

A regular meeting of the Board of Zoning Appeals was called to order at 7:30 P.M. on Tuesday, August 17, 1999 by the Chairman, Carmelo Milia.

PRESENT: Kenneth Courtney
Mark Maxwell
Gary Chamberlain
Christopher Fejes
James Giachino
Jerald Sosnowski
Carmelo Milia

Mark Stimac
Bob Davisson

ITEM #1 APPROVAL OF MINUTES – JULY 20, 1999

Motion by Sosnowski
Supported by Courtney

MOVED, to approve the July 20, 1999 minutes as written.

Yeas: 6 – Maxwell, Chamberlain, Giachino, Milia, Sosnowski, Courtney
Abstain: 1 – Fejes

MOTION TO APPROVE CARRIED

RENEWALS

ITEM #2 RENEWAL REQUESTED – MPSEEC ASSOCIATES, 2555 CROOKS RD. for relief of the 6’ high masonry-screening wall required along the west property line.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this board in regards to the 6’ high masonry screening-wall required along the west property line of their site that abuts residential property. This relief was originally granted in 1984 based on the fact the property is currently screened by wood fence from the Somerset Apartment complex. Conditions remain the same and we have no objections or complaints on file.

Mr. Mark Czarnik, owner of the property was present and indicated that he had nothing to add.

Motion by Sosnowski
Supported by Fejes

MOVED, to grant MPSEEC Associates, 2555 Crooks a three- (3) year renewal of their variance for relief of the 6’ high masonry-screening wall required along the west property line.

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ITEM #2

- Conditions remain the same.
- We have no objections or complaints on file.

Yeas: All

MOTION TO APPROVE REQUEST FOR THREE (3) YEARS CARRIED

ITEM #3 RENEWAL REQUESTED – LOUIS A. FABIAN, M.D., 2585 CROOKS for relief of the 6’ high masonry-screening wall required along the west property line.

Mr. Stimac explained that petitioner is requesting renewal of relief granted by this board to maintain a 6’ high stockade fence in lieu of the decorative masonry-screening wall required along the west property line of their site that abuts residential zoned property. This relief was originally granted in 1981 based on the fact that the stockade fence was existing and originally constructed by the Somerset Apartment complex and is in the residential zoning to the west. Conditions remain the same. We have no objections or complaints on file.

Louis A. Fabian, M.D. was present and stated that he had nothing to add.

Motion by Fejes
Supported by Courtney

MOVED, to grant Louis A. Fabian, M.D., 2585 Crooks a three (3) year variance for relief of the 6’ high masonry-screening wall required along the west property line.

- Conditions remain the same.
- We have no objections or complaints on file.

Yeas: All

MOTION TO APPROVE REQUEST FOR THREE (3) YEARS CARRIED.

ITEM #4 RENEWAL REQUESTED – VERSATUBE CORPORATION, 4755 ROCHESTER RD. for relief of the 6’ high masonry screening wall required along the north and west property lines.

Mr. Stimac explained that petitioner is requesting renewal of relief granted in regard to a 6’ high masonry screening wall required along the north and west property lines of their site that abuts residential zoning. The Zoning Ordinance requires that a 6’ high

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masonry-screening wall separate the area. The board granted relief allowing the petitioner to install an 8' steel fence in lieu of the wall based on the fact the fence suits the needs probably as well as, if not better, than the masonry wall. Conditions remain the same. We have no objections or complaints on file.

Mr. David Flaisher was present and stated that he had nothing to add.

Motion by Giachino
Supported by Courtney

MOVED, to grant Versatube Corporation, 4755 Rochester Rd. a three (3) year variance for relief of the 6' high masonry screening wall required along the north and west property lines.

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

Yeas: All – 7

MOTION TO APPROVE REQUEST FOR THREE (3) YEARS CARRIED

ITEM #5 RENEWAL REQUESTED – MIDWEST GUARANTY BANK, 5950 ROCHESTER RD. for relief of the 6' high masonry screening wall required along the south and east property lines.

Mr. Stimac explained that petitioner is requesting renewal of relief granted by this board in regard to the 6' high masonry screening wall required along the south and east property lines of their site. These property lines abut residential zoning and relief was originally granted in 1977 based on the fact the area was surrounded by a river and there was a substantial brush growth that adequately screens the abutting residential land. The building has been sold and is now occupied by Midwest Guaranty Bank. Other than that, conditions remain the same and there are no objections or complaints on file.

Mr. Dale Pfeiffer was present and indicated that he had nothing to add.

