The Chairman, Christopher Fejes, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, March 21, 2006 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
Christopher Fejes
Marcia Gies
Michael Hutson
Matthew Kovacs
Mark Maxwell
Wayne Wright

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF FEBRUARY 21, 2006

Motion by Courtney
Supported by Wright

MOVED, to approve the minutes of the meeting of February 21, 2006 as written.

Yeas: 6 – Fejes, Gies, Hutson, Kovacs, Wright, Courtney
Abstain: 1 – Maxwell

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – APPROVAL OF ITEMS #3 THROUGH ITEM #5

Motion by Courtney
Supported by Wright

RESOLVED, that items #3 and #5 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Yeas: All – 7

ITEM #3 – RENEWAL REQUESTED. K-MART, 100 E. MAPLE, for relief which will allow for an outdoor display of plant material, during the months of April through July, in front of K-Mart along the north side of the fenced area and a four-foot section of the sidewalk at the west end of the building, adjacent to the building.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board on a yearly basis since 1978, which allows for an outdoor display of plant materials in front of Kmart along the north side of the fenced area and four-foot section

J-1n

ITEM #3 – con't.

of the sidewalk, at the west end of the building, adjacent to the building. This display is used for plants and flowers, and the variance is valid during the months of April through July. This request has been subject to the petitioner providing a corral type fence to both enclose the area of the display and maintain a safe sidewalk at the same time. This item last appeared before this Board at the meeting of March 15, 2005 and was granted a one-year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant Kmart, 100 E. Maple, a one-year (1) renewal of a variance which will allow for an outdoor display of plant material, during the months of April through July, in front of Kmart along the north side of the fenced area and a four-foot section of the sidewalk, at the west end of the building, adjacent to the building.

- Variance is not contrary to public interest.
- There are no complaints or objections on file.

ITEM #5 – RENEWAL REQUESTED. ST. GEORGE ORTHODOX CHURCH, 2160 E. MAPLE, for relief to maintain a 5' high landscaped berm along the south and east property lines in place of the 4'-6" high masonry screening wall; and relief of the 4'-6" high masonry wall required along the west side of off-street parking where it is adjacent to residentially zoned land.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board since February 1993, which allowed for the construction of a 5' high landscaped berm, in lieu of the 4'-6" high masonry wall, along the south and east property lines, and relief of the 4'-6" high masonry wall required along the west property line. The relief was originally granted based on the fact that the property to the west is a non-residential use under the terms of a consent judgment and the neighbors to the south and east preferred a berm in lieu of a wall. This item last appeared before this Board at the meeting of March 18, 2003 and was granted a three (3) year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant St. George Orthodox Church, 2160 E. Maple, a three (3) year renewal of relief to maintain a 5' high landscaped berm, in lieu of the 4'-6" high masonry wall, along the south and east property lines, and relief of the 4'-6" high masonry wall required along the west property line where the parking lot is adjacent to residentially zoned land.

- Property to the west is a non-residential use under the terms of a consent judgment.
- Neighbors on the east and the south prefer a berm in lieu of a wall.

ITEM #4 – RENEWAL REQUESTED. S.O.C. CREDIT UNION, 4555 INVESTMENT DR., for relief to maintain a 6' high berm in lieu of the 6' high masonry-screening wall required along the south property line.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board since 1987 to maintain a 6' high berm in lieu of the 6' high masonry-screening wall required along the south property line abutting residential zoning. The berm is in place and landscaping has been completed and it appears to adequately screen the sites from the south. This item last appeared before this Board at the meeting of March 18, 2003 and was granted a three-year (3) renewal at that time. Conditions remain the same and we have no complaints or objections on file.

Motion by Courtney
Supported by Wright

MOVED, to postpone the request of S.O.C. Credit Union, 4555 Investment Dr., for a three-year (3) renewal of relief to maintain a 6' high berm in lieu of the 6' high masonry-screening wall required along the south property line abutting residential zoning until the meeting of April 18, 2006.

- To allow the Building Department the opportunity to publish a Public Hearing to consider making this a permanent variance.

Yeas: All – 7

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF APRIL 18, 2006 CARRIED

Mr. Maxwell said that in the past this location did not have complete landscaping. He would be hesitant in making this a permanent variance until the Board was sure that the landscaping was sufficient in separating this property from the residential property behind it.

