

The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, March 15, 2005, in Council Chambers of the Troy City Hall.

PRESENT:            Kenneth Courtney  
                  Christopher Fejes  
                  Marcia Gies  
                  Matthew Kovacs  
                  Mark Maxwell  
                  Lynn Drake-Batts

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

ABSENT:            Michael Hutson

Motion by Fejes  
Supported by Gies

MOVED, to excuse Mr. Hutson from this meeting as he is out of town.

Yeas:            All – 6

MOTION TO EXCUSE MR. HUTSON CARRIED

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF FEBRUARY 15, 2005**

Motion by Gies  
Supported by Courtney

MOVED, to approve the minutes of the meeting of February 15, 2005 as written.

Yeas:            5 – Fejes, Gies, Kovacs, Maxwell, Courtney  
Abstain:        1 – Drake-Batts  
Absent:        1 – Hutson

MOTION TO APPROVE MINUTES OF FEBRUARY 15, 2005 CARRIED

**ITEM #2 – RENEWAL REQUEST. K-MART, 100 E MAPLE**, for renewal of relief which will allow for an outdoor display of plant material 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

**ITEM #2 – con't.**

materials in front of K-Mart along the north side of the fenced area and four-foot section of the sidewalk adjacent to the building, at the west end of the building. This display area is used for plants and flowers, and the variance is valid during the months of April through July. This request has previously 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 16, 2004 and was granted a one-year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

The petitioner was not present.

Motion by Courtney  
Supported by Gies

MOVED, to grant K-Mart, 100 E. Maple, a one-year renewal of relief that will allow for an outdoor display of plant material 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.

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

Yeas: All – 6

MOTION TO GRANT RENEWAL OF VARIANCE FOR ONE-YEAR CARRIED

**ITEM #3 –INTERPRETATION REQUEST. GEORGE REED, BETTY REED & THOMAS KRENT, 3129 ALPINE**, appealing the issuance of a building permit to construct a garage at 3129 Alpine.

Mr. Stimac explained that the petitioners are appealing the issuance of a building permit to construct a garage a 3129 Alpine. In support of that appeal they are requesting interpretation of Sections 1.30.00, 2.30.00, 2.50.02, 4.20.01, 4.20.03, 4.20.65, 4.20.71, 4.20.139, 10.10.00, 3.40.03 and 40.57.02 of the Troy Zoning Ordinance as they apply to that structure. The permit for this structure was issued in 2003 because the structure was found to be in compliance with the requirements of the Troy Zoning Ordinance. This item last appeared before this Board at the meeting of February 15, 2005 and was postponed to allow City Staff to present a rebuttal to the petitioners' objections to the construction of this building.

The Building Department has received a written request from Howard & Howard Attorneys, representing the petitioners asking that this item be postponed until the meeting of April 19, 2005.

**ITEM #3 – con't.**

Mr. Courtney stated that he would like something in writing from the City Attorney's Office indicating why this Board has the right to deal with this question of interpretation. Mr. Courtney further stated that he does not understand how this Board has the right to hear this item. Mr. Courtney also said that if this Board is going to go back, after the fact, there are other buildings in Troy that he would like to act on. Mr. Courtney believes this Board can only act on interpretation of uses for a building and not on the actual building itself.

Mr. Motzny stated that this was something the Attorneys planned to give to this Board regarding interpretation.

Motion by Courtney  
Supported by Gies

MOVED, to postpone this item until the meeting of April 19, 2005 as requested by the petitioner's attorney.

Mr. Kovacs asked if Mr. Stimac had the City's rebuttal ready at this time. Mr. Stimac said that at the last meeting City Staff had indicated that they would provide a written response to this Board once they had the opportunity to review the petitioner's submittal. The City has not received this submittal at this time and City Staff is still awaiting a copy of the presentation that was done at the last meeting, which will also provide a copy for the public record. In addition several Board members had requested a summary of the petitioner's case and this has not been submitted yet. Mr. Kovacs asked if Mr. Stimac had any discussion with the petitioner's attorney indicating why there was a delay in receiving these documents. Mr. Motzny indicated that he had been informed that Mr. Kingsepp recently had surgery and this could account for part of the delay.

Mr. Kovacs feels that there is no reason not to honor the request of the petitioner to postpone this item.

Vote on the motion to postpone this item until April 19, 2005.

