The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, February 19, 2008 in Council Chambers of the Troy City Hall.

PRESENT: Michael W. Bartnik
Kenneth Courtney
Marcia Gies
Matthew Kovacs
Mark Maxwell
Wayne Wright

ALSO PRESENT: Mark Stimac, Director of Building & Zoning
Allan Motzny, Assistant City Attorney
Pamela Pasternak, Recording Secretary

ABSENT: Glenn Clark

Mr. Maxwell stated that he had received a phone call from Mr. Clark indicating that he would be late for tonight's meeting.

ITEM #1 – APPROVAL OF MINUTES – MEETING OF JANUARY 15, 2008

Motion by Courtney
Supported by Gies

Mr. Bartnik stated that on page 6 of the minutes, 6th line up, he wanted the words "recreational vehicles" added to the sentence regarding the parking of vehicles next to the lot line.

MOVED, to approve the minutes of the meeting of January 15, 2008 as amended.

Yeas: 6- Bartnik, Courtney, Gies, Kovacs, Maxwell, Wright
Absent: 1 – Clark

MOTION TO APPROVE MINUTES AS AMENDED CARRIED

ITEM #2 – 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.

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

ITEM #2 – con't.

houses this is considered to be 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.

This item first appeared before this Board at the meeting of January 15, 2008 and was postponed to allow the petitioner the opportunity of a full Board.

Mr. Maxwell asked if the petitioner wished to his request moved to the end of the agenda to wait for Mr. Clark's arrival.

Mr. Terry Blocitto stated that would be fine with him.

Item #2 – moved to Item #6 to give Mr. Clark the opportunity to be present.

ITEM #3 – VARIANCE REQUESTED. NINO SALVAGGIO INVESTMENT CO. OF TROY, 6835 ROCHESTER ROAD, for relief of the Ordinance to maintain a 6' high landscaped berm in lieu of the 6' high masonry screening wall required along the south and west sides of the property.

Mr. Stimac explained that the petitioner is requesting relief granted by this Board to provide a landscaped berm in place of the 6' high masonry-screening wall required along the south and west property line where this site abuts residentially zoned property. This relief has been granted on a yearly basis since 1995. This item last appeared before this Board at the meeting of February 2005 and was granted a three-year renewal. The site to the west is the site of a new condominium development and the site to the south, although residentially zoned, is the site of a commercial kennel. The Board, in 2005, resolved to consider making this a permanent variance at this time as construction on the property to the west would be complete. Public hearing notices have been sent to the appropriate property owners and residents regarding this item.

Mr. Bartnik asked for a clarification in the process of making this a permanent variance.

Mr. Stimac explained that this item has appeared before this Board for a number of years, each time extending the variance renewal. At the meeting in 2005 it was determined that since the area around this property was now developed, public hearing notices would be sent to all property owners within 300' of this property to notify them that the Board would consider having the landscaped berm remain permanently in lieu of the 6' high masonry wall. These notices have been sent out, as well as a notice

ITEM #3 – con't.

published in the appropriate newspaper, to determine if there are any objections to this request.

Mr. Kirk Taylor, President of Nino Salvaggio Investment Co. of Troy was present. Mr. Taylor stated that they have made a determined effort to make sure that the landscaping on the berm was in keeping with what the Board wanted them to do, and in fact, have added many more shrubs to fill in any empty spots. Mr. Taylor also stated that they have not received any complaints from the neighbors regarding this berm.

The Chairman opened the Public Hearing.

Ms. Wenhong Wang, 795 Red Run Drive, was present and stated that she had spoken to several neighbors and they did not quite understand the Public Hearing notice. Ms. Wang said that they did not feel there was enough information regarding what type of wall would be put in. Ms. Wang stated that they are quite happy with the landscaping.

Mr. Maxwell explained that the petitioner is asking to leave the landscaped berm and not put in a wall. The petitioner would maintain the landscaping as it is now.

Mr. Stimac explained that the Ordinance would normally require that a wall be built along the property line that abuts the residential property. In 1995, this petitioner asked that they be allowed to install the landscaped berm rather than put up the masonry screening wall. This was approved on a temporary basis. The petitioner has come back to the Board every three (3) years in order to ask for a renewal of this request. If this request is made a permanent variance, a wall will not be put in and a landscaped berm will remain on the property. The Board is now considering making that a permanent variance so that they will not have to come back before the Board.

