Mark Maxwell, Vice-Chairman, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, February 20, 2007, in Council Chambers of the Troy City Hall.

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

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF JANUARY 16, 2007

Mr. Clark stated that there was an error in the minutes of the last meeting. Because he was not sworn in as a member to the Board of Zoning Appeals until January 24, 2007, he should not have been listed as absent on the minutes of the meeting of January 16, 2007.

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of January 16, 2007 with corrections.

Yeas: All – 7

MOTION TO APPROVE MINUTES AS AMENDED CARRIED

ITEM #2 – APPROVAL OF ITEM #3 AND ITEM #4

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

Motion by Wright
Supported by Gies

Yeas: All – 7

MOTION TO APPROVE ITEM #3 AND ITEM #4 CARRIED

JH

ITEM #3 – RENEWAL REQUEST. BOYS & GIRLS CLUB OF TROY, 3670 JOHN R., for relief of the required 4'-6" high masonry screen wall required along the east and north property lines between the parking lot and the adjacent residentially zoned property. This item first appeared before this Board at the meeting of February 2006 and was granted relief for a period of one year. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant the Boys & Girls Club of Troy, 3670 John R., a three-year (3) renewal of relief of the required 4'-6" high masonry screen wall required along the east and north property lines between the parking lot and the adjacent residentially zoned property.

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

ITEM #4 – RENEWAL REQUEST. VFW POST, 2375 E. MAPLE, for relief to maintain an existing legal non-conforming use building and relief of the 4'-6" high masonry wall required adjacent to off-street parking.

MOVED, to grant VFW Post, 2375 E. Maple, a three (3) year renewal of relief to maintain a non-conforming building and use, and relief of the 4'-6" high masonry wall required at their off-street parking area.

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

ITEM #5 – VARIANCE REQUEST. MR. & MRS. MICHAEL TAORMINO, 1874 WYNGATE, for relief of the Ordinance to construct a deck enclosure that will result in a 35' rear yard setback where Section 30.10.02 requires a 45' rear yard setback for buildings in the R-1B Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a room over a deck that will result in a proposed 35' rear yard setback. Section 30.10.02 requires a 45' rear yard setback for buildings in the R-1B Zoning District.

This item first appeared before this Board at the meeting of December 2006 and was postponed for sixty (60)-days to allow the petitioner to explore other possibilities to determine if there was a way to reduce the size of this variance request.

Mr. Stimac indicated that the petitioner had brought in a revised plan that decreased the size of the deck enclosure by two feet, but this reduction would still require a variance. as this room would now result in a 37' rear yard setback. Mr. Stimac also stated that after a search of the records he could not find a record of a wetland and/or conservation easement that encroaches on this property. The wetlands area is solely contained in the area north of this property.

ITEM #5 – con't.

Mr. Taormino was present and stated that they had tried to restructure this room and no matter what they did the enclosed room would still require a variance. If they moved the room the other way, accessibility would be an issue as it would require two (2) doors and this would affect the placement of furniture. A walkway would have to be created around the structure and additional decking would be required. It would also block three (3) windows and there are mechanical issues that would have to be addressed. If they have to change the roofline it would start underneath the windows and would not be aesthetically pleasing.

The builder was present and stated that he had discussed this for hours with an architect, and if they slide the room over it would not be aesthetically pleasing and would cover the kitchen window. This would devalue the present property by covering up nice windows. There is a need for this screened in porch.

Mr. Taormino stated that they cannot enjoy their yard because of the number of insects and geese. Their dog cannot go outside because he chases the geese and therefore that creates a problem. Mr. Taormino said that they cannot make this room any smaller as it would not give them the room they are looking for.

Mr. Courtney asked why they purchased the home if this location is such a problem.

Mr. Taormino said that they purchased the home in December, did some interior renovations and finally moved into it in May of 2006. Mr. Taormino said that he did not realize a screened in room would be a problem.

Mr. Courtney stated that they were asking for a variance within six (6) months of moving into this home. Mr. Taormino said that they are just trying to put up a deck and it just makes more sense for them to add a screened in attachment so they can enjoy their property.

Mr. Kovacs asked if they had thought of putting up a gazebo, which would give them what they are looking for and would not be attached to the house.

Mr. Stimac said that a gazebo that is freestanding in a yard falls under the standards for Accessory Structures and could be placed within thirty-five (35) feet of the property line. If the gazebo was part of the deck and includes a covered room, it would have the same requirements as an enclosed room and may require a variance.

