

The Chairman, Christopher Fejes, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, May 16, 2006 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
 Christopher Fejes
 Michael Hutson
 Matthew Kovacs
 Mark Maxwell

ABSENT: Marcia Gies
 Lawrence Littman

Motion by Courtney
Supported by Hutson

MOVED, to excuse Ms. Gies from tonight's meeting as she is out of town and Mr. Littman due to illness.

Yeas: All – 5

MOTION TO EXCUSE MS. GIES AND MR. LITTMAN CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF APRIL 18, 2006

Motion by Courtney
Supported by Hutson

MOVED, to approve the minutes of the meeting of April 18, 2006 amended showing the No vote on Item #11 to be Courtney instead of Gies.

Yeas: All - 5

MOTION TO APPROVE MINUTES AS AMENDED CARRIED

Mr. Fejes informed the people in the audience that due to the fact that we did not have a full Board, at the time their request was called, they had the option to request postponing their item to allow them the opportunity of a full Board.

Mr. Fejes indicated that Item #7 and Item #12 would be taken out of order, as the Board had received a written request asking that these requests be postponed until a later date.

ITEM #7 - INTERPRETATION REQUEST. SIDNEY FRANK, REPRESENTING GABECARE DIRECT RX, 1179 MAPLELAWN, for an interpretation that a doctor's office is an accessory use permitted in the M-1 (Light Industrial) Zoning district per Section 28.25.01 of the Troy Zoning Ordinance.

Mr. Stimac explained that the petitioner is requesting an interpretation that a doctor's office is an accessory use permitted in the M-1 (Light Industrial) Zoning District per Section 28.25.01 of the Troy Zoning Ordinance. The petitioner operates a prescription drug distribution facility in the M-1 Zoning District. This use complies with the principal permitted uses per Section 28.20.09 of the Zoning Ordinance. For some of the activities that the business does, the services of a licensed physician are required. The physician that provides these services has opened an office on site providing family practice services to patients. Some of these patients (approximately 35% per discussions with the petitioner) have no connection to the prescription drug distribution business. This activity has been determined to not be included within the permitted uses of the M-1 District. The petitioners are asking for an interpretation that this use is permitted per the provisions of Section 28.25.01.

This item last appeared before this Board at the meeting of April 18, 2006 and was postponed at the request of the petitioner, to allow the petitioner to explore the possibility of finding a location that will comply with the Ordinance.

Motion by Courtney
Supported by Maxwell

MOVED, to postpone the request of Sidney Frank, representing Gabecare Direct RX, 1179 Maplelawn, for an interpretation that a doctor's office is an accessory use permitted in the M-1 (Light Industrial) Zoning District per Section 28.25.01 of the Troy Zoning Ordinance until the meeting of June 20, 2006.

- Postponed per the request of the petitioner.

Yeas: 5 – Hutson, Kovacs, Maxwell, Courtney, Fejes

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF JUNE 20, 2006
CARRIED

ITEM #12 – VARIANCE REQUEST. ANDRAOS KATTOUAH, 3410 ROCHESTER ROAD (proposed address), for relief of the Ordinance to construct a new gas station at the intersection of Charrington and Rochester Road that will result in a 30' setback to the abutting property. This property is in the R-1C (One-Family Residential) Zoning District and Section 31.30.00 requires a 75' setback from any property line that abuts a residentially zoned district.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new gas station building at the northeast corner of the intersection of Charrington and Rochester Road. Paragraph G of Section 31.30.00 requires a 75' setback from any

ITEM #12 – con't.

property line that abuts a residentially zoned district. The property to the east (rear) of this site is in the R-1C (One-Family Residential) Zoning District. The site plan submitted indicates a setback of 30' to this property line.

Motion by Courtney
Supported by Maxwell

Moved, to postpone the request of Andraos Kattouah, 3410 Rochester (proposed address), for relief of the Ordinance to construct a new gas station at the intersection of Charrington and Rochester Road that will result in a 30' setback to the abutting property until the meeting of June 20, 2006. This property is in the R-1C (One-Family Residential) Zoning District and Section 31.30.00 requires a 75' setback from any property line that abuts a residentially zoned district.

- Postponed at the request of the petitioner.

Yeas: 5 – Hutson, Kovacs, Maxwell, Courtney, Fejes

MOTION TO POSTPONE REQUEST UNTIL JUNE 20, 2006 CARRIED

ITEM #2 – APPROVAL OF ITEMS #3 THROUGH ITEM #6

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

Motion by Courtney
Supported by Maxwell

Yeas: 5 – Kovacs, Maxwell, Courtney, Fejes, Hutson

MOTION TO APPROVE RENEWALS CARRIED

ITEM #3 – RENEWAL REQUESTED. MARY MCCLEAN, LIBERTY PROPERTY TRUST, 2600 & 2710 BELLINGHAM, for relief of the Ordinance to maintain a 6' high berm in lieu of the 6' high masonry-screening wall.

Mr. Stimac explained that the petitioner is requesting relief to maintain a 6' high berm in lieu of the 6' high masonry-screening wall required. This Board has granted this relief since May 2000. This item last appeared before this Board at the meeting of May 2003 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no objections or complaints on file.

ITEM #3 – con't.

MOVED, to grant Mary McClean, Liberty Property Trust, 2600 & 2710 Bellingham a three-year (3) renewal of relief to maintain a 6' high berm in lieu of the 6' high masonry-screening wall.

- Conditions remain the same.
- We have no complaints or objections on file.

