The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, October 21, 2008, in Council Chambers of the Troy City Hall.

PRESENT:	Michael Bartnik Kenneth Courtney Matthew Kovacs Tom Strat
ALSO PRESENT:	Mark Stimac, Director of Building & Zoning Allan Motzny, Assistant City Attorney Pamela Pasternak, Recording Secretary
ABSENT:	Glenn Clark Marcia Gies David Lambert

Motion by Courtney
Supported by Strat

MOVED, to excuse Glenn Clark, Marcia Gies and David Lambert from this meeting as they are currently out of the State.

Yeas:	4 – Bartnik, Courtney, Kovacs, Strat
Absent:	3 – Clark, Gies, Lambert

MOTION TO EXCUSE MEMBERS CARRIED

Mr. Kovacs explained to the audience that since there were only four (4) Board members present, the petitioners did have the option to request to postpone their requests to allow them the opportunity of a full Board.

ITEM #1 – APPROVAL OF MINUTES – MEETING OF SEPTEMBER 16, 2008

Motion by Bartnik
Supported by Courtney

Mr. Bartnik asked that corrections be made on page 4, Item #7, lines 5 and 7 to substitute "approval" rather than "variance".

Yeas:	4 – Courtney, Kovacs, Strat, Bartnik
Absent:	3 – Lambert, Clark, Gies

MOTION TO APPROVE THE MINUTES OF SEPTEMBER 16, 2008 WITH CORRECTIONS CARRIED

JHb

ITEM #2 – APPROVAL OF ITEMS #3 THROUGH #10

RESOLVED, that Items #3, #4, #6, #7 and #8 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Motion by Courtney
Supported by Bartnik

Yeas: 4 – Kovacs, Strat, Bartnik, Courtney
Absent: 3 – Lambert, Clark, Gies

ITEM #3 – RENEWAL REQUESTED. JEREMY PHILLIPS, DETROIT EDISON, 2220 W. BIG BEAVER, for relief of the 6' high screening wall required between office and residentially zoned property.

MOVED, to grant Jeremy Phillips, 2220 W. Big Beaver, a three (3) year renewal of relief for the 6' high screening wall required between office and residential zoned property.

- The adjacent property is used as a retention pond.
- Conditions remain the same.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect on surrounding property.

ITEM #4 – RENEWAL REQUESTED. FIFTH THIRD BANK, 2282 W. BIG BEAVER, for relief of the 6' high masonry screening wall required along the north property line where this site abuts residential zoned property.

MOVED, to grant Fifth Third Bank, 2282 W. Big Beaver, a three (3) year renewal of relief of the 6' high masonry-screening wall required along the north side of their site where it abuts residentially zoned property.

- The adjacent property is used as a retention pond.
- Conditions remain the same.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect on surrounding property.

ITEM #6 – RENEWAL REQUESTED. WATTLES PROPERTIES, LLC, BROOKFIELD ACADEMY, 3950 LIVERNOIS, for relief of the 4'6" high masonry screening wall required along the east side of off-street parking.

MOVED, to grant Wattles Properties, LLC, Brookfield Academy, 3950 Livernois, a three (3) year renewal of relief of the 4'-6" high masonry screening wall adjacent to off-street parking.

- Fence to remain in good repair.
- Conditions remain the same.

ITEM #6 – con't.

- There are no complaints or objections on file.

ITEM #7 – RENEWAL REQUESTED. ST. AUGUSTINE EVANGELICAL CHURCH, 5475 LIVERNOIS, for relief of the 4'-6" high masonry wall required along the south and west sides of off-street parking.

MOVED, to grant St. Augustine Evangelical Church, 5475 Livernois, a three (3) year renewal of relief of the 4'-6" high masonry wall required along the south and west sides of the property, adjacent to the off-street parking.

- Variance is not contrary to public interest.
- There are no complaints or objections on file.

ITEM #8 – RENEWAL REQUESTED. MARC DYKES, HOME PROPERTIES, CANTERBURY SQUARE APARTMENTS II, N. SIDE OF LOVINGTON, E. OF JOHN R., for relief of the 4'-6" high masonry screening wall required along the north and east sides of off-street parking where these areas abut residentially zoned land.