The Chairman informed the people in Council Chambers that the petitioner for Item #7 had requested that this item be moved to the end of the agenda. Item #7 would now be heard as Item #11.

ITEM #6 - VARIANCE REQUEST. ALLIED METALS CORPORATION, 1750 STEPHENSON, for relief of the Ordinance to construct an addition to their front parking lot that will result in a 24' front setback where Paragraph L of Section 31.30.00 of the Troy Ordinance requires that the 50' front yard remain as a landscaped open space. Presently the existing parking lot has a 35' front yard setback and is considered a non-conforming structure. Section 40.50.04 of the Ordinance prohibits expansions of non-conforming structures in any way that increases the non-conformity.

ITEM #6 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition to the parking lot in front of their building. Paragraph L of Section 31.30.00 requires that the 50' front yard remain as a landscaped open space, without vehicular parking spaces and maneuvering aisles. The existing parking lot is located about 35' from the front property line. At the time the parking lot was constructed parking was allowed in the front yard setback. This existing parking area is classified as a non-conforming structure per Section 40.50.04 of the Troy Zoning Ordinance. The site plan submitted indicates a proposed addition to the parking lot that will result in a 24' front setback from the front property line. Section 40.50.04 of the Troy Zoning Ordinance prohibits expansions of non-conforming structures in any way that increases the non-conformity.

This item last appeared before this Board at the meeting of February 21, 2006 and was postponed to this meeting to allow the petitioner the opportunity to present detailed plans regarding this variance request.

Mr. Courtney asked if the petitioner had submitted any revised plans for the review of the Board. Mr. Stimac informed him that the Building Department had not received any other plans from the petitioner.

Mr. Fejes said that the Board was hoping to receive revised plans that were more detailed in explaining why the petitioner needs to have parking in the front of the building and what the hardship is that runs with the land that would justify increasing the non-conformity.

Mr. Robert Abraham, the Chief Financial Officer of Allied Metals and Mr. David Rogers were present. Mr. Abraham explained that this company has been at this location since 1996. Originally they had approximately twenty-four (24) shop employees and six (6) to seven (7) clerical staff. Since 2000 they have experienced an extraordinary growth pattern. They are operating twenty-four (24) hours a day and their clerical staff has grown from seven (7) to fourteen (14). This increase in business is what is causing their hardship.

There are trucks coming in and out of this facility constantly and they are concerned about the safety of their employees. These trucks come in off of Stephenson go to the weight scale and then proceed to the back of the property where they turn around and then are either loaded or unloaded. They are willing to increase the berm and landscaping along Stephenson and do not feel they have any other alternative. To stay in this facility they require more parking.

Mr. Fejes asked why some of the material that is stored outside could not be put inside the building. Mr. Abraham said that some of the material is 25' long, and they don't want to mix the different types of raw material that they receive. As their business continues to grow the amount of material is increasing and they have no choice but to

ITEM #6 – con't.

leave it outside. They have added more machinery inside and are operating at capacity now.

Mr. Fejes asked if Mr. Abraham could tell the Board what their rate of growth was. Mr. Abraham stated from 2005 to 2006 their business has increased by another 15%. Mr. Fejes said that if this rate of growth continued they would outgrow this building by 2008 and Mr. Abraham indicated that they are looking at other options. They would maintain their core operation at this facility and would take out one to two of the lines and move them to another location. Mr. Fejes informed Mr. Abraham that a variance runs with the property, and if they were to sell this property, the variance would still be in effect. Mr. Abraham said that the property is under a common ownership and they would be willing to post a bond, or sign an agreement that if they were to leave this site, they would remove whatever they install. Mr. Abraham also said that they have a second building on Piedmont and have moved some of their operations to that location.

Mr. Hutson asked how many shop employees are at this location. Mr. Abraham said that there are between 30 and 35 in the plant, and 14 in the office. Mr. Hutson asked where they park at this time and Mr. Abraham said that they park in the front of the building. Mr. Abraham also stated that they have an agreement with the Troy Medical Office across Stephenson to allow parking at their site. They have tried to obtain permission to park at the building next door, but the owner has been unwilling to let them use that area. Mr. Hutson expressed concern about employees crossing Stephenson to come into the building.

