The Chairman, Mark Maxwell, called the meeting of the Board of Zoning Appeals to order on Tuesday, August 21, 2007 at 7:30 P.M. in Council Chambers of the Troy City Hall.

PRESENT: Glenn Clark
Kenneth Courtney
Marcia Gies
Matthew Kovacs
Mark Maxwell
Wayne Wright

ABSENT: Michael Bartnik

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

Motion by Gies
Supported by Wright

MOVED, to excuse Mr. Bartnik from tonight's meeting as he is out of town.

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

MOTION TO EXCUSE MR. BARTNIK CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF JULY 17, 2007

Motion by Wright
Supported by Gies

MOVED, to approve the minutes of the meeting of July 17, 2007 as written.

Yeas: 5 – Courtney, Gies, Maxwell, Wright
Abstain: 1 - Kovacs

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – VARIANCE REQUEST. PATRICK DYKE, REPRESENTING AZHAR ALI, 2062 CHARNWOOD (PROPOSED ADDRESS), for relief of the Ordinance to construct a new single-family residence with a 29'-9" building height where Section 30.10.01 (u) limits the building height of single-family residences in the R-1A Zoning District to 27'.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new single-family residence. The plans submitted indicate a 29'-9" building height for the proposed residence when measured in accordance with Section 04.20.23. Section

JHi

ITEM #2 – con't.

30.10.01 (u) limits the building height of single-family residences in the R-1A Zoning District with properly installed attic draft stopping to not more than 27'.

This item first appeared at the meeting of July 17, 2007 and was postponed to allow the petitioner the opportunity of a full Board.

Mr. Maxwell stated that in going through the plans he did not see exactly how high the house was.

Mr. Dyke stated that it was approximately 37 ½' high at the highest point.

Mr. Dyke was present and stated that the roof height is determined by the height of the entire roof at each point. This is a hip roof and only a small portion of the roof will result in the 29'-9" height. The majority of the home will be at a height of 36 ½' to the peak.

Mr. Maxwell explained that he had asked Mr. Stimac for a list of homes in the Troy area that were over 5,000 square feet. Based about that list this home would be the second largest home and he believes would be a catalyst for change on other lots in this area that are the same size.

Mr. Dyke stated that the practical difficulty is that they are not utilizing the maximum allowable coverage of the square footage of the lot. This is a very large lot and the Ordinance allows 30% lot coverage. This home will be at half of that percentage. The owners of the home plan to live here for at least twenty (20) years. Roof pitches get taller and taller as the years go by. Mr. Dyke went on to say that if a variance is not granted, they will "fire-suppress" the home and the roof height could go to 32', which is allowed by the Ordinance. The height is measured from the mid-point between the eaves and the peak. In order for this home to comply, they would have to lower the ceiling height on the first floor to 9' and would also lower the ceiling height on the second floor.

Mr. Dyke feels that the Ordinance is not in keeping with the needs of people now. People want larger homes as the lots get bigger and Mr. Dyke thinks that the Zoning Ordinance should be changed to meet the needs of these people. Twenty years ago, people did not fathom building a home this large. This house is 30' deep and is not a very deep house. Mr. Dyke said that this Board has the authority to grant or deny this request and perhaps this request will bring about an investigation into the Ordinance and it will be changed. In other communities where more variances are requested the Ordinance is re-visited and perhaps changed.

Mr. Courtney asked for clarification on one of the pictures that Mr. Dyke had submitted to the Board.

ITEM #2 – con't.

Mr. Dyke said that as a house gets bigger in width and taller in height, if there is not a large roof, it is not as aesthetically pleasing when viewing it from the street. The Board does not consider aesthetics when making a decision, but as an Architect, this is one of the areas that Mr. Dyke places close attention to. If the roofline is forced down, the look of the house would not be as aesthetically pleasing.

Mr. Courtney said that he could build the house 27' high because he is adding extra draft stopping.

Mr. Stimac said that the Building Department is not in possession of the final drawings on the construction of the home, but is assuming that extra draft stopping would be added.

Mr. Dyke stated that instead of going to 2,000 square feet for draft stopping they actually compartmentalized it further and has gone between 1,300 and 800 square feet for draft stopping.

Mr. Maxwell asked if changing the width of the house would also change the roof height.

Mr. Dyke stated that if they lower the roofline with the same roof pitch, they would have to drop off approximately 7' and pull the house in.

Mr. Wright stated that he thought this home would cost between One and one-half million dollars and two million dollars and does not see a hardship with adding a fire suppression system.

