The Vice-Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, March 18, 2008 in Council Chambers of the Troy City Hall.

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

Motion by Wright
Supported by Clark

MOVED, to excuse Ms. Gies from this meeting for personal reasons.

Yeas: 6 – Bartnik, Clark, Courtney, Kovacs, Lambert, Wright

MOTION TO EXCUSE MS. GIES CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF FEBRUARY 19, 2008

Motion by Courtney
Supported by Wright

Mr. Bartnik stated that he would like the minutes amended as follows: Page 12, second line up, wording to be changed to "... whether the zoning of the property is R-C or R-1B, the variance should be allowed."

Mr. Lambert pointed out that on motion to approve the minutes of January 15, 2008 the minutes indicate that Mr. Clark abstained from the vote; however he was absent from the meeting of January 15, 2008.

MOVED, to approve the minutes of the meeting of February 19, 2008 with above amendments.

Yeas: 6 – Courtney, Kovacs, Lambert, Wright, Bartnik, Clark

MOTION TO APPROVE MINUTES AS AMENDED CARRIED

JH

ITEM #2 – RENEWAL REQUEST. K-MART, 100 E. MAPLE, for relief of the Ordinance to allow for an outdoor display of plant material in front of K-Mart along the north side of the fenced area and a four-foot section of the sidewalk at the west end of the building adjacent to the building.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board on a yearly basis since 1978, which allows for an outdoor display of plant materials in front of K-Mart along the north side of the fenced garden area and four-foot section of the sidewalk adjacent to the building, at the west end of the building. This display area is used for plants and flowers, and the variance is valid during the months of April through July. This request has previously been subject to the petitioner providing a corral type fence to both enclose the area of the display and maintain a safe sidewalk at the same time. This item last appeared before this Board at the meeting of March 20, 2007 and was granted a one-year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

The petitioner was not present.

Mr. Clark asked if there were any changes to this request.

Mr. Stimac indicated that the Building Department had not received any notice of any proposed changes compared to the previous years.

Motion by Courtney
Supported by Wright

MOVED, to grant K-Mart, 100 E. Maple renewal for one-year (1) of relief of the Ordinance to allow for an outdoor display of plant material in front of K-Mart along the north side of the fenced area and a four-foot section of the sidewalk at the west end of the building adjacent to the building.

- Conditions remain the same.
- There are no complaints or objections on file.
- Display out only during months of April through July.

Yeas: 6 – Kovacs, Lambert, Wright, Bartnik, Clark, Courtney

MOTION TO GRANT RENEWAL FOR ONE-YEAR CARRIED

ITEM #3 – VARIANCE REQUEST. TONY V'S SUNROOMS, 2024 LAKESIDE, for relief of the Ordinance to construct a patio enclosure that will result in a 28.18' rear yard setback and a 24' front setback to the east property line along Southpointe Drive. Section 30.10.05 requires a 40' minimum rear yard setback and a 25' minimum front yard setback in R-1D Zoning Districts.

ITEM #3 – con't.

Mr. Stimac explained that the petitioner is seeking relief of the Ordinance to construct a rear patio enclosure. This property is located at the southwest corner of the intersection of Lakeside and Southpointe. Because of the orientation of the adjacent houses it is a double front corner lot and has front yard setbacks along both streets. Because of the orientation of this house the south property line is considered to be the rear property line. The site plan submitted indicates a proposed 28.18' rear yard setback and a 24' front setback to the east property line along Southpointe Drive. Section 30.10.05 requires a 40' minimum rear yard setback and a 25' minimum front yard setback in R-1D Zoning Districts.

Mr. Stimac reminded the Board that there is an active motion on the floor to deny this request and it would require action taken by the Board.

Mr. Tony Coatto of Tony V's Sunrooms and Spas and Mr. Nuzhat Ali, the homeowner were present. Mr. Coatto stated that he did not feel the site line would be affected at all as this is a corner lot and there is an existing deck that Mr. Coatto could walk under. The proposed sunroom would not be visible to traffic heading south on Southpointe. The builder constructed this home within 2" or 3" of setback and all of the lots around the lake are different sizes and shapes and Mr. Coatto is hoping that the Board will approve this request.

Mr. Ali stated that his wife suffers from emphysema and arthritis. Mr. Ali has put a treadmill in the basement for his wife to do exercises that will help to strengthen her physically. The cold weather makes it difficult for her to work in the basement. His daughter, who is a physician, has forbidden his wife to go near the door as the cold weather could have an adverse effect on her health. Mr. Ali said that when they bought the house, they did not realize how close the house behind them was. They have a large backyard and the Homeowners Association has approved these plans for the sunroom. They had talked to many contractors and hired Tony V's as they felt that their design was the best. Mr. Ali also stated that the house behind them has a bay window that extends into the backyard and they did not realize that they would not be able to add on to their home at the time they purchased it.

