

The Chairman, James Giachino, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, December 19, 2000.

PRESENT: Kenneth Courtney  
Mark Maxwell  
David Waller  
James Giachino  
Carmelo Milia  
Michael Hutson  
Christopher Fejes

ALSO PRESENT: Mark Stimac  
Bob Davisson  
Pam Pasternak

**ITEM #1 – APPROVAL OF MINUTES, MEETING OF NOVEMBER 21, 2000**

Motion by Maxwell  
Supported by Milia

MOVED, to approve the minutes of the meeting of November 21, 2000 as written.

Yeas: Courtney, Maxwell, Fejes, Giachino, Milia, Hutson  
Abstain: Waller

MOTION TO APPROVE MINUTES CARRIED

**ITEM #2 – RENEWAL REQUESTED. WRC PROPERTIES, INC., 888 W. BIG BEAVER,** for relief of the Zoning Ordinance to maintain a 4588 square foot habitable space in the parking garage.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board to maintain an area in the parking garage as habitable space. This habitable space results in a gross building area for this site of 334,588 square feet. Section 26.70.00 of the Zoning Ordinance limits the building area on this site to no more than 330,000 square feet. Relief has been granted on a yearly basis since 1980, because the petitioner has indicated that at sometime in the future they would not need or require this additional space. In September 1999 this Board renewed this variance for one year; unfortunately the Building Department did not notify the petitioner in September 2000 regarding renewal of this variance. To date, conditions remain the same and there are no complaints or objections on file.

Mr. James Jonas, of Apex Management, was present and stated that presently the space is not being used, but asked for a one year extension in order to make the space more appealing for future tenants.

**ITEM #2**

Motion by Milia

Supported by Courtney

MOVED, to grant a one-year renewal of the variance, to WRC Properties, Inc., 888 W. Big Beaver, relief of the Zoning Ordinance to maintain a 4588 square foot habitable space in the parking garage.

- There are no complaints or objections on file.

Yeas: All – 7

MOTION TO APPROVE RENEWAL OF THE VARIANCE FOR ONE YEAR GRANTED.

**ITEM #3 – 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.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted for 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. This Board originally granted this variance in November 1996. This request came up for renewal in December 1999 and the petitioner stated that they were planning on adding approximately 25 additional trees in the spring. The Board granted renewal of the variance for one year to allow the Board to revisit the site and observe how the trees would fill in to create a more natural barrier.

Ms. Jill Bloom, a member of the Board of Trustees for Congregation Shir Tikvah was present and stated that they had planted in excess of 25 additional trees in the spring of this year. Ms. Bloom also requested that the variance renewal be extended for a period of three (3) years.

Mr. Maxwell stated that he had been out to the site and noticed a number of trees added which looked relatively new. Ms. Bloom stated that besides the new plantings, they have a landscaping crew go out in the spring of each year to make sure that the landscaping is in order. Ms. Bloom also said that they have not received any complaints from the residents regarding the screening in this area.

Motion by Maxwell

Supported by Waller

**ITEM #3**

MOVED, to grant Congregation Shir Tikvah, 3900 Northfield Parkway, a three-year (3) variance for relief of the 4'6" high masonry screening wall required on the east side of off-street parking.

- There are no complaints or objections on file.
- Petitioner has demonstrated a willingness to comply with the request of residents.

Yeas: All – 7

MOTION TO GRANT VARIANCE FOR THREE (3) YEARS CARRIED

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

Mr. Stimac explained that the petitioner is requesting renewal of a variance to maintain landscaped berms in place of the 4'6" high masonry wall required along the east and west side of off-street parking. This Board originally granted this variance in 1991 based on the fact that the berm is in keeping with the area and desired by the abutting neighbors. This item appeared before the Board at the November meeting but was tabled to allow the petitioners the opportunity to be present. Conditions remain the same and we have no complaints or objections on file.

Mr. Daniel Patrick a member of the congregation was present and stated that the Church has maintained a good relationship with nearby residents and they have not received any complaints.

