

A regular meeting of the Board of Zoning Appeals was called to order at 7:30 p.m. on Tuesday, September 15, 1998, by the chairman, Kenneth Courtney.

PRESENT: Michael Alaimo
Robin Beltramini
Kenneth Courtney
Christopher Fejes
James Giachino
Carmelo Milia
Jerald Sosnowski

Robert Davisson
Mitchell Grusnick

ITEM #1 Approval of Minutes - August 18, 1998

Robin Beltramini stated that on page 3 of the minutes (350 Kenyon) the minutes should be corrected to read:

Mrs. Payne stated that they have revised their plan to keep the addition the required 10 feet from the garage, but still need a rear yard variance. They cannot build a reasonable size addition within the guidelines. They have two teen age children and need the additional room. Mrs. Payne noted several other homes in the area that have similar rear yard setbacks. The lots are too **small** for a reasonable size expansion. They have contacted immediate neighbors, who have signed a petition indicating their approval. Mrs. Payne also stated that the pool in the rear yard would be removed.

Mr. Courtney stated that on page 7 the motion for reconsideration of Item #4 should be changed to read:

MOVED, to reconsider Item #4, for the benefit of a full Board.

And

MOVED, to table the resolution, for denial, of Tim Mouch, 5253 Crowfoot, to construct a 16'x14' patio enclosure, resulting in a 33.17 foot rear yard setback, where a 40 foot setback is required.

Motion by Sosnowski
Supported by Beltramini

MOVED, to approve the minutes as corrected.

Yeas: 5- Beltramini, Giachino, Milia, Sosnowski, Courtney
Abstain: 2 - Alaimo, Fejes

MOTION CARRIED

ITEM #2 RENEWAL REQUESTED: Romanian Orthodox Church, 5353 Livernois, for relief of the 4'6" high masonry wall required along the west and north sides of off-street parking.

Mr. Grusnick explained that the petitioner is again requesting renewal of relief granted, by this Board, to provide a landscaped berm in lieu of the 4'6" high masonry wall required adjacent to off-street parking abutting Stalwart. Again, this year there is no construction on site and the berm has been installed, but has not been landscaped. Other than that, conditions remain the same. We have no objections or complaints on file. A Building Permit has recently been issued.

A representative of the church was present and stated that they are starting construction on the church and dirt from the basement excavation will be used for the berm along the north side of off-street parking. A wall will be erected along the west and south.

Motion by Sosnowski
Supported by Milia

MOVED, to grant the Romanian Orthodox Church, 5353 Livernois, a one (1) year renewal of their variance for relief to provide a landscaped berm, adjacent to Stalwart, in place of the masonry wall required along the north side of off-street parking;

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

Yeas: All 7

MOTION TO RENEW VARIANCE FOR ONE (1) YEAR CARRIED

ITEM #3 RENEAL REQUESTED: Redico Management, 888 W. Big Beaver, for relief to maintain a habitable space in the parking garage.

Mr. Grusnick explained that the petitioner is again requesting renewal of relief granted, by this Board, to maintain an area in the parking garage as habitable space. This additional space gives the site a habitable area of 334,588 square feet. The Zoning Ordinance restricts the habitable area to 330,000 square feet for a site of this size. Relief has been granted on a yearly basis since 1980, because the petitioner has indicated that sometime in the future, they would not need nor require this space. To date, conditions remain the same, we have no objections or complaints on file.

Dave Jonnas was present to represent the petitioner. Mr. Jonnas stated that General Motors, On-Star Division, is using the area as an evaluation center. Their use is the same type use, Volkswagen had there previously.

Motion by Fejes
Supported by Milia

ITEM #3.

MOVED, to grant Radico Management, 888 W. Big Beaver, a one (1) year renewal of their variance for relief to maintain the habitable space in the parking garage;

- As long as conditions remain the same.
- There are no objections or complaints on file.

Yeas: All 7

MOTION TO RENEW VARIANCE FOR ONE (1) YEAR CARRIED

ITEM #4 VARIANCE REQUESTED: Gary & Brenda Zelds, 2969 E. Big Beaver for relief of the required landscaping and relief of the number of waiting spaces required for a drive-up window.

The chairman tabled this request until the next regular meeting (October 20, 1998) based on a memo from the City of Troy, Plan Examiner/Coordinator.

ITEM #5 VARIANCE REQUESTED: Tim Mouch, 5253 Crowfoot, for relief of the rear yard setback.

Mr. Grusnick explained that the petitioner originally appeared before this Board at the August 18, 1998, meeting. At that time, the petitioner was requesting relief of the Zoning Ordinance to construct a 16'x14' patio enclosure. The plot plan showed the proposed addition would result in a 33.17 foot rear yard setback. The Zoning Ordinance requires a minimum rear yard setback of 40 feet. At that meeting, this item was tabled to give the petitioner the opportunity of a full Board.