Mr. Kovacs stated that he understands everything Mr. Taormino has stated, however, he does not see a problem that is unique with this property. The water behind the house is not unique to this property. Mr. Kovacs said in his opinion the whole city has a problem with mosquitoes in the summer.

ITEM #5 – con't.

Mr. Taormino said there are thousands of geese in his yard all the time and his dog cannot go outside. He has had screened in porches in his last three (3) homes and he did not think this would be an issue for this property. If he had known this before he bought the house, he would not have purchased this home. They have spent a lot of money on this home and without this screened in room they cannot enjoy their yard.

Mr. Kovacs said that once a variance is granted that variance runs with the land. It would be feasible that the next owner would want to create a permanent room from this screened in porch and there is not a hardship that runs with the land.

Mr. Taormino said that he cannot deviate from the plan as he has a lot of time and money invested in this addition.

Mr. Kovacs said that he understands but does not see a hardship with the land.

Mr. Maxwell 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. Maxwell said that basically the practical difficulty is the location of the home. Mr. Taormino said that is the hardship plus the fact that his parents have skin cancer and cannot be out in the sun.

Mr. Maxwell said that he could see a case for some practical difficulty but many homes in Troy are built near a wetland.

Mr. Courtney said his property backs up to a lake and cannot see a hardship that runs with the land that entitles it to a variance.

Motion by Courtney
Supported by Gies

MOVED, to deny the request of Mr. and Mrs. Michael Taormino, 1874 Wyngate, for relief of the Ordinance to construct a deck enclosure that will result in a 35' rear yard setback where Section 30.10.02 requires a 45' rear yard setback for buildings in the R-1B Zoning District.

- Petitioner failed to demonstrate a hardship that runs with the land.

Yeas: 5 – Kovacs, Wright, Clark, Courtney, Gies
Nays: 2 – Maxwell, Fejes

MOTION TO DENY REQUEST CARRIED

ITEM #6 – VARIANCE REQUEST. WILLIAM DINE, 2455 HAMPTON, for relief of the Ordinance to construct an addition that will result in a proposed 24.63' front setback to Caswell and a 40.94' rear yard setback. Section 30.10.02 requires a 40' minimum front yard setback and 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 an addition to his home. This property is a double front corner lot. It has front yard requirements along Hampton and Caswell. The site plan submitted indicates removing an existing two-car attached garage and constructing a new master bedroom suite and an attached three-car garage.

The site plan submitted also indicates that this construction will have a proposed 24.63' front setback to Caswell and a 40.94' rear yard setback. Section 30.10.02 requires a 40' minimum front yard setback and a 45' minimum rear yard setback in R-1B Zoning Districts.

Mr. Courtney asked what the setback would be if this was not a corner lot. Mr. Stimac explained that if this was an interior lot, the side yard setbacks are a minimum of 10' and a total of 25'.

Mr. Dine and his son were present. Mr. Dine's son stated that his mother had passed away in May and Mr. Dine still wants to stay in the house. His sister and her family are planning to move in with him. They would like to convert the existing garage to living space, which would be a master suite. Mr. Dine's son also stated that based on the plans that have been drawn up the appearance of the house will be the same from the front. In the rear of the property they would like to add the three (3)-car garage.

Mr. Maxwell 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. Fejes asked why this home was considered to be non-conforming and Mr. Stimac explained that it is non-conforming because it was constructed with a 24' setback from Caswell. It currently conforms to the rear yard setback but not the front yard setback. Mr. Stimac was not sure how this came about but thought it was the result of two (2) subdivisions platted side by side.

Motion by Fejes
Supported by Courtney

MOVED, to grant William Dine, 2455 Hampton, relief of the Ordinance to construct an addition that will result in a proposed 24.63' front setback to Caswell and a 40.94' rear yard setback. Section 30.10.02 requires a 40' minimum front yard setback and a 45' minimum rear yard setback in R-1B Zoning Districts.

ITEM #6 – con't.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property described in this application.
- Corner lot makes this property unique and creates a hardship as it has double frontage.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUEST. SANKARAN BALAKRISHNAN, 1654 LIVERNOIS, for relief of the Ordinance to construct a new gasoline station service building that would result in a 31.48' front setback where Section 30.20.07 requires a 40' front yard setback; a setback of only 9' from the R-1E (Residential One-Family) property to the northeast, where Section 30.20.07 requires a 75' setback; and 750 square feet of landscaping where Section 39.70.04 requires at least 1,547 square feet of countable landscape for a site this size.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a new gasoline station service building. Section 30.20.07 requires a 40' front yard setback and a 75' setback from residential zoned property for developments in the H-S (Highway Service) Zoning District. The site plan submitted indicates a front yard setback of 31.48' and a setback of only 9' from the R-1E (Residential One-Family) Zoned property to the northeast.