Motion by Waller  
Supported by Fejes

MOVED, to grant Church of Jesus Christ Latter Day Saints, 2784 E. Square Lake, a three (3) year variance 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 – 7

MOTION TO GRANT VARIANCE FOR THREE (3) YEARS CARRIED

**ITEM #5 – RENEWAL REQUESTED. WELLS REAL ESTATE FUNDS, 4685 INVESTMENT DR.,** for relief to have a 5' high landscaped berm along the south side of the site where a 6' high decorative masonry screen wall is required.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board to maintain a landscaped berm in place of the 6' high masonry wall required along the south property line. This Board originally granted this variance in December 1998. This item appeared before the Board at the meeting of November 2000 and was tabled at the request of the petitioner.

**ITEM #6 – VARIANCE REQUEST. WELLS REAL ESTATE FUNDS, 4685 INVESTMENT DR.,** for relief to maintain a 3'6" high landscaped berm along the west side of the site where a 6' high decorative masonry screen wall is required.

Mr. Stimac explained that the Petitioner was granted a variance in December of 1998 and was renewed in 1999 to have a 5'-0" high landscaped berm in lieu of a 6'-0" high decorative masonry screen wall along the west side of their site. Section 39.10 01 requires this wall where this office-zoned property abuts the adjacent residentially zoned property. Site inspections have shown that the berm that is installed and landscaped along this side of the site is only 3'-6" high in some areas. The petitioner is requesting relief to maintain the 3'-6" high landscaped berm along the west side of the site. This item appeared before the Board at the meeting of November 2000 and was tabled at the request of the petitioner.

Mr. Giachino suggested that since Items #5 and Items #6 were related, the Board would hear the petitioner's position together. Mr. Milia stated he would agree, but each item would be voted on separately. Mr. Giachino also acknowledged Mr. John Szerlag, City Manager and asked if he was going to be part of this presentation. Mr. Szerlag stated that he was at the meeting as an observer.

Mr. Waller asked Mr. Stimac to comment on the activity between the residents and City Administration regarding these issues.

Mr. Stimac stated that meetings have been held with the petitioner, the owners of the property, the tenant, the City Manager and the residents. These meetings were held due to the fact that it was discovered that the berm is not 5'-0" high as was stipulated by the Board in December of 1998 and the residents have expressed concerns over the amount of screening on the berm. The residents have indicated that they do not wish to have a wall constructed which is the requirement of the Zoning Ordinance, but wish to have the berm made taller and additional plantings added. Mr. Stimac also stated that the original owner, Pauls Corporation, had agreed to install a 5'-0" high berm with adequate screening. Since 1998, a new owner, Wells Real Estate Funds has purchased the property.

**ITEMS #5 AND #6**

Mr. Stimac further stated that other concerns, such as noise from the generator and trash pick up have been addressed by the City with the tenant and resolved. Mr. Fejes asked about a drainage problem at the back of the property and Mr. Stimac stated that the developer has re-graded the property along the southerly edge of the site and he thought that this had also been resolved. Mr. Milia asked if there was a difference between the feelings of the neighbors on the south side of the site compared to the neighbors on the west side of the site. Mr. Stimac felt that all of the neighbors share the same concern, which is adequate screening. Mr. Stimac also said that there is a 10' grade differential from the northwest corner to southwest corner of the site and feels that because of the grades, the effectiveness of the berm is somewhat challenged.

Linda Doolittle, Property Manager, for Signature Associates and Mr. Fred Veresh, President of Pinnacle Landscaping were present. Ms. Doolittle stated that a year ago, they had understood that the residents wished to have a berm rather than a masonry screen wall. She stated that they are proposing to add additional plantings in order to keep the berm and comply with the residents' request.