MOVED, to grant Marc Dykes, Home Properties, Canterbury Square Apartments II, N. side of Lovington, E. of John R., a three (3) year renewal of relief of the 4'-6" high masonry screening wall required along the north and east sides of off-street parking areas where these areas abut residentially zoned land.

- Adjacent property is not developed with single-family residences.
- Variance will not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.
- Conditions remain the same.

Mr. Strat asked if the Board should offer the petitioners the opportunity to postpone their requests until the next scheduled meeting.

Mr. Motzny informed Mr. Strat that a petitioner can ask if they wished to postpone their requests, but it is up to the Board to make such a motion. He also noted that renewals do not need four (4) votes to be approved. A majority of the members present is all that is required.

Mr. Strat stated that the Planning Commission offers the petitioners the opportunity to postpone before the hearing is started.

Mr. Bartnik questioned the notice requirements regarding renewals.

ITEM #5, 9, &10

Motion by Bartnik

To postpone action on Items 5, 9, & 10 to allow public notices to be sent to the adjacent property owners and to obtain an update regarding the Master Land Use designation of the adjacent property from the Planning Director.

That motion failed for the lack of a second.

Mr. Stimac stated that he would be willing to go over each item with the Board. Notices are not sent out regarding renewals unless a complaint is received regarding the property. At that time we would notify that complainant so that they could submit something in writing. Renewals are covered under a different procedure and do not require the same original findings as when the variance is originally granted. A Public Hearing is held at the time the original request is made and the Board has the ability to continue the variance if there is a finding that conditions remain the same and if there are no complaints or objections on file. The Building Department has not received any complaints or objections regarding the three items in question.

Mr. Strat stated that the adjacent neighbors may not be aware that a variance was granted and he did not see the harm in notifying neighbors and if there any objections they would have the opportunity to present them to the Board. Mr. Strat is concerned about changes in occupancy.

Mr. Kovacs said that he thought they could be postponed so that surrounding property owners could be notified.

Mr. Stimac said that the property owners within 300 feet could certainly be notified that there was a renewal pending. Mr. Stimac cautioned the Board regarding a Public Hearing on these items as there is a different procedure in place for Public Hearings. Regarding Item #10, 2032 E. Square Lake, it is Mr. Stimac's opinion that since the area surrounding this property is fully developed this Item could be advertised as a Public Hearing and a permanent variance considered. A Public Hearing would be required and publication of that fact would have to be made. Mr. Stimac also stated that there have not been any changes in the Master Plan that would affect any of the items on this Agenda.

ITEM #10 – (TAKEN OUT OF ORDER)

ITEM #10 – RENEWAL REQUESTED. BLUE HERON INVESTMENTS, LLC, 2032 E. SQUARE LAKE, for relief of the 6' high screen wall required along the east side of the property, where commercial zoned property abuts residential zoned property.

Motion by Courtney
Supported by Strat

ITEM #10 – con't.

MOVED, to postpone the request of Blue Heron Investment, 2032 E. Square Lake for relief of the 6' high screen wall required along the east side of the property, where commercial zoned property abuts residential zoned property to the next meeting of November 18, 2008.

- To allow Notices to be sent out announcing a Public Hearing, so that the Board has the opportunity to consider making this a permanent variance.

Yeas: 4 – Bartnik, Courtney, Kovacs, Strat
Absent: 3 – Clark, Gies, Lambert

MOTION TO POSTPONE THIS REQUEST UNTIL NOVEMBER 18, 2008 CARRIED

Motion by Bartnik
Supported by Strat

MOVED, to postpone Items #5, and #9 to the next scheduled meeting of November 18, 2008.

- To provide notification to surrounding property owners that renewals are pending.

Mr. Kovacs said that he did not agree and that the variance for the screening wall for Item #5 has been granted since 1985 and there are no objections on file.