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF APRIL 19, 2005  
CARRIED

**ITEM #4 – VARIANCE REQUEST. ROBERT KAGE, 718 ECKFORD**, variance request for relief to maintain two (2) covered storage structures and a lean to attached to the existing pole building, constructed without first obtaining building permits.

**ITEM #4 – con't.**

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain two (2) covered storage structures and a lean-to attached to the existing pole building. These structures were constructed without first obtaining building permits. The site plan submitted indicates an existing 1,829 square foot pole building with a 337 square foot lean-to attached to the rear and two covered storage buildings that are 200 square feet and 320 square feet in area. The total area of all accessory buildings on this site is 2,686 square feet. Section 40.57.04 limits the total area of all accessory buildings on a site to 600 square feet or one-half of the ground floor area of the main building whichever is greater. The ground floor area of the main building is 3,782 square feet; therefore, the total area of accessory buildings cannot exceed 1,891 square feet.

The site plan submitted further indicates that the lean-to structure constructed on the rear of the pole building results in a 3' setback to the rear property line. Section 40.57.05 requires a 6' minimum setback from an accessory structure to any property line.

Mr. Kovacs asked if the pole barn on the property was done properly. Mr. Stimac stated that this pole barn did comply with the requirements of the Ordinance. Mr. Kovacs also stated that the structures that are housing this wood are very tall and asked if there was any type of regulation regarding the stacking of wood. Mr. Stimac said that the height of accessory structures is limited to 14'.

Mr. Courtney clarified that all three of these structures were built without Building Permits. Mr. Stimac said that the original storage building does comply with the Ordinance; these three (3) additional accessory structures do not comply.

Mrs. Jackie Kage was present and said that they burn a lot of wood both in their home and camping. A couple of years ago they were scrambling for wood and got the opportunity to get this wood from a tree cutting company. If they had to take the roofs off of the bins that store the wood, the alternative would be tarps, which Mrs. Kage thinks would be very unsightly. The roofs over these bins keep the wood dry so they are able to use it. The lean-to structure in the back is to keep items under it and out of the weather and once again, if they have to take it down the alternative would be tarps.

Mr. Courtney asked how they get the stacks of wood up and down. Mr. Kage stated that they have a forklift that they use. Mr. Courtney said that this does not sound like a normal residential vehicle.

Mr. Fejes asked if they would take the structures down when they use up all this wood. Mrs. Kage said that they plan on using wood all the time so they would remain full. Mrs. Kage said that this company could keep bringing the wood. Mr. Fejes asked what the wood was used for. Mrs. Kage indicated that they burn the wood in their fireplace and also when camping. Mr. Fejes then asked how they were built without first obtaining the

**ITEM #4 – con't.**

proper permits. Mrs. Kage said that they did not believe these would be considered buildings, as they do not have sides.

Mr. Kovacs asked if these structures could turn into another pole barn if a variance was granted. Mr. Stimac said that the Zoning Ordinance identifies a building as a "roofed structure". Whether these structures have walls or not, does not impact the application of the Zoning Ordinance regarding the maximum allowable area. Consideration of the request could place reasonable stipulations on the request.

Mr. Maxwell asked if these structures were considered accessory buildings. Mr. Stimac said that by definition of the Ordinance if they are used as an accessory to the main home, they are considered to be accessory structures. Mr. Maxwell also said if the Board approved this, the variance for square footage of accessory structures would result in a variance of 795 square feet and a variance regarding the rear yard setback for the lean-to.

Mr. Kovacs said that a restriction could be placed on the 795 square foot variance indicating that it could not have walls. He also indicated that he thinks this site is over-built and there are a lot of accessory structures on the property. Mr. Kovacs asked what kind of reasonable restrictions could be placed on this request so that these structures were not turned into more garages. Mr. Stimac said that whatever restrictions are placed on this request must be clear both for the petitioner and the record. If you want to restrict that it does not have sides on it that would have to be part of the motion; as well as the fact that it is used only to store firewood. Mr. Stimac said that if a restriction was placed on the request that these structures must remain in their present state, that is something that would be difficult to interpret and enforce.

