The Chairman, Christopher Fejes, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, November 15, 2005 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 OCTOBER 18, 2005

Mr. Wright asked that an addendum be added to the minutes indicating the reason he did not attend the presentation by Lori Grigg-Bluhm was because he had previously attended this presentation when it was before the Planning Commission.

Motion by Courtney
Supported by Wright

MOVED, to approve the minutes of the meeting of October 18, 2005 with addendum added.

Yeas: All – 7

MOTION TO APPROVE MINUTES WITH CHANGES CARRIED

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

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

Motion by Courtney
Supported by Gies

Yeas: All – 7

MOTION TO APPROVE ITEMS #3 THROUGH #5 CARRIED

J-1h

ITEM #3 – RENEWAL REQUESTED. BLOOMFIELD MANAGEMENT, 1100-1174 E. BIG BEAVER, for relief of the Ordinance to permit parking in the front yard of this industrial site.

Petitioner is requesting renewal of a variance granted by this Board to locate parking within the front yard setback of an M-1 Zoned site. This variance was originally granted in 1973 because of the large open drain that runs through the back of the site, preventing the installation of parking in the usual rear yard location. This has been granted a renewable variance based upon the premise that if the drain were to be enclosed that the parking could be relocated to a conforming location. This item last appeared before this Board in 2002 and was granted a three (3) year renewal. Conditions remain the same and we have no objections or complaints on file.

MOVED, to grant Bloomfield Management Company, 1100-1170 E. Big Beaver, a three-year (3) renewal of relief to permit parking in the front yard setback of an industrial site.

- The large drain on the site creates a practical difficulty in that it does not permit parking in the usual rear yard location.
- Conditions remain the same.
- We have no objections or complaints on file.

ITEM #4 – RENEWAL REQUESTED. SCHENCK PEGASUS CORP., 2890 JOHN R., for relief of the 6' high masonry-screening wall required along the east and portion of the north property line.

Petitioners are requesting relief granted by this Board of the 6' high masonry screen wall required along the east property line and a portion of the north property line where their site abuts residential zoning. This relief has been granted on a yearly basis since 1969 primarily due to the fact that the residential land at the east end of their site is undeveloped and owned by the petitioner as well as the fact that the land to the north, although residentially zoned, is controlled by consent judgment and is in fact is developed as an office development. This item last appeared before this Board at the meeting of November 2002 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 Schenck-Pegasus, 2890 John R., a three (3) year renewal of relief of the 6' high masonry-screening wall required along the east and a portion of the north property line.

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

ITEM #5 – RENEWAL REQUESTED. COLEMAN'S WRECKER SERVICE, 1871 BIRCHWOOD, for relief of the Ordinance to maintain a 7' high obscuring fence in lieu of the required 6' high masonry screen wall along Birchwood.

ITEM #5 – con't.

Petitioner is requesting renewal of relief granted by this Board to screen an outdoor storage area with a 7' high obscuring fence in lieu of the normally required 6' high masonry screen wall. This Board has granted this variance on a yearly basis since 1986. This item last appeared before this Board in November 2002 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 Coleman's Wrecking Service, 1871 Birchwood, a three (3) year renewal for relief to maintain a 7' high obscuring fence in lieu of the 6' high masonry screen wall along Birchwood.

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

ITEM #6 – VARIANCE REQUESTED. DAVID DONNELLON, OF THE CHOICE GROUP, 4254 BEACH ROAD, for relief of the Ordinance to split an existing parcel of land from its Beach Road frontage resulting in 55' of frontage where 100' is required by Section 30.10.02.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split an existing parcel from its Beach Road frontage. The site plan submitted indicates a split of this property and creating access to the property from the western end of the stub street Prestwick. This would result in the only street frontage for this property being the 55 feet at the end of Prestwick Drive. Section 30.10.02 requires that properties in the R-1B Zoning District have a minimum of 100' of frontage on a public street.

This item first appeared before this Board at the meeting of August 16, 2005 and again at the meeting of October 18, 2005 and was postponed until this meeting at the request of Mr. Donnellon of the Choice Group and Mr. Kyle Jones, representative of the Greentrees Homeowners Association.

Mr. Stimac also explained that after further research he found a zoning map originally created in 1956 and this street was shown as a private road to access the parcels of land that were considered to be land locked in the center of the section. In 1993 the City was asked and executed a Quit Claim to that 50-foot parcel to the property owner and therefore the City does not have an interest in this property.

Mr. Courtney asked if extending this road would make these parcels buildable. Mr. Stimac explained that the lot area may be adequate, but because of the size and configuration of the lot it would not be buildable. The front lot would technically have more area because the home could be fronted on Beach Road and would have only a 10' setback to the north and a 40' setback to the south, which would give you a 50' wide buildable area.