Mr. Curtis of the Troy Masonic Temple Association was present and stated that they had purchased the Building in 1969 and this variance has been granted since 1970. They own the adjacent property and they have not had any complaints.

Mr. Kovacs informed the petitioner that Mr. Bartnik is concerned about changes in occupancy and notifying neighbors that this variance is in effect.

Mr. Bartnik asked which properties were owned by the Temple and Mr. Curtis indicated how much of the property is owned by the Temple and indicated how much of that property was vacant. Mr. Curtis also pointed out that there is a shopping center right behind their property.

Mr. Bartnik said that he would amend his motion on this property.

Motion by Bartnik
Supported by Courtney

MOVED, to amend the motion regarding Item #2 excluding Item #5 for postponement.

ITEM #5 – con't.

Yeas: 4 – Kovacs, Strat, Bartnik, Courtney
Absent: 3 – Lambert, Clark, Gies

MOTION TO AMEND MOTION CARRIED

A representative of Life Christian Church International was present and stated that he is not sure what the Board is looking for. Life Christian Church International is the new property owner of this site.

Mr. Bartnik stated that he was concerned that since this is a change in ownership of the Church, the surrounding neighbors may not be aware that a variance had been granted. Mr. Bartnik stated that he would like those neighbors to be notified.

Mr. Strat stated that the property has been cleaned up and commended the petitioner on the appearance of the property.

Vote on the motion to postpone item #9

Yeas: 3 – Strat, Bartnik, Courtney
Nays: 1 - Kovacs
Absent: 3 – Lambert, Clark, Gies

Mr. Kovacs stated that he did not agree this postponement was necessary as this variance has been in effect for more than 30 years and there are no complaints or objections on file.

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF NOVEMBER 18, 2008 CARRIED

ITEM #5 – RENEWAL REQUESTED. TROY MASONIC TEMPLE ASSOCIATION, 1032 HARTLAND, for relief of the required 4'-6" high masonry screening wall adjacent to off-street parking.

Mr. Stimac explained that the petitioner is requesting relief of the 4'-6" high masonry-screening wall adjacent to their parking lot. This Board originally granted this variance in 1970. This item last appeared before this Board in October 2005 and was granted a three (3) year renewal of this request. Conditions at the site remain the same and we have no objections or complaints on file.

Motion by Courtney
Supported by Bartnik

ITEM #5 – con't.

MOVED, to grant Troy Masonic Temple Association, 1032 Hartland, a three (3) year renewal of relief of the 4'-6" high masonry screening wall required by Section 39.10.01 adjacent to off-street parking where it abuts residentially zoned property.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- There are no complaints or objections on file.

Yeas: 4 – Bartnik, Courtney, Kovacs, Strat
Absent: 3 – Clark, Gies, Lambert

MOTION TO GRANT RENEWAL FOR THREE (3) YEARS CARRIED

ITEM #11 – VARIANCE REQUESTED. LISA COURY & JAMES STEWART, 924 HANNAH, for relief of the Ordinance to construct a two-story gambrel style roofed building with a building height of 17'. Section 40.56.02 limits detached accessory buildings to not more than one story and not more than a 14' maximum building height.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a detached accessory building. The site plan submitted indicates the proposed construction of a two-story detached garage/storage building. The plans further show this gambrel (barn) style roofed building with a building height of 17' as measured by the Zoning Ordinance.

Section 40.56.02 limits detached accessory buildings to not more than one story and not more than a 14' maximum building height.

Lisa Coury and James Stewart were present. Mr. Stewart stated that they are running out of room as they have a lot of stuff that includes a cargo trailer with an 8' height. Rather than have their trailers in the front yard, they would be able to put them in this building. They have one child with a second on the way and they do not have any room for storage. Most of their storage is already taken up. The garage could be made longer, but there is a tree behind it and in front of it and also a telephone easement is located on the property. Mr. Stewart said that most of the lots in this area are very large and there are other garages that are larger than normal.

Mr. Kovacs asked how large the lot was and Ms. Coury stated it was 105' x 230'.

Mr. Courtney asked why the garage would be on the side closest to the neighbor rather than the front.