Mr. Dyke stated that they do not have a hardship. They have a practical difficulty. If you look at the equation of 27' to 32' there is actually a 10' differential.

Mr. Wright stated that he would like to see the house built, but with a fire suppression system.

Mr. Dyke said that in other communities they take in the entire height of the roof in determining the maximum allowable roof height.

Mr. Maxwell said that he has to decide if this house will have a negative impact to surrounding property. The setbacks are quite large.

Mr. Dyke said that they have centered the house directly in the middle of the property so that it would not impose on surrounding property. Mr. Dyke also believes that by allowing people to add fire suppression, they are opening the door for other people to build very large homes. They are also going to build the house as low to the ground as possible.

ITEM #2 – con't.

Mr. Maxwell said that just because people can build things allowed by the Ordinance, it does not mean that they are in the best interests to other people in the community.

Mr. Clark stated that the house could be built 10' taller than what is proposed, with a fire suppression system.

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

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

Mr. Clark said that he always tries to put himself in the house next to the property described in the petition and is trying to determine whether it would be better for the Board of Zoning Appeals to grant a variance and live next door to a larger home without fire suppression; or to have this home with a fire suppression system and have a taller home constructed next door. Mr. Clark said in his opinion it was difficult to determine the practical difficulty.

Mr. Dyke said that the reason for this is fire safety. When this plan was presented, Mr. Dyke did contact the fire department. If the Board believes the 2'-9" is going to make this house less safe the variance should not be granted. On the other hand, if the 2'-9" height is not an issue than the variance should be granted.

Mr. Clark asked why this home would need to have a fire suppression system.

Mr. Stimac stated that City Council and the Planning Commission are the governing bodies that adopt the regulation. The 25' height limit has been in the Ordinance for a great number of years and has served the City through its development phase. In the late 90's there were a number of requests for higher homes. These houses could potentially be as close as 20' apart and access for fire fighting purposes would have to be done on that narrow strip of land. The setbacks for this particular house are approximately 60'. The Board would have to make the decision that this setback would be enough to offset the height of the house. There are allowances in the Zoning Ordinance for additional roof height when setbacks are increased that apply to Churches and other non-residential buildings.

Mr. Kovacs said that the house is 7,000 square feet and a 10' ceiling on the main floor is not out of the ordinary. Mr. Kovacs said that he would be very happy to either be able to construct a home like this one, or have one built next to him like this. In his opinion the 2'-9" variance request is minimal.

Motion by Kovacs
Supported by Courtney

ITEM #2 – con't.

MOVED, to grant Patrick Dyke, representing Dr. Azhar Ali, 2062 Charnwood relief of the Ordinance to construct a new single-family residence with a 29'-9" building height where Section 30.10.01 (u) limits the building height of single-family residences in the R-1A Zoning District to 27'.

- Variance is not contrary to public interest.
- Variance request is minimal.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Variance applies only to the property described in this application.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Minimum side setback of 54' will be provided.
- Roof draft stopping would be at a 1,200 square foot maximum.

Mr. Maxwell said that he was quite sure that the surrounding neighbors would see an increase in their property values.

Ms. Gies agreed with Mr. Maxwell and said that the value of the land would increase.

Yeas: 5 – Kovacs, Maxwell, Clark, Courtney, Gies
Nays: 1 – Wright

MOTION TO GRANT VARIANCE CARRIED

ITEM #3 – VARIANCE REQUEST. MR. & MRS. DERRICK ROBINSON, 4472 LANCASHIRE, for relief of the Ordinance to construct a patio enclosure on the rear of their home that has a proposed 21' rear yard setback where Section 30.10.04 of the Ordinance requires a 40' minimum rear yard setback in R-1C Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure on the rear of their home. The site plan submitted indicates an addition on the rear of the existing home with a proposed 21' rear yard setback. Section 30.10.04 of the Ordinance requires a 40' minimum rear yard setback in R-1C Zoning Districts.

Mr. Rob McMahon, representing the Robinsons was present. Mr. McMahon stated that the hardship with this property is the pie-shaped lot and the location of the home. If the home had been constructed slightly closer to the east property line it would have allowed enough room for this addition. They want to use this room year round.

Mr. Clark asked if this room could be moved farther east, which would locate it along the back of the house.

ITEM #3 – con't.

Mr. McMahon stated that right now it is coming out of the family room and kitchen. He stated that they could move this room farther east but it would still require a variance, although he did think it would be smaller

Mr. Maxwell asked what part of the house was near this proposed construction.