ITEM #6 – con't.

Mr. Donnellon was present and said that this piece of property has a number of problems and the Board of Zoning Appeals has the authority to vote on dimensional issues. Mr. Donnellon also said that the because this was a continuation he felt that the Public Hearing was closed. They have met with the neighbors and they have a representative present who would like to speak this evening. Mr. Donnellon said that he was sure that the Board would like to hear from the neighbors.

The Chairman opened the Public Hearing.

Larry Walatkiewicz, 4285 Wentworth was present and asked if Mr. Donnellon was going to present his case, or if after Mr. Walatkiewicz gave his comments the matter would be returned to the Board and the petitioner would not give any more comments.

Mr. Fejes said that the Board could ask the petitioner any pertinent questions and Mr. Walatkiewicz asked if the petitioner could present his case once again. Mr. Fejes called on Mr. Donnellon to present his case.

Mr. Donnellon said that it was his understanding that the Public Hearing was closed and the public would not be able to speak on this item. Their case was presented in August and he would like to be able to make comments after hearing comments from persons in the audience. Mr. Fejes said that if the Board has questions for either the petitioner or persons commenting on this item, they would ask these questions. Mr. Donnellon said that he wants the right to make any comments he feels are necessary after the public makes their comments.

Ms. Lancaster said that the Board has the right to re-open the Public Hearing and could ask Mr. Donnellon to present his case again. The running of the meeting is up to the Chair and Mr. Donnellon indicated that he wants to hear what the public has to say.

Mr. Maxwell said that he would like Mr. Donnellon to present his case to the Board.

Mr. Donnellon passed out a handout to the Board members and said that he would like to address some of the concerns of the residents. Presently there are fifty-four (54) homes in this adjacent subdivision and this variance would increase the number of homes by one – to 55. Snow removal and trash pick up would continue and would not impact the area. The residents want the developer to adhere to the front lot line width as stated in the Ordinance and Mr. Donnellon's contention is that there are many front lot lines on dead-end streets and cul-de-sacs that are less than the zoning requirements, but the width of the lot at the house setback line is the determining factor of all such lots. A developers' business is to add value to the surrounding property and in this case only one (1) additional home will be built. The parcel in question would be 60,000 square feet and the Zoning District allows homes to be built on 15,000 square foot parcels.

ITEM #6 – con't.

Mr. Donnellon said this is not a self-created hardship, but a hardship that is related to the lack of frontage, which is 55' on Prestwick. These lots would be larger than any other lots in this area. The petitioner indicated that after they had met with the neighbors there were a couple of people that would support this request.

Mr. Donnellon also said that the reason he is in front of this Board is to ask for a dimensional variance, relating to frontage, and this is the proper Board to present his case. This request is for two (2) lots on a piece of property that exceeds four (4) times the minimal lot area in the R-1B Zoning District and is not excessive regarding profitability. Frontage, area, width and depth of the subject parcel cause a hardship when there are clearly two access points to the property.

The variance request is for the width of the lot at the road. The minimum width is 100' and the proposed property will have 55' along the front lot line. If the variance is granted it will result in a lot that will be 150' x 205' or 30,750 square feet in area, where 100' x 150' or 15,000 square feet of area is required in R-1B Zoning.

Mr. Donnellon also said that the most reasonable use of this property with two fronts is two lots, and absent a variance reasonable use of the property cannot be implemented. They will preserve as many natural features as possible and literal enforcement of the Ordinance will be unnecessarily burdensome.

Mr. Courtney asked about the property to the north and if it was available. Mr. Donnellon said that there were houses on the property to the north and asked Mr. Stimac to display the aerial map of this area. There are two homes on two lots and there is a 20-foot easement or axe handle split to get to 4342 Beach Road. 4298 Beach does not abut the petitioner's property. Mr. Courtney then asked if the road could be brought in on the north end of the property and Mr. Donnellon said that he felt that the only thing you could do was to buy both houses in this area, tear them down and re-build so that it would make more sense. Mr. Donnellon also indicated that if this were to happen they would probably extend Prestwick to Beach Road and this is one of the concerns that was expressed by the neighboring residents.

Mr. Fejes reopened the Public Hearing.