Tim Mouch was present and stated their hardship is, the rear of their home faces west and the hot sun which limits the use of their patio. They enjoy the outdoors and want to lengthen the season.

Mr. Milia questioned the hardship, noting that the character of the home is the same other homes that have a western exposure. Mr. Milia noted that the rear yard is not a large rear yard. If a variance is granted on the hot sun being a hardship, it would set a precedent for everyone wanting an addition on the west.

Mr. Mouch stated that they have planted a tree in the rear yard for shade, but is not growing fast enough. They feel, that because this is a glass enclosure, they will not encroach on the neighbors.

Mr. Giachino questioned reducing the variance.

ITEM #5

Mr. Mouch noted his request was based the size of other sun rooms and another variance granted in the area. He does not want to lengthen the room, as it would cover windows and cut down on the light. They need this size room to accommodate a picnic table, family and friends.

The chairman called for a new vote on the previous resolution to deny the request.

Yeas: 4- Courtney, Alaimo, Beltramini, Giachino
Nays: 2- Milia, Sosnowski, Fejes

MOTION TO DENY REQUEST CARRIED.

Mr. Milia commented that his nay vote was based on the fact the conditions of the property are not unique and no practical difficulty or hardship has been presented.

ITEM #6 VARIANCE REQUESTED: Harry & Nancy Boeck, 2035 Jeffrey for relief of the rear yard setback.

Mr. Grusnick explained that this item first appeared before the Board at the August 18, 1998, meeting. At that time the petitioner was requesting relief of the Zoning Ordinance to construct a 19'x14' addition to the rear of an existing residence. The plot plan showed the proposed addition would result in a 27.3 foot rear yard setback. The Zoning Ordinance requires a minimum rear yard setback of 35 feet. At that meeting this item was tabled to allow the petitioner the benefit of a full Board.

Mr. & Mrs. Boeck were present and presented the Board with a print-out of information they compiled on the findings to grant a variance. They noted their proposal is not contrary to public interest. They had 4 written approvals on file and, neighbors they talked with approved of their request. They stated that literal enforcement of the Zoning Ordinance precludes the full enjoyment of the permitted use and makes conforming unnecessarily burdensome. They further noted the allergies, Mr. Boeck and his daughter have to mosquitos. They also noted that Mr. Boeck's mother has macular degeneration and that she may eventually have to live with them. To meet the setback, the interior of the room could only have a width of 5-1/2 feet. Their home is a ranch and covers more of the lot than colonials in the area. Mr. & Mrs. Boeck stated that they would be willing to reduce the size to 12 feet in the spirit of compromise. Because their home is a ranch, the layout is more restrictive than the neighbors.

Ms. Beltramini questioned the front setback, asking if it was the same as others on the street. Mrs. Beck stated that they did line up in the front, but their ranch covered more ground area than the colonials.

Mr. Alaimo questioned the date of the Doctor's report on the mosquito allergies. Mrs. Beck stated that the reason there has not been recent reports, is their daughter is now a teenager and they treat the bites themselves. Mr. Boeck stated that he treats his mosquito bites.

ITEM #6

The chairman opened the public hearing. No one wished to be heard and the public hearing was closed.

Motion by Sosnowski
Supported by Fejes

MOVED, to grant Harry & Nancy Boeck, 2035 Jeffrey, a variance to construct a 19'x12' addition, resulting in a 29.3 foot rear yard setback, where a 35 foot rear yard setback is required;

- The variance is not contrary to public interest.
- The variance does not establish a prohibited use in the zoning district.
- The variance will not cause an adverse effect to properties in the immediate vicinity or zoning district.
- The variance relates only to the property described in the application.
- Literal enforcement precludes full enjoyment of their property.

Yeas: 3- Sosnowski, Fejes, Giachino
Nays: 4- Courtney, Alaimo, Beltramini, Milia

MOTION FAILS - REQUEST DENIED

ITEM #7 VARIANCE REQUESTED: Donald Pratt, 3251 Cedar Crest (proposed address) for relief of the rear yard setback.

Mr. Grusnick explained that the petitioner is requesting relief of the Zoning Ordinance to relocate a 48.37'x34.24' single family residence. The plot plan shows a 30.76 foot rear yard setback. The Zoning Ordinance requires a 35 foot rear yard setback.