Mr. Stimac stated that there was a door wall off of the family room and approximately 6' from the corner of the house. Mr. Stimac also stated that they could probably shift the addition a little more that 6' to the east. Based, on the drawings before him, Mr. Stimac stated it would be difficult to calculate what the rear setback would be.

Mr. McMahon stated that if they did shift the room over 8' and made the entrance through the kitchen, they would have a much larger space.

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

There are three (3) written approvals on file. There are two (2) written objections on file.

Mr. McMahon said he did not think that the size of the room could be made smaller and still be efficient.

Mr. Stimac stated that there was an existing patio off of the door at the rear of the house and asked if there was a desire to keep that patio there and put the addition to the east of the deck.

Mr. McMahon said that the deck was in very rough shape and if the Board wanted him to move the room farther to the east, he believes that the deck would become a stamped concrete patio.

Mr. Courtney asked which rooms were located at the east side of the house.

Mr. McMahon stated that it was the kitchen, and they plan to make the window a doorway into this room. Mr. McMahon stated that he did not believe it would be a problem to move the room farther east, but he would have to confer with his clients.

Mr. Kovacs stated that he would like to see what type of setback would be required if the room was moved farther east and perhaps the petitioner could come back with another plan. Mr. Kovacs said that in his opinion this was a massive variance and he would like to see them come back with an alternative plan.

Mr. Courtney asked if the room could be moved behind the garage.

ITEM #3 – con't.

Mr. McMahon stated that the intention is to enclose both of the existing rooms to allow access into the addition. If you shift it all the way behind the garage you may be limiting access to this room.

Mr. Courtney said that he thought the addition could be moved to the eastern edge of the garage and a lesser variance could be requested.

Mr. Maxwell asked if the Board would like to see an alternate plan.

Mr. Clark stated that he did not see a practical difficulty that would justify this variance and some of the neighbors have objections.

Mr. McMahon stated that most of the neighbors approved of this request.

Mr. Maxwell said that they would like to look at a lesser variance.

Mr. Kovacs stated that he would like to see the petitioner come back with a lesser variance request.

Mr. McMahon stated that he thought the homeowner would be willing to look at moving the room farther east.

Motion by Clark
Supported by Gies

MOVED, to postpone the request of Mr. & Mrs. Derrick Robinson, 4472 Lancashire, for relief of the Ordinance to construct a patio enclosure on the rear of the home that has a proposed 21' rear yard setback where Section 30.10.04 of the Ordinance requires a 40' minimum rear yard setback in R-1C Zoning Districts until the meeting of September 18, 2007.

- To allow the petitioner to explore another alternative location that would require a lesser variance.

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

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF SEPTEMBER 18, 2007 CARRIED

ITEM #4 – VARIANCE REQUEST. MR. & MRS. RICK HOWARD, 2051 E. BIG BEAVER, for relief of the Ordinance to construct an addition to an existing day care center that will result in 23,250 square feet of outdoor play space, where Section 10.30.03 of the Ordinance requires 28,250 square feet.

ITEM #4 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition to an existing day care center. Section 10.30.03 of the Troy Zoning Ordinance requires that a minimum of 150 square feet of outdoor play area be provided for each child cared for at the center. Petitioner is proposing a 190-child capacity. A minimum of 28,500 square feet of outdoor play space is required. The site plan submitted indicates that only 23,250 square feet of outdoor play space is proposed.

Mr. Courtney asked how many children would be using the outdoor play area.

Mr. Howard was present and said that right now they have eight (8) classrooms and the maximum number of children at any one time is only three (3) classrooms. This usually means that there are fifty-(50) children outside at any one time. This present variance is less than what they had asked for in 2003. Mr. Howard really does not think this is a problem. This is not a residential home and Mr. Howard stated that in his opinion the Ordinance is loosely written. The City requires 500 square feet per child and the State only requires 150 per child. Many of the children are in cribs and do not use this outdoor area at all. There is also a gym located inside the building and therefore the outdoor space is not utilized.

The Chairman 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 are no written objections on file.

Mr. Kovacs stated that in his opinion the petitioner is working in good faith and he believes this to be a very reasonable request.

Motion by Kovacs
Supported by Gies

MOVED, to grant Mr. & Mrs. Rick Howard, 2051 E. Big Beaver, relief of the Ordinance to construct an addition to an existing day care center that will result in 23,250 square feet of outdoor play space, where Section 10.30.03 of the Ordinance requires 28, 250 square feet.

- Not more than 155 children will be over of 2 ½ years of age.
- Variance is not contrary to public interest.
- Variance applies only to the property described in this application.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.