Mr. Kovacs informed Mr. Ali that this Board does not have the power to vote on a motion based on personal illness or personal circumstance of the person residing in a particular residence. The Board does sympathize with Mr. Ali, however, in order for the variance to be granted there has to be a hardship that runs with the land and they must vote on the facts that are presented.

Mr. Courtney stated that in his opinion the house is large enough that the walking that is required for Ms. Ali could be done on the first floor and the treadmill would not take up that much room.

ITEM #3 – con't.

Mr. Ali said that there are not enough windows in the bedrooms to make them a pleasant location for the treadmill. The other alternative they have is to place the treadmill in the breakfast room and then they would lose the use of this area. Mr. Ali said that in his opinion the hardship is his wife's physical difficulties. The treadmill is quite large and this is the reason the sunroom is needed.

Mr. Bartnik asked about the house behind Mr. Ali's home with the bay window. Mr. Bartnik asked exactly which property Mr. Ali referred to.

Mr. Ali said that it was the home directly behind his home to the south.

Mr. Bartnik then asked if this enclosure was going to be put on the existing deck.

Mr. Coatto said that it will be smaller although the existing deck will have to be reinforced in order to hold the walls and windows.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

Mr. Kovacs brought it back to the Board for a vote on the motion to deny the request. Mr. Kovacs pointed out that a "yes" vote would be in favor of denial.

Mr. Bartnik stated that because this item had been postponed to allow the petitioner the opportunity of a full Board, and Ms. Gies was not present; he felt that the petitioner should be offered the opportunity to postpone this request once again.

Mr. Courtney stated that it was up to the Board whether to postpone this matter or not, and Ms. Gies had voted in the past to deny the request. He did not feel postponing would be necessary. Mr. Courtney suggested that other members may want to postpone the request to give them the opportunity to go out and look at the property.

Mr. Kovacs felt that with the new members it may be better to take a vote tonight.

Mr. Clark said that the building to the south appears to be very close to the property line compared to what the petitioner is asking for. Mr. Clark also asked what the setbacks were for the home to the south.

Mr. Kovacs stated that that was a side yard setback and asked Mr. Stimac to explain the setbacks.

Mr. Stimac stated that the north property line of the house to the south of 2024 Lakeside is considered to be a side yard setback. In the R-1D Zoning District, the minimum side yard setback is 8'. The petitioner's rear yard is the south side of his property and in the

ITEM #3 – con't.

R-1D Zoning; it is required to be 40'. Mr. Stimac also said that he believes the house to the south would have a setback to the rear property line of 40' to the west. The orientation of the house to the south is as follows: the front yard is to the east, the side yard is to the north and the rear yard is to the west. Regarding the petitioner's property, it is considered to be a double front corner lot as the rear yard is the south yard, which is required to be 40', the side yard is the west side of the house and is allowed to be 8' and the front yard would be the north side of the house.

Mr. Clark asked if the fact that this home is a double front corner lot negatively affects this property.

Mr. Stimac explained that the property to the west of the petitioner's home, the north property line fronts Lakeside Drive and is considered the front yard setback, the rear property line which is required to be 40' is on the south side of the home. That property also fronts on John R. and is also considered to be a double front through lot. In the R-1D Zoning Classification the minimum lot width is 75' and a corner lot is required to be 90' wide. The developer in this case met the 90' width at the north setback line, and it tapers back to the south property line to 72' wide. Overall lot width at the rear is 72', where 75' is required; however they do meet the 90' width at the front of the lot. You don't get the additional 15' full width you would if this lot was a rectangle shape.

Mr. Bartnik stated that the petitioner came forward and gave additional facts, but he was prepared to vote favorably on this request last month. Mr. Bartnik stated that there is an existing structure there that is raised off the grade. Mr. Bartnik also stated that the homes in this area are very close together and the subdivision is landlocked because of the lake and John R. The developer took advantage of the 10% rule in putting these homes in and this is a unique property and Mr. Bartnik does not feel it would be a fair solution to prohibit him from building this sunroom.

Mr. Kovacs stated that he is not in favor of this request and does not think anyone on the Board had a problem with the 25' setback on Southpointe and everyone understands that because it is a double front corner lot certain leeway should be allowed. The rear yard setback request going from 40' to 28' is a very large request and is too excessive. This home sits on the back property line and this is a very big variance request.

Mr. Courtney stated that originally he had voted not to deny, but when he took a closer look at this property he saw that adding this on, will put these homes too close and he is not in favor of this request.

Mr. Kovacs asked for a vote on the motion to deny the request made by Mr. Courtney at the meeting of February 19, 2008.

ITEM #3 – con't.

MOVED, to deny the request of Tony V's Sunrooms, 2024 Lakeside, for relief of the Ordinance to construct a patio enclosure that will result in a 28.18' rear yard setback and a 24' front setback to the east property line along Southpointe Drive. Section 30.10.05 requires a 40' minimum rear yard setback and a 25' minimum front yard setback in R-1D Zoning Districts.

- Variance request is excessive.
- 28' rear yard setback will bring these two homes too close to each other.