Mr. Fred Veresh said that they are proposing to augment the existing landscape with an addition of thirty-four (34) 12' to 14' evergreens. He further stated that they plan to look at the area and also add additional shrubbery consisting of Dogwood and Rose of Sharon, which should mature to 10' to 12' in height and 6'-8' in width. He said that this additional planting would result in the area becoming much denser than it is now, although the new shrubs would not mature for 10 to 12 years. Mr. Veresh also said that the SOC Credit Union has a similar type of look with the mature evergreens. Mr. Giachino stated that the Rose of Sharon would lose its leaves in winter and Mr. Veresh stated that they are aware of that, but that the Dogwood and Rose of Sharon would be used as "fill ins" until the evergreens mature. He also said that they were going to be put in clusters or groupings where they felt the planting was sparse. Mr. Veresh said they were trying to add a variety of plantings to this area.

Mr. Giachino asked Mr. Stimac to explain to the Board what options were available to the petitioner. Mr. Stimac stated that the Board could renew their previous variance for the five-foot high berm, could approve the proposed plan for the shorter berm with the additional plantings as now proposed or deny the request and require that the wall be constructed as required by the Ordinance.

Mr. Courtney asked what the timetable would be for the petitioner to add the additional plantings and Mr. Veresh stated that they would be planted by May 2001 at the latest. Mr. Waller asked if some of the plantings height plus the earth height would meet the height requirements. Mr. Stimac stated that a 3'-6" high berm with plantings does not provide the same screening as a 5' high berm.

**ITEMS #5 AND #6**

The Chairman opened the Public Hearing.

Mr. Greg Sikorski, 4720 Bentley, was present and stated that he was the homeowner on the west side of the site, closest to Investment Drive. Mr. Sikorski questioned Mr. Veresh regarding how close the additional trees would be planted, stating that he had measured several areas and the present distance from trunk to trunk is 18' to 20'. Mr. Veresh stated that right now the proposed trees are 12' to 14' wide and would take approximately 15 to 20 years to mature. Mr. Veresh also said that if the trees were planted too closely, quite a few of them would die. Mr. Giachino asked Mr. Sikorski if he wished to make a statement regarding his approval or disapproval of the berm at this time, and Mr. Sikorski stated he wished to wait until later in the meeting to decide.

Mr. William Kitts, 4599 Hycliffe was present and stated that he liked the berm, although he wished it was either 6' high, or that it would comply with the 5' height requirement.

Another resident of Bentley Street was present and stated that he would like to see them raise the berm to at least 5'.

Mr. Giachino asked the residents if they wished to have the petitioner consider putting up the required wall in lieu of the landscaped berm and they stated that they would rather have the berm.

Ms. Karen McInerney, 4712 Bentley was present and stated that her property is not screened from Investment Dr. She stated that when they first bought this property, they had a great number of trees behind them and with the new construction on Investment Drive; they lost most of these trees. Ms. McInerney is concerned that the proposed Rose of Sharon and Dogwood trees will not give her any adequate screening at all. She questioned Mr. Veresh as to the positioning of the proposed arborvitae and Mr. Veresh stated that they would have to be "field located". Mr. Veresh again stated that they would walk the area and determine where the shrubs were very sparse and add the additional plantings there. Ms. McInerney stated that the residents had met with the Pauls Corporation originally and they were in agreement with the residents as to the planting of the trees. Mr. Giachino asked if the residents would be working with Wells Real Estate to have input as to where the new plantings would go, and Ms. Doolittle stated that they were not consulting with the residents. Ms. Doolittle further stated that the owner is more in favor of putting up a wall. Mr. Milia stated that he did not feel that the additional plantings would give Ms. McInerney the screening she wanted and Ms. McInerney stated that they were told one thing and got another.

**ITEMS #5 AND #6**

Mr. Waller questioned Mr. Veresh as to the number of additional plantings that were going to be put in and Mr. Veresh said that they will be adding 34 trees, 90 shrubs and additional plants as needed. Mr. Waller feels that Siemens is making every attempt to be a "good neighbor". Mr. Veresh also said that they are planning to put 20 evergreens on one side and 14 evergreens on the other side.