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

MOTION TO GRANT VARIANCE CARRIED

ITEM #5 – VARIANCE REQUEST. GARY ABITHEIRA, 193 FORTHTON (EXISTING ADDRESS), 195 & 207 (PROPOSED ADDRESSES), for relief of the Ordinance to demolish an existing single-family home and divide the property into two (2) parcels that would result in lot widths of 56.05' and 56.06' where Section 30.10.06 requires a 60' minimum lot width for single-family homes.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to demolish an existing single-family home at 193 Forthton and divide the property into two (2) parcels for two future home sites. The site plan submitted indicates that the proposed parcels would be only 56.05' and 56.06' in width. Section 30.10.06 of the Troy Zoning Ordinance requires a 60' minimum lot width for single-family homes constructed in the R-2 (Two-Family Residential) Zoning District.

Mr. Kovacs asked how large the lots in this subdivision were.

Mr. Stimac stated that this area was a combination of number of older subdivisions that were pieced together and 99% of the other lots do comply with the requirements regarding lot width. The lots to the west of this property are a result of a replat and they are all 60' wide lots. Parcels to the east were originally 125' wide and then split into two separate lots.

Mr. Abitheira was present and stated that he had purchased this property with the intention of removing the existing home and putting up a duplex. After looking at the neighborhood he felt that two single-family homes would be a better fit in this area. There will be two families with two homes rather than renters. Two homes would be more neighborhood friendly and would create a better value to the neighborhood. Mr. Abitheira also feels that private ownership creates more pride in a parcel. These homes will meet all other setbacks, and will create 10' more in open space.

Mr. Courtney asked what the side setbacks would be.

Mr. Abitheira stated that they would 9' and 6' for a total of 15' as required by the Ordinance.

Mr. Courtney asked how large the side setbacks would be with a duplex.

Mr. Abitheira stated that he would put in 10' on each side for a total of 20'.

The Chairman 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 (1) written objection on file.

Mr. Kovacs asked if the numbers given were correct for the side yard setbacks.

ITEM #5 – con't.

Mr. Stimac explained that a minimum 5' side yard setback and a total of 15' are required for a single family home in the R-2 (Two-Family Zoning District).

Mr. Stimac also stated that a duplex would have to be 92' wide in order to be at the minimum 20' side yard setbacks.

Mr. Abitheira stated that is what he planned on building, as the duplex would have a three car attached garage.

Mr. Maxwell said that since all other setbacks would be met, he did not have a problem with this request.

Mr. Courtney said that he would rather see a duplex than split the lot and make it smaller than the other lots in the area.

Mr. Abitheira stated that he thinks the neighbors would rather see single-family homes rather than a rental property.

Motion by Courtney
Supported by Clark

MOVED, to deny the request of Gary Abitheira, 193 Forthton (existing address), 195 & 207 (proposed addresses), for relief of the Ordinance to demolish an existing single-family home and divide the property into two (2) single-family residential parcels that would result in lot widths of 56.06' and 56.06' where Section 30.10.06 requires a 60' minimum lot width for single-family homes.

- Petitioner did not demonstrate a practical difficulty.
- Property could be built on and comply with the requirements of the Ordinance.

Mr. Maxwell stated that he believes new homes would be much better for the City rather than a duplex and the new construction will maintain all setbacks.

Mr. Abitheira stated that the neighbors on either side of this parcel told him that they would rather see two homes than a duplex.

Mr. Clark asked what kind of homes Mr. Abitheira planned to construct.

Mr. Abitheira stated that they would be 4 bedroom, 2 ½ bath Colonials, approximately 2,000 or 2,200 square feet. This is what people want to buy.

Mr. Courtney asked if Mr. Abitheira bought this property with the intention of constructing a duplex on it.

ITEM #5 – con't.

Mr. Abitheira stated that he purchased this property at a foreclosure and did originally plan to put up a duplex. The more he looked at it and put himself in the neighbors' shoes, he decided that the neighbors would like two homes.

Mr. Courtney asked if he had any other property in the area.

Mr. Abitheira stated that he had built a duplex 20 years ago, approximately 4 streets away.

Vote on Mr. Courtney's motion to deny.

Yeas: 1 – Courtney
Nays: 5 – Wright, Clark, Gies, Kovacs, Maxwell

MOTION TO DENY FAILS

Motion by Kovacs
Supported by Wright

MOVED, to grant Gary Abitheira, 193 Forthton (existing address), 195 & 207 (proposed addresses), relief of the Ordinance to demolish an existing single-family home and divide the property into two (2) single-family residential parcels that would result in lot widths of 56.06' and 56.06' where Section 30.10.06 requires a 60' minimum lot width for single-family homes.