Mr. Hutson said that in his opinion the outside storage looks very unorganized and he was hoping that someone would have brought in a plan showing how this area could be organized and perhaps supply more parking. Mr. Rogers said that they can't bury one material with a different type of material and this is the reason that they are all separated as it would be too difficult to dig out the material they need.

Mr. Abraham said that it is very important to keep the passageway open for the trucks coming in and out of the property. Mr. Courtney stated that the Board had postponed this request to allow the petitioner to bring in a drawing showing how much parking was available on the site. Mr. Courtney asked how many people park on the south side of the site, Mr. Abraham said that people only park in the front of the building, and no one parks inside the gated area. Mr. Courtney asked how many parking spaces were available and Mr. Abraham said that he thought there were twenty-five (25) spaces. Mr. Courtney asked if that covered a day shift and Mr. Abraham said that it did not and this is the problem. Mr. Abraham said that they also take safety very seriously, have moved about 20% of their operation down to Piedmont to provide some relief, and are in the beginning stages of another relocation study to provide more relief. With or without re-locating some of their operations they would still require a variance. Regardless of where they move their lines, this building will always be their headquarters.

ITEM #6 – con't.

Mr. Courtney asked if the City could accept any of the proposals that the petitioner had offered regarding this variance. Ms. Lancaster said that this Board can never accept a bond from a petitioner and secondly, a variance runs with the land and the Board has to make a decision based on hardship and practical difficulty with the land. Mr. Courtney asked if they could give a temporary variance and Ms. Lancaster said that a temporary variance is not permitted unless it is specifically addressed in the Ordinance.

Mr. Stimac stated that the petitioner indicated that there are twenty-five parking spaces up in front of the property; however, as he reads the plan there are fifteen (15) parking spaces available. There are eleven (11) parking spaces shown north of the driveway and four (4) additional parking spaces on the south side. The petitioner wants to double the amount of parking, which would get him up to twenty-nine (29) or thirty- (30) parking spaces.

Mr. Abraham said that the southernmost lot is already striped with that configuration, currently there are three (3) or four (4) spots for parallel parking, and they are trying to change those to perpendicular parking. They are doing a lot of work to obtain these extra parking spots, not because they want them, but because they need them.

Mr. Kovacs asked if the Board could stipulate that the asphalt would have to be removed if this petitioner would leave this site, although the variance would run with the land. Ms. Lancaster said that it would not be a good idea because it would be very difficult to enforce such a stipulation, and because the variance runs with the land the hardship has to be the same no matter who owns this property. The judgment has to be made on the practical difficulty that runs with the land.

Mr. Abraham passed out some photos for the Board to look at showing the parking on the property.

Mr. Fejes said that if someone else were to buy this property, they may not need the extra parking in the front, but if the variance is granted, it will add to the non-conformity of this property. Mr. Fejes also expressed concern about employees crossing Stephenson to get into work.

Mr. Hutson said that although the petitioner has been there a long time, the hardship is that the petitioner has outgrown this site. Even though they are outsourcing some of their operations, Mr. Hutson did not see a practical difficulty that runs with the land, he believes this is a more of a case of overuse of the property. Mr. Hutson also said that it was his opinion that the parking this property juts further out than the other properties on Stephenson. Mr. Abraham said that the linear line of parking would be in line with the other properties along Stephenson.

ITEM #6 – con't.

Mr. Maxwell said that this would primarily be a temporary solution and because the variance would run with the land permanently, he does have reservations regarding this request.

Mr. Wright said that he had expected to see drawings or some sort of representation of what they may be able to do with the property at the rear in order to increase the parking. Mr. Courtney said that he agreed and thought that the petitioner would have presented more information to the Board.

Mr. Fejes said that he thought the petitioner had covered some of this information through the previous discussion. Mr. Fejes said that it is his understanding that the main reason for the different stacks of material that are outside is to allow the petitioner easier access to the raw materials.

Mr. Courtney said that he understands that but would have liked to see some type of drawing. The variance is going to run with the land no matter who owns the building.

