Mr. Maxwell also stated that many of the neighbors that objected to this request did so because of the appearance of the property and now thinks that the home has improved considerably. Mr. Maxwell also stated that because of the improvements made to this home, there would not be an adverse effect to the property value of Mr. Pakula's home.

Mr. Kovacs also thinks that there is a lot of animosity between the neighbors and also thinks that this addition, as long as approved by the City, would add to the value of this property as well as surrounding property. Mr. Kovacs also feels that there is a hardship with the land.

Mr. Fejes also felt that the property had been improved and would be in support of this request. Mr. Fejes also stated that he felt that mistakes had been made on both the petitioner and the City. Mr. Stimac stated that he felt that the only mistake made, was

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that the Building Department relied on the site plan submitted by the petitioner with his permit application.

Ms. Gies asked what would happen if the variance were granted and Mr. Stimac stated that the Stop Work Order would be lifted at which time, if requested by the applicant, the final inspections would be done.

Mr. Courtney also stated that that there is a deed restriction in this neighborhood and the neighbors still have recourse regarding any decision made by this Board.

Motion by Maxwell
Supported by Fejes

MOVED, to grant Mr. Adam Pachana, 6787 Locust, relief to main an existing non-conforming addition that is located 7.4' from the side property line.

- Footprint of original home on the land creates a hardship with the land.
- Variance request is very small.
- Variance would not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.
- Conformance to the Ordinance is unnecessarily burdensome.
- Variance does not establish a prohibited use in a zoning district.
- This variance relates to this property only.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

The Board of Zoning Appeals meeting adjourned at 10:46 P.M.

MS/pp