Ms. Wang indicated that she was in favor of the landscaped berm. Ms. Wang asked what was required to get a variance.

Mr. Maxwell advised Ms. Wang that if this variance is granted tonight, they will not have to come before the Board again. Mr. Maxwell also stated that if should anything change with the appearance of this berm, she should contact the City to address her concerns.

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

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

Motion by Kovacs
Supported Courtney

ITEM #3 – con't.

MOVED, to grant Nino Salvaggio Investment Co. of Troy, 6835 Rochester Road, a permanent variance for relief of the Ordinance to maintain a 6' high landscaped berm in lieu of the 6' high masonry screening wall required along the south and west sides of the property.

- Variance will not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Absent a variance significant natural features would be negatively affected or destroyed.

Yeas: 6 – Kovacs, Maxwell, Wright, Bartnik, Courtney, Gies
Absent: 1 – Clark

MOTION TO GRANT A PERMANENT VARIANCE CARRIED

ITEM #4 – VARIANCE REQUEST. DENNIS SIAVRAKAS, 330 OLYMPIA, for relief of the Ordinance to split an existing parcel of land which will result in a 78.77' wide, 9,922 square foot lot and to construct a two-family residence. Section 30.10.09 requires an 80' wide, 10,000 square foot minimum lot for the construction of a two-family residence in R-2 Zoning.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split an existing parcel of land to construct a two-family residence. The property is the site of an existing single family home and a vacant lot. The demolition of the home and combining of the property allows for an 80' wide parcel to be split off on the east side for the construction of a two-family residence. The remaining parcel is a 78.77' wide; 9,922 square foot lot. The site plan submitted indicates the construction of a two-family residence on this parcel. Section 30.10.09 requires an 80' wide, 10,000 square foot minimum lot for the construction of a two-family residence in R-2 Zoning. A previous variance granted in 2006 allowed for the construction of a single family home on a 59.27' wide portion of this land where a 60' minimum width is required.

Mr. Courtney asked for a clarification on the original variance request.

Mr. Stimac explained that the original request was to leave the existing house and place another home on the west side of that home, on a lot that had a shortage in width.

Mr. Courtney stated that originally the petitioner planned to construct houses for two (2) families and now wished to construct home for four (4) families.

Mr. Dennis Siavrakas and his partner, Mr. Brian Vargason, were present. Mr. Siavrakas stated that originally they did plan to put in a single-family home. At that time they felt

ITEM #4 – con't.

that they were in an affordable market and since that time the market value has gotten very low and they now feel that there is too much risk to put in a single-family home. They had been marketing a brand new home on that lot and have not had one response since the variance was granted. In this area, the property backs up to commercial property and they are proposing to re-configure the property and put in two-family homes. There are other two-family homes in the area and they do appear to be more desirable than single-family homes. This lot is pie-shaped and is narrower in the front than the rear. Mr. Siavrakas said that they had entertained the thought of asking to split the parcel of land down the middle, but that would require two (2) variances rather than just one.

Mr. Siavrakas said that this is a very small request and he believes that they are asking for less than 1% of the total lot area. Another variance was granted several months ago on another property in this area and they are asking for the same consideration. These homes will meet all building codes and setback requirements. This is the highest, best and full use of this property and does meet the Zoning Requirements. Mr. Siavrakas said that this site is a little more location challenged as it is adjacent to Commercial Zoning on the west and the north.

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

There is one written approval and one written objection on file.

Motion by Kovacs
Supported by Wright

MOVED, to grant Dennis Siavrakas, 330 Olympia, relief of the Ordinance to split an existing parcel of land which will result in a 78.77' wide, 9,922 square foot lot and to construct a two-family residence. Section 30.10.09 requires an 80' wide, 10,000 square foot minimum lot for the construction of a two-family residence in R-2 Zoning.

- Configuration of lot is very challenging due to commercial property to the west and north.
- Variance request is minimal.
- Two-family homes are not out of character to this area.
- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use.
- Literal enforcement of the Ordinance is unnecessarily burdensome.