Mr. Kovacs said that currently they are double-parking even though they are not supposed to be doing that. Mr. Kovacs asked if the Board could grant a variance to simply park in two rows with a smaller width. Mr. Stimac said that the Board does have the authority to grant a variance on the size of parking spaces or the width of the aisle; however, the Public Hearing notice that was sent on this request did not address a change in the dimension of the parking spaces or aisles. A new application would have to be received asking for the dimensional change the petitioner would like to have and the Public Hearing notices would be re-published.

Ms. Gies asked if the petitioner would obtain what he is looking for if he submitted a request on the change in the size of the parking spaces or width aisle. Mr. Stimac said that it depended on what the petitioner asked for and how far the Board would be willing to go on such a request. Currently it appears that the deficiency on the drawings is 11', which is going down from 35' to 24'. If you shorten the parking spaces 2' each that would give you 4', but the driveway would go from a 24' drive to a 17' drive.

Mr. Courtney said that he would be concerned about the turning radius if this type of change was made. Mr. Kovacs said that they are already parking in this manner on the south side of the property. Mr. Abraham said that people park where there are stripes.

Mr. Maxwell asked if the driveway could be moved and Mr. Abraham said that it would be too costly as there is a fire hydrant and sewers in this area. They still have to get the trucks in and out of there and right now the alignment works very well.

Mr. Courtney asked if they were making arrangements to move the fire hydrant and/or sewers, perhaps they could move the truck scale. Mr. Abraham said that this would be impossible as the scale would be in the middle of the lot. Mr. Abraham said that they

ITEM #6 – con't.

are planning on splitting their product line, but have no plans to move from Troy and this facility would be their world headquarters. They are not trying to encroach on their neighbors and would be willing to make it aesthetically pleasing for everyone.

Mr. Stimac asked if there was a retaining wall on the south property line and Mr. Abraham indicated that there was. Mr. Stimac explained that originally the property south of this wall was part of this site. Mr. Stimac said that if the petitioner had access rights to the southerly 19' of the site and moved the wall, they may be able to park cars all along that south property line and would not require a variance. Mr. Stimac also clarified that this is a private two-way drive and the owner of the property behind this location brought this land to allow a second access to their facility. Mr. Stimac does not know what was in the purchase agreement and if access rights were granted.

Motion by Courtney
Supported by Gies

MOVED, to postpone the request of Allied Metals Corporation, 1750 Stephenson, until the meeting of April 18, 2006, for relief of the Ordinance to construct an addition to their front parking lot that will result in a 24' front setback where Paragraph L of Section 31.30.00 of the Ordinance requires that the 50' front yard remain as a landscaped open space. Presently the existing parking lot has a 35' front yard setback and is considered a non-conforming structure. Section 40.50.04 of the Ordinance prohibits expansions on non-conforming structure an any way that increases the non-conformity.

- To allow the petitioner the opportunity to determine if they have access rights to the property on the south side.

Yeas: All – 7

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF APRIL 18, 2006

Mr. Courtney said that if they can't withdraw this request, he would like to see drawings showing the material that is stored outside and perhaps a plan to re-organize it. He would also like to know exactly how much parking is actually available.

Mr. Wright said that originally they had plenty of parking but because they are using the property for storage, they have created their own hardship.

Mr. Abraham clarified that there are no storage bins outside, the only thing stored outside is raw iron.

ITEM #7 – MOVED TO ITEM #11

Mr. Fejes stated that they would like to hear Item #8, Item #9 and Item #10 together as they are all basically the same request. Ms. Lancaster said that they could definitely hear the presentation of these items together, and at the time of the Public Hearing, anyone wishing to speak would indicate which property they were addressing.

ITEM #8 – VARIANCE REQUEST. METRO PCS, 4031 JOHN R., on the request from Metro PCS for approval to install a 75' tall temporary antenna for a six-month time period along side the existing communication tower located at 4031 John R. Section 43.80.00 of the Zoning Ordinance allows the Board of Zoning Appeals to permit temporary structures for permitted uses for periods not to exceed two years.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to install a portable antenna facility alongside the existing tower facility located on this parcel. The temporary tower is a trailer-mounted antenna that will operate off of a portable generator. Wireless telecommunication services from Metro PCS are proposed to be made available to the Detroit Metropolitan area on March 31, 2006. The permanent antenna location, which is proposed to be collocated on the existing tower facility will not be ready at that time. Petitioners are requesting a temporary permit until the permanent antenna facility can be turned on. Section 43.80.00 of the Zoning Ordinance requires approval from the Board of Zoning Appeals to permit temporary buildings for permitted uses for a time frame not to exceed two years.