In addition, Section 39.70.04 requires at least 1,547 square feet of countable landscape for a site this size. The site plan submitted indicates that only 750 square feet of countable landscaping will be provided.

There was an alley that was east of the property and it has now been vacated by City Council. There is a shared driveway between the properties. The alley in terms of zoning was split down the middle. The H-S Zoned property expanded 9' to the east and the R-1E Zoned Property and the B-1 Zoned property both expanded 9' to the west.

Mr. Courtney asked approximately how much landscaping was currently on the site and Mr. Stimac said that he thought it either met or exceeded the requirements of the Ordinance, although the landscaping is located behind the building. The proposed new plan puts the landscaping at the front of this property at the northwest corner and the southwest corner of the property.

A variance was granted on this property back in 2005 and Mr. Fejes asked if permits had ever been applied for relating to that variance approval. Mr. Stimac said that nothing has been applied for per the 2005 plan. Mr. Stimac said that after they had received approval it was discovered that there was not enough room for a two-way drive

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and they had to change their original plan. They located parking to the west of the building and on the east side of this site.

Mr. Kovacs asked how close the existing building was to the residential property. Mr. Stimac said that he thought the existing building was within 10 or 12' feet of the residential property.

Mr. Kovacs asked if this building would be moved closer to the property lines or farther away. Mr. Courtney said that in his opinion they were moving the building closer to the property line.

Mr. Longhurst said that the existing building is approximately 6 to 9' from the property line. The canopies and pumps are going to remain and they want to move the building back farther on the property in order to provide enough room for cars to maneuver.

Mr. Courtney asked what the difference in the size of this building is compared to the building that was proposed in 2005.

Mr. Longhurst stated that the size of the building is the same; the only difference is the location on the lot.

Mr. Clark stated that he had read the letter from the neighbor opposing this request as the setbacks were being drastically changed. In Mr. Clark's opinion this was a "big foot" building and thought the petitioner was proposing to maximize every inch of this property.

Mr. Longhurst said that they plan to add a 30" high screen wall along the front of the property and plan to add landscaping along either side of it. There will be more landscaping visible from the right of way. They are also proposing a 6' masonry wall along the residential property to aid in screening this building from the residents.

Mr. Maxwell opened the Public Hearing.

Mr. Sidney Frank, representing Mrs. Zawaideh, the owner of the property at 35, 37 E. Maple and 26 Chopin was present and stated that they had filed an objection in 2005 and were definitely objecting to this request now. Mr. Frank said that at the time this property was purchased it was an existing gas station and the property owners did not have to have it re-zoned. The greenbelt was in the back of the property, which protected the property that his client owns.

The setback to the residential property is going from 75' to 9'. Before a variance is granted, the Board has to weigh all the options regarding the effect to the surrounding property owners and protect them from any negative impact. Mr. Frank said that in his opinion, these variances if granted would definitely have a negative effect to the

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surrounding property. Mr. Frank introduced Mr. Stefanson, the owner of the property to the north of this site and said that these variances would also have a negative effect to his property as well. The building to the north will be blocked by this proposed building, which will reduce visibility for potential customers.

Mr. Frank further stated that he does not believe anyone will want to rent, own or improve a residence that would be 6' from a gas station. Now there is some landscaping acting as a buffer, the proposed plan does not include this landscaping. This same statement would apply to the commercial property behind this property. Mr. Frank said that there is nothing about this property that would justify a variance and he believes that this Board should deny this request and let the gas station operate as it is.

Mr. Maxwell stated that all of the buildings in this area are in close proximity to this location and wondered how far the existing structure was from the surrounding property. Mr. Frank said that there is an 18' alleyway that has been vacated and believes it is approximately 7 – 8' from the property line. Once the landscaping is removed from the back, the gas station will appear closer to the surrounding property.

Mr. Courtney said that in his opinion if he was in the residential property he would rather have the gas station closer to him than what is there now. Mr. Courtney went on to say that often there are cars parked there and a lot of litter is on the ground. Mr. Frank said that would be an enforcement issue.

Mr. Wright stated that at the time the first variance came to the Board Mr. Frank's client wished to buy the surrounding property. Mr. Frank said there is no longer any interest for his client to purchase this property.

Mr. Kovacs asked how far the building to the north was from the property line. Mr. Kovacs said that he understands that Mr. Frank's client is saying that she does not want this building closer to her property, but after looking at the property, Mr. Kovacs believes the building to the north is almost on the property line. The property to the east also appears to be sitting on the property line.