- No other variances would be allowed on this parcel.
- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Homes will comply with all other setback requirements.

Yeas: 5 – Clark, Gies, Kovacs, Maxwell, Wright
Nays: 1 – Courtney

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUEST. HAVEL HOME IMPROVEMENT, REPRESENTING MR. & MRS. STEVE CARRYER, 2777 ORCHARD TRAIL, for relief of the Ordinance to construct an addition to an attached garage that will result in a 27'-2" front yard setback to the northeast corner of the expanded garage, where Section 30.10.01 of the Ordinance requires a 40' minimum front setback in the R-1A Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition to an attached garage. The site plan submitted indicates that the proposed

ITEM #6 – con't.

addition would have a 27'-2" front yard setback to the northeast corner of the expanded garage. Section 30.10.01 requires a 40' minimum front setback in the R-1A Zoning District.

Mr. John Havel of Havel Construction was present and stated that the practical difficulty is that this home is located on a cul-de-sac and without a variance 40% of the property is not usable. The owner is handicapped and needs a wheel chair. Due to the size of the van that has an automatic lift, there is not enough space in the garage. The extra 10' feet would enable the lift to come out the side and lower the wheel chair.

Mr. Maxwell asked if the driveway would also be changed.

Mr. Havel indicated that they would be moving the driveway over to accommodate this addition.

Mr. Clark asked if the present garage was a two-car garage.

Mr. Havel stated that it was, however they would not be able to use the other side of the garage when this van was in the garage.

Mr. Clark suggested not parking the second car in the garage, as he believes this is quite a large request.

Mr. Wright stated that he could certainly understand the problems the property owner is facing especially with a side entrance van. Mr. Wright suggested that they look into the possibility of a van with a rear entrance.

Mr. Kovacs stated that in his opinion this was a very small variance request and asked if they could add to the back of the garage rather than the side and change the garage from a side entrance garage to a front entrance garage.

Mr. Stimac stated that if they added on the front of the garage they would still require a variance, but if they added to the back of the garage a variance would not be required.

Mr. Havel stated that they could not add to the back of the garage as the door wall is next to the garage.

The Chairman 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.

Motion by Courtney
Supported by Wright

ITEM #6 – con't.

MOVED, to grant Havel Home Improvement, representing Mr. & Mrs. Steve Carryer, 2777 Orchard Trail, relief of the Ordinance to construct an addition to an attached garage that will result in a 27'-2" front yard setback to the northeast corner of the expanded garage, where Section 30.10.01 of the Ordinance requires a 40' minimum front setback in the R-1A Zoning District.

- Variance is not contrary to public interest.
- Variance request is minimal over the previous variance granted in 1970.
- Variance will not have an adverse effect to surrounding property.
- The unusual shape of the lot makes literal enforcement of the Ordinance unnecessarily burdensome.

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

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUEST. PAUL T. BARNES, 5587 WHITEHAVEN, for relief of the Ordinance to construct a three-season room enclosure that will result in a proposed 42'-5" rear yard setback where Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a three-season room enclosure that will result in a 42'-5" rear yard setback. Section 30.10.02 of the Ordinance requires a 45' minimum rear setback in R-1B Zoning Districts.

Mr. Barnes was present and stated that he needs to replace the existing deck and he would like to add a three-season room. Mr. Barnes said that he would like to minimize the cost of construction by using the existing foundations of the upper deck and by keeping the roof lines the same. This is the only location a room could be added. If they try to make the room smaller it would become long and narrow and would be impractical. Mr. Barnes said that he had spoken to his neighbors and they do not have an objection to this addition.

Mr. Courtney asked if he was planning to use a foundation.

Mr. Barnes said that there would be a crawl space underneath the room. An additional foundation would not be added.

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

There are five (5) written approvals on file. There are no written objections on file.

ITEM #7 – con't.

Motion by Clark
Supported by Gies

MOVED, to grant Paul Barnes, 5587 Whitehaven, relief of the Ordinance to construct a three-season room enclosure on the rear of an existing home that will result in a 42'-5" rear yard setback where Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance request is minimal.

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

MOTION TO GRANT VARIANCE CARRIED

The Board of Zoning Appeals meeting adjourned at 9:13 P.M.

Mark Maxwell, Chairman

Pamela Pasternak, Recording Secretary