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

ITEM #9 – VARIANCE REQUEST. METRO PCS, 203 LOWRY, on the request from Metro PCS for approval to install a 75' tall temporary antenna for a six-month time period along side the existing communication tower located at 203 Lowry. Section 43.80.00 of the Zoning Ordinance allows the Board of Zoning Appeals to permit temporary structures for permitted uses for periods not to exceed two years.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance for the installation of a portable antenna facility at this location. The temporary tower is a trailer-mounted antenna that will operate off of a portable generator. Wireless telecommunication services from Metro PCS are proposed to be made available to the Detroit Metropolitan area on March 31, 2006. The permanent antenna location, which is proposed to be collocated on the existing tower facility will not be ready at that time. Petitioners are requesting a permit for a temporary tower until the permanent antenna facility can be turned on. Section 43.80.00 of the Zoning Ordinance requires approval from the Board of Zoning Appeals to permit temporary buildings for permitted uses for a time frame not to exceed two years.

There are no written approvals or objections on file.

ITEM #10 – VARIANCE REQUEST. METRO PCS, 200 E. WATTLES, for approval to install a 75' tall temporary antenna for a six-month time period at 200 E. Wattles. Section 43.80.00 of the Zoning Ordinance allows the Board of Zoning Appeals to permit temporary structures for permitted uses for periods not to exceed two years.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance for the installation of a portable antenna facility at this location. The temporary tower is a trailer-mounted antenna that will operate off of a portable generator. This petitioner will provide wireless telecommunication service to the Detroit Metropolitan area on March 31, 2006. The permanent antenna location, which is proposed to be collocated on the existing tower facility on the adjacent property at 3838 Livernois, will not be ready at that time. Petitioners are requesting a temporary permit until the permanent antenna facility can be turned on. Section 43.80.00 of the Zoning Ordinance requires approval from the Board of Zoning Appeals to permit temporary buildings for permitted uses for a time frame not to exceed two years.

The existing tower at this site, 200 E. Wattles, is not on this property, but is located next door at Walsh College. This location is strictly a temporary location and will be moved to the property to the south.

There is one written objection on file. There are no written approvals on file.

Mr. Stimac further explained that each location will have a generator that will run 24 hours a day on each site. The towers are basically on a trailer, are telescoping towers, and will extend 75' in the air.

Mr. Courtney asked if there were homes located close to these towers. On John R. there is a residence approximately 400' away from the tower. Lowry has office buildings to the east and a single-family residence about 200' away from the tower on the west. The closest residential property to 200 E. Wattles would probably be on the north side of Wattles.

Mr. Hutson said that regarding the John R. site, the owner Mr. Garrett gave permission for the temporary antennas and he has a partnership with Mr. Garrett. Mr. Hutson said he has no interest in this property and does feel it would cause a conflict, but wanted the Board to be aware of the relationship. The Board agreed that it would not cause a conflict.

Mr. Bernard Yantz was present and said that they are looking for temporary permits for these three sites. The generators will run at about 57 decibels, which is a little quieter than an air conditioner. They will be the only people on this temporary tower and plan on using a microwave dish. They will not hook up to the municipality power or telephone.

Mr. Courtney asked if they had agreements with the people that own the existing towers to put their equipment on them. Mr. Yantz said that they have agreements with the

ITEM #8, #9, and #10 – con't.

owners of all three sites, and the existing towers are being strengthened to handle the extra antennas.

Mr. Kovacs asked what the decibel level would be at 100' if the generator would run at 57 decibels at 23'. Mr. Yantz said that it would be considerably less.

Mr. Fejes asked about the safety of these towers. Mr. Yantz said that they have stabilizer bars and if need be they could put guide wires up. The antennas are fairly small and he does not believe they would be adding a lot of weight to the tower.

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

Motion by Kovacs
Supported by Courtney

MOVED, to grant Metro PCS, 4031 John R., approval to install a 75' tall temporary antenna for a six-month time period along side the existing communication tower located at 4031 John R. Section 43.80.00 of the Zoning Ordinance allows the Board of Zoning Appeals to permit temporary structures for permitted uses for periods not to exceed six months.

