The Board of Zoning Appeals meeting was called to order by Chair Lambert at 7:30 p.m. on September 21, 2010, in the Council Chamber of the Troy City Hall.

1. ROLL CALL

Present:
Michael Bartnik
Glenn Clark
Kenneth Courtney
Donald L. Edmunds
William Fisher
A. Allen Kneale
David Lambert

City Clerk's Office

Also Present:
Paul Evans, Zoning Compliance Specialist
Lori Grigg Bluhm, City Attorney
Kathy L. Czarnecki, Recording Secretary

2. APPROVAL OF MINUTES – July 20, 2010

***Resolution # BZA 2010-09-038***
Motion by Edmunds
Support by Clark

**MOVED**, To approve the July 20, 2010 Regular meeting minutes as prepared.

Yes: All present (7)

**MOTION CARRIED**

3. HEARING OF CASES

A. **VARIANCE REQUEST, WILLIAM GEORGE AND LINDA BULL, 987 EMERSON** – In order to enlarge the existing garage, 1) a 3.5 foot variance to the minimum 10 foot side yard setback and 2) an 8.5 foot variance from the requirement that the combined total setback for both side yards is at least 25 feet.

Mr. Evans gave a brief report on the proposed variance with respect to its location and zoning of adjacent properties and briefly addressed the requested setback variances. Mr. Evans announced that prior to the beginning of tonight's meeting, the petitioner provided floor plans and an elevation drawing to further clarify the appearance of the addition should the variance be granted.

The petitioner, William George and Linda Bull, were present. Mr. and Mrs. Bull said situating the garage to the side of the house would preserve their beautifully landscaped backyard with a pond and garden. Mrs. Bull said they would like to keep the view of their backyard from their glassed-in dining area, and not look at a garage. They indicated their intent to utilize the existing garage as living space.

Mr. Edmunds confirmed, upon inspection, that the home is beautifully landscaped. He said that should the variance be granted, the neighbor closest to the proposed garage would still be considerably at a distance because the home is situated on a double lot.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted the petitioner submitted signed documentation from three neighbors indicating support of the variance request.

PUBLIC HEARING CLOSED

***Resolution # BZA 2010-09-039***
Motion by Courtney
Support by Edmunds

***MOVED***, To grant the variance request.

*Preliminary Findings:*
- That the variance is not contrary to public interest.
- That the variance does not permit the establishment of a prohibited use within a zoning district.
- That the variance does not create an adverse effect on the neighbors.

*Special Findings:*
- Conformity would ruin the backyard and that is not a desired effect.

Discussion on the motion on the floor.

Mr. Clark inquired if the house closest to the proposed garage, 991 Emerson, is situated on a double lot.

Mr. Evans could not confirm that 991 Emerson is a double lot, but he indicated the lot it is clearly larger than other lots in the area, and that the setback of that house from the adjoining lot line is well over 10 feet.

Vote on the motion on the floor.

Yes: All present (7)

**MOTION CARRIED**

B. **VARIANCE REQUEST, WAYNE AND JEAN PURSELL, 4912 MOONGLOW** – In order to cover the existing deck with a screened porch, an 8.2 foot variance to the required 45 foot rear yard setback.

Mr. Evans gave a brief report on the proposed variance with respect to its location and zoning of adjacent properties and briefly addressed the requested setback variance. Mr. Evans said the floor plans and elevations provided by the petitioner indicate the appearance of the proposed construction.

The petitioner, Jean Pursell, was present. Ms. Pursell addressed the intended use of the screened porch. She said there is written support from three neighbors, as well as supporting documentation from the Architectural Review Committee of the Oak River Subdivision.

David Hattis, contractor for the project, of 14895 Almont, Allenton, was present. Mr. Hattis said he would be installing a roof and screens on the existing porch.

Mr. Bartnik noted the Homeowners Association placed a condition on its approval that future use of the proposed structure shall be limited to an un-insulated screened porch. Ms. Pursell said she has no plans to insulate the porch or turn it into an addition to the house. She had no objection to place that same condition on the approval of a variance.

Mr. Hattis said it would not be feasible to turn the porch into living quarters without a substantial amount of construction.

PUBLIC HEARING OPENED

No one was present to speak. Mr. Lambert noted communications on file are the recommendation from the Homeowners Association Architectural Review Committee, and a letter of support from the neighbor to the south.