ITEM #4 – RENEWAL REQUESTED. SAN MARINO SOCIAL CLUB, 1685 E. BIG BEAVER, for relief of the Ordinance of the 6' high masonry-screening wall required adjacent to the residential zoned district to the north.

Mr. Stimac explained that the petitioner is requesting relief of the 6' high masonry-screening wall required adjacent to the residential zoned district to the north. This relief has been granted on a yearly basis since 1976, primarily due to the fact that the adjacent residential property is undeveloped and owned by the petitioner. This item last appeared before this Board at the meeting of May 2003 and was granted a three-year (3) renewal at that time.

MOVED, to grant San Marino Social Club, 1685 E. Big Beaver, a three-year (3) renewal of relief of the 6' high masonry-screening wall required on the property that is adjacent to the residential zoned district to the north.

- Conditions remain the same.
- We have no complaints or objections on file.

ITEM #5 – RENEWAL REQUESTED. BIG BEAVER UNITED METHODIST CHURCH, 3753 JOHN R., for relief of the 4'-6" high masonry wall required along the north, east and west sides of off-street parking.

Mr. Stimac explained that the petitioner is requesting renewal of relief of a 4'-6" high masonry wall required along the north, east and west sides of off-street parking. This Board has granted this relief on a yearly basis since 1994 based on the fact that the wooded areas provide a natural screening and a variance would not cause an adverse effect to the properties in the immediate vicinity. This item last appeared before this Board at the meeting of May 2000 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant Big Beaver United Methodist Church, 3753 John R., a three-year (3) renewal of relief of the 4'-6" high masonry wall required along the north, east and west sides of off-street parking.

- Conditions remain the same.
- There are no complaints or objections on file.

ITEM #6 – RENEWAL REQUESTED. ST. ANASTASIA CHURCH, 4571 JOHN R., for relief to maintain a berm in lieu of the 4'-6" high obscuring wall between the parking lot and adjacent residential property.

Mr. Stimac explained that the petitioner is requesting renewal of a three (3) year variance granted by this Board to maintain a berm in lieu of the 4'-6" high obscuring wall between the parking lot and adjacent residential property. This item last appeared before this Board at the meeting of September 2002 and was granted a three (3) year variance at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant St. Anastasia Church, 4571 John R. a three –year (3) renewal of relief to maintain a berm in lieu of the 4'-6" high obscuring wall between the parking lot and adjacent residential property.

- Conditions remain the same.
- There are no complaints or objections on file.

ITEM #8 – VARIANCE REQUEST. MR. & MRS. WILLIAM NICHOLS, 1080 MINNESOTA, to maintain a shed, constructed without first obtaining the necessary Building Permit, in the front yard setback along Wisconsin.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a shed constructed in the front yard setback along Wisconsin. This lot is a double front corner lot. As such, it has a front yard setback along both Minnesota and Wisconsin. The site plan submitted indicates that a shed has been constructed without first obtaining the necessary Building Permit in the required front yard setback, 8 feet from the property line along Wisconsin. Section 40.56.03 of the Ordinance prohibits the placement of an accessory building in a front yard.

This request last appeared before this Board at the meeting of April 18, 2006 and was postponed to allow the petitioner the opportunity to obtain a lot split.

Mr. Nichols was present and recapped what was presented to the Board at the previous meetings. Mr. Nichols again stated that the existing trees have a great deal of sentimental value to him and if has to relocate the shed, he would have to remove these trees. Mr. Nichols also apologized for not obtaining a permit before putting up the shed, but said that he would have come before this Board and asked for a variance anyway. This is the best location for the shed and they need the extra storage space. Eventually they will build a house at the other end of their lot that will have a basement, but he said it probably won't happen for about six (6) years.

Mr. Hutson asked if there was vegetation between the shed and the lot line. Mr. Nichols said that there is a 6' high privacy fence and trees on the other side of the fence.

ITEM #8 – con't.

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

Mr. Nichols submitted a petition with twelve (12) signatures indicating approval of the location of this shed. There are also two (2) written approvals on file. There are no written objections on file.

Motion by Kovacs

Supported by Courtney

MOVED, to grant Mr. & Mrs. William Nichols, 1080 Minnesota, relief of the Zoning Ordinance to main a shed in the front yard setback along Wisconsin where Section 40.56.02 requires a rear yard location.

- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.
- Double front corner lot creates a hardship.
- Lacking a variance, conformance to the Ordinance is unnecessarily burdensome.
- Without a variance significant natural features would be affected.

Yeas: 5 – Maxwell, Courtney, Fejes, Hutson, Kovacs

MOTION TO GRANT VARIANCE CARRIED

ITEM #9 – VARIANCE REQUEST. MR. & MRS. ROSS REYNOLDS, 364 HICKORY, for relief of the Ordinance to split an existing parcel of property that will result in two lots that will not meet either the minimum lot width or minimum area requirements.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to split an existing parcel of property that will result in two lots that will not meet either minimum lot width or minimum area requirements. The resultant lots will be 49.4' and 50' wide where Section 30.10.06 requires a lot width of at least 60', and only 6,455 square feet and 6,500 square feet where a minimum of 7,500 square feet is required.

Mr. Fejes asked for additional information on the original lots. Mr. Stimac explained the dimensions of the original lots and also informed the Board that a similar request had appeared before the Board of Zoning Appeals in 1991 to split one large lot into three smaller lots. That request was denied and the property owner sold off part of the original parcel as a conforming lot. The petitioner is now asking to split the remaining parcel into two smaller lots. It is Mr. Stimac's opinion that that there is enough of a difference in this request to bring it back to the Board, as this request is asking for a greater variance than the original request. The Ordinance does not dictate which way the difference has to be, there just has to be a significant change to bring it back to the Board.