- If the petitioner requires additional time, they will need to come back to the Board for a renewal.

Yeas: All – 7

MOVED, to grant Metro PCS, 203 Lowry, approval to install a 75' tall temporary antenna for a six-month time period along side the existing communication tower located at 203 Lowry. Section 43.80.00 of the Zoning Ordinance allows the Board of Zoning Appeals to permit temporary structures for permitted uses for periods not to exceed six months.

- If the petitioner requires additional time, they will need to come back to the Board for a renewal.

Yeas: All – 7

MOVED, to grant Metro PCS, 200 E. Wattles, approval to install a 75' tall temporary antenna for a six-month time period at 200 E. Wattles. Section 43.80.00 of the Zoning Ordinance allows the Board of Zoning Appeals to permit temporary structures for permitted uses for periods not to exceed six months.

- If the petitioner requires additional time, they will need to come back to the Board for a renewal.

ITEM #8, #9, and #10 – con't.

Yeas: All – 7

MOTION TO GRANT REQUEST FOR ITEM #8, ITEM #9 AND ITEM #10 CARRIED

ITEM #11 (ITEM #7) - VARIANCE REQUEST. SAIF JAMEEL, 3031 CROOKS RD., for relief of the Ordinance to construct a new commercial building on a site which is .51 acres in size, where Section 23.25.01 of the Troy Ordinance requires a site that is at least one acre in size in order to have a drive-up window facility in the H-S (Highway Service) Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new commercial building. A majority of this property is located within the H-S (Highway Service) Zoning District. The plans submitted indicate that the development will include a drive-up window accessory to the restaurant use proposed in the building. Section 23.25.01 of the Troy Zoning Ordinance requires a site that is at least one acre in size in order to have a drive-up window facility in the H-S (Highway Service) Zoning District. This site is only .51 acres in size.

Mr. Fejes asked if another fast food, drive up restaurant could come in this area. Mr. Stimac explained that the number of parking spaces required is based on the number of seats inside the restaurant. Technically, whether it is a small restaurant, or a fast food type of restaurant the parking does not change, but is based on the number of seats. Mr. Stimac said that he is not aware of any issues regarding the parking at this location. Mr. Fejes also asked if the property to the west had been purchased as of yet by the petitioner. Mr. Stimac explained that as far as he knew it was an agreement to purchase the property.

Mr. Maxwell asked what the square footage was of the seating area. Mr. Stimac said that there are 13 parking spaces provided, and the analysis shows that there is one parking space for each 35 square feet of seating area. Based upon seating count, with 13 parking spaces the petitioner could get 21 seats.

Mr. Courtney said that he would like the petitioner to demonstrate to the Board the changes in this plan compared to the plan brought forth from the request that was presented to the Board in October 2005.

Mr. Joe Novitsky, the architect for this request was present as well as Saif Jameel, the petitioner and John Anderson of Starbucks. Mr. Novitsky indicated that they have been working very carefully with the Planning Commission and the Building Department to develop this site. The additional land to the west of this site was not part of the original plan submitted. The site was very tight and Mr. Novitsky believes that there would not have been any way to make the original plan fit. They have tried to satisfy the City requirements and are working with the standards of the corporate structure that is ultimately coming to them with their needs. Mr. Novitsky said that he has been working very carefully with the City regarding their landscape plans and believes that they will

ITEM #11 – con't.

meet all the requirements. The hardship created is because this property is in the Highway Zoning District.