Mr. Stewart said that there are telephone lines in this area and they can't put anything in this area. The garage would still be as close to the neighbor because of this easement.

ITEM #11 – con't.

Mr. Courtney asked why a second floor was needed as they were planning to use the building for storage of trailers.

Ms. Coury said that their house is approximately 950 square feet and due to the fact that another child is on the way, more storage will be required. The trailers will take up most of the first floor and this is the reason, they require a second floor. They would move some of the things they have in the basement to the loft in this building.

Mr. Courtney asked if they were planning to make the attached garage living space.

Mr. Stewart said that is their plan.

Mr. Courtney said that they could shorten the height of the garage and not have a second level. Instead of going 20 feet high, just go as far as needed to cover the door.

Mr. Stewart said that one of his trailers is 8' high and they would need a ceiling height in the lower level of at least that much to stand in the garage. There is a tree in front of the proposed garage and one also in back of the proposed garage that would make it difficult to make the garage longer. The cost of the pad alone to make the garage longer is prohibitive.

Mr. Strat asked what the height limitations of garage doors were.

Mr. Stimac stated that the height limitation only applies to an attached garage and is 10'.

Mr. Kovacs asked how high the garage door was proposed to be.

Mr. Stewart stated that it would be 8'.

Mr. Strat stated that he had a problem with this request as he does not believe the petitioner has demonstrated a hardship that runs with the land. The petitioner is asking for a variance to store recreational vehicles.

Mr. Strat said that one of the approvals received regarding this request is from a neighbor that has the same barn. Mr. Strat also stated that the Board had received two (2) objections to this request and one is from the neighbor that is directly behind this property. Recreational vehicles can be stored off-site. A variance needs to be granted with a hardship.

Mr. Stewart asked if Mr. Strat was only objecting to the height of the building.

Mr. Kovacs asked if a one and one-half story building could be constructed and comply with the height.

ITEM #11 – con't.

Mr. Stimac informed the board that there are accessory buildings in the City that do have storage areas that meet the 14' height requirement.

Mr. Stewart said that there are four (4) houses on his street and he does not believe they meet the height requirement.

Mr. Kovacs said that he does not agree with the Board, but is trying to see what could be done.

Mr. Stewart said that he could put up a long garage and in his opinion it would look worse than what he is proposing.

Mr. Kovacs agreed with the petitioner and said that he felt this proposed building would look much nicer than a long building.

Mr. Strat stated that the petitioner could have a second story but it would not be 7' high.

Mr. Stimac said that he could have a garage that is 24' wide and have storage that is 4' high and would comply with the Ordinance.

Mr. Kovacs asked if the petitioner wished to postpone this request in order for the petitioner to work with the City to bring down the height of this building.

Mr. Stewart said it is either that or he will build a garage that is super-wide and would not look as nice. Mr. Stewart said that he would rather have something that fits the neighborhood and he could build a garage that was 14' tall and very wide, which would comply with the Ordinance.

Mr. Kovacs said that he believes you are limited to the square footage of an accessory structure.

Mr. Strat said that the petitioner should look at the letters from the people that objected to this request and possibly speak to those neighbors.

Mr. Kovacs stated that the objections are from 951 and 976 Deetta

Mr. Stewart said that the yards are 225' deep.

Mr. Stimac explained that we are required by law to inform property owners within 300' of this property that the petitioner is requesting a variance. Testimony can be taken from anyone in the City regarding a request.

Mr. Courtney stated that if this request is postponed he would like the petitioner to submit what the maximum height of this building needs to be.

ITEM #11 – con't.

Mr. Stewart said that he could put up a building that is 20' to the peak and it would comply with the guidelines.

Mr. Stimac said that he could build a 28' high A-frame garage but that is not what the petitioner is asking for.

Mr. Kovacs asked what would be different if this was an attached garage.

Mr. Stimac said that if this garage was attached it could be two and one-half stories and could be 25' high.

Mr. Stewart said that would look much worse than what he is proposing.

The Chairman opened the Public Hearing.