Mr. Walatkiewicz thanked the Choice Group and Mr. Donnellon for setting up the meeting for the residents and stated that they basically agreed to disagree. The neighbors are in opposition to this request. Mr. Walatkiewicz stated that the lots in this area are considerably smaller than these lots and are very consistent in design and size. In his opinion granting this variance would have an adverse effect to the surrounding area. 4254 Beach is a 5 bedroom, 4 bath home and he does not believe there are any similar homes in this area. Mr. Walatkiewicz said that the everyone in this community will be disrupted in their established patterns of daily life. The dead end street is used in many ways, not only for snow plowing, but also as a collection point for

ITEM #6 – con't.

school buses and although perhaps not the best idea, the children use this area to play street hockey or baseball. Mr. Walatkiewicz asked if there was going to be a walkway provided that would allow access to Beach and the park on Beach Road and also if a sidewalk would be put in that runs north and south, if this street is extended.

Mr. Stimac said that the Quit Claim deed granted in 1993 was for the south 50' of this overall property. Looking back at the old zoning maps this parcel was shown as a private road. Mr. Stimac also said that if this parcel were developed it would be according to the City standards and a sidewalk would be put in that would run north and south.

Mr. Walatkiewicz said that the residents know that there is not any traffic on this stub street and therefore use it quite a bit and they would like some protection provided to the residents in this area. Mr. Walatkiewicz also stated that after meeting with the Choice Group, the residents were left with a number of questions regarding whether the proposed development would be a single-family residence or a spec home. The Choice Group did not give any time frame of when this property would be developed.

Mr. Courtney asked if Mr. Walatkiewicz was representing the neighbors. Mr. Walatkiewicz stated that he was speaking on behalf of himself and his family and they were opposed to this variance request. Mr. Walatkiewicz also stated that there were other people in the audience present from the Greentrees Subdivision that were planning to speak on this request.

Mr. Maxwell asked Mr. Walatkiewicz if he thought this lot split would lead to Prestwick being opened up all the way to Beach. Mr. Walatkiewicz said he thought the likelihood of that happening was much greater with the variance. There are a number of unknown factors that the residents are faced with and he would rather see this request denied. Mr. Maxwell said that as it stands now there is direct access from Prestwick to Beach through this lot, and the lot split would take that access away. Mr. Maxwell also said that he did not want to see more traffic in this area either. Mr. Walatkiewicz said that he would rather see this stub remain a stub and never be opened up. Mr. Maxwell said that in his opinion, granting this variance would make the likelihood of direct access being granted through this one lot no longer there.

Mr. Courtney said that if a house was built there and the road went through, it would make the house non-conforming. Mr. Walatkiewicz said that he agrees, however, they are unsure of what the developer's intentions truly are.

Mr. Wright said that he agrees with Mr. Maxwell and said there was some discussion about the Choice Group acquiring the lots to the north, and in his opinion it would make the most sense for them to take Prestwick and open it up all the way to Beach. Mr. Wright believes that the best chance to make sure Prestwick is not opened up is to grant this petitioner's request for a variance. Mr. Walatkiewicz said that the residents

ITEM #6 – con't.

do not have any idea of what is going to happen in the future and would like to see this area remain the way it is today.

Leroy Barnes, 2296 Prestwick was present and stated that it appears to him that this parcel was split on June 21, 1999, which made a lot with the 50' egress and 4254 Beach was 150' x 185', which made it legal and conforming. Mr. Barnes said that the upper lot is 100' x 185' and in his opinion these two lots are legal and conforming, which make the variance unnecessary. Mr. Barnes also said that according to what he read these lots were in conformance with the Ordinance. Mr. Barnes also said that pages 243-246 of the Zoning Ordinance addresses re-building a structure to the extent of 60%. As far as the street is concerned, it appears to Mr. Barnes that if you look at where the street stops at Beach Road it is privately owned. The south 10' would be owned by the new development going in and the north 50' belongs to 4254 Beach Road.

Mr. Wright said that two lots under one ownership, are considered as one lot and undividable under the City Ordinance. Mr. Barnes said that according to the Assessing Department the lots are 100' x 185' and the other lot is 150' x 185'. Mr. Stimac said that that the northern lot is currently 100' wide x 185' deep, however, the parcel in question only has 50' of frontage on Beach Road. This parcel by itself is considered to be a non-conforming lot and needs the parcel to the north to comply with the Ordinance. If the petitioner were to sell this northern piece of property to someone else a building permit would not be issued to put a house on this parcel. These are two separately described properties, however, since one of those properties does not comply with the Ordinance and they are both owned by the same person, they are considered to be undivided parcels.

A discussion began regarding the legal description of 4254 Beach Road and Mr. Stimac explained this description with the aid of the aerial maps of this parcel. The frontage on Beach Road is 50' for this property. Ms. Lancaster said that if Mr. Barnes wished he could come in and see her tomorrow and they would go to the Assessing Department and go over the legal description of this lot.