Mr. Hutson asked if Mr. Jameel owned this property. Mr. Jameel said that he is actually a lessee of this property. Mr. Hutson then asked if they have reached an agreement with Starbuck's yet and Mr. Jameel said that he cannot sign an agreement with Starbuck's until he has taken care of the items that Starbuck's is requesting. Mr. Hutson said that it is his understanding that the lease agreement restricts Mr. Jameel to lease this property as a gas station and asked if he had reached an agreement with Mrs. Ford to change this lease agreement. Mr. Jameel said that he had and they have been talking to attorneys for both families and they are very agreeable. Mr. Hutson asked if he had a signed agreement and Mr. Jameel said he did not, because Mrs. Ford did not want the zoning on this property to change. Mr. Jameel said that Mrs. Ford did not want to lose the zoning as a gas station. Mr. Hutson asked Mr. Jameel if the only issue he had to address was the zoning. Mr. Jameel said that Mrs. Ford does not want to lose her zoning as a gas station, in case they ever want to make it a gas station again. Mr. Hutson said that he had spoken to an attorney representing one of the owners and was informed that no agreement has been reached on this property at all. Mr. Jameel said that he would dispute that because he has several letters from the attorney handling both sides that lists ten issues that he has to take care of, and this variance and an appearance before the Planning Commission would be the last items he would have to take care of. Mr. Hutson confirmed that Mr. Jameel does not have any type of signed agreement for the purchase of this property.

Mr. Fejes asked what this means and if this issue is actually putting the cart before the horse. Ms. Lancaster said that if there is a personal conflict or a lawsuit between the parties, it does not concern the Board. The Board has to take a vote based on the property. Ms. Lancaster also said that if the property was not developed in a certain time the variance would not be in effect. Mr. Stimac explained that the Zoning Ordinance addresses this issue, and in fact states that if a Building Permit is not obtained within twelve (12) months of the variance being granted, the variance is no longer valid. Mr. Fejes said that theoretically someone could come in and do something that they don't want them to do. Mr. Stimac said that the variance runs with the land, and the Board could place a stipulation on the variance that it is approved per the plans submitted to the Board at this time. This would include the layout of the building, the parking and general appearance of the site. Mr. Stimac also said that the plan has not gone before the Planning Commission at this time, and the Planning Commission may make different recommendations.

Mr. Courtney asked what lot size would be required for a building of this type if it was located in another Zoning classification. Mr. Stimac stated that the minimum lot size for a drive up restaurant is the same in any Zoning classification, which is one (1) acre. Mr. Courtney asked about the cross access to the parcel to the north. Mr. Stimac said that he couldn't speak for the Planning Commission, however, he believes that as part of the

ITEM #11 – con't.

Planning Commission site approval they would want a cross access easement on this site. The owner, lessee, or lawyer representing the petitioner cannot mandate the owner of the property to the north provide cross access easement.

Mr. Courtney asked if they had signed an agreement with the owner of the property to the north to give them a cross access easement. Mr. Novitsky said that nothing has been signed, but he feels this is a "good faith" agreement. He also feels that everything depends on their success tonight. The cross access agreement is contingent on the petitioner receiving the variance tonight. Mr. Novitsky said that they have done everything they can to ease the traffic patterns in this area.

Mr. Courtney said that if he remembers correctly it appeared that there were more cars in the stacking lane in the plan submitted in 2005. Mr. Novitsky said that he did not remember the original plan, but they have moved the drive as far to the west as they could. There is a deed restriction on the parcel that they wish to purchase stating that nothing can be built on that property, so they moved the building closer to Crooks, and the driveway farther away from Crooks. Mr. Courtney said that he would like to see the driveway closed off of Crooks. Mr. Novitsky agreed and said that if he could he would.

Mr. Fejes said that there will be people coming in from Crooks, Big Beaver, and also through the cross access easement with the property to the north and asked where the people will order their coffee. Mr. Novitsky explained that you order your coffee behind the building and pick it up at the window on the side. Mr. Fejes said that looking at the plan, he felt that it would be very difficult to get through the oncoming traffic to order his coffee especially between the hours of 6 A.M. and 9 A.M. Mr. Novitsky said that they are willing to take a risk and this is what they think will work for them. Mr. Fejes said that he is wondering what will work for the residents of Troy. Mr. Novitsky said that you may have to wait a little while to get in, but he thinks that this plan would provide relief to the property to the north. The parking lot to the north is a mess and Mr. Novitsky believes this would be an improvement.

Mr. Kovacs asked if the petitioner meets the stacking requirements of the Ordinance. Mr. Stimac said that the Ordinance requires that there is room for eight (8) vehicles and one (1) by the window, and this is shown on the plan. Mr. Kovacs said that the Board cannot force Starbuck's to provide more stacking and Mr. Fejes agreed.

Mr. Maxwell said that if you have cars coming in from every direction it is going to create congestion. Mr. Novitsky said that every gas station has a lot of curb cuts and if everyone flooded the gas stations it would be a mess. This is not something you can regulate.