ITEM #9 – con't.

A discussion began regarding how it is determined that an item be heard before the Board a second time and Ms. Lancaster stated that it is up to Mr. Stimac to determine that the circumstances have changed enough not just in the request, but perhaps a change in the circumstances, to bring it back to the Board.

Mr. Reynolds was present and stated that he was unaware of the lot split at the time he purchased this property. Mr. Reynolds said that Mr. Stimac had explained that to him, but he chose to have his request brought to the Board anyway. They have a handicapped daughter and would like to be able to build a home that is handicap accessible. Caitlin who will be 15 in June, attends a special school in the area and will until she reaches the age of 25. They have looked at other homes in the Troy area but have not found any that would fit the special needs that they have plus it would remove them from the existing neighbors who help them take care of her. The Reynolds' present house is 1200 square feet. Mr. Reynolds brought in one (1) letter indicating approval of this request. Mr. Reynolds also provided the Board with a site map indicating the number of homes in the area that did not conform to the lot width or area and feels that these lots would conform to other lots in the area. Mr. Reynolds also said that they do not plan to split the lot and sell it, but to split the lot and build another home on the lot.

Mr. Fejes clarified that Mr. Reynolds was not the original petitioner in 1991. Mr. Fejes also asked what Mr. Reynolds plans were regarding the existing house. Mr. Reynolds said that he thought they would sell it, although his 80 year old mother lives in the upper peninsula and he does not believe she will stay up there much longer. Mr. Fejes asked about the square footage of the present home and asked what the square footage would be for the new home. Mr. Reynolds said that their existing home is 1200 square feet and the new home would probably be about 2000 square feet with a basement. Mr. Reynolds said that the home directly across the street from him is on a 53' wide lot and is about 2500 square feet and fits very nicely.

Mr. Fejes stated that there are six (6) written objections on file. There is one written approval on file.

Mr. Courtney asked if they could make modifications to their existing home to make it handicap accessible. Mr. Reynolds said that they have done all they could and the house is not large enough. Mr. Courtney stated that the decision of the Board could not be made on a person with a handicap, but it has to be based on a hardship with the land and he did not see a hardship running with the land.

Mr. Fejes asked if he could just build a larger home on the existing lot. Mr. Reynolds said in his opinion he would be better off to sell and move, although he would lose the neighbors that help him with his daughter. Mr. Fejes said that a variance would not be required if Mr. Reynolds chose this option.

ITEM #9 – con't.

Mr. Kovacs asked if Mr. Reynolds understood that this Board did not have the power to rule on a variance based on the condition of the people living in the home. Mr. Reynolds said that he did understand that as Mr. Stimac had explained it to him but he thought that some thought would be given to personal circumstances. Mr. Reynolds further stated that these lots would not cause an adverse effect to surrounding property. Mr. Reynolds also stated that he had polled the neighbors and did not receive a lot of negativism from anyone he talked to.

Mr. Kovacs said that in 1991 a previous Board denied a request for a lot split and he cannot see any justification to over turn that decision.

The Chairman opened the Public Hearing.

Mr. Bill VanHorne, 384 Hickory was present and stated that he owns the property just east of this parcel. Mr. VanHorne said that he is opposed to this request as it is a very large variance request. Mr. Van Horne also stated that the Reynolds are great neighbors and believes there are other options available to them. Mr. Van Horne said that he would not look forward to seeing another house on this lot and said that it will have a negative impact on his property value and also will not be aesthetically pleasing to the neighborhood. Mr. VanHorne said that the petitioner had other options available to build the type of home he wanted without a variance. Granting this variance would create two non-conforming lots.

Laura Johsan, 363 Cherry was present and stated that she lives directly behind this parcel. Her main concern is that Mr. Reynolds will sell the lot to a developer and she would rather not see a large home come in there. Ms. Johsan said that they are very good neighbors and hopes something can be worked out. Mr. Fejes asked if she was objecting to this request and Ms. Johsan said that she was approving the request and hoped that something could be worked out to the benefit of everyone involved.

Mr. Marvin Prine, 383 Hickory was present and stated that he had moved into this area in 1991 from Madison Heights and 40' lots. Mr. Prine objects to this request and believes it will create a precedent for other people to split their property into non-conforming lots. Mr. Prine loves the neighbors and baby-sits for Caitlin but does not believe this lot split would have a positive effect to the surrounding property.

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

Mr. Courtney said that he is against this request because Council passed an Ordinance to stop the spread of 40' lots. Existing lots were grandfathered in, but new 40' lots should not be created.

Motion by Courtney
Supported by Hutson

ITEM #9 – con't.

MOVED, to deny the request of Mr. & Mrs. Ross Reynolds, 364 Hickory, for relief of the Ordinance to split an existing parcel of property into two lots that will not meet the minimum lot width or lot area requirements of Section 30.10.06.

- Petitioner did not demonstrate a hardship with the land.

Yeas: 5 – Maxwell, Courtney, Fejes, Hutson, Kovacs

MOTION TO DENY REQUEST CARRIED

Mr. Maxwell stated that he voted against this item because the variance request is too large.

Mr. Hutson stated that he voted against this request because he feels that granting the variance would be going against the intent of the Ordinance, and although sympathetic with the Reynolds, he cannot approve this request.