Mrs. Drake-Batts asked what the hardship was. Mrs. Kage said that if these structures were taken down, the wood would have to be moved into the wooded area of the property and covered with tarps. Mrs. Drake-Batts said that she does not feel this is a hardship. Mrs. Kage said that their neighbors don't want to see this wood sitting with tarps on it. Mrs. Drake-Batts informed Mrs. Kage that the neighbors objected to what is in the yard now. Mrs. Kage said that she brought in a petition with 26 signatures indicating that they would rather look at what they have than woodpiles covered with tarps. Mrs. Drake-Batts said that Mr. & Mrs. Kage could use up the wood that is presently on the site and take these structures down. Mrs. Kage indicated that they would like to continue receiving a supply of wood and last winter burned four (4) bins of wood.

Mr. Kovacs said that Mrs. Kage stated she went through four (4) bins of wood this winter and asked how many bins were on the property. Mr. Kage said that there are about forty 40-bins of wood on the property. Mr. Kage said that there are also large bins and small bins and stated that there are about 100 face chords of wood on the property. Mr. Kage also said that he uses the bins to keep the wood separated and eventually the bins would be empty but he hoped it wouldn't be for the next 10 or 15 years.

**ITEM #4 – con't.**

Mr. Kage also has about seventy (70) trees on his property that need to come down, so he does not believe these bins will ever empty. Mr. Kovacs said that basically there is about a five-year supply of wood on the property and asked Mr. Kage if he thought that was reasonable. Mr. Kage said he thought it was and said the only reason he bought the forklift was to move the wood around. If he has to take the structures down, he is going to move the wood off of the cement and put it on the ground and cover it with tarps. Mr. Kage also said that he felt a lot of the wood would rot & create a problem with animals living in it.

Mr. Kovacs also said that when he looked at this site, he saw two (2) motor homes, some ski-doo's and wondered why these vehicles could not be moved into the pole barn. Mr. Kage said that he farms and has a lot of equipment that he stores in this pole barn and likes to bring tools home to work on them. Mr. Kovacs asked why the farm equipment was not kept up north, on the farm. Mr. Kage said that he does not own any land, he rents the property he farms on.

Mr. Fejes asked what Mr. Kage would have done if he had come to the Building Department, before he constructed these structures and was told that he was limited to 1829 square feet. Mr. Kage said that he knew he was at the maximum square footage allowed and did not believe he needed a Building Permit for these structures because they do not have walls. Mr. Fejes said that there are complaints against them and the neighbors are worried about de-valuing their property, and asked if these structures could be brought more in line without requiring a variance. Mr. Kage said that without a variance he would only be allowed sixty square feet and he does not consider that helpful at all. Mr. Fejes said that he is having a problem with this request as it is a very large variance request and he does not see a hardship with the land. Mr. Kage said that the hardship would be all the people around them that would have to look at the woodpiles covered with tarps. Mr. Kage also said that one of his neighbors could not see the structures at all. Mr. Kage indicated that he would like to see if the neighbors that were complaining also signed Mr. & Mrs. Kage's petition indicating approval of these structures. Mr. Fejes said that he is the one that is having a problem with this variance request as the variance runs with the land. Mrs. Kage said that she felt the size of their property should be taken into consideration as it is four (4) acres and not in a subdivision.

Mr. Kage said that no one can see into the yard during the summer because of the number of trees on the property. Mr. Kage also said that he would be willing to take one of the buildings out as it would be relatively easy to remove, the other building was built around the trees. The lean-to has a fiberglass roof and Mr. Kage believes the people behind him would rather see that than wood with a tarp. Mr. Kage said that the problem is that he would only be allowed an additional sixty square feet with a variance and that does not give him enough room.

**ITEM #4**

Mr. Kovacs asked why the wood storage could not be reduced from five years to two years. Mr. Kovacs said that right now there is a five-year capability of storing wood on the property and he understands that the neighbors would rather see structures than tarps all over the property, however, in his opinion he thinks the neighbors would also rather not see wood stored in bins all over the property. The neighbor directly behind this property can see the lean-to and the barn. Mr. Kovacs also said that there is an 1829 square foot pole barn on the property that is larger than some peoples' houses, and if he wants to have the wood and the farm equipment, he may have to choose between which he would like to store in the barn. Mr. Kovacs said that he does not see a hardship that runs with the land. Mr. Kage said that they were out of wood for several years and have now gotten the opportunity to get this wood and he would like to keep storing it in case they cannot get wood in the future. Mr. Kage also said that there is a hedge row along the back of the property as well as a six (6') high fence, and the only time the neighbor can see into the yard is when they go upstairs and have nothing better to do than to look out of their window. Mr. Kage said that his hardship is that he is going to have a bunch of neighbors looking at piles of wood on the property and complaining about it.