Don Pratt was present and explained his 19 unit condominium development proposed for the area, indicating that the house presently located at 2505 Orpington would be within the area being developed. It is his proposal to move that house to a parcel they own located on the rear portion of lot #53, 2457 Orpington. Mr. Pratt stated there are no affordable lots on Orpington and to move the house out of the area using any main street would be too costly. The lot split meets the City standards for size. The normal front setback for this area is 25 feet, but because of a 12 inch sanitary sewer line across the front, he must set the house back 35 feet. Because of the greater setback, he cannot meet the rear yard setback. Mr. Pratt stated that if he cannot move the house it would cost him \$50,000 to wreck the home. He feels the house is comparable to the area and would blend into the neighborhood.

The chairman opened the public hearing.

ITEM #7

Ed Whisnat, 2458 Orpington, was present and objected to the variance. He stated that the two story home would look out of place with the ranches in the area and because of the shallow rear yard there would be no room for a patio enclosure, deck, etc., as demonstrated by the previous appeals.

Milan Krstich, 2453 Orpington, was present and objected stating it would be too congested.

James Calvin, 2448 Orpington, was present and objected, stating that he feels the ordinance should be complied with. Mr. Calvin noted that the split makes the lots much smaller than the other lots on Orpington.

Cheryl Burnette, 2457 Orpington, was present and objected, stating there were other lots available on Orpington. The lot in question is too small for the house.

There were no further comments and the public hearing was closed.

There was 1 written objection on file.

Mr. Alaimo questioned how the lot would be used if the variance were denied. Mr. Pratt stated that he would build homes the same as the proposed condominiums.

Motion by Giachino

Supported by Sosnowski

MOVED, to deny the request of Don Pratt, 3251 Cedar Crest (proposed address) for relief to relocate a home onto the lot, resulting in a 30.76 foot rear yard setback, where a 35 foot setback is required;

- This is a self-imposed hardship that will result in further problems.
- The main hardship presented was economic.

Yeas: 6- Fejes, Courtney, Beltramini, Giachino, Milia, Sosnowski

Nays: 1- Alaimo

MOTION TO DENY REQUEST CARRIED

ITEM #8 VARIANCE REQUESTED: Patterson Construction, 800 E. Maple Road, for relief of: (1) the front setback, (2) the side lot line, (3) the rear lot line, (4) relief of the distance between an accessory building and lot line.

ITEM 8

The chairman polled the Board and tabled the request of Patterson Construction, 800 W. Maple until the next regular meeting (October 20, 1998) to hear this request as one item.

Mr. Milia asked if the Board could hear from the petitioner as to why no action was taken within the last year.

Ron Katchman, the architect representing Speedway, was present, and stated that it was due to re-design of the site and clearances from Detroit Edison. As a result the petitioner will be returning to the October 20, 1998 meeting.

ITEM #9 INTERPRETATION REQUESTED: Omnipoint Communications, 920 John R., for an interpretation that a proposed antenna is an accessory to the principal building.

Mr. Grusnick explained that the petitioner is requesting an interpretation from this Board to determine whether the communication antennas proposed for the top of 920 John R., are in fact accessory to the principal building, as required in the Zoning Ordinance. The Building Department has determined that in residential zones, permitted antennas are required to be accessory to the main use as pointed out in the ordinance. Therefore, 6 antennas on one structure, on top of the building, serving communication systems throughout the City, in our interpretation, are not accessory to this use and therefore not permitted. Secondly, should the petitioner be granted the interpretation, they would be then coming back to the Board of Appeals for a variance to permit an excess number of antennas.

Keith Davidow was present to represent Omni Point Communications. Mr. Davidow said the antennas are needed for wireless communications. To provide this service to the communities, they need antennas located at different locations. The antennas must be placed on top of high rise structures. They have antennas placed on other high rise structures and feel that they are incidental to this high rise structure.

Mr. Sosnowski questioned the ordinance for residential antennas. Mr. Davisson explained the intent of the ordinance.

Mr. Milia questioned the size of the proposed antennas. Mr. Davidow stated that the antennas were 5-1/2 feet tall, 8 inches wide, 2 inches deep. They receive and transmit radio signals. They would be mounted flush to the building and could be made to match the finish color of the building. He further explained that the customer sells air time and they have looked for buildings that would work without special approval.

Ms. Beltramini questioned towers in the area. Mr. Davidow pointed out the antennas in the area noting that they have used the Marriott, Double Tree, etc. The only residential site that would be feasible to use for an antenna is the site in question. Residential structures would be high enough. They need to have the antennas 100 to 122 feet above the ground.

Mr. Alaimo expressed his concerns with the long term effects of an interpretation and how it would be interpreted to allow for other antennas on residential sites in the future.

The chairman opened the public hearing. No one wished to be heard and the public hearing as closed.

Motion by Milia
Supported by Giachino

RESOLVED, that a small panel antenna, of the type proposed by Omnipoint Communications, Inc., placed near the top of the high rise building located at 920 John R. and mounted flush to the high-rise, may be considered an accessory to that high rise.