ITEM #10 – VARIANCE REQUEST. MR. VLADIMIR RRUSHI, 27 STARR (PROPOSED ADDRESS), for relief of the Ordinance to construct a single-family home on an existing 50' wide parcel where Section 30.10.06 requires a 60' minimum lot width.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a single-family residence. The site plan submitted indicates building the home on an existing 50' wide parcel where Section 30.10.06 requires a 60' minimum lot width. Mr. Stimac further explained that in 1956 the same person owned three of the lots in this parcel. In 1957 Mr. Carpenter, the original owner, sold off a piece of this parcel and since then this parcel has changed hands many times. Mr. Stimac explained that Section 40.50.02 states that If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this chapter, and if all or part of the lots do not meet the requirements for lot width and area as established by this chapter, the lands involved shall be considered to be an undivided parcel for the purposes of this chapter, and no portion of said parcel shall be used or occupied which does not meet lot width and area requirements established by this chapter, nor shall any division of the parcel be made which leaves remaining any lot with width or area below the requirements stated in this chapter. Technically the sale of this parcel in 1957 was an action that created a non-conforming lot and was an illegal action. The City cannot control the buying and selling of a piece of property, but the City can control what can be built on a parcel and this is a non-conforming parcel.

ITEM #10 – con't.

The Real Estate Agent for Mr. Rrushi was present and said that Mr. Rrushi wants to build a new house. Mr. Courtney clarified that Mr. Rrushi has not purchased the property at this time and Mr. Rrushi's Agent informed the Board that a purchase agreement was ready with the stipulation that this purchase would take place only if the variance was granted. The Agent also said that he looked at a number of other homes in the area that were just recently constructed on non-conforming lots.

Mr. Fejes said that each petition stands on its own merit and Mr. Rrushi's agent said that he understood that. The building of this home will not have an adverse effect to the surrounding property. Mr. Fejes asked what the hardship was that would justify a variance. The agent replied that this home would be close to the schools Mr. Rrushi's children attend and would be an asset to the area.

Mr. Courtney pointed out that the practical difficulty is not that the client could buy the property at a good price and he does not see a hardship that runs with the land.

Mr. Stimac stated that the handouts being given out at the meeting indicating houses that are for sale are not correct. He does not believe that the size of the parcels shown on these ads is correct.

Mr. Fejes asked if Mr. Stimac knew what type of home would be built on this parcel. Mr. Stimac said that complete plans have not been submitted, but on a 50' wide parcel of land the buildable width would be 35'.

The Chairman opened the Public Hearing.

Ms. Michaeline Whittaker, the owner of the property was present and stated that she inherited this property from her fiancée who passed away in 2004. They have been paying taxes on this property since 1964 and does not know what she will do with the property if a variance is not granted. Somehow down the line the property was sold illegally but she is not sure what she can do now.

Mr. Kovacs asked if her fiancée was aware of the Ordinances at the time he purchased the property. If he had bought the property before the Ordinance was passed, Mr. Kovacs thought she would have a pretty good case, but this property was purchased in 1969, which was long after the Ordinance was put into effect and it is up to the seller to be aware of what he can or can't do with the property. Mr. Kovacs also said that he thought Ms. Whittaker had a decent lawsuit on her hands.

Mr. Fejes said that there is no hardship with the land and although Ms. Whittaker wants to sell this property, she can't because it is not a conforming parcel.

ITEM #10 – con't.

Ms. Whittaker asked if she was supposed to keep paying taxes on an illegal piece of property and Mr. Fejes said that unfortunately she was. Ms. Whittaker asked where she could go to fight this.

Ms. Lancaster stated that the City of Troy did not make this parcel illegal, and if you own property in Troy you have to pay taxes. Ms. Lancaster also suggested that Ms. Whittaker consult an attorney or a real estate agent to see what can be done with this parcel.

Mr. Royce Miller, 35 Starr was present and stated that he lives next door to this parcel. Mr. Miller said he is opposed to this request as the new home would be built right on top of his home. Mr. Courtney asked how close his home was to the lot line and Mr. Miller said that it was about 5' or 6'. Mr. Miller also said that when she first inherited this lot, he told her he would be interested in purchasing this parcel but Ms. Whittaker never got back to him.

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

There are four (4) written objections of file. There are no written approvals on file.

Mr. Fejes said that there is no practical difficulty with the property that would justify granting a variance.

Motion by Courtney
Supported by Hutson

MOVED, to deny the request of Mr. Vladimir Rrushi, 27 Starr (proposed address) for relief of the Ordinance to construct a single-family home on an existing 50' wide parcel where Section 30.10.06 requires a 60' minimum lot width.

- Petitioner did not demonstrate a hardship that runs with the land.

Yeas: 4 – Courtney, Fejes, Hutson, Kovacs

Nays: 1 - Maxwell

MOTION TO DENY REQUEST CARRIED

Mr. Kovacs stated that he thought the petitioner was in a very difficult situation and suggested that they approach the surrounding neighbors to either purchase an additional 10' or sell the parcel to the surrounding neighbors.

Ms. Whittaker said that she had talked to the surrounding neighbors and no one was interested in purchasing this property.

ITEM #10 – con't.

Mr. Maxwell said that without a variance there is nothing that can be done with this piece of property and this is the reason he voted no to deny the request.

ITEM #11 – VARIANCE REQUEST. MR. JEFF DUNCAN, 6730 WESTAWAY, for relief of the ordinance to construct an addition that will result in a 29' front setback and a 32' front setback to the covered porch. Section 30.10.02 requires a 40' minimum front 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. The plot plan submitted indicates a 29' front setback to the proposed addition and a 32' front setback to the covered porch. Section 30.10.02 requires a 40' minimum front yard setback in R-1B Zoning Districts.