Mr. Courtney asked if Mr. Barnes was in favor of this request. Mr. Barnes said that he is not in favor of this variance request. Mr. Courtney then asked if he would be in favor of the petitioner tearing down the existing house and re-building a new house. Mr. Barnes said that he would be in favor if it conforms to zoning.

Mr. Kyle Jones, 4280 Wentworth, was present and stated that he was appointed as the representative for the residents of the Greentrees Subdivision. Mr. Hayden, the president of the association was out of town and was unable to attend this meeting. Mr. Jones also thanked the petitioner for postponing this request until they could be present. The Greentrees Homeowners Association is against this request. Mr. Jones is also representing a group of residents on Prestwick and Wentworth and said that they are against granting this variance request.

ITEM #6 – con't.

The issue of the cut through from Prestwick to Beach has been brought up several times and in his opinion, presupposes that this variance will be granted. Without the variance there will not be a cut through. Every variance that is granted is a violation of the Zoning Ordinance and this lot is conforming and therefore there is no reason to grant a variance. Residents already have access to their house, and the barricade has been in place since the Greentrees Subdivision has been developed. There is no control over the plans that the petitioner has. This petitioner is a very shrewd and smart businessman, and his plans could change and there is no way to enforce what he is proposing. Mr. Jones does not believe there is any hardship that runs with the land and the only hardship would be financial gain. This situation was created after this property was purchased. Promises and assurances given to the residents and the Board are not enforceable. The development to the south has resulted in the trees being removed and the homes not selling. The residents in this area do not want to see that happen with this parcel.

Mr. Jones also said that they would rather see the barricade left where it is and the variance not granted. The larger homes are not in character with the houses in the Greentrees Subdivision. The existing house has a Beach Road address and in his opinion it belongs on Beach Road. He understands that the Board may want to accommodate this builder, however he believes that this would create a precedent. Mr. Jones also suggested that the petitioner could ask for a variance for the northern lot on Beach that would not affect any of the residents. Mr. Jones said that there are a number of other options available to this petitioner and thinks they should be considered by the Board and the variance denied. There is no basis under the Ordinance to grant this variance.

Mr. Jones also said that it is wrong for the City to set a precedent by calling the axial end of a stub street frontage for a home's property, especially when the home already has frontage to another street. The petitioner could leave the property as is and create access to the second lot off of Beach Road. The petitioner chooses not to do that so he can have a wider lot along Beach. Mr. Jones believes he can ask for a variance along Beach Road rather than along Prestwick or he could gain access from the development to the south. He could leave the current east/west road as is. These options are not preferable to the petitioner, but he would still be able to add value to this property without a variance. Mr. Jones believes this hardship was created by the petitioner and does not run with the land. Mr. Jones went through a number of the reasons variances are granted and pointed out reasons why he thought this variance would have an adverse effect to surrounding property. Mr. Jones asked that this Board deny the request of this petitioner.

Mr. Kovacs asked Mr. Jones if he thought this property could sustain two houses and Mr. Jones said that the other part of the lot could be developed if a variance was granted on Beach Road or he could get his access some other way. Mr. Kovacs asked if he thought the developer could put two houses on this property and Mr. Jones said

ITEM #6 – con't.

that would be up to the developer and two houses could be put on the property as long as all the requirements of the Ordinance were met. Mr. Kovacs said that they have to look at the reasonable use of the property. Mr. Jones said that if the reasonable use of the property is to have two houses, then have two houses, but if there is a choice between asking for a variance along Prestwick that will bother a larger number or residents or asking for a variance along Beach Road that will not bother anyone, Mr. Jones feel the variance should be obtained along Beach Road. The reasons the developer is giving for this variance are all valid and are the best possible outcome for the developer and that does not have to be the case.

Mr. Maxwell said that he did not agree with the statement made that approval of the cut through meant the Board was predisposing granting the variance and was not true at all. Mr. Maxwell then asked if the lot split would make the cut through more or less likely. Mr. Maxwell then stated that he would like to see the neighborhood left as it is and this Board does not make decisions ahead of time. Mr. Jones said that he was not suggesting that they did, but the logic of those arguments meant that the barricade was coming down. Mr. Maxwell then said that there are ramifications either way and the Board has to consider all of these ramifications.

Mr. Courtney asked Mr. Jones if he would rather have the developer ask for a variance on the northern piece of property. Mr. Jones said he thought that would be an option for this Board to consider. If this variance is to allow the building of a second home, the choice is to have a variance off of Prestwick that would bother a lot of neighbors and the other is to have a variance off of Beach Road that will not bother anyone.