Yeas: 3 – Clark, Courtney, Kovacs
Nays: 3 – Lambert, Wright Bartnik

MOTION TO DENY REQUEST FAILS

Motion by Courtney
Supported by Clark

MOVED, to postpone the request of Tony V's Sunrooms, 2024 Lakeside, for relief of the Ordinance to construct a patio enclosure that will result in a 28.18' rear yard setback and a 24' front setback to the east property line along Southpointe Drive. Section 30.10.05 requires a 40' minimum rear yard setback and a 25' minimum front yard setback in R-1D Zoning Districts until the meeting of April 15, 2008.

- To allow the petitioner the opportunity of a full Board.

Mr. Clark apologized to the petitioner and said that he is not familiar with this request and he plans to go out and take a good look at this property so that he is more comfortable with what the petitioner is proposing. Mr. Clark said that he is concerned that the setback to the south could be quite over-whelming.

Mr. Ali said that he had received approval from the Architectural Committee and the neighbors. Mr. Ali said that Mr. Clark would be welcome anytime to come and look at his property. This will also enable Mr. Clark to see how high the existing deck is.

Yeas: 6 – Lambert, Wright, Bartnik, Clark, Courtney, Kovacs

MOTION TO POSTPONE THIS REQUEST UNTIL APRIL 15, 2008 CARRIED

Mr. Lambert asked how Ms. Gies had voted.

Mr. Kovacs informed him that Ms. Gies had voted to deny this request, which is why he felt that they could go ahead with the vote.

ITEM #3 – con't.

Mr. Lambert suggested that the petitioner could go in and speak with City Staff regarding alternate plans.

Mr. Courtney said that the petitioner could come back with a lesser variance request.

ITEM #4 – APPROVAL REQUEST. ROBERT & GENOVENA RASCOL, 635 HARTLAND, for approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property.

Mr. Stimac explained that the petitioners are seeking approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property. The Ford F450 stake truck described in the application does not meet the exceptions found in Section 40.66.00 of Chapter 39 of the Troy City Ordinance.

Mr. Bartnik asked if the three (3) lots to the north of this site had homes on them.

Mr. Stimac stated that he knows that there was at least one existing home and does know for sure if there are others.

Mr. Kovacs stated that he had looked at the area on line and there are three homes on the property.

Mr. Courtney said that he felt those homes would be too far away to see this truck.

Mr. Rascol was present and stated that the truck is slightly larger than a F150 or F250. It is approximately 3' longer, 2' wider and 2' taller than a normal pickup truck. They have lived in Troy since 1996 and previously had lived at 680 Hartland. They had been before Council and received a variance either in 1996 or 1997 and they have not had to appear before a Board since then. In May 2006 they moved across the street to a home that has a larger lot, and the present vehicle is 1' shorter than the original truck. Mr. Rascol has a small tree service and only one truck is required. Due to the economy, it is much easier for them to keep the truck on their property rather than spend the extra money to store it in another location. The truck is not visible and Mr. Rascol would like to be able to keep the truck parked on his property. This is a very large property and if the Board wished, they would be willing to move the truck to another location on their lot.

Mr. Kovacs informed the Board that there are three (3) written approvals on file and two (2) written objections on file.

Mr. Lambert stated that he was probably on City Council the last time this request came before a Board and asked Mr. Rascol if Council had placed any stipulations on this request such as additional screening with landscaping or fencing.

ITEM #4 – con't.

Mr. Rascol said that the last time they had received approval they were not required to add any fencing or landscaping to park the truck on their property. This was at 680 Hartland and it was parked in front of the garage. Mr. Rascol said that he would like to be able to keep his truck on his property.

Mr. Courtney stated that the Ordinance had changed and it may cost the petitioner some money to park the truck elsewhere. Mr. Courtney said that he would be in favor of short term approval to allow the petitioner the opportunity to explore other possibilities for the storage of this truck. Mr. Courtney also stated that it may be possible for Mr. Rascol to build a garage that would hold this vehicle.

Mr. Rascol said that the truck is approximately 10' tall and is not sure that he would be able to fit it inside his attached garage.

Mr. Kovacs asked how high the opening of a garage door could be.

Mr. Stimac said that presently an attached garage could have a door opening with a 10' height.

Mr. Kovacs said that in his opinion the restrictions of the Ordinance do not allow a petitioner to build a garage with a large enough door opening to hold a commercial vehicle.

Mr. Stimac said that there is no limit on the size of the door opening for a detached garage, although the maximum height of a detached garage is limited to 14' to the average roof line.

Mr. Rascol said that he can lower the box of the truck and asked how close he could come to the side property line with the attached garage.

Mr. Stimac said that as long as there is 10' from the side property line on the east side of the house, then the west building line could be within 5' of the property line.

Mr. Rascol said that he would prefer to keep the truck outside.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

Mr. Kovacs asked Mr. Rascol about the standards listed on the application and said that the Board had to agree that the petitioner met Item C and either A or B. Mr. Kovacs asked the petitioner how he felt that he met the other criteria.