Mr. Duncan was present and stated that the wall closest to the fence has a flat roof and wants to raise that wall 8' to put an additional 6' on that side of the house. He realizes that it has to be fire rated. Mr. Duncan further stated that there is an existing porch and they are trying to create a nicer looking, cottage type of house. They would like to tie the addition together so that the house does not look like it has been added onto three or four times. In addition, the office in the front is the only place that they can make it work. If they tried to put it at the back of the house, they would lose an egress window and would have a problem with the setback to the garage. They cannot go to either side of the house, as the fence is on one side and the driveway is on the other side.

Mr. Duncan said that he does a lot of work from home and he would be like to be able to add this office so he can keep everything in one place. Mr. Fejes asked how long they have lived there and Mr. Duncan said that they purchased this home in 1996.

Mr. Courtney asked if all they were adding to the home was the 12' x 12' room. Mr. Duncan said they are actually adding more room, but the other plans conform to the Ordinance. Basically they are taking a three-bedroom home and actually plan to build an upstairs with two bedrooms and a bathroom for his daughters. They plan to convert the downstairs to one larger bedroom.

Mr. Kovacs asked how large this home was. Mr. Duncan stated that the current home is just under 2000 square feet and with the addition it will be right around 2800 square feet.

Mr. Kovacs asked how this home ended up with a 1' setback to the property line. Mr. Stimac said that he had researched Building Department records, but was unable to find any permits that indicated the addition would be 1' from the existing property line. Mr. Kovacs then asked how old this home was and Mr. Stimac said that the original home was constructed in approximately 1922.

ITEM #11 – con't.

Mr. Duncan said that financially it would be cheaper for them to tear the home down and build a new home, but the rest of the house not under the flat roof has had considerable renovation done to it and has been done to a 1920's look. A lot of very nice quality work has been done on the interior that they would like to keep.

Mr. Fejes asked about the non-conformity of the structure. Mr. Stimac stated that technically the expansion is the raising of the northern wall, which would not add to the square foot area of the structure but would be adding to the volume of the structure because they are increasing the height.

Mr. Hutson said that there are no objections on file. Mr. Hutson also said that he does not have a problem with the non-conformity and he feels that this is a very reasonable request.

Mr. Fejes opened the Public Hearing.

Mr. Dean Cox of 425 Lovell was present and stated that he approves of this request. Mr. Cox stated that what Mr. Duncan is proposing will be an asset to the neighborhood. This is a very old home and has had several additions put on to it and Mr. Duncan's proposal will make it look like something that belongs in this area.

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

Mr. Kovacs asked if there was any way the Board could protect the neighbors and make sure that this home was remodeled as depicted in the pictures presented to the Board. Mr. Kovacs said that the proposed alteration looks beautiful. Mr. Duncan said that he did not have final drawings as he was waiting to see if he could get the variance.

Ms. Lancaster said that you can put conditions on the variance but you would have to look at how these conditions would be enforced. Ms. Lancaster further stated that she did not know how you would be able to hold the petitioner to this plan.

Mr. Stimac said that in other cases specific plans have been submitted and the variance has been granted based on those plans. Sufficient plans have not been submitted in this case to place such a condition on this variance. The dimensions of the alteration have been advertised and those would have to be adhered to.

Motion by Hutson
Supported by Maxwell

ITEM #11 – con't.

MOVED, to grant the request of Mr. Jeff Duncan, 6730 Westaway, for relief of the Ordinance to construct an addition that will result in a 29' front setback to the front wall of the home and a 32' front setback to an expanded covered porch where Section 30.10.02 requires a 40' minimum front yard setback. Also, to extend an existing wall of the home that has a non-conforming side yard setback.

- Variance is not contrary to public interest.
- Variance does not permit a prohibited use in a Zoning District.
- Conformance to the Ordinance is unnecessarily burdensome.
- Variance will not have an adverse effect to surrounding property.

Yeas: 5 – Courtney, Fejes, Hutson, Kovacs, Maxwell

MOTION TO GRANT VARIANCE CARRIED

ITEM #13 – VARIANCE REQUEST. GARY ABITHEIRA, 3367 ELLENBORO, for relief of the Ordinance to split an existing parcel of land that will result in two lots each with a lot area of 7320 square feet where Section 30.10.06 of the Zoning Ordinance requires 7500 square feet of lot area in the R-1E Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split an existing parcel of land, which will result in two lots each with a lot area of 7320 square feet. Section 30.10.06 of the Zoning Ordinance requires 7500 square feet lot area in the R-1E Zoning District.

Mr. Abitheira was present and stated that he is a developer in the area and would like to be able to put two affordable houses on this property. Mr. Abitheira said that this will be an asset to the area and although these lots will not meet the lot area, all the other setbacks will be met. Mr. Abitheira further stated that in order to meet the lot area he would have to purchase property from the three (3) homes behind this property. There is no other way to get the extra property needed.

Mr. Kovacs asked if the petitioner could just get property from one of the lots behind this home rather than all three. Mr. Stimac explained that technically the Ordinance does not differentiate where the extra property comes from. Mr. Kovacs stated that he did not see a hardship with this request as he felt that Mr. Abitheira had the option to approach the neighbors to see if he could obtain the extra property required.