Mr. Stimac said that he believes the distance of the building to the north to the property line of this site is about 2'. The building to the east is approximately 9' from the common property line.

Mr. Kovacs said that basically Mr. Frank's client's property is sitting right on the property line and the other properties are also sitting on or near the property lines. This petitioner wants to be able to move his building closer to the property line.

Mr. Frank said that he did not address the property to the east, as he knew it was very close to the property line. This petitioner wants to move his building farther north and

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east and will affect the residential property. In terms of landscaping, if they had to meet the entire landscaping requirement it would protect the value of the commercial property to the east.

Mr. Kovacs said that he did not believe there was any landscaping on the site that is next to the commercial property right now. Mr. Frank said that was correct but right now the owner of the property is asking to eliminate a present landscaping requirement and if that requirement was enforced it would result in landscaping in this area. If the full amount is required the landscaping would buffer the adjoining pieces of property.

Mr. Kovacs said that without a variance this property owner would only be able to put in a very small structure on the corner of the property. Mr. Frank said that the property has to have some deficiency with it to allow a variance. Mr. Kovacs said that based on the current Ordinance he could not build anything on it. Mr. Frank said that when he purchased the property he knew what he was getting and should just work with what he has. Mr. Frank also said that he wasn't sure what uses were allowed in the H-S Zoning District, but perhaps the petitioner could find another use for this property.

Mr. Courtney said this gas station existed long before there was H-S Zoning. The Ordinance was changed to make H-S Zoning required for gas stations. Mr. Courtney also said that originally Mr. Frank's client wanted both properties combined and made a joint venture.

Mr. Frank said that he was not involved in the original variance request, but he believes those comments were a result of owning the property for a very long time and his client believed that this solution would greatly benefit the City. Due to a very negative response regarding this proposal, there is no longer any interest in combining this property. Mrs. Zawaideh has a piece of property she is trying to use and is only concerned about the negative effect this proposal will have on the surrounding property. There is no question that this proposed building will make the area look better, but if it will not meet the Zoning requirements and will negatively effect the surrounding property the Board needs to consider these facts. Mr. Frank said that there is nothing on this property that would justify a variance.

Mr. Jeff Fedorinchik of H-F Architecture was also present on behalf of Ms. Zawaideh and said that relative to the setbacks they are very concerned. The front setback is required to be 40'; this petitioner is proposing a front setback of 31.48', which means they are asking this Board to waive 21% of this setback requirement. In addition, the second setback that is between this property and the residential property is required to be 75' which means that they are asking this Board to waive 88% of the setback requirement. The minimum landscaping requirement is 1,547 square feet and the petitioner is proposing landscaping in the amount of 750 square feet, which is a waiver of 50% of this requirement. Landscaping is proposed to be put on the northwest and

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southwest corners that will be beautiful to the traffic going by but will not give any type of buffer to the surrounding property. Mr. Fedorinchik said that he believes this will result in a very negative impact to the adjacent property.

Mr. Courtney asked what the difference in the variance was for landscaping between what exists and what is proposed. Mr. Fedorinchik said that he was unable to give Mr. Courtney that information. The unfortunate thing for the petitioner is that they have to meet the requirements of the Ordinance. Mr. Courtney said he was having trouble understanding how the lack of landscaping would affect these properties when there would be two (2) brick walls in place.

Mr. Fedorinchik said that he believes it would be a detriment to the entire community to grant a variance asking for more than a 50% waiver.

Mr. Clark said that he had lived in this area for many years and was very familiar with it. The residential area is not blocked off and thinks that this would be an encroachment to the neighborhood. Mr. Clark came from a community that developed every inch of property and it became a concrete jungle. The neighbors in this area are concerned about a devaluation of their property. Regardless of whether the landscaping is in the front or back, moving the building towards the home would be an encroachment on the residential home. Regardless of what the commercial neighbors feel, Mr. Clark thinks this will have a greater impact on the residential area. Mr. Clark also said that he believes this is a proposal to provide more service with the convenience store and thinks that this will increase traffic, which will have an impact on the neighborhood.

Mr. Frank said that while there is no current intention to tear the commercial building down, everyone knows it is a very old building and his client is a property owner that owns a lot of property in the City of Troy. If this building is ever torn down and re-developed there won't be a solid wall on the property line, but would probably be a building that will have windows that would end up looking at this gas station.