Mr. Rascol said that in his opinion, he had met all of the criteria listed in order for the Board to grant approval.

ITEM #4 – con't.

Motion by Courtney
Supported by Lambert

MOVED, to grant Robert & Genovena Rascol, 635 Hartland, approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property for a period of one-year.

- One-year time frame will give the petitioner the opportunity to look into other options for the storage of this vehicle.
- Petitioner met the requirements of A and C.

Mr. Bartnik stated that he did not believe the petitioner met the criteria for either A or B and was concerned about granting this approval for one-year without evidence of either A or B. Mr. Bartnik informed the applicant that it was up to him to provide evidence that he looked for another area to store this vehicle.

Mr. Rascol stated that he would really like to keep this commercial vehicle at his home as he has done for the past ten (10) years.

Mr. Bartnik stated that this was a residential neighborhood and would like to see the motion amended and reduce the amount of time allowed to six months rather than one-year.

Mr. Courtney said that he would be willing to amend the motion for a period of six months, and if during that time period the petitioner had shown that he was trying to enlarge the existing garage, he would be willing to extend that another month or two.

Mr. Kovacs said that the Board is looking for the information it needs that Mr. Rascol has made a solid, reasonable effort to find somewhere else to store this vehicle.

Mr. Kovacs asked for a vote on the motion with the amendment of time allowed from one year to six months.

MOVED, to grant Robert & Genovena Rascol, 635 Hartland, approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property for a period of six (6) months.

- Six-month time frame will allow the petitioner to explore the possibility of enlarging his attached garage.
- Six-month time frame will allow the petitioner to look into other sites where this vehicle could be stored.

Yeas: 4 – Clark, Courtney, Kovacs, Lambert
Nays: 2 – Wright, Bartnik

ITEM #4 – con't.

MOTION TO GRANT APPROVAL FOR SIX MONTHS CARRIED

ITEM #5 – VARIANCE REQUEST. VASILE CARSTEA, 5353 LIVERNOIS, for relief of the Ordinance to reduce the width of the driveways by installing gates. The site plan submitted indicates that the gates will reduce the width of both driveways, (Stalwart and Livernois), to 18'. Section 40.25.00 requires a minimum width of 22' for a two-way driveway.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to reduce the width of the existing driveways by installing gates at 5353 Livernois. The site plan submitted indicates installing entrance gates at the north (Stalwart) and east (Livernois) driveways to the parking lot. As shown on the plans, these gates will reduce the width of both driveways to 18'. Section 40.25.00 requires a minimum width of 22' for a two-way driveway.

Mr. Lambert asked if the gate width is set up for public safety purposes such as the ingress and egress of Fire Trucks.

Mr. Stimac stated that he did speak with the Fire Department on this issue and presumably if the Fire Department were arriving to the site, they would not be dealing with on-coming traffic to get to the site. A fire truck can get through an area that is 18' wide. The actual requirement is basically to deal with day to day passenger vehicles trying to go through this opening in both directions simultaneously. Standard parking spaces in the City of Troy are 9 ½' wide and you will be doing two-way traffic with 1' less for two cars if this variance is granted. The gates have already been fabricated.

Mr. Courtney asked for a clarification on the size of parking spaces.

Mr. Stimac said that the width of two parking spaces is required to be 19' and two-way traffic is 22'. A drive aisle is 11' wide.

Mr. Bartnik asked what the width of the pavement on Stalwart as it appeared to him that the north driveway was no narrower than the pavement on Stalwart.

Mr. Stimac stated that the typical width of asphalt street pavement is 22' from edge to edge. Right now the drive at the church is 24 1/2' wide. In a parking lot arrangement where you are actually maneuvering in and out of a parking space the two-way driveway width is actually 24'. Where there are just two cars passing each other in a driveway, the minimum width is 22'. The extra space is required when you are backing out and making a 90° turn.

Mr. Bartnik asked what the zoning of this property was.

ITEM #5 – con't.

Mr. Stimac explained that the zoning is R-1B (Single Family Residential). Churches are a permitted use in R-1B Zoning subject to Special Use Approval.

Mr. Bartnik asked if the Church could be sold and a commercial building put on this property.

Mr. Stimac stated that it could not. A commercial building could not be located in this area without the re-zoning of the property.

Mr. Courtney asked if commercial operations, such as day care, or a nursing school could be conducted from this location.

Mr. Stimac said that there are allowable usages in conjunction with the Church such as regular elementary education as well as day care.

Mr. Courtney said that you would have people coming in to drop off children at the same time people are leaving.

Mr. Carstea said that their basement does not meet the requirements to have any living space so they only use the Social Hall on Sundays.

Mr. Courtney asked if it was possible to put a condition on a variance so that it would not permit using the site for a Sunday or nursery school.

Mr. Motzny said that the variance request could have conditions imposed as long as the conditions are related to the use of the land. A nursery school or day care use could possibly be viewed as a use of the land.