Michael Fischer, 914 Hannah, was present and stated that he feels this barn would fit in very well with this neighborhood. There are other gambrel style roofs in the area and the height would not create a problem. Mr. Fischer stated that he would like to see this request approved.

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

There are four (4) written approvals on file. There are two (2) written objections on file.

Mr. Courtney asked if the petitioner wished to postpone this request.

Mr. Stewart said that if was not approved he would have to wait longer to put up the building.

Mr. Kovacs said that the petitioner is taking a chance that his request will be denied. Mr. Kovacs also stated that he feels the petitioner has a case for a variance however, he would need all four members to agree and Mr. Kovacs did not feel that all the members would vote in favor of this request.

Mr. Stewart said that he guesses he could cut down one of the trees and put in a longer building.

Mr. Kovacs said that there has to be a hardship that runs with the land.

Mr. Kovacs said that he did not believe it would be fair to the petitioner to consider the request this evening as there is not a full Board present.

Motion by Courtney
Supported by Bartnik

ITEM #11 – con't.

To postpone action on this request and continue the public hearing at the next meeting.

Mr. Bartnik said that the petitioner keeps stating that there is a tree in the way however, Mr. Bartnik does not see any evidence indicating that there are trees in this area. Furthermore, the petitioner keeps indicating that there are other gambrel style buildings in this area however they do not back up to other properties. Most of the houses in this area are one story and this request is for a two-story building. This home is a very nice bungalow. There are only one or two other two-story homes in the neighborhood. Mr. Bartnik also said that he believes this variance will have a detrimental effect to other homes in the area.

Mr. Strat said that he agrees with the comments Mr. Bartnik made. One of the homes adjacent to this property is for sale and they would have a clear view of this building as this garage is proposed to be constructed very close to the rear property line. Mr. Strat said that they have taken this request very seriously and the storage of a recreational vehicle is not a hardship. The garage that was built down the street has no bearing on this request. Variances should not be granted lightly.

Mr. Stewart said that he understands, but he was looking at the maximum square footage that he could use without taking up most of his back yard. If this variance is not granted, the new garage will be longer and wider.

Mr. Kovacs said that if the postponement passes, it is up to the petitioner to come back before the Board and show proof that what would be allowed would be detrimental to surrounding property rather than what could be put up with a variance.

Mr. Stewart asked what would happen if only four Board members were present again.

Mr. Kovacs stated that this was a very rare occurrence and he did not believe this situation would happen again.

Mr. Strat told the petitioner to indicate the exact location of the trees on his property that would prohibit him from making this garage longer. If a footing is put in, these trees may also be destroyed.

Mr. Courtney asked what the elevation was from the back of the house to the back of the lot.

Mr. Stewart said he believes this is one of the original farmhouses in this area. The neighbors behind them have a small ditch and his property slopes down from the house.

Mr. Strat said that the petitioner would need to be very careful where the floor of the building is due to the water problems.

ITEM #11 – con't.

Mr. Bartnik stated that he only had a picture of the mortgage survey and stated that it appears there is a lot of room on the other side of the property.

Mr. Stewart said that there is an Edison easement on that side of the property.

Ms. Coury asked the date of the next meeting and informed the Board that she is scheduled for a caesarian section on that day and they would not be able to attend that meeting.

Mr. Courtney suggested the petitioner turn in the necessary paper work before the meeting and it may not be necessary for them to appear.

Mr. Stimac stated that there are three other members that have not had this case presented to them at all.

MOVED, to postpone the request of Lisa Coury and James Stewart, 924 Hannah, for relief of the Ordinance to construct a two-story gambrel style roofed building with a building height of 17' where Section 40.56.02 limits detached accessory buildings to not more than one-story and not more than a 14' maximum height until the next meeting.

- To allow the petitioner the opportunity of a full Board.
- To allow the petitioner the opportunity to bring in documents indicating a hardship that would support this request.