Yeas: 6 – Kovacs, Maxwell, Wright, Bartnik, Courtney, Gies
Absent: 1 – Clark

MOTION TO GRANT VARIANCE CARRIED

ITEM #5 – VARIANCE REQUEST. ELLEN TENCER, 1641 W. SQUARE LAKE (PROPOSED ADDRESS), for relief of the Ordinance to construct a 120' cellular communication tower located only 130' from the residential property to the north and 290' from the residential property to the south. This site is located in the R-C (Research Center) Zoning District. Paragraph E of Section 27.25.03 of the Troy Zoning Ordinance requires that freestanding communications antenna tower structures in the R-C District be setback a minimum of five times their height from residentially zoned or used property. This would require a 120' tower to be a minimum of 600' from residential property.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new cellular communication tower within the I-75 Right of Way on the south side of Square Lake Road between Crooks Road and Coolidge Highway.

Research into the records regarding this property reveals that the I-75 Right of Way in this area is located in the R-C (Research Center) Zoning District. Prior to the construction of I-75 all of Section 8 was zoned in the R-C Zoning District. When the right of way for the freeway was acquired, the zoning of the land was not changed.

Re-zonings of the land adjacent to the freeway have occurred since the 1950's, but they never included the land on which the freeway sits. Therefore, the requirements of the R-C Zoning District are being applied. Paragraph E of Section 27.25.03 of the Troy Zoning Ordinance requires that freestanding communications antenna tower structures in the R-C District be setback a minimum of five times their height from residentially zoned or used property. This would require a 120' tower to be a minimum of 600' from residential property. The plans submitted indicate that the tower is located only 130' from the residential property to the north and 290' from the residential property to the south. In addition to the mandated notice to those within 300' of the site, we have sent notices to property owners and residents within 600' of the site since that would be the required setback in this instance.

Mr. Bartnik asked if this stretch of I-75 was zoned R-C, what the rest of I-75 would be zoned.

Mr. Stimac stated that it would be the same as the zoning of the property at the time the freeway went through.

Mr. Bartnik asked if a Research Center could be put up in this area, meaning the pavement and right of way.

Mr. Stimac explained that typically structures are not constructed in the right of way.

Mr. Stimac explained that the right of way for I-75 in this area is 300' in width and there are three (3) lanes of traffic in each direction, which are 36' to 40' on each side. The entire land area, between Crooks and Coolidge was originally zoned R-C and it has

ITEM #5 – con't.

never been changed. The acquisition of the property by the Michigan Department of Transportation does not change the Zoning. MDOT does not have the authority to change the Zoning of a property. The only body that can change the Zoning is City Council and they have never changed the Zoning.

Mr. Bartnik said that the petitioner has submitted an exhibit that is contrary to that legal analysis and asked if staff had a response to that exhibit.

Mr. Motzny stated that he has examined all of the correspondence and initially he might have agreed with that premise submitted by the petitioner that there is no zoning. However, based on the research done by Mr. Stimac, the zoning in this area has never changed and Mr. Motzny agrees with Mr. Stimac's interpretation. If this area was not zoned then the petitioner would be facing more of an uphill battle as there are permitted uses in certain zoning districts. In Mr. Motzny's opinion, the petitioner would be facing a text amendment.

Mr. Bartnik stated that he disagrees with this interpretation.

Mr. Kovacs said that the park is zoned R-1B and asked how far away the closest house was.

Mr. Stimac said that that he did not have a specific dimension on Firefighter's Park. Notices were sent out to property owners within 600' of this location and no notices were sent to homeowners in the Crescent Ridge Subdivision.

Mr. Alan Green, Counsel for the applicant, and Ms. Ellen Tencer were present. Mr. Green stated that he disagrees with the zoning of this property. Looking back twenty (20) years the property was zoned Research. Mr. Green said that they believe this is unzoned land. Mr. Green said that they believe this is an ideal site for this antenna. Originally they had gotten approval from City Council to put the antenna at the site of the Fire Station on Coolidge, but this approval was taken away because of the number of people that were opposed to this location. When abutting a road or lot line, you would extend the line to the adjacent property and take that zoning.