Mr. Courtney said that he was concerned because if there was a school, there could be traffic coming in and out at the same time.

Mr. Vasile Carstea was present and said that the purpose of the gates were to keep out trespassers and to prevent cars from cutting through the property to get to Crooks or through the subdivision from 3:00 P.M. to 6:00 P.M. There have been cars doing "donuts" in the parking lot and in the last year there have been two accidents. Services are held once a week from 10:00 AM to 12:00 PM. Twice a year, Christmas and Easter, services are held once during the day and once in the evening.

Mr. Kovacs asked if they were separated by a significant amount of time.

Mr. Carstea said that it was approximately 6 to 8 hours in between services. Mr. Carstea also said that they have only one mass on Sunday.

Mr. Kovacs opened the Public Hearing.

ITEM #5 – con't.

Mr. John Inch, 5247 Livernois, was present and stated that he lives approximately four houses away from the Church. Mr. Inch's driveway is 18' wide and he thinks there may be a problem with traffic overstepping the driveway going into Church. Mr. Inch also stated that he has concerns because cars will back up on Livernois. This area starts to narrow down and he thinks it could pose a problem.

Mr. Kovacs asked Mr. Inch how the traffic would affect his driveway.

Mr. Inch stated that the road narrows down and he is concerned about someone rear-ending the car in front of it. He believes that the gates will make the opening narrower.

Mr. Kovacs said that he thought there was enough room for 2 or 3 cars in the driveway before getting to the gates. Mr. Kovacs said that he also understood that Mr. Inch was concerned about the safety of traffic in this area.

Mr. Courtney asked if this wasn't an existing problem.

Mr. Inch said that it was but he did believe that the gates would make the drive tighter for the cars to get in and out of. Mr. Inch stated that he has lived in this area for twenty-six years and has firsthand knowledge of the traffic in the area.

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

There are two (2) written objections on file. There are no written approvals on file.

Mr. Clark asked for an explanation of where the gates were going to be.

Mr. Carstea pointed out the location of the gates on a drawing he brought in.

Mr. Clark stated that he well aware that Churches are targets for thievery. Mr. Clark also stated that the petitioner spent a large amount of money on the gates.

Mr. Carstea stated that they are trying to keep the area looking as authentic as possible. Mr. Carstea also said that the Church is empty except for Saturday nights and Sundays during services.

Mr. Kovacs stated that the objections on file concern the parking of cars on Stalwart and do not have anything to do with the gates themselves. Mr. Kovacs also said that he feels this is a small request and believes it will be beneficial to the petitioner and does not believe it will be a safety concern.

Motion by Courtney
Supported by Bartnik

ITEM #5 – con't.

MOVED, to grant Vasile Carstea, 5353 Livernois, relief of the Ordinance to reduce the width of the driveways by installing gates. The site plan submitted indicates that the gates will reduce the width of both driveways, (Stalwart and Livernois), to 18'. Section 40.25.00 requires a minimum width of 22' for a two-way driveway.

- The petitioner cannot operate any type of school or day care center at this location.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance will aid the petitioner in providing security at this location.

Mr. Clark asked if this motion was appropriate.

Mr. Motzny stated that this Board has the authority to place conditions on a variance as long as it applies to the use of the land and this would be a use of this land.

Mr. Kovacs said that in his opinion a pre-school on this property should not require that stipulation and asked if this motion was denied what the next step would be.

Mr. Courtney stated that the reason he put the condition in the motion was so that you would not worry about whether or not two-way traffic can fit through a narrower driveway.

Mr. Kovacs stated that in the future if the petitioner wanted to add pre-school he would have to come before the Board for a variance.

Mr. Bartnik confirmed that any school would be involved with this Church and not a commercial entity. There is another Church north of this location and they do have child care with a narrow drive and he does not see that this would be problem.

Motion by Clark
Supported by Bartnik

MOVED, to amend the motion made by Mr. Courtney to remove the condition placed on the motion.

Vote on amendment.

Yeas: 4 – Bartnik, Clark, Kovacs, Lambert
Nays: 2 – Courtney, Wright

MOTION TO APPROVE AMENDMENT CARRIED

Therefore the motion on the floor is:

ITEM #5 – con't.

MOVED, to grant Vasile Carstea, 5353 Livernois, relief of the Ordinance to reduce the width of the driveways by installing gates. The site plan submitted indicates that the gates will reduce the width of both driveways, (Stalwart and Livernois), to 18'. Section 40.25.00 requires a minimum width of 22' for a two-way driveway.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance will aid the petitioner in providing security at this location.

Vote on amended motion.