Mr. Abitheira asked if he would have the option to come back to the Board if this request was denied today and he was unable to purchase any extra property from the surrounding neighbors. Mr. Maxwell said that if this request was denied Mr. Abitheira would not be able to come back to the Board. Mr. Courtney suggested that the petitioner ask to withdraw this request and then could fill out a new application and

ITEM #13 – con't.

come back to the Board at a later date. Mr. Abitheira said that he is not the property owner, and thought that she should be the one to ask that this request be withdrawn.

The Chairman opened the Public Hearing.

Beth Saffar, one of the owners of 3367 Ellenboro was present. Ms. Saffar said that she did not quite understand what the Board was proposing and asked if she could go to the neighbors adjacent to this property. Ms. Saffar said that she understand that there was not a hardship but thought the City would want all the benefits and tax dollars from two homes rather than one. Mr. Fejes said that she could try to obtain the extra property from the neighbors and they would have to prove a hardship with the land.

Mr. Courtney said that the owner could ask to have her application withdrawn. Mr. Fejes asked what the owner would like to do and Ms. Saffar said that it sounds like they should withdraw the application.

Mr. Abitheira said that at this time he would like to withdraw this request in order for them to contact the surrounding neighbors to see if they would be able to obtain the extra square footage of land they need.

The Chairman closed the Public Hearing.

There are no written objections or approvals on file.

A discussion ensued regarding whether or not the Board should vote to accept this withdrawal request. Ms. Lancaster said that once an item is withdrawn the Board requires no further action as they no longer have anything to vote on. If a vote was taken and it failed, the Board would be forcing the petitioner to take an action they did not wish to take. The Board can accept the withdrawal, but cannot vote on this action.

The petitioner has withdrawn item #13. No further action taken by the Board.

ITEM #14 – VARIANCE REQUEST. BRIAN SHARRAK, 6969 ROCHESTER (proposed address), for relief of the ordinance to construct a new gas station at the intersection of Rochester Road and South Boulevard. Section 30.20.07 requires a 30' rear yard setback. The site plan submitted indicates that the building would be constructed right up to the west property line. This Section also requires a 20' side yard and the building is proposed to be right up to the south property line.

Section 40.40.00 requires that loading spaces be a minimum dimension of 10' x 50' or 500 square feet. The petitioner is proposing loading spaces that are 10' x 20' or 200 square feet.

ITEM #14 – con't.

Section 39.70.04 requires a minimum of 1,953 square feet of landscaping in addition to a 10' greenbelt along the road frontage for a site this size. The site plan indicates only about 240 square feet of landscaping.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new gas station at the southwest corner of the intersection of South Boulevard and Rochester Road. Section 30.20.07 requires a 30' rear yard setback. The site plan submitted indicates that the building would be constructed right up to the west property line. This Section also requires a 20' side yard. The building is proposed to be right up to the south property line.

Section 40.40.00 requires that loading spaces be a minimum dimension of 10' x 50' or 500 square feet. The loading space is shown with a dimension of 10' x 20' or 200 square feet.

Section 39.70.04 requires a minimum of 1,953 square feet of landscaping in addition to a 10' greenbelt along the road for a site this size. The site plan submitted shows only about 240 square feet.

Mr. Courtney asked if the current building was in compliance and Mr. Stimac said that he thinks it is too far south and west.

Mr. William Quinlan, the Architect for this project and Mr. Brian Sharrak, the owner of the property, were present. Mr. Quinlan stated that the hardship is the size and shape of this lot. They plan to demo the small office and build a new service center. The pumps and canopies will stay in the same location. Most people today come to a gas station not only for gas, but also are looking for the convenience of a food store. This is not a self-created hardship, the existing gas station has been there for years. Mr. Quinlan said that they were hired to determine how to put a convenience store at this corner. They tried to find a way not to violate any of the Zoning Ordinances, but were unable to. Mr. Sharrak likes the look of Salvaggio's and would like to improve this corner so that it will blend with the area. They are asking for a continuation of this use and it is important to them to make this area look good as it is the entrance to the City.

Mr. Courtney said that he did not think most people stopping for gas were looking for a service center. Mr. Courtney asked if there were any statistics on this. Mr. Quinlan stated that he was not in this business but the clients that have remodeled gas stations have all said that a service center is a must.

Mr. Maxwell asked about the dimensions of the loading and unloading zone. Mr. Quinlan said that is to address the requirements of the Ordinance, and they use it to load and unload pop and items similar to this. Mr. Quinlan said that they planned this site to meet Mr. Sharrak's needs and they have determined that he will not require a large loading or unloading zone.

ITEM #14 – con't.

Mr. Hutson said that he did not see a hardship with the location of the pumps. In his opinion they are increasing the size of the building to sell more items and he thinks they are trying to overuse the existing site. Mr. Quinlan said that the hardship is the size and the shape of the property and the existing building does not meet the setbacks. Mr. Hutson said that he was concerned because they want a 0' setback to the property line. Mr. Quinlan said that there only other option would be to leave the site as it is.

Mr. Kovacs asked how large the current building is and Mr. Quinlan said it was 16' x 23'.

Mr. Courtney said that this space was not all for the use of the customers. Mr. Quinlan said that it was used for the office for the person that was managing the facility.

Mr. Maxwell asked if there was a reduction in size of this location due to the expansion of Rochester and South Boulevard. Mr. Stimac said that the gas station was built in the mid 1960's or early 1970's. Mr. Stimac also said that he believes Rochester Road and South Boulevard have both been expanded. This parcel is an acreage parcel and not part of a subdivision so he does not believe there was any type of dedication of right of way for either of those roads at the time the land was created. When the rights of way were expanded the owner was compensated for any property that the City may have acquired.