Mr. Courtney said that this wood is normally stored on cement and asked if these structures have to be removed, why the wood would not still be stored on the cement? Mr. Kage said that if he has to remove the structures, he is going to park a different trailer on the cement. Mr. Courtney said that he feels they are choosing to create a problem. Mrs. Kage said whether they get the variance or not they are going to maintain the firewood. If necessary they will keep it covered with tarps. Mrs. Kage said that they are going to keep the firewood and they are either going to keep the structures and have the wood under them, or they are going to store the firewood on the ground and keep it covered with tarps. Mrs. Kage also said that they think it looks much better stored this way rather than on the ground. Mr. Kage said that he cannot take the forklift on the dirt.

Mr. Kovacs asked if what they were saying was that they were going to take the five years of wood out of the bins and dump it on the ground. Mr. Kage said he would get rid of the bins as he would no longer have any use for them.

Mr. Stimac said that if they stored that much wood on the ground, not in bins and not raised off the ground, they would be in violation of the Property Maintenance Code and would be cited. Mr. Kage asked how much wood could be stored on the ground. Mr. Stimac said that he can store as much wood as he wants as long as it does not become a nuisance. 100 face chords of wood stored on the ground would become a nuisance. Mr. Kage said that the way the wood is stored now is not a nuisance. Mr. Stimac said that the buildings that cover the wood violate the Ordinance.

**ITEM #4 – con't.**

Mr. Fejes asked why they burn this wood. Mr. Kage said that their house is over 3,000 square feet and it does help with the heat bills and also that it adds a certain ambience to the house.

The Chairman opened the Public Hearing.

Mr. Winkleprins of 650 Eckford was present and his property is technically next door to 718 Eckford as their backyards have the same depth. Mr. Winkleprins said that they like to burn a lot wood too and they go through quite a bit every year as it adds ambience to the house and is a nice touch. Mr. Winkleprins said that he always thought that in order for a structure to be considered a building, it would have to have walls. He considers the roof over these structures as canopies that are much more attractive than the tarps. They are very thankful that the wood is consolidated the way it is rather than spread over a large area. Mr. Winkleprins uses tarps to keep his wood dry, but thinks these structures are more appealing. Mr. Winkleprins said that they cannot see the lean-to at all so he cannot comment on that, although he would much rather see what is there now instead of tarps. He is in favor of granting this variance. Mr. Kovacs asked if he had signed the petition brought in by Mr. & Mrs. Kage. Mr. Winkleprins indicated that his wife had signed the petition.

Mr. Roger Panella of 682 Eckford was present and stated that his house is to the north of this property. The south side of his home faces these two (2) structures and does not find them to be an eyesore and is in favor of the variance, rather than the alternative of putting up tarps. Mr. Kovacs asked if his name was also on the petition and Mr. Panella said that it was.

Mr. Gary Blanck, 655 Thurber was present and said that his home is south of this property. Mr. Blanck said that he does not have an objection to these structures and thinks it would be an eyesore if the wood was on the ground. Mr. Blanck said that he would be concerned if the wood was on the ground with tarps as not only would it be an eyesore, but would also attract animals. Mr. Blanck said that he had signed the petition and would like to see this variance request granted.

Mr. John Hansen, 683 Thurber was present and said that his property backs up to Mr. Kage's property and he is the most affected by these structures. Mr. Hansen brought in pictures taken from his home and feels that the main eyesore is the lean-to attached to the pole barn. Mr. Hansen said that he has lived there approximately seven years and always thought that Mr. & Mrs. Kage were living quite comfortably without all this wood on the property. There is also a structure that has a tarp over it. Mr. Hansen believes this structure will have an impact on the value of his property and sees this lean-to every day and thinks that Mr. Kage could get rid of some of the wood. The buildings are approximately 14' to 16' high and there are several stacks of wood outside of these buildings also. Mr. Hansen said that he wished he had come to him as he would have told him not to build a lean-to and also to stack the bins below six (6) feet, so they would