PUBLIC HEARING CLOSED

***Resolution # BZA 2010-09-040***
Motion by Bartnik
Support by Courtney

**MOVED**, To grant the variance request.

*Preliminary Findings:*
- That the variance is not contrary to public interest.
- That the variance is not calling for a prohibitive use within the zoning district.
- That the variance does not appear to cause an adverse effect to the immediately adjacent properties.

*Special Findings:*

- Conforming is unnecessarily burdensome, given the size, location and configuration of this particular piece of property.
- Approval is conditioned on the requirement that the future use is an un-insulated screened porch.

Discussion on the motion on the floor.

Mr. Bartnik addressed his reasoning in making the motion. He said it appears the nature of the request relates to the property's open space and the particular requirements of the petitioner.

Vote on the motion on the floor.

Yes: All present (7)

**MOTION CARRIED**

C. **VARIANCE REQUEST, JOSEPH MANIACI, MONDRIAN PROPERTIES WESTON DOWNS LLC, VACANT SITES AT 694, 702 AND 710 SEABISCUIT AND 3901, 3909, 3925, 3933 AND 3941 APPALOOSA (WESTON DOWNS)** – In order to construct 8 detached condominium units, a variance to allow the minimum distance between buildings to be no less than 10 feet. Chapter 31.30.00 (L) of the Zoning Ordinance allows no less than a 20 foot minimum distance between buildings.

Mr. Evans gave a brief history of the site condominium development. He indicated that the petitioner is currently going through the preliminary site plan review process to receive approval to build the remaining units as single family detached units. Mr. Evans addressed the flexibility of the Planning Commission approval with respect to minimum distances between buildings. He indicated that the petitioner has provided elevations and floor plans. In response to Board member questions, Mr. Evans said there is no change in the number of units and noted it would be best to confirm with the petitioner on occupancy status of the completed units.

The petitioner, Joe Maniaci of Mondrian Properties, 50215 Schoenherr, Shelby Township, was present. Mr. Maniaci gave a brief history of the development, from its origination in 2002. He indicated the project was very successful up until the recent economic downtown, and they are now revisiting the site with the intent to complete the project and meet the obligation of creditors.

Mr. Maniaci addressed the marketing strategy of detached condominiums versus attached condominiums. He indicated detached condominiums have a greater appeal to a larger variety of people, and they are unable to construct the current units as originally planned due to the existing market conditions. He briefly addressed ownership role and responsibility of detached condominiums, impact on property values and maintenance costs. Mr. Maniaci said they have the ability to construct six units without the variance but it is their desire to build out the project completely.

Mr. Maniaci addressed the following items:

- Square footage.
- Distance between buildings.
- Open space.
- Individual condominium units in relation to distances between buildings.
- Occupancy of existing units (all built, sold and occupied).
- Architecture (blend with original development).
- Garage design (side or front entrance).
- Reputation of Mondrian Properties.
- Economic impact on sale prices (original sale prices ranged from $400,000-$500,000; later unit sale prices ranged from $275,000-$280,000).
- Maintenance costs currently shared by 16 homeowners; it is projected that owner costs will be lower if among 24 units.

Mr. Maniaci, a member of the three-member Association Board, said a board meeting was held to present the proposal. He said all homeowners were notified of the meeting. The Board was in favor of the proposal, and homeowners in attendance voiced no objections at that time.

PUBLIC HEARING OPENED

Janet Martin of 3912 Old Creek was present. Ms. Martin voiced a concern with existing water problems and the potential to increase those problems with the development of units 710, 702 and 694.

Karen Allen of 3886 Appaloosa was present. She voiced objection to the proposed development. Ms. Allen addressed property values, the number of remaining units to be constructed, and the appearance differences from the original plan to the proposed plan.

Dave Schuit 3942 Appaloosa was present. He voiced objection to the proposed development. Mr. Schuit addressed property values, marketing strategy of attached units and appearance change of overall development than what was originally presented at the time he bought his unit. He said he would rather pay a higher monthly maintenance fee going forward than put in single family units.

Mr. Bartnik referenced the board meeting that was held wherein there were no objections heard, and it appears that eight homeowners are in favor or do not care one way or another and seven are against the proposal.