Mr. Kovacs said that a stub street is built to extend and not to necessarily remain a dead end. If there were two homes on that property, it would be very difficult for a developer to come in and extend that road. Mr. Jones said that what the Choice Group is asking for is not necessarily a bad thing, but they have other options, one of which is to ask for a variance along Beach Road or build a home on a smaller lot. There is a way for the Choice Group to build here and not affect the residents.

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

There is one (1) written objection on file. There is one (1) written approval on file.

Mr. Maxwell told Mr. Donnellon that he felt he was asking for a large variance, 45'. Mr. Courtney asked if they were willing to put in a cul-de-sac. Mr. Donnellon said that two issues come into play, the dimensions of the property at the road and the width of the property at the house line. Configuration of the property causes the variance to be 45'. This parcel was part of a larger acreage and the developer of Prestwick bought off a portion of the property. Mr. Donnellon said that the property owner did not create his own hardship, but it was through the buying and selling of the property that created this hardship. This request is not excessive and it would be two square parcels of property

ITEM #6 – con't.

rather than a flag shaped piece of property. This variance would enhance a 60,000 square foot piece of land. This is an irregular shaped lot and this in itself creates a hardship. The variance would result in 55' of frontage along Prestwick.

Mr. Courtney asked if the developer purchased this property in this configuration. Mr. Donnellon said he did not, original configuration was 50' x 405' and 100' by 405'. They thought they were getting two pieces out of it. Mr. Courtney asked when Choice Group bought this property and Mr. Donnellon said that it was in the early 90's. Mr. Courtney said that the Zoning Ordinance is still the same as it was then. Mr. Donnellon said that regardless of what it was then, the variance request is still the same today. Mr. Courtney asked about putting a cul-de-sac in and Mr. Donnellon said that he did not think that would be a good idea for just one lot. Mr. Donnellon said that because of all the divisions in the property they are left with what is left. Mr. Courtney said that he could buy the property to the north and re-develop at any time. Mr. Donnellon said that was not true as there were many natural features in the way.

Mr. Shouhayib, the President of the Choice Group, was present and said that he wished to speak. Mr. Shouhayib said that they have two lots and has been developing homes in Troy for twenty (20) years and has never gone over the heads of any of his neighbors. They were proposing to have two estate size lots but the residents don't want it. He thought this was a better solution for the residents and would increase the value of the surrounding homes but there is a tremendous amount of people that do not want this solution. Mr. Shouhayib said that he would be willing to go with what the Assessing Department had given them.

Mr. Stimac said that the original lot description as the Choice Group bought it was that there was a 50' parcel that went the full length of the property, and a 100' parcel that went the full length of the property. They have one conforming lot and one non-conforming lot and the Ordinance states they can have only one house on the lot. Mr. Stimac believes that Mr. Shouhayib now wishes to get a variance to build a house on the northern property line. This would require a different variance and would require a different Public Hearing notice to be published. The Board could not act on a different request tonight.

Mr. Courtney asked what the repercussions would be if this request was denied. Mr. Shouhayib said that he would happy to accept a variance on the other lot tonight and Mr. Fejes stated that the Board could not act on that request tonight, as a new Public Hearing would have to be published.

Mr. Shouhayib asked that this request be withdrawn.

Motion by Courtney
Supported by Gies

ITEM #6 – con't.

MOVED, to accept withdrawal of the request of David Donnellon of the Choice Group, 4254 Beach Road, for relief of the Ordinance to split an existing parcel of land from its Beach Road frontage resulting in 55' of frontage where 100' is required by Section 30.10.02.

- At the request of the petitioner.

Yeas: All – 7

MOTION TO ACCEPT WITHDRAWAL CARRIED

The meeting **RECESSED** at 9:15 P.M.

The meeting **RECONVENED** at 9:25 P.M.

ITEM #7 – VARIANCE REQUESTED. ARNOLD BECKER, 2840-2880 ROCHESTER, for relief of the Ordinance to expand the existing parking lot at 2840-2880 Rochester with a 10' setback from the north property line where 25' is required by Section 29.50.07 of the Ordinance.

Petitioner is requesting relief of the Ordinance to expand the existing parking lot at this commercial property. The property immediately to the east is zoned R-1E. Section 29.50.07 of the Troy Zoning Ordinance requires a 25' front setback for Vehicular Parking (P-1) zoned parcels when they have contiguous frontage with residential districts. The site plan submitted by the petitioner indicates a 10' front setback.

This item first appeared before this Board at the meeting of October 18, 2005 and was postponed to allow the petitioner to determine if he wished to withdraw this request for relief of the setback requirement.

The Building Department has received a written request from the petitioner asking that this request be withdrawn.