Yeas: 4 – Bartnik, Courtney, Kovacs, Strat
Absent: 3 – Clark, Gies, Lambert

MOTION TO POSTPONE THIS REQUEST UNTIL THE NEXT MEETING CARRIED

ITEM #12 – VARIANCE REQUESTED. DAVID DONNELLON, 1477 JOHN R., for relief of the Ordinance to construct an outdoor dining area to within 10' of the front property line along John R. In 2002 the Board of Zoning Appeals granted a variance that would allow the enclosure of the outdoor dining area to within 14' of the front property line.

Furthermore, the petitioners are proposing to install a new fabric awning over a portion of the dining area on front of the structure extending out to within 24' of the front property line. Section 30.20.06 required a minimum 40' front yard setback in the B-3 (General Business) Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to alter an outdoor dining facility. In 2002 the Board of Zoning Appeals granted a variance that would allow the enclosure of the outdoor dining area to within 14' of the front property line. The site plan submitted indicates a proposed new raised "deck area". The

ITEM #12 – con't.

enclosure of this deck area is proposed to be within approximately 10' of the front property line along John R (when measured to the 75' right of way line).

Furthermore, the petitioners are proposing to install a new fabric awning over a portion of the dining area on the front of the structure extending out to within 24' of the front property line. This property is located in the B-3 (General Business) Zoning District. Section 30.20.06 requires a minimum 40' front yard setback.

Mr. Donnellon was present and stated that conditions have changed because the owner did not construct the structure originally granted a variance. This restaurant has had open dining for the last several years and the owner wants to create an area that will let people sit outside and enjoy the weather. There has been some Karaoke done at the restaurant and some people seem to like it. The reason for awning is to protect diners from the elements. The economy is tough and on that side of town, things can be a little more difficult. Mr. Donnellon questioned Mr. Stimac regarding the setback lines. Mr. Donnellon said that the existing right of way line is much farther out than 10'. The dining is much farther back from the existing right of way line.

Mr. Stimac explained that the distance is measured from the proposed right of way line. The sidewalk takes a rather significant jog as it gets to this property from the south because the future right of way line of John R is not in place. The Ordinance says that the setbacks have to be measured from the Master Thoroughfare Plan as set by the Planning Commission.

Mr. Donnellon also pointed out that the building to the north is much closer to John R. than this building is.

Mr. Kovacs said that he was present for the original variance request and he is not aware of any complaints from the surrounding neighbors.

Mr. Courtney asked if the new awning would cover more seating than what was originally proposed.

Mr. Donnellon said that the awning will protect more tables than what was previously proposed.

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

There are no written objections or approvals on file.

Mr. Strat stated that this proposal is in keeping with what the Planning Commission is trying to accomplish. The height of the wall prevents people from seeing what is going on at the restaurant.

ITEM #12 – con't.

Mr. Donnellon stated that they had to put the wall in.

Mr. Strat stated that large trees would be ideal for this situation.

Motion by Courtney
Supported by Strat

MOVED, to grant David Donnellon, 1477 John R., relief of the Ordinance to construct an outdoor dining area to within 10' of the front property line along John R.; and to install a new fabric awning over a portion of the dining area on front of the structure extending out to within 24' of the front property line. Section 30.20.06 requires a minimum 40' front yard setback in the B-3 (General Business) Zoning District.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance is in keeping with what the Planning Commission is trying to achieve.

Yeas: 4 – Kovacs, Strat, Bartnik, Courtney
Absent: 3 – Gies, Lambert, Clark

MOTION TO GRANT VARIANCE CARRIED

Mr. Kovacs expressed concern over the fact that Ms. Coury and Mr. Stewart may not be able to make the November 18th meeting and encouraged Mr. Stimac to try and set up a special meeting so that their petition could be heard.

Mr. Stimac said that we have to post a notice indicating a Special Meeting would be held within seventy-two hours of the meeting date. Mr. Stimac stated that Building Department Staff would take a poll to see if we would have enough members present for a special meeting and inform the Board and the petitioners of our findings.

The Board of Zoning Appeals meeting adjourned at 9:00 P.M.

David Lambert

Matthew Kovacs, Chairman

Pamela Pasternak, Recording Secretary