Yeas: 6 – Bartnik, Clark, Courtney, Kovacs, Lambert, Wright

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUEST. JASON WENZEL, 213 FABIUS, for relief of the Ordinance to construct an addition to an existing, legal non-conforming structure. The existing home has a 29' front yard setback. Section 30.10.02 requires a 40' front yard setback in the R-1B Zoning District. The site plan submitted indicates a proposed 32'-8" front setback to the new covered porch and a 36'-8" front setback to the two-story addition. Section 40.50.04 prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition to an existing single-family residence. Records show that this home was originally constructed in 1940. The existing home has a 29' front yard setback. Section 30.10.02 of the Zoning Ordinance requires a 40' minimum front yard setback in the R-1B Zoning District. The existing house is considered to be a legal non-conforming structure.

Mr. Kovacs asked if the side yard setback was in compliance.

Mr. Stimac stated that the side yard setback is 10'.

Jason Wenzel was present and stated that basically there is an existing covered porch and he plans to extend the covered porch over to the addition. Everything will stay the same and he does not believe you will notice a difference. The major difference would be that instead of a one-car garage door, there will be a two-car garage door. Mr. Wenzel took the Public Hearing notice to his neighbors and received eight (8) signatures indicating approval of this request.

Mr. Kovacs stated that two (2) of the people that had signed Mr. Wenzel's petition had already sent in written approvals.

ITEM #6 – con't.
Mr. Stimac asked the petitioner if the eastern portion of the existing house was a garage. He then asked if he planned to extend the porch along the front of the garage.

Mr. Wenzel stated that he plans to extend the roof along the front of the garage.

Mr. Stimac said that the petitioner is planning to extend the existing roof line over the garage to the east property line.

Mr. Wenzel said that right now the roof line is over the existing garage and he plans to continue that roof line. Mr. Wenzel also stated that this Board had granted a variance to another home in the area and his request is much smaller than what that particular homeowner had received.

Mr. Kovacs pointed out that each request is taken on its own merit and does not have anything to do with other properties.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There is one written objection on file.

Mr. Kovacs said that the home was built in 1940 and Mr. Wenzel was not moving any closer to the front property line and it does not make sense to put an addition 11' or 12' behind the front of the house.

Motion by Bartnik
Supported by Lambert

MOVED, to approve the request of Jason Wenzel, 213 Fabius, for relief of the ordinance to construct an addition to an existing, legal non-conforming structure. The existing home has a 29' front yard setback. Section 30.10.02 requires a 40' front yard setback in the R-1B Zoning District. The site plan submitted indicates a proposed 32'-8" front setback to the new covered porch and a 36'-8" setback to the two-story addition. Section 40.50.04 prohibits expansions of non-conforming structures in a way that increases the non-conformity.

- Variance is not contrary to public interest.
- Variance will not encroach any farther to the front property line.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Variance applies only to the property described in this application.

Yeas: 6 - Kovacs, Lambert, Wright, Bartnik, Clark, Courtney

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – con't.

Mr. Kovacs informed the petitioner that the objections received by the Building Department concerned storing construction equipment and vehicles on the property.

Mr. Kovacs informed the Board that Mr. Lambert feels he has a conflict of interest with Item #7.

Mr. Lambert stated that Mr. Root is his brother-in-law and he feels that it could create a conflict of interest for him to vote on this item. Mr. Lambert said it would be up to the Board to decide if he should participate or not.
Mr. Kovacs said that in his opinion it was a conflict of interest and brought it to the Board for discussion.

Motion by Wright
Supported by Bartnik

Mr. Clark said that he does not have a direct financial interest in the matter and wondered if he should be excused.

Mr. Motzny said that the By-Laws of the Board of Zoning Appeals make it very clear that a member of the BZA should never vote on a matter with a conflict of interest. Having a relative as a petitioner would be a conflict of interest and could give the appearance of malfeasance. Anytime there is a personal interest, such as knowing someone or having a financial interest, the person should be excused from voting on the item. The Board will have to decide and the route to avoid impropriety is to excuse that member.

Mr. Clark asked if that would include discussion on the matter.

Mr. Motzny stated that it would be appropriate not to discuss the matter at all and if the Board approves to excuse Mr. Lambert, to have him step down from the podium.

Mr. Courtney asked Mr. Lambert if he felt he would have a conflict.

Mr. Lambert said that with City Council the rule they followed was that if there was a financial interest the person would be excused. Mr. Lambert did say that he thought there would be a conflict and did not think it would be appropriate for him to vote on this request.

Mr. Bartnik asked if it was necessary to vote on the motion to excuse Mr. Lambert.

Mr. Motzny stated that there should be some kind of vote by the Board.

Mr. Kovacs suggested that the Board vote.

Motion by Wright

Supported by Bartnik

MOVED, to excuse Mr. Lambert from the discussion and vote on Item #7 as one of the petitioners is his brother-in-law.

Yeas: 5 – Courtney, Kovacs, Wright, Bartnik, Clark

MOTION TO EXCUSE MR. LAMBERT CARRIED

Mr. Lambert left the podium.