Mr. Courtney said that he did not believe this Board should discuss the zoning on the property. If the zoning needs to be changed it would have to go back to the Planning Commission. Mr. Courtney said that the zoning did not change because the I-75 went through this area.

Mr. Maxwell agreed with Mr. Courtney and said he thinks that basically the discussion is mostly opinion and speculation.

ITEM #5 – con't.

Mr. Kovacs said that the reason is the petitioner is holding this position is because the antenna would need the 600 foot distance from residential property and if the R-C zoning did not apply to this property the variance request would be smaller.

Mr. Green stated that was correct and if the location for the tower was in residential zoned property, a lesser variance would be required.

Mr. Kovacs said that he could understand both points of view.

Mr. Courtney stated that he does not believe the zoning of the property should be considered in this decision.

Mr. Bartnik said that he has a problem relying on a map that is 50 years old and did not believe the legislative body intended for this site to remain under Research Center Zoning, and every other location along I-75 remains whatever zoning the highway crosses over.

Mr. Courtney said that in his opinion they assumed that nothing could go in this area and that is one of the reasons the zoning was never changed.

Ms. Tencer stated that they provide towers on MDOT, DNR and State owned property. Right now this tower would be for T-Mobile, but this location would be used by as many as 4 to 5 different carriers. Originally they wished to put this tower at the Fire Station on Coolidge. City Council approved it, but there was a great deal of opposition at the Public Hearing and City Council would not lease the land to them. City Council supported the citizens that were opposed to this location for a tower. Everyone that lived around the Fire Station was opposed to this Tower as they did not want to look at it. They cannot put the towers in residential zoned areas and be far enough away from residential structures. There are a number of light poles along I-75 and these towers will be very similar; the main difference being that they are slightly thicker. They are called monopole towers.

Ms. Tencer went on to say that the State of Michigan is very happy to work with carriers, have a good quality system and help provide people with service. They have received both Federal and State approval for this land. This is Federal land, State managed. Putting the tower right in front of the park is the farthest point from residential property. The Ordinance was revised to make it two times the height and they could put up a tower that was 65' in height. Trees in Michigan grow from 60' to 80' tall and the leaves would block the signal. A tower that is 65' in height would not allow for a number of carriers.

Ms. Tencer also said that because of this economy, a number of people are not using land line phones. In an effort to save money, many people use only cell phones. In one month's time there were 672 emergency phone calls made in this area. If just one or

ITEM #5 – con't.

two calls are dropped it could be disastrous. They want to make sure that they provide the service that people need. These towers provide the service required for 911 calls. Ms. Tencer went on to say that the towers do not fall end over end. When a tower does fail it "crimps" in the middle. It does not fall all the way to the ground. Ms. Tencer went on to show a picture of a tower that was considered a complete failure and it "crimped" in the middle. The coax cable burned from the ground to the top of the tower. The tower "crimps" and there is time to repair the tower.

Ms. Tencer said that this particular location is in the best interest of Troy and she gave the Chairman, an affidavit from their engineer swearing that the tower is needed in this location to provide service for the residents and people on the road. 120,000 people use I-75 on a daily basis and they want to be able to use their cell phones if necessary. Ms. Tencer said that although she works for T-Mobile, she also carries a Verizon phone in case she cannot get service from her carrier.

Ms. Tencer brought in a letter from one of the carriers that make the towers and the letter states that they have never had a tower that has failed and hit the ground. The State of Michigan does not have a problem with a tower going right next to I-75. Ms. Tencer asked their engineer to explain some of the maps that were part of her presentation.

The engineer from T-Mobile, an expert on radio frequencies showed the Board the difference in coverage on several maps. There are a lot of gaps in this area and the quality of the coverage on Coolidge. There should be rock solid coverage and presently there is not. This location is the best location for this tower and it will provide service for the greatest number of cell phone users.

Ms. Tencer said that T-Mobile will be located at the top of the tower. Other carriers will be placed at 10' intervals. Ms. Tencer said that there is a 40% between a 65' tower and 120' tower. Each of the co-locators is 10' lower than the other carrier. Sometimes it is better to go taller with a smaller number of towers, than to go lower with a lot of towers.