Mr. Schuit said homeowners were hit cold with the proposal that night and did not have time to think about it. He said those homeowners who paid $280,000 for their condominiums probably do not care what goes in, and a few homeowners have their units on the market hoping to sell.

Chair Lambert said communications received on the item comprise of a formal letter from a Wattles Creek Condominium owner, a petition signed by seven neighbors in opposition and four email messages, one in favor and three opposed.

Ms. Bluhm stated that no outside agreements should be considered in the Board's determination. She noted that consideration should be given to the impact on neighboring properties and documentation presented to the members this evening.

Mr. Maniaci thanked homeowners for coming to the meeting tonight. He addressed the condominium documents which allow the developer to present site alterations and request City approval. He said they must consider other options because they cannot economically build as originally planned. Mr. Maniaci addressed the architecture and density of the development. He said it is not their intent to devalue property values but to try to increase them.

Mr. Courtney asked the petitioner what option he would go with, higher density or construction of six units, should the Board deny the variance request.

Mr. Maniaci replied they would have to go back and review numbers. He said it could very likely be decided to go with the higher density and build smaller units (1200 to 1400 square feet). Mr. Maniaci confirmed that any revisions would have to go back before the Planning Commission for approval, and noted that a development of higher density would meet all Zoning Ordinance requirements. Mr. Maniaci addressed the impact of distances unit by unit should the variance request receive approval.

PUBLIC HEARING CLOSED

Mr. Evans responded to Janet Martin who identified a water problem during the Public Hearing. He advised Ms. Martin that the City Engineering Department would be happy to work with her on a resolution to the existing water problem.

Mr. Clark addressed concerns presented by both the homeowners and developer.

Mr. Evans reviewed the Site Plan Review process and Board of Zoning Appeals approval process for variance requests.

Mr. Edmunds asked Mr. Evans if he is aware of any condominium developments with units as closely distanced as the proposed plan.

Mr. Evans replied he is not prepared to answer because he conducted no research to that respect.

Ms. Bluhm advised the Board members of the following:

- Variance requests could be determined individually, in which case, separate motions should be entertained.
- Economics cannot be considered in the decision.
- Practical difficulty must be demonstrated.
- Determination should be made whether conditions are unique to the property not shared by other properties, whether there are reasonable alternatives and whether conditions are self-created.
- Consideration should be given to impact on the neighbors; not necessarily from a financial aspect.
- Developer is not required to construct on the vacant lots. The impact of vacancy on the neighboring properties could be considered.
- The developer may wish an opportunity to revise the plan before the Board makes an action; in which case, tabling the item is a consideration.

Mr. Courtney said he is not in favor of the variance request because of the close proximity between units.

Mr. Kneale said he is not very much in favor of the variance request. He suggested a hybrid plan (a "Plan C") that might be more palatable.

Mr. Bartnik said he is struggling with the economic impact on the neighbors of attached units versus detached units. He noted that units 6, 7 and 8 are most severely affected by the variance request.

Chair Lambert said a clear presentation of hardship on the part of the petitioner was not presented, other than economic. He suggested that the item be delayed to the next meeting to allow the petitioner an opportunity to arrive at an alternate plan that might accommodate both the developer and homeowners.

***Resolution # BZA 2010-09-041***
Motion by Courtney
Support by Clark

**MOVED**, To table the item until the next regular meeting.

Yes: Clark, Courtney, Fisher, Kneale, Lambert
No: Bartnik, Edmunds

**MOTION CARRIED**

Mr. Evans announced the item would be placed on the October 19, 2010 Regular meeting agenda.

The petitioner was asked to address the following concerns at the next meeting:

- What is the adverse economic effect on the neighbors and how would property values be affected should development (1) continue with detached units; (2) change some or all units to attached units, and (3) leave some or all units vacant.
- Clarification of a practical difficulty with the land.
- Impact on neighborhood and property values with respect to varying square footage of detached and attached condominium units.
- Address real hardship.

D. **VARIANCE REQUEST, YACOUB MURAD, VACANT LOT ADJACENT TO AND EAST OF 734 AMBERWOOD** – In order to build a new house, 1) a 5 foot variance from the required 10 foot side yard setback, and 2) a 15 foot variance from the required 45 foot rear yard setback.

