The Board of Zoning Appeals meeting was called to order by Chair Lambert at 7:30 p.m. on March 15, 2011, in the Council Chamber of the Troy City Hall.

1. ROLL CALL

Present	Absent
Michael Bartnik	A. Allen Kneale
Glenn Clark	
Kenneth Courtney	
William Fisher	
David Lambert	
Thomas Stray	

Also Present
Paul Evans, Zoning and Compliance Specialist
Christopher Forsyth, Assistant City Attorney
Recording Secretary Stuart Filler

2. APPROVAL OF MINUTES

Resolution # BZA 2011-03-15
Moved by Clark
Seconded by Fisher

MOVED, To approve the February 15, 2011, Regular meeting minutes as presented.

Vote on the motion on the floor.

Yes: All present (6)

MOTION CARRIED 6-0

3. HEARING OF CASES

B. **VARIANCE REQUEST, MONSIGNOR ZOUHAIR TOMA KAJBOU, 2442 E. BIG BEAVER ROAD, ST. JOSEPH CHALDEAN CATHOLIC CHURCH** - In order to construct an addition to the church and a new driveway: 1) An 8 foot variance from the requirement that the addition be set back 50 feet from the west property line; 2) a 43 foot variance from the requirement that the proposed driveway be set back at least 50 feet from the west property line; and 3) a variance from the requirement that a landscaped berm be provided between the proposed driveway and the west property line.

ORDINANCE SECTIONS: 1), 2), and 3: 10.30.04 (B), 10.30.04 (E), 10.30.04 (F)

Mr. Evans said the appellant has asked to postpone this Item because only six Board members are present tonight. Deputy City Attorney Forsyth recommended also postponing consideration of any comment until then.

***Resolution* # BZA 2011-03-16**
Moved by Courtney
Seconded by Bartnik

MOVED, To postpone action on the case to the April 19, 2011, meeting.

Discussion on the motion on the floor.

The Board discussed whether to allow partial discussion tonight, with no actual hearing and the appellants absent.

Deputy City Attorney Forsyth said under Roberts Rules, a postponement postpones everything; but someone might need to speak who is unable to speak at a future time; that would be a matter of necessity.

Chair Lambert later established, by a show of hands, that five members of the public present to hear this case think they could attend next month's meeting
Mr. Evans advised said that parties who cannot attend next month's meeting can forward comments to the Board via e-mail. Mr. Forsyth advised there would be no additional public hearing notices.

Further discussion ensued. Mr. Courtney called the previous question.

Vote on the motion on the floor.

Yes: Bartnik, Clark, Courtney, Fisher, Lambert
No: Strat

MOTION CARRIED 5-1

A. **VARIANCE REQUEST, HARRY KWON, 38921 DEQUINDRE** - A variance from the requirement that the required obscuring wall along the west property line be constructed of common or face brick, or of poured or precast masonry or decorative block, in order to maintain the existing wood fence.

ORDINANCE SECTION: 39.10.03

After Mr. Evans presented the facts, visuals and requested variance, appellant Harry Kwon said he has applied for a permanent variance instead of periodic

renewals of the relief because the wooden portion of the screening is due to the unavoidable necessity created by a 1940s private easement to Sun Oil Company. The appellant explained in some detail how, if the periodic renewals are inevitable, a variance will save wasted time and expense for all concerned.

The appellant added that the compliant masonry portion is prison-like and unpleasing, both when compared to the white wooden fence portion--shown as 35 feet in length in previous Board minutes--and when compared to how the masonry might look if painted to be more attractive.

The appellant said the original and existing arrangement was a compromise deemed necessary by the City's Legal department and satisfactory to the City and to Sunoco, to all concerned. The wood portion is removable, you can swing it out, and the brick or concrete portion is "permanent." The then City Attorney coordinated the resolution of the issues.

Mr. Courtney asked why the wood portion, if necessary, should not be limited to the approximately 20 foot portion transected by the 20 foot easement. Board members and staff discussed the definition of "permanent structure" and alternatives to wood fencing like demountable masonry or a "fence footer" solution that Chair Lambert said one neighbor suggested.

Assistant City Attorney Forsyth noted that the application does not contain copies of the controlling agreements referred to by the applicant.

Mr. Bartnik said the pipeline appears to go under the road and under buildings, and asked what happens to the easement at 2950 Dequindre and 3960 Wardlow, etc. Mr. Strat agreed it goes under Wattles.

The appellant said the easement holder's assertion of its right involves their catching up on their enforcement activity after periods of inattention.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted there are 3 letters from neighbors opposed to the request.

PUBLIC HEARING CLOSED

Mr. Courtney said the temporary extensions of the relief are a hedge against the easement holders' at some point changing their mind, and said that as a representative of the citizens acknowledging how the appellant feels about the aesthetics of the masonry--he would need to see documentation that gives full confirmation to the assumptions and conclusions that have been cited regarding the pipeline, etc.

Chair Lambert asked how a developer could have got authorization put houses over the pipeline easement. Mr. Forsyth said the City's situation with regard to the private easement is in some ways analogous to the City's situation with regard to the covenants of private homeowner associations.