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not be visible above the privacy fence line. Mr. Hansen also said that he had to overcome this visual line of site to the lean-to and wondered if the Fire Department had any issues with this wood stacked up in this structure. Mr. Kovacs asked if he had signed the approval petitioner. Mr. Hansen said that when Mrs. Kage came by she asked the question as to whether the neighbors would rather see a wood cage or a tarp. Mr. Hansen indicated that the consensus of opinion was that they would much rather see a structure than a tarp, although he did not realize it would result in a lean-to and there are still tarps on the property covering wood. If Mr. Hansen had known that these structures were going to be put on the property, he probably would not have bought this home. Mr. Hansen said he does not want to create any animosity but he would rather not have the lean-to on the property. Mr. Hansen also said that he does not believe Mr. Kage needs a five-year supply of wood stored on the property. Mr. Kovacs asked Mr. Hansen about his signature on the petition and Mr. Hansen once again stated that his wife had signed the petition based on the fact that Mrs. Kage asked if they would rather have a wood structure than a tarp covering the wood.

Mr. Nick Vitale, 641 Thurber was present and stated that his home is behind and to the south of this property. Mr. Vitale said that he does not see the lean-to or the other structures on this property as his property is heavily wooded. Mr. Vitale is in favor of this variance request and is concerned that the number of rodents would increase if the wood was stored on the ground. Mr. Vitale also indicated that he had signed the petition.

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

There are four (4) written objections on file. The Kages submitted a petition with twenty-five (25) signatures indicating approval of the structures.

Mr. Maxwell stated that it is his opinion that the best alternative is less wood. Mr. Maxwell also said that he does not believe this much wood is reasonable in the City and the petitioner did not demonstrate a hardship that runs with the land and also feels that a lot of things that were brought up were a self-imposed hardship.

Mr. Courtney said that he did not see a hardship that runs with the land and would be inclined to make a motion to deny.

Mr. Fejes asked if the approvals on the petition were for a variance for the square footage of accessory structures, or an approval for a structure versus a tarp. Mr. Kovacs said that the wording on the petition indicated that it was "petition for allowing residents at 718 Eckford to retain two pavilions on property to cover firewood". Mr. Courtney said that the sales pitch was that it was indicated that the wood would be under tarps. Mr. Kovacs thinks that there is too much wood on this property and believes that this is a self-imposed hardship. Mr. Kovacs also said that he thinks this

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much wood will bring down property values and thinks it is obtrusive to other residents in the area.

Mr. Maxwell stated that he feels the hardship is self-created.

Motion by Courtney  
Supported by Gies

MOVED, to deny the request of Robert Kage, 718 Eckford, for relief to maintain two (2) covered storage structures and a lean-to attached to the existing pole building, resulting in 2,686 square feet of accessory buildings where 1,891 square feet is allowed.

- Petitioner did not demonstrate a hardship.
- Amount of firewood proposed to be stored is more than what would be reasonable for a single family home.
- Variance is obtrusive to surrounding neighbors.
- Variance would have an adverse effect to surrounding property.

Yeas: All – 6

**MOTION TO DENY VARIANCE REQUEST CARRIED**

**ITEM #5 – VARIANCE REQUEST. ROBERT KLEINSTIVER, 2877 DALEY**, for relief to maintain an addition constructed without first obtaining a building permit that results with 9.5' rear yard setback where Section 30.20.09 of the Ordinance requires a minimum 20' rear yard setback in M-1 (Light Industrial) Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain an addition constructed without first obtaining a building permit. The site plan submitted indicates that this 10.5' x 25.9' addition was constructed with 9.5' rear yard setback. Section 30.20.09 of the Ordinance requires a minimum 20' rear yard setback for buildings located in the M-1 (Light Industrial) Zoning District.

Mr. Robert Kleinstiver and his Attorney, were present. Mr. Kleinstiver's Attorney stated that Mr. Kleinstiver had been a property owner in the City of Troy for many years. Approximately 20 years ago Mr. Kleinstiver hired a contractor and assumed that this contractor pulled the necessary permits and met the requirements of the City when he put up this structure. During the process of trying to sell this building, it was found that the structure was put up without a Building Permit. This structure is part and parcel of this building. Mr. Kleinstiver would like to retire and is trying to sell this building.

Mr. Courtney asked if the sale of this building would be affected if this storage building had to be removed. Mr. Kleinstiver's Attorney said that the buyer would not continue with the purchase of this property.

**ITEM #5 – con't.**

Mr. Courtney asked if a Building Permit was required if this variance was granted. Mr. Stimac said that it would be appropriate to issue a Building Permit, which would also create a record for this structure.