Motion by Fejes
Supported by Maxwell

MOVED, to grant Midwest Guaranty Bank, 5950 Rochester Road, a three (3) year variance for relief of the 6' high masonry screening wall required along the south and east property lines.

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

Yeas: All – 7

MOTION TO APPROVE REQUEST FOR THREE (3) YEARS CARRIED

ITEM #6 RENEWAL REQUESTED – ST. NICHOLAS GREEK ORTHODOX CHURCH, 760 W. WATTLES, for relief to maintain 4'6" landscaped berms in lieu of the 4'6" masonry wall required adjacent to parking areas.

Mr. Stimac explained that petitioner is requesting renewal of relief granted by this board to provide a 4'6" high landscaped berm in lieu of the 4'6" high masonry wall required along their parking areas which abut residential zoned property. This relief was originally granted in 1990 based on the fact that one side abuts a cemetery and the petitioner would install 4'6" high landscaped berms. Conditions remain the same. We have no objections or complaints on file.

Mr. George Malis was present and stated that he had nothing to add.

Motion by Sosnowski
Supported by Chamberlain

MOVED, to grant St. Nicholas Greek Orthodox Church, 760 W. Wattles, a three (3) year variance for relief to maintain 4'6" landscaped berms in lieu of the 4'6" masonry wall required adjacent to parking areas.

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

Yeas: All – 7

MOTION TO APPROVE REQUEST FOR THREE (3) YEARS CARRIED

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ITEM #7 RENEWAL REQUESTED – NEWMANN/SMITH & ASSOCIATES, 600 WILSHIRE, for relief of the 6' high masonry-screening wall required abutting residential zoned property.

Mr. Stimac explained that petitioner is requesting renewal of relief granted in 1996 to provide landscaped berms instead of the 6' high masonry wall required where non-residential abuts residential zoned property. The site has now been constructed and occupied and landscaping and berms along the west property line and the north have been completed. Other than that, conditions remain the same and we have no objections or complaints on file.

Mr. Joel Smith was present and stated that he had nothing to add.

Mr. Chamberlain recognized the fact that the wall on the north side has been constructed and that renewal of this portion of the appeal would not be in order. Mr. Chamberlain noted that his motion was only for one year due to his observation of the distressed nature of some of the trees along the west side of the site.

Motion by Chamberlain
Supported by Maxwell

MOVED, to grant Newmann/Smith & Associates, 600 Wilshire a variance for one (1) year for relief of the 6' high masonry-screening wall required on property abutting residential zoned property on the west side only.

- North side variance no longer required.
- Conditions remain the same.
- There are no objections or complaints on file.

Yeas: All

MOTION TO APPROVE REQUEST FOR ONE (1) YEAR FOR WEST SIDE ONLY
CARRIED.

ITEM #8 RENEWAL REQUESTED – MASSACHUSETTS MUTUAL LIFE REAL ESTATE, INC., 2701 TROY CENTER DR. for relief of the 6' high masonry screening wall required along the north property line.

Mr. Stimac explained that petitioner is requesting renewal of a variance for relief of the 6' high masonry-screening wall required along the north property line. The petitioner was originally granted this relief based on the fact they would install 280' of decorative metal fencing and landscaping along this north property line that abuts a residential apartment complex. Conditions remain the same. We have no objections or

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complaints on file. This item was tabled at the last regular meeting to give the petitioner the opportunity to be present.

Mr. John Pitrone was present and stated that he felt that the existing wall is an improvement over a masonry wall.

Motion by Maxwell
Supported by Sosnowski

MOVED, to grant Massachusetts Mutual Life Real Estate, Inc. 2701 Troy Center Dr. a three (3) year variance for relief of the 6' high masonry screening wall required along the north property line.

- Conditions remain the same.
- We have no objections or complaints on file.

Yeas: All – 7

MOTION TO RENEW VARIANCE FOR THREE (3) YEARS CARRIED.

ITEM #9 RENEWAL REQUESTED – LINDA SCOTT, VILLAGE GREEN MANAGEMENT CO. 2330-2488 JOHN R. for relief of the 4'6" high masonry screening-wall along the north property line and the northern 300' of the east property line where off-street parking abuts residential.

Mr. Stimac explained that petitioner is requesting renewal of a variance granted by this board to maintain a 5' high berm in lieu of a wall along the north property line and the northern 300' of their east property line where off-street parking abuts residential. The Zoning Ordinance requires a 4'6" high masonry-screening wall at this location. Conditions remain the same and we have no objections or complaints on file. This item was tabled at the last regular meeting to give the petitioner the opportunity to be present.