Mr. Evans gave a brief report on the proposed variance with respect to its location and zoning of adjacent properties and briefly addressed the requested setback variance. He noted that the property is adjacent to a dedicated outlot for drainage purposes. Mr. Evans said the petitioner has provided an elevation drawing and floor plans of the proposed home.

Nathan Robinson of Horizon Engineering, P.O. Box 182158, Shelby Township, was present to represent the petitioner. Mr. Robinson stated that the petitioner currently resides at 685 Amberwood Court and also owns the vacant subject property. He would like to construct a home for his family of a size that satisfies the needs of his family, but the preliminary design of the house does not fit on the lot. Mr. Robinson addressed the uniqueness of the lot with respect to its bordering on two sides by a permanent easement for drainage purposes. He addressed setbacks on the east and south sides. He noted that there is no neighbor to the rear (south) and a substantial setback would remain to the neighbor to the east.

Mr. Courtney asked how much square footage would be lost should the petitioner build a home that fits on the lot and would require no variance.

Mr. Robinson said he did not calculate square footage. He assured that the overall width and depth of the structure would not exceed overall lot coverage.

Mr. Courtney asked if a completely different house design would fit on the lot.

Mr. Robinson replied most likely, but noted that the house design is one of a custom home and has been a work in progress for the petitioner.

Mr. Bartnik asked if the overhang on the second floor is part of the variance request.

Mr. Robinson said he did not show cantilevers on the plan, and does not recall if they would be allowed within the side setbacks.

Mr. Evans said it would be required to meet side setbacks.

Mr. Robinson said he would remove the cantilevers.

Mr. Clark asked if the covered concrete patio is within the proposed backyard setback.

Mr. Robinson replied in the affirmative. He said the concrete patio is basically a masonry extension of the house. Mr. Robinson said it would be required to be within the setback because it has a footing and is covered.

Mr. Clark asked how much depth there would be if the covering for the patio was removed.

Mr. Robinson replied approximately 8 to 10 feet. He said approximately 10 feet would remain to the main rear line of the house.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted that there are no objections to the proposed variance request on file.

PUBLIC HEARING CLOSED

There was a brief discussion on the temporary closing of Amberwood in relation to the driveway. It appears there would be no adverse effect because the driveway is on the other side of the property.

There was a brief discussion on the height of the house. Mr. Robinson indicated he was not certain of the height but assured the Board members that it would fit within the building envelope and meet all Zoning Ordinance requirements.

Mr. Clark said a practical difficulty has not been clearly demonstrated. He said the proposed home is very beautiful and is beautifully situated on the lot, but he does not understand what the Board should be looking at with respect to a practical difficulty.

Mr. Edmunds agreed, noting he sees very little practical difficulty. He said it appears that a very substantial home could be built on the lot that would require no variances.

***Resolution # BZA 2010-09-***
Motion by Clark
Support by Kneale

**MOVED**, To deny the variance request based on the fact there appears to be no apparent practical difficulty with the land.

Discussion on the motion on the floor.

After a brief discussion, Board members were amenable to postpone the item to provide the petitioner an opportunity to come back before the Board with a slightly reduced floor plan.

***Resolution # BZA 2010-09-042***
Motion by Courtney
Support by Kneale

**MOVED**, To substitute the motion on the floor.

Yes: All present (7)

**MOTION CARRIED**

***Resolution # BZA 2010-09-043***
Motion by Courtney
Support by Kneale

**MOVED**, To postpone the item to the next regular meeting.

Yes: All present (7)

**MOTION CARRIED**

4. COMMUNICATIONS

Chair Lambert announced the following communications:
- Memorandum from City Manager and Staff regarding 2062 Charnwood.
- Michigan Association of Planning Annual Conference, Detroit.

There was a brief discussion on budget monies available for training purposes.

5. MISCELLANEOUS BUSINESS

Chair Lambert welcomed Ms. Bluhm.

Ms. Bluhm suggested that agendas in the future be inclusive of a section titled "Public Comment" in order to meet the requirement of the Open Meetings Act.

There were brief comments around the table on available training courses.

6. ADJOURNMENT

The Board of Zoning Appeals meeting adjourned at 9:22 p.m.

Respectfully submitted,

David Lambert, Chair

Kathy L. Czarnecki, Recording Secretary

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