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

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

Motion by Maxwell  
Supported by Courtney

MOVED, to grant Robert Kleinstiver, 2877 Daley, relief of the Ordinance to maintain an addition constructed with first obtaining a Building Permit that results with a 9.5' rear yard setback where Section 30.20.09 of the Ordinance requires a minimum 20' rear yard setback in M-1 (Light Industrial) Zoning District.

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

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

**ITEM #6 – VARIANCE REQUEST. VITO MITCHELL HOMES, L.L.C., 996 ECKFORD (PROPOSED ADDRESS)**, for relief to construct a house that will result in a proposed 26.07' front setback from the Rochester Road right of way where Section 30.10.04 requires a 30' minimum front yard setback in R-1C Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a single-family residence. This lot located on the southeast corner of Eckford and Rochester is a double front corner lot. As such, it has front setback requirements from both Eckford and Rochester Road. Section 30.10.04 requires a 30' minimum front setback in R-1C Zoning Districts. The site plan submitted indicates a proposed 26.07' front setback from the Rochester Road right of way.

Mr. Vito Mitchell was present and stated that they are looking to keep this home exactly like the rest of the homes on this street and will have the same square footage. If they had to take off 4' off the home would have the appearance of a "shotgun" type of house and would not look the same as the homes in the area.

**ITEM #6 – con't.**

Mr. Courtney asked how taking off 4' of the house would create a "shotgun" appearance. Mr. Mitchell said that although 4' does not seem like a lot it will bring the house in and the rooms would come in 2' on each side of the home.

Mr. Kovacs asked to see the plan of the home and Mr. Mitchell gave the Board a plan to examine. Mr. Kovacs asked if this was going to be a two-story home and Mr. Mitchell said it would be one-story ranch. Mr. Kovacs then asked if they had to take 4' off of the house what would happen to the footprint of the house. Mr. Mitchell said that aesthetically it would look as though you were walking through narrow hallways to get to the bedrooms. Mr. Mitchell also said that it would not fit in with the other homes in the area. They are trying to make sure that this home looks like the surrounding homes, which will keep the property values up.

Mr. Kovacs asked if there was any future expansion planned for Rochester Road. Mr. Stimac said that this is the existing right of way along Rochester Road, which happens to be at the current ultimate right of way that is shown on the City's Master Thoroughfare Plan. This already does take into account any known future widening of Rochester Road.

Mr. Mitchell also said that in order to keep the house secluded from Rochester Road, they are going to put in a berm with pine trees.

Mr. Courtney asked if a variance would be required if this was not a double front corner lot. Mr. Stimac said that the lot is 85' wide and if it was not a double front corner lot, he would need 10' on each side and basically could build a 65' wide house. Mr. Kovacs asked if the house could be rotated to face Rochester. Mr. Mitchell said that if the house was turned it would not meet the rear yard setbacks.

Mr. Courtney asked why this was not considered at the time these lots were split. Mr. Mitchell said that in this Zoning District the minimum lot width is 85 feet. Mr. Mitchell also said in order to get the maximum number of lots from this parcel, this is the way it was split with 85' frontage and 130' deep.

Mr. Kovacs asked if they had built all the homes in this area and Mr. Mitchell stated that they had built the homes on the south side of the street. Mr. Kovacs asked if a Colonial style home would fit on this parcel and Mr. Mitchell stated that it would not fit on this lot. Mr. Mitchell also said that the proposed home would be comparable to the other homes in the area.

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

There are two written approvals on file. There are no written objections on file.

**ITEM #6 – con't.**

Mr. Kovacs said that in his opinion this was a very small variance request and would not be obtrusive to other homes in the area.

Mr. Courtney said that he thought this should have been taken into consideration when they were going to split the parcel. Mr. Stimac said that the original property width was 255', the minimum lot width is 85', and they could not have reduced the lot width on the adjoining lots without obtaining a variance.

Motion by Fejes

Supported by Courtney

MOVED, to grant Vito Mitchell Homes, L.L.C., 996 Eckford (proposed address), for relief to construct a house that will result in a proposed 26.07' front setback from the Rochester Road right of way where Section 30.10.04 requires a 30' minimum front yard setback in R-1C Zoning Districts.