Motion by Courtney
Supported by Wright

MOVED, to accept the withdrawal of the request of Arnold Becker, 2840-2880 Rochester, for relief of the Ordinance to expand the existing parking lot with a 10' setback from the north property line where 25' is required by Section 29.50.07 of the Ordinance.

- At the request of the petitioner

Yeas: All – 7

ITEM #7 – con't.

MOTION TO ACCEPT WITHDRAWAL CARRIED

ITEM #8 – INTERPRETATION REQUESTED. JLJ INVESTMENTS, LLC, 4048-4060 ROCHESTER ROAD, for an interpretation, per Section 43.75.00 of the Zoning Ordinance, that a facility that provides for the sales, rental, and service of musical instruments along with music lessons is a permitted use in the B-1 (Local Business) Zoning District.

Petitioner is requesting an interpretation, per Section 43.75.00 of the Zoning Ordinance, that a facility that provides for the sales, rental, and service of musical instruments along with musical lessons is a permitted use in the B-1 (Local Business) Zoning District. The petitioners propose to open a Marshall Music store in the shopping center located at the northeast corner of Rochester Road and Wattles Road. The property in question is located within the B-1 Zoning Classification. Their proposed use has been determined to not be in compliance with the allowable uses in the B-1 District contained in Section 20.20.00 of the Troy Zoning Ordinance.

The Building Department is in receipt of a written request by the petitioner asking that this item be postponed until the meeting of December 20, 2005.

Motion by Gies
Supported by Wright

MOVED, to postpone the interpretation request of JLJ Investments, LLC, 4048-4050 Rochester Road, per Section 43.75.00 of the Zoning Ordinance, that a facility that provides for the sales, rental, and service of musical instruments along with music lessons is a permitted use in the B-1 (Local Business) Zoning District until the meeting of December 20, 2005.

- At the request of the petitioner.

Yeas: All – 7

MOTION TO POSTPONE REQUEST UNTIL DECEMBER 20, 2005 CARRIED

ITEM #9 – VARIANCE REQUESTED. BONNIE SCOTELLA, 845 NORWICH, for relief of the Ordinance to construct an attached garage that will result in a 5'-9" side yard setback and a 23'9" front yard setback where Section 30.10.04 requires a 10' minimum side yard setback and a 30' minimum front yard setback.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an attached garage. This house is a legal non-conforming structure. It has an existing 5.2' side yard setback and a 29.9' front yard setback to an existing carport. Section 30.10.04 requires a 10' minimum side yard setback and a 30' minimum front yard setback in R-1C Zoning Districts. The site plan submitted indicates replacing the carport with an attached garage that will result in a 5'-9" side yard setback and a 23'-9"

ITEM #9 – con't.

front yard setback. Section 40.50.04 prohibits expansions of non-conforming structures in a way the increases the non-conformity.

Ms. Bonnie Scotella was present and stated that she did not think a carport was made for the Michigan winters and would like to be able to park her car inside a garage. This house was built back in the 1950's and she believes that carports were very popular at that time. Ms. Scotella said that this would be a two-car garage.

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

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

Motion by Courtney
Supported by Gies

MOVED, to grant Bonnie Scotella, 845 Norwich, relief of the Ordinance to construct an attached garage that will result in a 5'-9" side yard setback and a 23'-9" front yard setback where Section 30.10.04 requires a 10' minimum side yard setback and a 30' minimum front yard setback.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to the property in question.
- Variance will be an improvement to this area.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #10 – VARIANCE REQUESTED. FRANK ZIMMER, OF THE HONEY BAKED HAM COMPANY, 1081 E. LONG LAKE ROAD, for approval under Section 43.80.00 of the Zoning Ordinance to place two temporary storage containers outside for a period from December 10, 2005 through December 31, 2005.

Mr. Stimac explained that the petitioner is requesting approval under the Zoning Ordinance to place two temporary storage containers outside at 1081 E. Long Lake from December 10th through December 31, 2005. 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. This item last appeared before this Board at the November 16, 2004 and the petitioner was granted approval at that time.

ITEM #10 – con't.

Mr. Kovacs asked if this request could be granted for a period of two years and Mr. Stimac said that because the Public Hearing notices only advertised the time frame indicated on the petitioner's application, the Board would not be able to grant this request for two years. Next year, if the petitioner wishes he may request this variance for two years in his application. Mr. Hutson said that in the past he wanted this request heard on a yearly basis, however, with the number of approvals that are received, he would not have a problem granting this request for a period of two years.

Mr. John Broderick was present and said that he had nothing further to add.