Mr. Art Bousson, 4594 Hycliffe, was present and stated that he lives on the southeast corner of the site. He stated that his property sits between SOC Credit Union and Siemens, Inc. Mr. Bousson stated that he would rather have a berm but would like to see it at least 5' high. Mr. Bousson also said that the water drainage is still a problem although the City has been out and attempted to correct the problem. Mr. Bousson further stated that since the City had re-graded the property, the drain sits below the grade. Mr. Bousson's next door neighbor was present and said that he does not want to see a wall put up, but would be in favor of a higher berm.

Mr. Sikorski questioned Mr. Veresh as to the placement of the additional trees, and was told that they would have to be "field located". Anywhere there was a recognizable gap, additional trees would be planted. Mr. Sikorski also questioned if the berm could be made taller and then the additional shrubs planted. Mr. Veresh stated that is was up to the owner of the property and that the additional plantings proposed are at a considerable expense. Mr. Sikorski feels that the owner should comply with the original variance granted. He also said that the Credit Union has a berm and when he out on his deck, he cannot see the cars or the parking lot, or smell exhaust fumes. He would like to see the berm brought up another 2'.

The Chairman closed the Public Hearing.

Mr. Waller asked if there had been any recent discussion regarding bringing in extra earth, and Ms. Doolittle stated that they were under the impression that the neighbors would be happy with the additional plantings. Mr. Fejes brought up the fact that if dirt were brought in, existing plantings would have to be dug up and replaced. Mr. Veresh stated again that any decision to add additional height to the berm would be up to the owner, although the owner has stated that if the cost gets too high he would rather put up the required wall.

Motion by Courtney  
Supported by Milia

**ITEM #5**

MOVED, to grant Wells Real Estate Funds, 4685 Investment Dr., a three (3) year variance to have a 5' high landscaped berm along the south side of the site where a 6' high decorative masonry screen wall is required.

- Additional plants will be required to fill in bare spaces.

Yeas: All – 7

MOTION TO GRANT VARIANCE FOR THREE (3) YEARS CARRIED

**ITEM #6**

Mr. Giachino asked if additional screening could be added immediately to correct the problem the residents are having. Ms. Doolittle stated that she did not have the authority to say that this could be done.

Motion by Courtney  
Supported by Fejes

MOVED, to grant Wells Real Estate Funds, 4685 Investment Dr., a one (1) year variance for relief to maintain a 3'6" high landscaped berm along the west side of the site where a 6' high decorative masonry screen wall is required.

- Additional plantings in addition to Rose of Sharon and Red Twig Dogwoods are required in between the large evergreens to bring the height of the screening to 5'-0".
- One-year time limit will allow residents to determine if the additional plantings will provide the extra screening requested.

Yeas: All – 7

MOTION TO GRANT REQUEST FOR ONE (1) YEAR CARRIED

Mr. Hutson stated that due to the fact that his partner in his Law Firm was representing the next petitioner, he felt he should be excused from this hearing.

Motion by Milia  
Supported by Maxwell

MOVED, to excuse Mr. Hutson from hearing this request due to the appearance of a conflict of interest.

Yeas: All – 6

MOTION TO EXCUSE MR. HUTSON CARRIED

**ITEM #7 – VARIANCE REQUEST. MR. NELSON K. WESENBERG, 2040 BARRETT**, for relief of the Zoning Ordinance to expand a legal non-conforming use to install new mixing equipment that will replace existing mixing equipment.

Mr. Stimac explained that the current use of the property is for an asphalt batch plant. Such use, although it has been in existence for many years, is not permitted as a principal use by Section 28.20.00 of the Troy Zoning Ordinance. The use is therefore classified as a legal non-conforming use. Section 40.50.05 of the Troy Zoning Ordinance prohibits the enlargement, extension, construction, reconstruction movement or structural alteration of a legal non-conforming use.

Petitioners are now proposing to install a horizontal style mixer/dryer to replace the existing vertical batch mixer. They seek approval for this alteration/expansion of the legal non-conforming use.