Mr. Courtney asked if Mr. Frank's client was looking into changing the residential property into another use. Mr. Frank said that she is looking at a number of options for this property. Mr. Courtney then said it would not be an infringement on the residential property as it could be changed. Mr. Frank said that you can't assume that this property would change from residential. They are exploring a number of possibilities and the way to go may be by keeping it residential.

Mr. Clark said that he is concerned about the encroachment to all of the neighbors up and down the street.

Mr. Stefanson the owner of the property to the north of this site was present. Mr. Stefanson said that presently this building is occupied by a Chinese Deli and has very good visibility to traffic traveling both north and south. Traveling from the west to the

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east it stands out quite visibility. Traveling from the east to the west, it is quite visible when stopped at the light. A lot of effort and money has been put into presenting this building the way it is now. A new gas station would look nice and a new dumpster area would also look nice. The proximity of what the petitioner is proposing with having this building abutting the property to the north would conceal more than half of this building to traffic traveling north. To find another tenant would be extremely difficult if the building was hidden. The present dumpster is not maintained and there is a lot of debris and litter around it. Mr. Stefanson has gone out and cleaned the area himself. The grass between the fence and his building is the responsibility of the present owner, however, they have been taking care of it to make sure it looks good.

Mr. Stefanson asked if it was absolutely necessary to move the building and asked if the petitioner could re-build the existing gas station and leave it where it is. Mr. Stefanson said that he totally objects to this request.

Mr. Courtney said that back in 2005 the proposed plan would have resulted in his building being completely screened and Mr. Stefanson said that he did not think he had received notification of that request. Mr. Stefanson said that this proposal will have a definite impact on his property.

Mr. Balakrishnan was present and said that he is the owner of this property. Mr. Balakrishnan said that he is the one operating the building right now. He is spending more money on repairing the building than on improving the business. The building is very old and has to be updated.

Mr. Courtney asked what the problem would be replacing the existing building. Mr. Balakrishnan said that the present building is only 400 square feet and right now he is not satisfying his customers. Mr. Courtney said Mr. Stefanson did not say he had to keep the building the same size only in the same location.

Mr. Longhurst said that the problem right now is with the existing canopies. There is not enough room for two-way traffic to move in this area. They have to move the building farther away from the canopies to allow for maneuverability.

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

There are two (2) written objections on file. There is one (1) written approval on file.

Mr. Maxwell asked how much closer this building would be to the property to the north. Mr. Longhurst said they were moving the building approximately 5 or 10'.

Mr. Kovacs asked what the setbacks would be if the property was zoned B-1? Mr. Stimac explained that presuming the building would be fronting on Livernois, the west

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setback would be 25', the south would be 25', the east would be 20' and the north could be 0'.

Mr. Stimac also explained that when B-1 property abuts another B zoned property and as long as there are no doors or windows where these properties meet, the setback could be 0'.

Mr. Stimac went on to say that based on aerial photographs, he believes that the existing gas station sits 35' from the north property line, 53' from the west property line, 22' from the new east property line and 18' from the south property line.

Mr. Maxwell asked if 1708 Livernois was at the property line. Mr. Stimac said that he thought it was 2' or 3' from the property line.

Mr. Maxwell asked if the petitioner had any flexibility for the placement of the proposed building. Mr. Longhurst said that there is not a lot of play because they need 24' to allow for cars to be able to maneuver.

Mr. Maxwell asked if they could put in a landscape buffer between this building and the residential property. Anything the petitioner can do to create a buffer to separate this property from the surrounding property would be beneficial.

Motion by Courtney
Supported by Gies

MOVED, to postpone the request of Sankaran Balakrishnan, 1654 Livernois, for relief of the Ordinance to construct a new gasoline station service building that would result in a 31.48' front setback where Section 30.20.07 requires a 40' front yard setback; a setback of only 9' from the R-1E (Residential One-Family) property to the northeast, where Section 30.20.07 requires a 75' setback; and 750 square feet of landscaping where Section 39.70.04 requires at least 1,547 square feet of countable landscape for a site this size until the meeting of March 20, 2007.

- To allow the petitioner to give the Board a copy of the site plan showing where the 24' drive needs to go.
- To allow the petitioner to present a landscaping plan to the Board.

Yeas: All – 7

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF MARCH 20, 2007

Mr. Fejes asked about the variance granted for this property back in 2005. Mr. Stimac explained that the variance was valid until March of 2006 as long as permits were

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applied for. The petitioner did not apply for a Building Permit within the one-year time frame and the original variance is no longer valid.

The Board of Zoning Appeals meeting adjourned at 9:05 P.M.

Mark Maxwell, Vice-Chairman

Pamela Pasternak, Recording Secretary