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

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

Mr. Fejes said that he was not happy about losing the landscaping in this area, and he also believes that they are over building the corner lot. Mr. Courtney said that he agrees with the loss of the landscaping but this Board has granted several large variances for other gas stations in the area. Mr. Courtney said he would like to see more landscaping but he does not believe the petitioner has any room to put the landscaping in.

Mr. Quinlan suggested that the Board take this request one variance at a time and address each item. Mr. Fejes said that the Board members have discussed the different items and they are going to take a vote on this request as it sits.

Mr. Kovacs stated that he is not opposed to the 0' setback. Rochester Road and South Boulevard have been expanded, but we are putting these owners at a disadvantage by not allowing the variances. Nothing else can be put on this property and he feels without a convenience center, the owner would not have the same advantage as other gas stations in the area.

Mr. Hutson disagreed and said that as long as they are selling gas, people will come.

ITEM #14 – con't.

Mr. Maxwell said that he was in favor of the variances as this would become a viable business and it would be the best use of the parcel. Mr. Maxwell further stated that he did not think people would notice the lack of landscaping on this corner.

Motion by Maxwell
Supported by Courtney

MOVED, to grant Brian Sharrak, 6969 Rochester (proposed address), relief of the ordinance to construct a new gas station at the intersection of Rochester Road and South Boulevard with a 0' setback to the property line; and to have loading spaces that are 10' x 20' or 200 square feet; and to have 240 square feet of landscaping where 1,953 square feet is required.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Expansion of Rochester Road and South Boulevard have created a hardship with the property.
- Variance applies only to the property described in this application.
- This particular plan supports a good traffic flow.
- Variance will allow the petitioner the opportunity to run a viable business.

Yeas: 4 – Kovacs, Maxwell, Courtney, Fejes
Nays: 1 – Hutson

MOTION TO GRANT ALL VARIANCES CARRIED

Mr. Fejes said that a gas station has been at this corner forever and although he does not like to lose the landscaping, he does believe the variances will allow the property to be a viable business.

ITEM #15 – VARIANCE REQUEST. BENNY SPIELMANN, 2963 INDUSTRIAL ROW, for relief of the Ordinance to construct a building addition and new parking lot on the site of an existing industrial building. The site plan submitted show the construction of the parking lot right up to the front property line along Coolidge and within 5' of the front property line along Industrial Row. Paragraph L of Section 31.30.00 requires that the 50' front yard required in the M-1 (Light Industrial) Zoning District remain free of parking and maneuvering lanes. Because the parking is so close to the property lines, there is no 10' greenbelt as required by Section 39.70.02.

Further, Section 39.70.04 requires a minimum of 3,993 square feet of landscaping in addition to the 10' greenbelt along the road frontage. The plans show only about 867 square feet of landscaping.

ITEM #15 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a building addition and new parking lot on the site of an existing industrial building. The plans show the construction of a new parking lot right up to the front property line along Coolidge and within 5' of the front property line along Industrial Row. Paragraph L of Section 31.30.00 requires that the 50' front yard required in the M-1 (Light Industrial) Zoning District remain free of parking and maneuvering lanes. Since these parking areas will be so close to the property lines, there is also no 10' greenbelt as required by Section 39.70.02 shown on the plans.

Further, Section 39.70.04 requires a minimum of 3,993 square feet of landscaping in addition to the 10' greenbelt along the road frontage for a site this size. The plans show only about 867 square feet of landscaping.

Mr. Benny Spielmann was present and stated that they are looking to build an addition on the east side of the building and because of the addition they will lose the parking that they have now and have no choice but to put the parking at the front of the building. Mr. Spielmann stated that he had met with Ron Hynd of the Parks and Recreation Department and he approved installing landscaping per his plan and recommended adding every 30 linear feet a single trunk tree and although Mr. Spielmann offered to park more elaborate landscaping in front Mr. Hynd said that he did not feel that was necessary.

Mr. Spielmann stated that they want to take this building and make it an "architectural jewel" so that it will fit in with the buildings in the surrounding area. This is the first building on Coolidge coming into Troy and it is a run down, tired Industrial building and has lost its relevance in the area. They plan to rejuvenate this building and use the same architectural elements as the Home Depot across the street. Mr. Spielmann and Dominic Pangborn the co-owner of this company are moving their office into Troy from Oak Park and believe that they will be an asset to Troy as much as Troy will be an asset to them.

Mr. Kovacs asked what the nature of the business was. Mr. Spielmann said he is an Architect and Dominic is a well know Graphic Designer, and they would supply exotic flooring materials. Mr. Kovacs then asked if the addition would be used as warehouse space. Mr. Spielmann said that it would be used for warehouse and part will be storage of raw materials. They have tight connections with the Design Center, they want to do something much grander, and they feel this location is just tremendous.

Mr. Courtney asked what percentage of their business would be retail. Mr. Spielmann said that the business is not going to be open to the public, but their clientele will be mostly builders or interior design people. Mr. Spielmann said that the largest percentage of the space will be used for raw storage. People will come in, look at the raw materials, and order from them. Mr. Courtney asked if they had looked at other locations. Mr. Spielmann said that they have been looking for a site for a long time and

ITEM #15 – con't.

right now has a successful business in Oak Park. In order to move his business he needed an area exactly like this one. The building is fine their only problem is with the parking.

Mr. Courtney asked why they wanted this site and Mr. Pangborn said that this location is absolutely perfect for their needs.