Mr. Giachino questioned Mr. Stimac as to why this was brought before the Board, and Mr. Stimac replied that the Zoning Ordinance prohibits alterations, and he felt that because they were changing this equipment, this would be considered an alteration. Mr. Milia questioned Mr. Stimac regarding the Zoning Classification of this location. Mr. Stimac replied that the property is zoned M-1 or light industrial and that the City of Troy does not have a Zoning Classification that is considered “heavy industrial”. Mr. Milia also stated that this building has been in existence prior to the Ordinance being established. Mr. Stimac stated that the building has been in operation since the late 1940’s, and the Zoning Ordinance was drafted in the late 1950’s.

Mr. Giachino asked if the City had analyzed the new equipment to determine if it would be environmentally friendly. Mr. Stimac stated that upon reading the brochure provided and speaking with the petitioner, the new equipment would run quieter; there would be fewer odors and less dust.

Mr. Thomas Sawyer, Mr. Richard Downey and Mr. Nelson Wesenberg were present. Mr. Sawyer stated that presently Barrett Paving has seven (7) plants in Michigan and this is state of the art equipment. They have installed this equipment in Ann Arbor with the full approval of the DEQ (Department of Environmental Quality). Mr. Sawyer further stated that the new equipment was much smaller than the existing equipment and will substantially reduce dust and improve air quality.

Mr. Richard Downey stated that in the past Barrett Paving and Asphalt Co., has had problems with the dust and odor. They have gone through and fixed the leaks in the plant. Mr. Downey further explained the workings of the unit and stated that it is a totally enclosed unit.

**ITEM #7**

Mr. Nelson Wesenberg addressed the objection letter from Mr. Glenn Joseph, of Interior Space Management, and stated that the new equipment would eliminate almost all if not all of Mr. Joseph's concerns.

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

Mr. Stimac asked the petitioner if an additional tower was going to be added, and the petitioner stated that that is one of the things they are proposing. Mr. Stimac stated that the public hearing notice on the request would cover the installation of the third silo, he had spoken with Elizabeth W. Cannon of Cannon Real Estate, LLC and failed to mention that a third silo was going to be added. Although, he was reasonably certain that this would not affect Ms. Cannon approval of this request, he does feel it is necessary to contact her to let her know of the additional silo. Mr. Sawyer stated that the 3<sup>rd</sup> silo would be identical to the other 2 silos.

Mr. Giachino stated that he believes Barrett Paving deserves every consideration, however he was concerned regarding the environmental impact the new equipment would have compared to the old equipment. Mr. Giachino wished to make sure that the new equipment would not in any way be detrimental to the surrounding area. Mr. Stimac stated that he would contact officials regulating the Ann Arbor Plant and also try to reach someone from the DEQ to determine the impact of the new equipment to the environment. Mr. Sawyer stated that the DEQ would be willing to talk to other cities regarding the effect to the environment. Mr. Giachino stated that he did not want to rush this decision through without first checking into the safety of the unit and suggested tabling this request. Mr. Downey stated that they needed to order the equipment, which would take from 10 to 12 weeks, and also they needed time to demolish the existing equipment to make room for the new equipment.

Mr. Davisson expressed concern over the fact that he does not believe that the City can "warranty" this equipment and Mr. Giachino stated that he does not want a warranty as much as reassurance that this equipment will not have increased adverse effect on the environment.

Motion by Courtney  
Supported by Waller

**ITEM #7**

MOVED, to approve the request of Mr. Nelson K. Wesenberg, 2040 Barrett, for relief of the Zoning Ordinance to expand a legal non-conforming use to install new mixing equipment that will replace existing mixing equipment.

- “Assumed approval” – within one week, Mr. Stimac is to notify the Board as well as the petitioner, if his investigation determines that the new equipment would be detrimental to the environment.
- New equipment will have an effect on the surrounding area that will be equal to or better than the old equipment.

Yeas: 6 – Courtney, Milia, Fejes, Giachino, Waller, Maxwell

Excused: 1 – Hutson

MOTION TO GRANT REQUEST WITH STIPULATION CARRIED

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

MS/pp