- Variance request is minimal.
- Double front corner lot creates a hardship.
- Variance will not have an adverse effect to surrounding property.
- Variance does not create a prohibited use in a Zoning District.
- Variance is not contrary to public interest.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

**ITEM #7 – VARIANCE REQUEST. RAM A. SHARMA, 2951 HOMEWOOD**, for relief of the Ordinance to maintain a porch enclosure constructed without a permit on the east side of his home that results in a side setback of 5.6' where Section 30.10.01 requires a 15' setback in R-1A Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to maintain a porch enclosure constructed without first obtaining a building permit on the east side of his home. The site plan submitted indicates that this structure was built with a 5.6' side setback. Section 30.10.01 requires a 15' minimum side yard setback in R-1A Zoning Districts.

Mr. Stimac stated that an error was made in the write up of this petition. This subdivision was originally developed utilizing the open space option and the lot sizes were reduced. In the R-1A Zoning District, in open space option developments, side yard setbacks are only 10' and not 15' as published, therefore this is a lesser variance request. After conferring with Mr. Motzny it was determined that the Board could act on this request because the variance request is now a lesser variance than the request in the published notice.

**ITEM #7 – con't.**

Mr. Ram Sharma was present and stated that if there were any objections on file he would be willing to take down this porch enclosure.

Mr. Kovacs said that we did have a written objection on file and asked Mr. Sharma what the purpose of this structure was. Mr. Sharma said that it protects the door and keeps water from running down into the basement. Mr. Sharma also said that he had signed a contract with someone, and found out later that he did not have a license. Mr. Sharma had to take him to civil court and this contractor lost the case to Mr. Sharma. Mr. Kovacs clarified that Mr. Sharma had indicated he would tear down the structure if there was an objection on file and Mr. Sharma said that he would. Mr. Kovacs asked how this structure was attached to the house. Mr. Sharma said that there were glass doors and a wood molding that makes up the frame.

Mr. Kovacs said that the Board needs to find a hardship with this request. Mr. Sharma said that that he does not have a hardship and if he knew it was a problem originally he probably would not have put it up.

Mr. Courtney asked if Mr. Sharma wanted to withdraw his petition and he said if the Board decides he can keep the structure he will and if the Board indicates that it needs to come down, he will remove it.

Mr. Fejes asked why Mr. Sharma built this enclosure. Mr. Sharma said that there was a door there and water was draining inside. Mr. Fejes said that if he takes it down, he will have water leaking into the basement. Mr. Fejes said that he did not see a hardship.

Mr. Kovacs asked if the petitioner would be allowed to building some sort of canopy that would act as a rain deflector over this door. Mr. Stimac asked Mr. Sharma if the door was added as part of this project. Mr. Sharma said that the door was there about two years. Mr. Stimac then asked if he had a problem with water running in through the door before he added the enclosure. Mr. Sharma said that he did not.

Mr. Stimac stated that the Zoning Ordinance permits architectural features, one of which would include a small overhang that could encroach 2" per foot of setback. In a 10' setback you could have a 20" overhang that could cover the top of the door. Mr. Kovacs said that right now it sits 11' from the property line. Mr. Stimac said that according to the mortgage survey, it is currently 11 ½' and he can go 20" into the setback, which would take him to 8'-4" that would give him a 3' overhang over the door. This overhang could not have walls. Mr. Sharma said that without walls the water would go inside.

Mr. Courtney asked if there was something that protected the front and back doors. Mr. Sharma indicated that a large porch covered the front door.

**ITEM #7 – con't.**

Mr. Kovacs said that in his opinion a small architectural overhang would be more appropriate and does not think this enclosure fits in with the surrounding area.

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

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

Mr. Kovacs said that he did not see a hardship with this request and also felt that if Mr. Sharma decided he needed something to cover the door, he could put up an overhang without walls.

Mr. Courtney suggested that Mr. Sharma determine if anything would be required once the structure was removed.

Motion by Courtney  
Supported by Gies

MOVED, to deny the request of Ram A. Sharma, 2951 Homewood for relief of the Ordinance to maintain a porch enclosure constructed without a permit on the east side of his home that results in a side setback of 5.6' where Section 34.20.03 requires a 10' setback in R-1A Zoning Districts utilizing the open space option.

- Petitioner did not demonstrate a hardship.
- Structure does not fit in with surrounding property.