Mr. Strat said that title companies and title searches are part of the process, with attendant liability for undiscovered existing easements, and he agreed that the Board lacks the information to justify a permanent variance for what some affected people might regard as unsightly; the Board needs to see the older easement, and related documents, and the City's own record.

Deputy City Attorney Forsyth said he would "dig" and verify the City's due diligence in a repeat of some of the work of six years ago, if the Board needs it. On the face of it, an ordinance cannot override a private easement unless there is a public benefit. The current relief could go on forever on a year-by-year basis.

The appellant said that in earlier discussions Sun Oil said to get rid of the entire brick wall, not just a segment. A Board member said the wall should be able to extend all the way up to the easement unless there is a reason for it not to. The appellant said that the spirit of the ordinance is to provide protection to the residences abutting a commercial entity.

Chair Lambert suggested that the appellant meet with the neighbors that are by the fence portion of the screen wall and find out what they think they could live with, and noted that one of them sent a letter that contains suggestions.

***Resolution* # BZA 2011-03-17**
Moved by Clark
Seconded by Courtney

MOVED, To adjourn the hearing to April 19, 2011, for the petitioner to provide more information.

Vote on the motion on the floor.

Yes: All present (6)

MOTION CARRIED 6-0

C. **VARIANCE REQUEST, MINAL GADA AND ASHISH MANEK, 4820 LIVERNOIS** - In order to split the subject parcel into 3 separate parcels, a 15 foot variance to the required 100 foot lot width requirement for 2 of the proposed parcels.

ORDINANCE SECTION: 39.10.02

Mr. Evans presented the facts, visuals and the variance request.

Mr. Bartnik asked whether staff confirmed the information contained in a spreadsheet analysis provided by the applicant. Mr. Evans advised they had not, but could do so if the Board desires.

Mr. Courtney asked if the site could be split into two lots without a variance; Mr. Evans confirmed it could.

Chair Lambert asked whether the property, or the proposed southern 170 feet, is too small for a site condo plan.

The appellants, Ms. Gada and Mr. Manek, were accompanied by Bob Lind of Urban Land Consultants LLC., 8800 23 Mile Rd Shelby Township. Appellant Manek said he moved to Troy in 2005 and bought the unique property in 2007 and that the two southern lots resulting from a division into three meet the square footage and other requirements except for the 15 foot lot widthdeficit. It was part of a farm subdivided in two phases in the 1950s, when requirements were different and lots were larger, exceeding zoning requirements. Water and sewer enabled the homebuilding in the 1980s.

The existing farmhouse was built in 1901; its gravel driveway some 35 feet to the south turns north from the proposed middle lot.

The appellant said the land division would be no detriment to the surrounding area, with trees and brush to the east and more traditional, 1990s platted homes across Livernois.

Mr. Courtney asked whether there is enough square footage for site condos. Mr. Lind said they worked with City staff and looked at different scenarios. This one is the simplest; all would require variances, and condos would not be feasible. Appellant Manek thanked Mr. Evans and staff for their help.

Mr. Strat asked about the existing storage shed on the property, in what would be the center lot, and appellant Manek said they will move it to comply with the code. Mr. Strat said a site condominium appears possible and he feels would make more sense. It could use the existing curb cut and split the existing drive with a turnaround. This would work and allow two homes without a variance, even if a cul de sac, which the appellants have considered and rejected, would not.

Mr. Courtney agreed as that condominiums might be a viable alternative.
Chair Lambert asked about the rendering showing two new homes and the gambrel roof farmhouse, intent to avoid more curb cuts, and agreed with as to the need to consider alternatives such as site condominiumss.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted there was no written correspondence from the public.

PUBLIC HEARING CLOSED

***Resolution* # BZA 2011-03-17**
Moved by Courtney
Seconded by Bartnik

MOVED, To adjourn the hearing to April 19, 2011, so that the appellants can research the viability of alternatives, including a condominium plan alternative.

Discussion of the motion on the floor.

Chair Lambert gave appellant Manek leave to speak further, and the appellant asked whether Board members are suggesting consideration of a site condo served by the existing drive. Mr. Strat said the configuration is at the appellant's discretion.

The appellant said that, eight months ago, Planning said for some reason they could not do condos; he forgets the details, but it included two units as well as four; they were against rezoning. Chair Lambert said if there is a firm denial from Planning, the Board will take up the lot split proposal.

Vote on the motion on the floor.

Yes: All present (6)

MOTION CARRIED

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4. COMMUNICATIONS

Mr. Evans said Board members have the latest information from the Michigan Chapter of the American Planning Association.

5. PUBLIC COMMENT

There was no one present who wished to speak.

6. MISCELLANEOUS BUSINESS

Chair Lambert thanked Assistant City Attorney Forsyth for his service with the City of Troy and wished him well in his new endeavor; the Board has enjoyed working with him this year. His departure is the City's loss. Mr. Strat concurred.Assistant City Attorney Forsyth said he has enjoyed working here in various capacities.
In response to Mr. Strat's brief comment on agenda item 3B, Assistant City Attorney Forsyth reminded the Board that it postponed consideration of the item to next month.

7. ADJOURNMENT

The Board of Zoning Appeals meeting adjourned at 8:58 p.m.

Respectfully submitted,

David Lambert, Chair

Stuart Filler, Recording Secretary