The Chairman opened the Public Hearing.

ITEM #11 – con't.

Mr. John Anderson, of Starbuck's was present. Mr. Anderson said that he is familiar with what traffic patterns are and in his opinion they are restricting some of the traffic coming in off of Crooks by limiting the access. Also, if the drive-through is packed, a prudent person will not wait to get into this area off of Crooks. This would be the best use of this property and they will get people through very quickly. Their menu is quite limited and he does not feel people will stay at the location a long time. When looking at this piece of property and the lack of redevelopment on this site, he believes Starbuck's would be a fine addition to this area. They will provide a nice warm atmosphere for customers to come in. Mr. Anderson said that in his opinion the cooperation that they will get from the property to the north is going to be very limited. If they cannot get the cross access, they could provide more landscaping or more of a stacking lane.

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

There are no written objections or approvals on file.

Mr. Hutson said that he has not changed his mind regarding this property from the first presentation. He is fully aware of the traffic in this area and thinks it is absolutely horrendous. The Ordinance requires that this site be one acre in size and there has been no evidence presented that any of the agreements have been signed. Mr. Hutson also said that he does not believe they will be able to obtain a cross access easement from the property owner to the north. Mr. Hutson also said that he thinks they would be better off to go the Planning Commission, obtain site approval and then come back to this Board.

Mr. Courtney agreed with Mr. Hutson and said that he would like to know what restrictions the Planning Commission would put on this plan.

Mr. Fejes said that he feels this would work if it was any other corner but this one. Most people know when they go to Starbuck's, they know what they want so service is very quick. Mr. Fejes said that he did not know what else could be put on this corner.

Ms. Gies said that if people want to go in there, they will wait as long as it takes to get in there. Mr. Fejes said that he feels this is a nice plan, but he would like the Board to be able to limit the size of the building and the site plan. Before any approval is granted though, Mr. Fejes said that they would like them to go before the Planning Commission first and see what requirements the Planning Commission would put on them.

Mr. Stimac said that the petitioner has submitted their plan to the Planning Commission, but it is in the process of review and is not on their agenda at this time. Where this is a land size issue, they cannot go to the Planning Commission and present this as a one-acre site, and they come back to this Board and say that the site is only ½ acre. This Board can get comments from the Planning Commission on the plan presented to them.

ITEM #11 – con't.

Ms. Lancaster said that in addition, no motions be made contingent on what the Planning Commission requires, because the Board would be putting the burden on the Planning Commission to actually re-visit the issue, where actually this Board must determine whether this is a hardship issue. The Planning Commission may be able to address some of the concerns that have been brought up by this Board. Basically, it is up to this Board to determine that this property deserves a variance from the one-acre provision. Mr. Courtney said that he would still like to have the Planning Commission input on this site.

Motion by Courtney
Supported by Gies

MOVED, to postpone the request of Saif Jameel, 3031 Crooks Rd., for relief of the Ordinance to construct a new commercial building on a site which is .51 acres in size, where Section 23.25.01 of the Troy Ordinance requires a site that is at least one acre in size in order to have a drive-up window facility in the H-S (Highway Service) Zoning District until the meeting of April 18, 2006.

- To allow the petitioner the opportunity to present this site plan to the Planning Commission.
- To allow this Board the opportunity to examine the comments of the Planning Commission.

Yeas: 6 – Maxwell, Wright, Courtney, Fejes, Gies, Hutson
Nays: 1 - Kovacs

MOTION TO POSTPONE THIS REQUEST UNTIL APRIL 18, 2006 CARRIED

Mr. Fejes asked if the concerns of this Board should be presented to the Planning Commission. Mr. Stimac said that as he understands it, this Board is concerned with traffic circulation first and foremost, the availability of stacking, parking and the availability of the cross access easement to the north. Mr. Stimac said that in his opinion the cross access easement will be very difficult to obtain.

Mr. Kovacs stated that the reason for his no vote was because some of the concerns brought forth tonight were not under the jurisdiction of this Board, and he was ready to make a decision.

The Board of Zoning Appeals adjourned at 9:35 P.M.

Christopher Fejes, Chairman

Pamela Pasternak, Recording Secretary