Mr. Green said that the Zoning Ordinance includes co-location and the State wants to have a total grid at a site that is the most appropriate. A location such as this will keep these towers out of residential neighborhoods.

The Chairman opened the Public Hearing.

Mr. Yousif Elias, 1697 Fleetwood, was present. Mr. Elias stated that he lives directly south of this proposed location and can see the entrance to Firefighters Park from his living room. Mr. Elias is against this proposed tower as he does not want to look at a 120' tower from his home. This tower will be 200' from his child's bedroom. Mr. Elias believes that this tower will add to pollution and noise, especially if they have to bring in generators to keep these towers powered up when electricity goes out. Mr. Elias said

ITEM #5 – con't.

that he has fifteen years experience in auto engineering and has also been employed with Nextel. Mr. Elias said that they have four different carriers in their home, and they have never had a problem with coverage. Mr. Elias said that he does not believe they need a 120' tower as there are a number of tall buildings along Coolidge and Crooks and these antennas could be placed on top of these buildings. Mr. Elias gave a number of locations that presently have roof top mounted antennas and he believes T-Mobile could do the same thing. Mr. Elias was very surprised that there was not a larger turnout of people that objected to this request. Mr. Elias said that in his opinion as a Radio Frequency Engineer, this tower is not needed. Other cities and jurisdictions do not allow these large towers and have found compromises to provide coverage for cell phone carriers. Mr. Elias believes that there are other solutions that do not require large towers, which include putting these antennas on the top of surrounding buildings. This is more of a cheap, old way of getting into an area. Mr. Elias has been to many meetings for Nextel and has worked with the community and the residents in the cities to come up with alternative solutions to provide more coverage. These towers do not belong in the middle of neighborhoods. There are many technical solutions that will provide coverage.

Mr. Courtney asked where Mr. Elias lived. Mr. Elias stated that he was at 1697 Fleetwood.

Mr. Kovacs stated that he lives approximately a mile away from I-75 and hears noise all day and all night. Mr. Kovacs asked Mr. Elias how the noise from the cell phone tower would compare with the noise from I-75.

Mr. Elias said that the traffic is bad in the morning, but the noise will come from generators that are used in an emergency to power a cell tower. Mr. Kovacs stated that his neighbors could have generators in use in an emergency.

Mr. Kovacs confirmed that Mr. Elias had four cell phones in his home and believes this is part of the proliferation where more cell towers are needed. No one wants cell phone towers near them, but everyone wants the convenience of a cell phone. Living near I-75 is noisy anyway and Mr. Kovacs does not believe that generators used in emergencies for cell towers would add to the problem.

Mr. Elias stated that this tower is going to be too close to his home and believes that these carriers can come up with other solutions that will allow more coverage without the use of cell towers.

Mr. Courtney stated that he believes that between the house and tower there are two trees in the area that would block the view of the tower. Mr. Courtney said that looking out you would see the trees before you would see the tower.

ITEM #5 – con't.

Mr. Elias said that he can see the entrance to Firefighters Park from his living room and he does not want to see this tower.

Mr. Te-Ying Lee, 1641 Fleetwood was present. Mr. Lee stated that he was surprised that more people had not shown up in opposition of this request. This location is much closer to residential property to the south than the original proposed location of the Fire Station. Mr. Lee stated that he is more concerned about the location of this tower and is worried about structure failure, and is concerned about the radio waves of these towers. Mr. Lee said that he does believe more cell towers are needed to provide more coverage to the area; however, he does not want a tower in this location. Mr. Lee asked how many objections were in the file and how many notices were sent out.

Mr. Maxwell stated that there is one (1) written objection in the file.

Mr. Stimac stated that Public Hearing notices were sent out to property owners within 600' of this site, as well as the notice that was published in the Somerset Gazette. A total of fourteen (14) Public Hearing notices were sent out. Mr. Stimac went on to say that Federal Law has jurisdiction over the health effects of cell towers. The Board of Zoning Appeals cannot base its decision on the health effects of towers, as they are under Federal jurisdiction.

Mr. Lee asked that his objection be taken into consideration.