FURTHER, that the Plan Commission representative, Ms. Beltramini, take back to the Planning, a request to re-write the Ordinance, with provisions recognizing new technology.

Yeas: 4-Courtney, Giachino, Milia, Fejes
Nays: 3- Alaimo, Beltramini, Sosnowski

MOTION TO APPROVE REQUEST CARRIED

ITEM #10 VARIANCE REQUESTED: Howard R. Tobin, 3437 Balfour, for relief to erect a gazebo in the rear yard.

Mr. Grusnick explained that the petitioner is requesting permission, from the Board, to construct a 12'x12' gazebo in the rear yard. The Zoning Ordinance requires Board of Zoning Appeals approval for placement of free standing gazebos.

Mr. Tobin was present and stated that the gazebo is an architectural landscape feature to his yard. It will be placed in the rear yard and fit in well with the landscaping. Mr. Tobin further noted that he does not feel gazebos should have to go before the Board. The Building Department should be able to approve them. He further stated that he feels the ordinance should be amended.

Ms. Beltramini noted that she is on the Troy High Orchestra Boosters with Mr. Tobin, but feels it would have make no difference on her vote. The Board unanimously agreed that Ms. Beltramini should not abstain from voting on this matter.

The chairman opened the public hearing. No one wished to be heard and the public hearing was closed.

There were 3 written approvals on file.

ITEM #10

Motion by Milia
Supported by Sosnowski

MOVED, to grant Howard R. Tobin, 3437 Balfour, approval to construct a 12'x12' gazebo in his rear yard;

- It is aesthetically pleasing.

Yeas: All 7

MOTION TO APPROVE REQUEST CARRIED

ITEM #11 VARIANCE REQUESTED: Erie Engineering, 1401 E. Fourteen Mile Road, for relief to add to a non-conforming site.

Mr. Grusnick explained that the petitioner is requesting relief of the Zoning Ordinance to construct a 4,400 square foot addition to the an existing legal non-conforming site. This site is non-conforming because there are drives and parking 44 feet from Indusco Ct. The Zoning Ordinance requires a 50 foot setback and does not permit any structures or parking in the required front setback.

Ed Kickhan, Attorney, Paul Kleine, of Erie Engineering and Regan Louchart, the builder were present. Mr. Kickman stated that the 46.5 feet setback is from the entrance structure on the front of the building. The actual building is 56.6 feet back from the property line. He feels that the building did meet the required setback when constructed. The entrance to the office area is in the front. Therefore the parking in front is to allow for easy access to the offices without going through the shop area. The proposed machine shop addition does not increase the non-conforming setback, therefore, they feel it is in the spirit of the ordinance. They are reducing the non-conformity by removing some of the parking.

Mr. Giachino noted that he felt the building could be added to and altered to provide a new entrance, parking could be relocated out of the setback and a better entrance from the parking lot could be provided.

Mr. Kleine stated that they have looked at alternatives to reduce the non-conformity. Because of the layout of the building they were not able to come up with a plan.

The chairman opened the public hearing. No one wished to be heard and the public hearing was closed.

Motion by Alaimo
Supported by Sosnowski

ITEM #11

MOVED, to grant Erie Engineering, 1401 E. Fourteen Mile Road, a variance, as requested, to construct a 4,400 square foot addition to an existing legal non-conforming site;

- The variance is not contrary to public interest.
- The variance will not establish a prohibited use within the zoning district.
- The variance will not cause an adverse effect to the immediate vicinity or zoning district.
- The variance relates only to the property described in the application.
- Safety and health concerns have been taken into account by the petitioner.
- The petitioner has taken steps to reduce the non-conformity.

Yeas: 6- Alaimo, Beltramini, Milia, Sosnowski, Fejes, Courtney
Nays: 1- Giachino

MOTION TO APPROVE REQUEST CARRIED

OTHER BUSINESS-- Request of Dipti Bharat Shah, regarding 2606 W. Square Lake Road (proposed address) for re-consideration of his request.

Mr. Grusnick explained that there is a request from Mr. Shah regarding a variance heard, by this Board, for a proposed site at 2606 W. Square Lake Road. Mr. Shah is asking that you review the information and he is requesting re-consideration of the variance. Should the Board agree that the information, provided by Mr. Shah, is new information. We then would move forward with a variance request for the October, 1998 meeting.

The board discussed the information provided by Mr. Shah. The Board unanimously agreed that significant evidence had not been presented, to warrant a new public hearing. The change was, homeowners who previously objected, now approved of the request.

The Board of Zoning Appeals adjourned at 9:45 p.m.

MG/ddb