Jennifer Vignone, Property Manager for Village Green, was present and stated that she had nothing to add.

Motion by Chamberlain
Supported by Fejes

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MOVED, to grant Village Green Management Co., 2330-2488 John R. a three (3) year variance for relief of the 4'6" high masonry screening-wall required along the north property line and the northern 300' of the east property line where off-street parking abuts residential.

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

Yeas: All – 7

MOTION TO APPROVE REQUEST FOR THREE (3) YEARS CARRIED

ITEM #10 VARIANCE REQUESTED – TARIK MATTY, 4583 HYCLIFFE, for relief of the rear yard setback.

Mr. Stimac explained that petitioner is requesting relief of the Zoning Ordinance to construct a patio structure to an existing residence. The site plan submitted indicates a 26.25' rear yard setback to the patio structure. The Zoning Ordinance requires a minimum 30' rear yard setback to an uncovered and un-enclosed porch or patio.

Mr. Tarik Matty was present and stated that he wanted to add a patio to his property to look nice in the backyard.

Mr. Sosnowski questioned whether a portion or the entire patio structure was in the setback.

Mr. Stimac explained that the raised platform encroached into the setback and a portion of the lower platform most likely encroached into the setback.

Mr. Giachino asked why this issued was in front of the board since the structure was already up.

Mr. Stimac gave a brief chronological report of events leading up to the petitioner filing an application for appeal.

Mr. Maxwell questioned whether an enclosure was going to be added to this patio since the brick wall was several feet high.

Mr. Matty explained that one column was higher but that it was only a two level patio.

The Chairman opened the Public Hearing.

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ITEM #10

Mrs. Matty was present and said that she had called the City and was told a Building Permit was not needed for a patio. She had also spoken to the neighbor behind her and was told that this structure was not a problem.

Mr. Victor Maniani was present and stated he was a good friend of the Matty's and was helping them build the porch. He also stated that they wanted some privacy and that

nothing would be built on top of the slab. He said that the pillar is 31" from the base of the patio.

Mr. Stimac, responding to a question from the Chairman, stated that he had been to the property and taken measurements of the column in question. The upper slab of the patio is 4' above finished grade and the top of the column is 96" above finished grade.

Mr. Sosnowski questioned what the hardship was that would justify a variance.

Mr. Matty stated that this wife just wanted something fancy.

Mr. William Kitts, 4599 Hycliffe was present and said he had several concerns regarding the construction of this structure. He said he has a pool and his fence line is adjacent to the patio. He was concerned about the height of the patio, the fact that it appears there are two different types of building material, and the time taken to complete this project. The construction has been going on for approximately 17 months. Mr. Milia asked if he approved of the variance and Mr. Kitts replied that he objected to this variance.

The Public Hearing was closed.

There are two written approvals on file.
There are three written objections on file.

Mr. Giachino stated that he felt that the board had a dilemma because everyone feels this is a self-created hardship but asked what good would be done in the event they had to tear it down.

Mr. Chamberlain asked if the construction had been inspected.

Mr. Stimac replied that due to the lack of information on the plans submitted, a thorough review had not been done. He stated that the Building Department would have to determine if there are adequate footings under the structure. They would also have to review stair geometry and determine correct spacing and height of the guardrail.

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Mr. Chamberlain questioned the integrity of the structure because no inspections were done and stated that petitioner may have to tear down a portion so that inspections could be done.

Motion by Giachino
Supported by Courtney

Moved, to grant the request of Tarik Matty 4583 Hycliffe, for relief to construct a patio with a 26.25' rear yard setback where 30' is required by Section 41.45.00.

Mr. Giachino stated that because this was a self imposed hardship and because the integrity of the structure was in question, the petitioner be granted thirty (30) days to remove all objections by the neighbors and allow City to ascertain what steps would be needed to be done to correct any structural problems.

Mr. Courtney stated that he would not object as long as petitioner pays for all additional inspections by the City.

Mr. Giachino asked if thirty (30) days was a reasonable time frame for these conditions to be met.

Mr. Stimac stated that inspections and reports could be done in thirty (30) days but questioned the methodology to determine that all objections had been cleared up.

Mr. Davisson stated that this motion could place an undue burden on the neighbors and this could create neighborhood tension and conflict. He also stated that this could constitute an impermissible delegation of authority from the Board to the neighbors.