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

There is one (1) written objection in file. There are no written approvals in file.

Ms. Tencer said that the only noise that would come from the tower is a low hum, such as the hum of an air conditioner. Ms. Tencer also stated that there is a new law in front of the Federal Government regarding the use of generators. This is called the "Katrina" Law and applies to battery back up for cell towers. If there is a two-day power outage, battery back up would be used, but if the power was out for three days the generators would be used. Farmington Hills does allow for towers in parking lots that are 120' high.

Ms. Tencer pointed out several locations in Troy indicating that they have mounted antennas on the roofs of buildings wherever possible. The antennas on the roofs do not give the coverage that the cell towers will provide. Oakland County will soon be offering wireless systems, but cell towers will be needed to provide coverage. Companies that are coming in to do this for Oakland County are planning to add their equipment to these cell towers. There are quite a few trees along the south side of I-75 and there are a lot of trees where this tower will be located. Regarding safety, these towers are amazingly safe. Ms. Tencer showed pictures of towers that were still standing after hurricane Katrina. These towers are much safer than the wood poles that are in the area.

ITEM #5 – con't.

Mr. Bartnik asked where the location of the tower to the west was.

Ms. Tencer said that she believed it was at the water treatment facility on Adams, and one is on the office building.

Mr. Bartnik asked what the heights of those two towers were.

The engineer stated that T-Mobile is at a height of 72' on each tower, but did not have the exact height of the towers. Ms. Tencer said that the location on a tower is on a first come, first serve basis and whoever gets there first gets the highest spot.

A discussion began regarding the locations of the towers in Troy. Mr. Stimac asked if the tower was on the northwest side of Adams and I-75. Ms. Tencer said that there are two towers at that location; the tower may be at the water treatment facility and the other is on the office building. Mr. Stimac also said that the location at 1450 W. Long Lake is a roof mount, which is indicated on the plan.

Mr. Bartnik said that there are towers at Square Lake and Adams, one is north of Square Lake and the other is on the east side of Adams, on the south side of the expressway but north of Square Lake. Ms. Tencer said that was correct. Mr. Bartnik then said there is another tower on Long Lake around Northfield Parkway. Mr. Stimac indicated that was not a tower but a building mount. Mr. Bartnik said that there is another tower on the hotel between Crooks Road and the exit ramp. Mr. Stimac said that was correct. Mr. Bartnik said that there is another one on South Boulevard and Crooks and another further east of Livernois. Mr. Stimac said that the towers shown on the maps included in the application, indicates that the tower on west side of Adams Road is actually in Bloomfield Hills. Another tower mount is on 6966 Crooks Road, 850 Tower has a roof mount, there is tower at Sylvan Glen Golf Course, and there is another located in Rochester Hills.

Motion by Bartnik
Supported by Gies

MOVED, to grant Ellen Tencer, 1641 W. Square Lake, relief of the Ordinance to construct a 120' cellular communication tower located only 130' from the residential property to the north and 290' from the residential property to the south. Paragraph E of Section 27.25.03 of the Troy Zoning Ordinance requires that freestanding communications antenna tower structures in the R-C District be setback a minimum of five times their height from residentially zoned or used property. This would require a 120' tower to be a minimum of 600' from residential property.

- Regardless of whether the zoning of the property is R-C or R-1C, the variance should be allowed.
- The property on the north, closest to the site, is a public park.

ITEM #5 – con't.

- Variance is not contrary to public interest.
- Variance will not establish a prohibited use in a zoning district.
- Variance will be beneficial to property owners in the area.
- Variance applies only to the property described in the application.
- Absent a variance, public health and safety will be negatively affected.
- Absent a variance, conformance to the Ordinance is unnecessarily burdensome.
- Park area located to the north and there are no residential buildings located in close proximity of the tower.
- Residential homes are located more than two times the height of the tower.

Yeas: 6 – Maxwell, Wright, Bartnik, Courtney, Gies, Kovacs
Absent: 1 – Clark

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 (ITEM #2) – 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.

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 this 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.

This item first appeared before this Board at the meeting of January 15, 2008 and was postponed to allow the petitioner the opportunity of a full Board.