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

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

Motion by Courtney
Supported by Gies

MOVED, to grant Frank Zimmer, of the Honey Baked Ham Company, 1081 E. Long Lake, relief of the Ordinance for approval under Section 43.80.00 of the Zoning Ordinance to place two temporary storage containers outside for a period from December 10, 2005 through December 31, 2005.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- There are no objections on file.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #11 – VARIANCE REQUESTED. MR. & MRS. DANIEL KAISER, 692 BARCLAY, for relief of the Ordinance to construct a family room addition that will result in a 34.2' rear yard setback where Section 30.10.04 requires a 40' minimum rear yard setback.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a rear family room addition on their home. The site plan submitted indicates a family room addition with a proposed 34.2' rear yard setback. Section 30.10.04 of the Ordinance requires a 40' minimum rear setback in R-1C Zoning Districts.

Ms. Kaiser was present and said that they wished to add a first floor bedroom for her elderly mother and she cannot go up and down stairs. It makes the most sense to put

ITEM #11 – con't.

this addition in this area as they would not have to tear down any walls. They are on a straight section of Barclay and not on the curved section of the street. This lot is only 120' long and is one of the shallowest lots in this area.

Mr. Fejes asked how many bedrooms were in this home now and the petitioner stated that there are three, one of which is being used as an office.

Mr. Courtney asked where the addition would be. Ms. Kaiser said that the existing living room is in the front of the house and they would like this addition at the rear of the home.

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

There are four (4) written approvals on file, one of which is from the property owner. Ms. Kaiser brought in an additional three (3) written approvals. There are no objections on file.

Motion by Kovacs
Supported by Wright

MOVED, to grant Mr. & Mrs. Daniel Kaiser, 692 Barclay, relief of the Ordinance to construct a family room addition that will result in a 34.2' rear yard setback where Section 30.10.04 requires a 40' minimum rear yard setback.

- Variance is not contrary to public interest.
- Variance will not cause substantial adverse effect to properties in the immediate vicinity.
- A significant natural feature of an existing mature tree will be affected if this variance is not granted.
- Absent a variance conformance would be unnecessarily burdensome.
- Variance does not permit the establishment of a prohibited use within a zoning district.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #12 – VARIANCE REQUESTED. MR. TONY ELDER, ELDER LAND DEVELOPMENT, 1767 MAPLELAWN (PROPOSED ADDRESS), for relief of the Ordinance to construct a new auto dealership that will result in 9,851 square feet of landscaping where 14,032 square feet of landscaping is required per Section 39.70.04.

ITEM #12 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a new auto dealership at 1767 Maplelawn. The site for this project is 140,321 square feet. Section 39.70.04 requires a minimum of 14,032 square feet of landscaped area be provided for a site this size. The site plan submitted indicates that only 9,851 square feet of landscape will be provided.

Mr. Tony Dellicolli, of Cityscape Architects was present and stated that they wished to construct this new building in line with the buildings next door in order not to encroach any further into the setback line. The site plan submitted indicates that they will pull the building back an additional 10' off of the minimum required front setback line. They want to have the building at the street in order to provide more exposure and identification. In order to meet the Ordinance the building would have to moved back 105' from the street. They could achieve additional landscaping if they eliminated one of the proposed driveways, however, the auto haulers back into the existing drive that is 30' wide. They have reduced the drive to 25' in order to add more greenspace. The auto haulers come in off of Maplelawn, back into the access drive, unload and leave the site. With only one drive, the public would not have access to the site if the auto hauler is present.

This is a very long and narrow site, and in order to meet the landscaping requirement, the building has to moved farther back from the street, which would limit visibility. This building is proposed to be 60' back from the street frontage. The building will also buffer the look of the storage parking at the rear of this site. Mr. Dellicolli said that he thought the Detroit News building next door was approximately 55' from the street frontage. There is no front yard display of cars planned for this dealership. The merchandise will only be displayed inside the building. The building was sited this way in order for people to look inside the building. If the building were turned there would be more greenspace available, however it would not be the same as the prototype of this building.

Mr. Courtney asked if Mr. Elder owned any additional property in this area. Mr. Dellicolli said that Mr. Elder owns the Jaguar and Saab facility that abuts this parcel. Mr. Courtney said that if the back of this lot was transferred to the other property he did not think the greenspace requirement would be as high.

Mr. Stimac said that technically the site combined together complies with the greenspace requirement and if each site were to be split off, each site would comply individually with the greenspace requirement. However, if the south end of the site were added to the piece of property to the west, it would not comply with the greenspace requirement. No matter which way the site was divided one site would require a variance.