Mr. Chamberlain stated that a self-imposed hardship was not a reason a variance should be granted and if the structure in question does not meet the standards a variance should be denied.

Yeas: 1 – Giachino

Nays: 6 – Chamberlain, Milia, Sosnowski, Fejes, Courtney, Maxwell

MOTION TO APPROVE THE REQUEST DENIED

Motion by Chamberlain
Supported by Sosnowski

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MOVED, To deny the request of Tarik Matty, 4583 Hycliffe, for relief to construct a patio with a 26.25' rear yard setback where 30' is required by Section 41.45.00.

- Variance is contrary to public interest
- This variance does cause an adverse effect on surrounding property.
- No hardship established.
- Reasonable use of the property can be made without the variance.

Yeas: All – 7

MOTION TO DENY REQUEST CARRIED

ITEM #11 VARIANCE REQUESTED – MR. WILLIAM A. STINSON, 439 REDWOOD, for relief of the side yard setback.

Mr. Stimac explained that petitioner is requesting relief of the Zoning Ordinance to construct a detached garage at an existing residence. The site plan submitted indicates a 3' setback from the proposed garage to the north property line. The Zoning

Ordinance requires a minimum 6' setback for an accessory building to any side or rear property line.

Mrs. Linda Clouston resident of 439 Redwood was present and stated that she has been a resident for 23 years. She also stated that because of the location of her patio if she moves the garage over there is a risk of hitting the corner of the patio and house when backing out of the garage.

The Chairman pointed out that there are numerous homes in this subdivision that have garages with setbacks of 3' or less.

There are seven written approvals on file.

Motion by Chamberlain
Supported by Maxwell

MOVED, To approve the request of Mr. William A. Stinson, 439 Redwood, for relief of the side yard setback to an accessory building.

- Variance is not contrary to public interest.
- This variance will not cause an adverse effect on surrounding property.
- This variance will not establish a prohibited use in this zoning district.

Yeas: All – 7

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ITEM #11

MOTION TO APPROVE REQUEST CARRIED

ITEM #12 VARIANCE REQUESTED – MR. WADE RICKARD, 498 W. SQUARE LAKE, for relief of Zoning Ordinance regarding the size of accessory buildings.

Mr. Stimac explained that petitioner is requesting relief of the Zoning Ordinance to demolish and then rebuild a portion of a detached garage at an existing residence. The plans submitted show the proposed construction would reduce the size of an existing

1,481 square foot detached garage to 1,186 square feet. The Zoning Ordinance limits the size of accessory buildings on this site to 728 square feet.

Mr. Wade Rickard was present and stated that because their home is older and has small closets and has no basement, a large garage is needed for storage space. He also stated that he had looked into the possibility of removing only a part of the garage and repairing the remainder, however, it was much more costly to remove a portion of the structure and repair the rest than to remove and rebuild the whole west wing.

The Chairman opened the Public Hearing.

Mr. Peter Dunjeon, 6004 Elmwood was present and stated that he approved of this request.

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

Motion by Courtney
Supported by Sosnowski

MOVED, To grant the request of Mr. Wade Rickard, 498 W. Square Lake, for relief to have 1186 square feet of accessory building where 728 square feet is permitted by Section 40.57.04.

- This variance is not contrary to public interest.
- This variance does not have an adverse effect to surrounding property.
- This variance applies only to this property.
- The variance will result in a smaller area of accessory building than is present today.

Yeas: All – 7

MOTION TO APPROVE REQUEST CARRIED

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Mr. Milia acknowledged Mrs. Wassef and stated they had no formal agenda but wished to make general comments. Mr. Milia said that the City had no goals or agenda regarding this property. He said it was up to the petitioner to justify the variance requested. He stated it was not a unanimous decision and in fact felt it would be beneficial to the City of Troy. He felt that that main reason the variance was not granted was due to the size and hostility to the neighbor. The justification was not enough to grant a variance.

Mr. Courtney stated that he did not reopen this issue due to the fact that the legal department said an issue could not come back to the board unless certain conditions were met. These conditions were newly discovered evidence and a substantial change.

As of this date, these conditions have not been met. Mr. Courtney also stated that the majority of the board felt the variance excessive and a smaller request may work.

Mr. Stimac stated that the minimum requirements for a variance come from State Law. Some of the burdens placed on the petitioner come from the State of Michigan and if they cannot justify their request, State Law says you have to deny and the decision will stand.

Mr. Milia stated that there is no responsibility by members of the board to justify their vote.

The Board of Zoning Appeals adjourned at 8:45 P.M.

MS:pr