Mr. Maxwell asked if the Board wished to postpone this request to give the petitioner the opportunity of a full Board.

Motion by Courtney
Supported by Kovacs

ITEM #6 – 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 is excessive.

Mr. Kovacs asked Mr. Courtney what his reason for denial was. Mr. Courtney stated that he went back out and looked at the property and believes this request is excessive. Originally, Mr. Courtney thought there was more space available.

Mr. Maxwell said that he agrees with Mr. Courtney.

Mr. Blocitto said that he went back to the site and went down the side street and took pictures of the back of the property and does not believe this addition will be visible to anyone sitting on their front porch. The only time this sunroom will be visible is when traveling north on Southpointe. This room will not affect anyone's site view. Mr. Blocitto said that the family had planned to be here, however, the homeowner just got out of the hospital with pneumonia.

Mr. Maxwell said that because of the proximity of the home closest to this home, he believes the sunroom would be intrusive.

Mr. Bartnik asked what the procedure was regarding a vote to deny the variance.

Mr. Maxwell said that if this request is denied, the petitioner could come back before the Board if they had a significant change in their plan. At times the Board has looked at a change of 10% in a plan.

Mr. Stimac said that was correct. There is no exact, specific definition of what a substantial difference is. Ultimately the Board can decide that the second request was the same as the first and deny it again. It is up to the best interests of the applicant to provide the Board with a substantial change.

Mr. Blocitto asked what Mr. Maxwell said regarding a 10% change.

Mr. Stimac said that he is not trying to put out numbers, however, past history shows that if a new request is submitted it should be at least 10% different from the original submission. There is nothing in the Ordinance that specifies 10%, but the change should be significant.

ITEM #6 – con't.

Mr. Bartnik said that he went out and looked at the property and believes the variance should be granted. The neighborhood surrounds the lake, and there are large houses on the lots with shorter distances between the houses. Mr. Bartnik believes this is a unique piece of property and the neighbors or association did not have a problem with this request. Mr. Bartnik also said that he does not believe this request is excessive.

Motion by Bartnik
Supported by Wright

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 March 18, 2008.

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

Yeas: 4 – Gies, Maxwell, Wright, Bartnik
Nays: 2 – Kovacs, Courtney
Absent: 1 – Clark

MOTION TO TABLE THIS REQUEST UNTIL THE MEETING OF MARCH 18, 2008 CARRIED

Mr. Stimac said that officially since there was a motion on the floor to deny this request, at the next meeting this motion will have to be acted upon. Mr. Bartnik's motion to postpone, only postponed the vote on the motion to deny.

Mr. Kovacs said that he has no problem with the variance for the front yard setback, but does believe the rear yard setback variance is too large.

Mr. Blocitto asked if the cell tower at 5600 Crooks Road was still in operation. Mr. Stimac said it was and Mr. Blocitto said that he never has a problem with cell phone coverage.

Mr. Bartnik asked if the postponement will allow the petitioner to change his plans.

Mr. Maxwell stated that the petitioner will have the opportunity to speak about his request at the next meeting.

Mr. Stimac informed the Board that Mr. Maxwell had accepted a position on the Planning Commission and this would be his last meeting at the Board of Zoning Appeals. It is quite likely that a new member will be at the next meeting.

Mr. Kovacs thanked Mr. Maxwell for the time he served on this Board and told him that he thought he did an excellent job as Chairman.

Motion by Gies
Supported by Courtney

MOVED, to excuse Mr. Clark from tonight's meeting for personal reasons.

Yeas: 6 – Bartnik, Courtney, Gies, Kovacs, Maxwell, Wright

MOTION TO EXCUSE MR. CLARK CARRIED

Mr. Maxwell said that he appreciated the staff he has worked with and feels that everyone he has worked with cares about what happens with the City. Mr. Maxwell said that everyone on the Board has a great deal of integrity and everyone has always been respectful even though not everyone agrees with each other. Mr. Maxwell also thanked everyone that he had worked with in the nine (9) years he was on this Board.

The Board of Zoning Appeals meeting adjourned at 9:30 P.M.

Matthew Kovacs, Vice-Chairman

Pamela Pasternak, Recording Secretary