ITEM #7 – VARIANCE REQUEST. DONALD ROOT, 621 W. LONG LAKE, for relief of the Ordinance to construct a new mausoleum and garden area at the White Chapel Cemetery. Section 10.60.03 of the Zoning Ordinance requires a 50' setback from major thoroughfares for main buildings in the R-1B Zoning District. The site plan submitted indicates wall and benches that are part of the garden area that include niches for the internment of cremated remains. As such, these structures meet the definition of buildings per Section 04.20.21. The plans submitted, although not dimensioned, appear to show these structures within 3' of the east property line along I-75.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new mausoleum and garden area at the White Chapel Cemetery. This property is located in the R-1B Zoning Classification. Section 10.60.03 of the Zoning Ordinance requires a 50' setback from major thoroughfares for main buildings in the R-1B District. The site plan submitted indicates walls and benches that are part of the garden area include niches for the internment of cremated remains. As such, these structures meet the definition of buildings per Section 04.20.21. Since the principal use of this facility is the internment of human remains, these structures would be considered main buildings per the definition contained in Section 04.20.27. As such, they are not permitted to be located within 50' of the property line along I-75. The plans submitted, although not dimensioned, appear to show these structures within 3' of the east property line along I-75.

Mr. Kovacs asked if this was a burial plot if it would still have to be at the 50' setback line.

Mr. Stimac explained that as long as it was not considered to be a "building" it would not have to be at the 50' setback.

Mr. Kovacs asked if there were burial plots that were closer to the setback line.

Mr. Stimac stated that as far as he knew there were no other "buildings" located within the 50' setback but was not able to say for sure that there were burial plots in this area.

Dennis Cowan of Plunkett & Cooney, David Krall of White Chapel Cemetery and Don Root of Integrated Design Solutions were present. Mr. Cowan explained that Mr. Root

ITEM #7 – con't.

has been the architect for White Chapel Cemetery for the last twenty-five (25) years. Mr. Cowan said that he felt it would be better from Mr. Krall to come forward and explain what White Chapel is doing.

Mr. Krall explained that they are planning a cremation garden that will be a unique aspect that is not seen anywhere else in Metro Detroit. Right now the rate of cremation is at 35% and they expect this number to increase. They want to be able to offer a full service to their cremation families. They are planning to construct an elaborate garden setting, the "Garden of Living Waters", with heated walkways, landscaping, a waterfall and niche walls and benches. Niche walls and benches are very popular with cremation families. This will be a totally unique meditative garden that will add to the City of Troy.

Mr. Krall went on to say that further south on this property there are internments closer than the 50' setback.

Mr. Cowan said that he thought these burial plots were probably done before the I-75 expressway came through.

Mr. Root stated that they are trying to create something beautiful for families to be able to come to and would be happy to answer any questions that the Board may have. They would like this garden to become an inspiration to other cemeteries in the area.

Mr. Courtney asked if there was any other location on the site that this garden could go.

Mr. Krall stated that one of the reasons they want the garden in this area is to compliment the existing mausoleum. They will have an outdoor garden and during inclement weather they could go inside the mausoleum. White Chapel Cemetery is a very open area and this particular spot gives them the opportunity to create a more intimate scenario.

Mr. Courtney asked if there was an existing mausoleum and Mr. Krall stated not at this time. Mr. Courtney asked if there was any other area that this garden could go.

Mr. Krall stated that in their estimation this was the best location for these gardens.

Mr. Bartnik stated that he did not see a practical difficulty with the property that would justify a variance. There is a mausoleum structure in the middle of the south half of the cemetery and it appears there are no graves in this area. Mr. Bartnik stated that in Mr. Cowan's letter of March 12th it is stated: "The "intimate enclosed feel" of the Garden at this site cannot be achieved in other locations due to the openness of the White Chapel cemetery grounds." and asked Mr. Cowan if he had any factual support of that conclusion.

ITEM #7 – con't.

Mr. Cowan said that the point of setting up the mausoleum with the cremation garden together is to give this area an enclosed feeling and there is no where else in the cemetery to create this enclosed feeling. This can't be accomplished anywhere else on the property as most of the property is a big open space.

Mr. Bartnik asked if the existing mausoleum in the northeast corner is needed with the new mausoleum and the garden to create this enclosure. Mr. Bartnik asked what the pieces were for this proposal.

Mr. Cowan stated that the two pieces that are required are the new mausoleum and the creation of the garden setting. The garden will be in the setback area and does not require approval. The niche walls and benches are what require the variance in order to be placed within the 50' setback. Mr. Cowan went on to say that a variance will be required from the Building Code Board of Appeals to allow them to put up the perimeter walls around the garden.

Mr. Bartnik asked how tall the walls are proposed to be.

Mr. Root stated that there are two different types of walls. The bench walls are approximately 2'-4" or 2'-6" tall and the curved perimeter walls are proposed to be 7'-1" tall. They will have granite fronts on them and six tiers for burial.

Mr. Clark asked if they had plans to put a roof in this area, since these niche walls are classified as structures.