Mr. Spielmann said that he feels the location of the present parking is very dangerous because this is where the trucks unload their material and people have to walk around the truck to get into the building. He does not believe it is safe and is very unattractive. Mr. Courtney said that as long as they are remodeling the building, they could put the entrance in another location.

Mr. Pangborn said that everything will go through the back rather than crossing over. Mr. Spielmann said that regardless of where the entrance in, the parking will have to be moved to the front of the building. Mr. Pangborn said that they have explored a number of different scenarios and this is the best possible solution. Mr. Spielmann said that this location is very poorly landscaped as it is now and they plan to make this location a "jewel". They would also like to place a sign indicating that this is the entrance to Troy.

Mr. Kovacs asked how close the parking would be to the sidewalk along Coolidge. Mr. Stimac said that the property to the south is a municipal cemetery. Parking will be closer to Coolidge that what is depicted on the drawings submitted by the petitioner. The parking lot will line up with the sidewalk to the north.

Mr. Spielmann said that he understands that each request is taken as a case-by-case scenario, but the building across Industrial Row has a parking lot right up to Coolidge and he felt that the Board should take that into consideration.

Mr. Hutson stated that if you look at the buildings to the north they all appear to be setback along 40' or 50' and presents a nice green approach as you are coming along Coolidge. The petitioner is proposing to have parking within 5' of Coolidge and he would prefer not to see cars parked this close to Coolidge. Mr. Spielmann said that is the reason he proposed to put in 3' to 4' high shrubs at the front of this lot. Mr. Hutson said that he did not believe that would add enough relief compared to a 40' or 50' green ribbon.

Mr. Kovacs brought up a question about the power poles on this property. Mr. Stimac said that in his estimation by viewing the site out in the field, it appears that those power poles are approximately 3' to 5' east of the existing sidewalk and will be in the pavement. The petitioner would have to either move these poles or pave around them.

ITEM #15 - con't.

Mr. Spielmann said that he did not know these poles were on his property, he thought they would be on the City property. Mr. Kovacs asked if it was possible that these poles be located on this property and Mr. Stimac said that it was.

Mr. Kovacs asked if the petitioner thought he was going that far out and Mr. Spielmann said he knew how far he was going to go, but was unaware that the poles were on his property. Mr. Kovacs said that he believes there is a large discrepancy between the way the City is interpreting where the parking is going to go relative to the plans submitted and the drawings submitted to the Board by Mr. Spielmann indicating where he plans to put the parking lot. Mr. Spielmann said that his Architect drew up these plans based on a professional survey he had done. Mr. Kovacs said that the two plans are not the same and he would like to see a more accurate drawing in order to make a decision on this variance request.

Mr. Spielmann said that based on the drawings he had submitted, Mr. Hutson could see the building to the north had parking to Coolidge and a loading dock facing Coolidge. Mr. Hutson said that he understood that, but there are only five (5) parking spaces shown. Mr. Spielmann said that there is about 40 extra feet of parking.

Mr. Kovacs said that he would like a more accurate drawing showing where this parking is going to be.

Mr. Courtney said that personally he does not like the parking in the front at all and asked if the petitioner would look for a different spot for parking. Mr. Courtney also said that in remodeling they can change the entrance to the building so that people will not have to go around the trucks to get into the building.

Mr. Pangborn said that the City of Troy would never progress if they did not grant variances and compared this site to the property across the street. Mr. Courtney said that the property owners across Coolidge did not come and ask to put parking right up to the property line along Coolidge and perhaps the petitioner would want to look for a different site.

Mr. Stimac said that the building to the north had received a variance to have parking in the front of the building. In regards to the telephone poles, they are not in line and only one telephone pole will be located in the proposed pavement. The sidewalk is up to the property line and the petitioner is proposing to pave through the front property line. Mr. Spielmann suggested that they could park around the telephone pole that is on their property.

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

There are four (4) written objections on file. There are no written approvals on file.

ITEM #15 – con't.

Motion by Kovacs
Supported by Maxwell

MOVED, to postpone the request of Benny Spielmann, 2963 Industrial Row, for relief of the ordinance to construct a new gas station at the southwest corner of the intersection of Rochester Road and South Boulevard with a 0' side and rear yard setback where Section 30.20.07 requires a 30' rear yard, and a 20' side yard setback. Also, to have a 200 square foot loading space where Section 40.40.00 requires 500 square feet. Finally, to have 240 square feet of landscaping where Section 39.70.04 requires a minimum of 1,953 square feet of landscaping until the meeting of June 20, 2006.

- To allow the petitioner the opportunity to present the Board with more accurate drawings showing the exact location of the parking lot in relation to Coolidge Highway.
- These drawings should also depict how much greenbelt will be on the site.
- The Board would like to see a proposed landscape plan.

Yeas: 5 - Hutson, Kovacs, Maxwell, Courtney, Fejes

MOTION TO POSTPONE THIS REQUEST UNTIL JUNE 20, 2006 CARRIED

ITEM #16 – ELECTION OF OFFICERS.

Motion by Courtney
Supported by Fejes

MOVED, that Mr. Hutson be elected Chairman and Mr. Maxwell be elected Vice-Chairman for the Board of Zoning Appeals until May 2007.

Yeas: 5 – Kovacs, Maxwell, Courtney, Fejes, Hutson

MOTION TO ELECT MR. HUTSON, CHAIRMAN AND MR. MAXWELL, VICE-CHAIRMAN CARRIED

The Board of Zoning Appeals meeting adjourned at 10:16 P.M.

Christopher Fejes, Chairman



Pamela Pasternak, Recording Secretary