Mr. Hutson asked about the use of the lot and Mr. Dellicolli said that the south end of the property is used mainly for the storage of Jaguar and Saab. The only inventory for

ITEM #12 – con't.

this dealership will be whatever is in the showroom. Mr. Hutson then asked if deliveries could be restricted through the Jaguar dealership and thereby they would be able to eliminate one drive on this site. Mr. Dellicolli said that he was not sure that they would be able to maneuver their vehicles through that driveway. Mr. Hutson pointed out that the elimination of one drive would greatly improve the greenspace on the site.

Mr. Courtney asked how many square feet would be picked up if the drive was eliminated. Mr. Dellicolli said that the building would still have to be moved back 25' to 30'. If the driveway were removed, it would probably add an additional 2500 square feet. Mr. Courtney said that would be closer to what is required.

Mr. Wright expressed concern that the auto haulers were backing into the space to unload the vehicles. Mr. Dellicolli said that they had done that in the past, however, they were jumping the curb and destroying existing landscaping. They have learned in the last several years that it would be easier for them to back in. Mr. Wright said that there are times during the day when Maplelawn is very busy and the Planning Commission would be very concerned about these trucks backing into the site.

Mr. Courtney asked who complained about the trucks pulling into the site. Mr. Dellicolli said that the owners were not happy with them pulling in and damaging the property and would rather see them back in. Mr. Courtney thought they could solve that problem by putting in a better driveway.

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

There are no written approvals or objections on file.

Motion by Maxwell
Supported by Gies

MOVED, to grant Mr. Tony Elder, Elder Land Development, 1767 Maplelawn (proposed address) relief of the Ordinance to construct a new auto dealership that will result in 9,851 square feet of landscaping where 14,032 square feet of landscaping is required per Section 39.70.04.

- Variance request is reasonable.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Narrowness and depth of the lot creates a hardship.

Mr. Courtney stated that he feels that they could eliminate one of the driveways and therefore reduce the size of the variance request.

ITEM #12 – con't.

Mr. Kovacs said that in his opinion any business, especially a car dealership, needs two driveways.

Mr. Fejes called for a vote on the motion to approve this request.

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

MOTION TO GRANT VARIANCE CARRIED

ITEM #13 – VARIANCE REQUESTED. MR. & MRS. MAJCHEREK, 4996 BUTLER, for relief of the Ordinance to maintain an attached storage addition constructed without obtaining the required Building Permit and resulting in a 34.9' rear yard setback where Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to maintain an attached storage addition that was constructed without first obtaining the required Building Permit. The site plan submitted with the subsequent permit application indicates the addition has been constructed with a 34.9' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

Mr. Kovacs asked if this storage addition could remain in this location if it was a detached structure. Mr. Stimac explained that it would have to be located 10' from the rear of the existing building, 6' from the east and south property line and 30' from the north property line. Mr. Kovacs said that presently it is 31' from the north property line. Mr. Stimac said that if it was detached from the main building and located 10' farther to the east it would be conforming.

Mr. Majcherek was present and stated that when he put this addition up he did not realize he needed a building permit. He uses this building mainly for the storage of lawn equipment in order to be able to park both cars in his garage.

Mr. Kovacs asked if there was a drive through from the garage to this building. Mr. Majcherek stated there was not, there was a door on the back of the garage that goes into the shed. This building is used only for storage.

Mr. Fejes asked why the petitioner built the structure without a permit. Mr. Majcherek said that he didn't know you needed a permit and he put it in as a temporary structure. Mr. Majcherek said that this structure has been in this location for approximately three (3) years. Mr. Fejes asked how large the garage was and Mr. Majcherek said that it was strictly a two (2)- car garage.

Mr. Courtney asked if a Building Permit would still be required if the variance was approved and Mr. Stimac confirmed that Mr. Majcherek would still require a Building Permit.

ITEM #13 – con't.

Mr. Kovacs asked if a ratwall would be required and Mr. Majcherek said that as long as the floor of the shed was elevated at least 6" it would not require a ratwall.

Ms. Gies asked how long the shed was in this location and Mr. Majcherek said it was at least two years.

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

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

Mr. Kovacs said that they could make the petitioner move the building back 10' but did not see what the benefit would be.

Ms. Gies said that the building had been there approximately three years. Mr. Courtney said that he thinks this location is the best place for this structure.

Motion by Courtney
Supported by Gies

MOVED, to approve the request of Mr. and Mrs. Majcherek, 4996 Butler, for relief of the Ordinance to maintain an attached storage addition constructed without obtaining the required Building Permit and resulting in a 34.9' rear yard setback where Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Shed has been in this location approximately three (3) years.
- Moving the shed could create an eyesore.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

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

Christopher Fejes, Chairman

Pamela Pasternak, Recording Secretary