Mr. Root stated that there is a small chapel inside the mausoleum and people that have loved ones buried outside will be able to go inside and meditate. The reason they call this area the "Garden of Living Waters" is because there will also be a waterfall inside the mausoleum. The waterfall in the garden looks like a pile of rocks and there is a fountain on the inside of the mausoleum near the entrance and there is another fountain in the north location of the building.

Mr. Clark said that the area to the north and east is what is going into the setback area.

Mr. Root said that there will be trees and shrubs, the area in the center is thought of as the pond. This will give the people that are buying that space the places they want their loved ones to be.

Mr. Bartnik said that this is a magnificent facility and they do take in the grief process, but he does not see a practical difficulty with this area. Mr. Bartnik asked what was in the area in the southeast that would prevent the gardens from going into this area.

Mr. Root stated that to the south right now is a road with underground electrical easements.

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Mr. Courtney asked why this garden area could not be put in on the southernmost part of this site.

Mr. Root said that the south end is already covered with burial plots.

Mr. Courtney then asked about the ownership of the property south of the boundary of the cemetery.

Mr. Cowan said that currently the cemetery owns approximately 25 acres to the south, but it has not been approved for cemetery use. One of the reasons for having the mausoleum at the front of the cemetery is so that people will not have to drive through the entire cemetery to get where they want to be. White Chapel does not have above ground grave markers and so it appears that the land to the south is vacant; however, there are already a number of burial plots in this area.

Mr. Courtney asked if they could have an entrance coming in from Wattles since they owned that property and said that many cemeteries have more than one entrance.

Mr. Root stated at this point they cannot connect the two properties as there are already existing burials.

Mr. Courtney asked if because there are burials there, if that property could be combined.

Mr. Cowan said that at this point he did not know how the property would be connected and is not sure if the cemetery knows what they will do at this point.

Mr. Bartnik asked for a clarification on which pieces of property are owned by the cemetery to the south.

Mr. Stimac pointed out the acreage that is owned by White Chapel on the south side of the existing cemetery.

Mr. Krall said that at this point this acreage is not designated as cemetery property at this time.

Mr. Courtney asked if there was a timetable for this property to be designated as cemetery.

Mr. Krall said that he would not be able to give any time table at this time.

Mr. Stimac said that the property is in the R-1B Zoning Class. Cemeteries in existence in 1956 are a permitted use in the R-1B Zoning Class. This property would have to be

ITEM #7 – con't.

re-zoned to establish a new cemetery and that is done through the Planning Commission.

Mr. Kovacs stated that he thinks that the Zoning Ordinance is too strict in the interpretation that these niche walls are structures.

Mr. Courtney stated that he thinks this garden area could be located to another spot.

Mr. Kovacs said he thinks it would be difficult as they do not know how the property is going to be used.

Mr. Courtney said that he thinks the other part of the property is a better place than the area the petitioner has proposed.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

Mr. Kovacs stated that he thinks this is a very strict interpretation of the Zoning Ordinance.

Mr. Stimac explained that the wall is considered a structure because it holds burial remains.

Mr. Kovacs stated that he understands that, but the niche walls are only 3' wide.

Motion by Clark
Supported by Bartnik

MOVED, to grant Donald Root, 621 W. Long Lake, relief of the Ordinance to construct a new mausoleum and garden area at the White Chapel Cemetery. To have main buildings consisting of niche walls and benches within 3' of the east property line along I-75 where Section 10.60.03 of the Zoning Ordinance requires a 50' setback from major thoroughfares for main buildings in the R-1B Zoning District.

- Variance is not contrary to public interest.
- Variance will not establish a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property described in this application.

Yeas: 5 – Kovacs, Wright, Bartnik, Clark
Nays: 1 – Courtney

ITEM #7 – con't.

MOTION TO GRANT VARIANCE CARRIED

Mr. Clark stated that he understood that a storage facility is a building, but did not think the memorial walls should be considered a building. Mr. Clark also stated that he looks at how a variance would impact the neighbor and in this case I-75 is the neighbor and he believes this will be an improvement to the property.

Mr. Courtney stated that he objected to this request as he believes it is short sighted to put it in this location and believes that the property to the south is a better location.

Mr. Courtney asked if Mr. Stimac knew when the hotel on Maple Road would be going in and Mr. Stimac replied that the demolition of the Jumbo Buffet was started today and the hotel should begin construction shortly.

Mr. Kovacs welcomed Mr. Lambert to this Board and hoped he would enjoy his time with the Board of Zoning Appeals.

Mr. Bartnik asked if it wouldn't be more practical to have the owners of the properties listed in the Agenda as the applicant.

Mr. Stimac explained that a Church could not be the applicant. A person can appear on behalf of a Church, or the applicant can be anyone who is affected by the decision of the Building Official. A person can represent any entity.

Mr. Motzny stated that the Board of Zoning Appeals by-laws refer to the request of "...applicant", who signed the application.

The Board of Zoning Appeals meeting adjourned at 9:38 P.M.

Matthew Kovacs, Vice-Chairman

Pamela Pasternak, Recording Secretary