Yeas: All – 6

MOTION TO DENY REQUEST CARRIED

**ITEM #8 – VARIANCE REQUEST. LARRY FRANDLE, 1142 BOYD**, for relief of the Ordinance to reconstruct a fire damaged home. Section 40.50.04 prohibits the reconstruction of a legal non-conforming structure destroyed by a means to an extent of more than 60% of its replacement cost unless the construction is in compliance with all provisions of the Zoning Ordinance.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to reconstruct a fire-damaged house. This house is a legal non-conforming structure. It has an existing 4.7' side yard setback where 5' is required and an existing 17.6' front setback where 25' is required in the R-1E Zoning District per Section 30.10.06. A fire occurred on January 14, 2005 damaging this structure beyond 60% of its replacement cost. Section 40.50.04 prohibits the reconstruction of a legal non-conforming structure destroyed by any means to an extent of more than 60% of its replacement cost unless the construction is in compliance with all provisions of the Zoning Ordinance.

**ITEM #8 – con't.**

Mr. Kovacs asked if there were any plans submitted to rebuild. Mr. Stimac said that there were not any plans submitted, but Montgomery & Sons did submit specifications as to the scope of the work. Mr. Stimac also verified with the City Assessor, that the house on this property is valued at \$46,344.00 for tax purposes and the cost estimates to repair is \$123,000.00.

Mr. Courtney asked if the rebuilt structure would be two stories instead of one and one-half. Mr. Stimac said that there are two sets of numbers, one to rebuild the structure and put it back the way it was is the \$123,000.00 figure and the other to expand the structure to a full second floor which will exceed the \$123,000.00 figure. Mr. Courtney asked if granting a variance to rebuild this home would remove the non-conformity status of the home and if it were to be destroyed again could they rebuild without a variance. Mr. Stimac said that if a variance is granted, it would be made a conforming structure with the reduced setbacks and would not have to come back to them. Mr. Courtney asked what would happen if it were built larger. Mr. Stimac stated that if the home was rebuilt in a way that increases the non-conformity or continue the non-conformity it would have to come back to the Board. If a structure was put on to the back of this home that met the side yard setbacks, it would not have to come back to this Board.

Mrs. Drake-Batts asked if they were planning to rebuild on the existing foundation and Mr. Stimac indicated that this was correct.

Mr. Frandle was present and stated that basically all they want to do is repair the house. The footprint of the home will stay the same. Cost of repairs is estimated to be \$120,000.00 and it was explained to Mr. Frandle by AAA that the cost of repair is limited to his liability. If Mr. Frandle has to tear down the house, rebuild, and move the foundation to make it conforming, it would be twice as much and that money would have to come out of his pocket. Mr. Frandle said that they are a one-income family and without a variance this would create a hardship for them.

Mr. Kovacs asked about expanding a non-conforming structure. Mr. Stimac said that they are not going to expand this non-conformance but only to rebuild it without having to comply with the requirements of the Ordinance. Because the cost of repairs is more than 60% of the value of the home, the Ordinance dictates that it can only be rebuilt in conformance with the guidelines of the Ordinance.

Mr. Courtney asked if making this home 2 stories instead of 1-½ stories would increase the non-conformity. Mr. Stimac said that even though it would be 2 stories the non-conformity would not be increased because the sidewalls would not be moved and therefore the side yard setback would not change.

Mr. Frandle said that he had used the upstairs for living space and he wanted to raise the knee walls 5'.

**ITEM #8 – con't.**

Mr. Kovacs also said that he thought this would be an expansion of a non-conforming structure because it is going from 1-½ stories to 2 stories. Mr. Stimac said that the Board could allow the structure to be rebuilt exactly the way it was or they could allow the second floor to be expanded to take up the full width of the house.

A discussion ensued regarding whether or not this would be considered an expansion to a non-conforming structure and a new Public Hearing notice would be required. Mr. Courtney said that he is adding to the non-conformity. Mr. Fejes stated that he did not think this was an addition to the non-conformity. Mr. Stimac stated that the Public Hearing notice states specifically that the home has to be repaired in the same location but does not indicate if that is the same structure or a different structure. Mr. Kovacs said that he feels this is a technicality and does not feel it would be appropriate to make the petitioner wait another month for a ruling. Mr. Courtney asked Mr. Motzny for a ruling on this issue.

Mr. Motzny said that if the structure is rebuilt exactly the same it is not really an expansion. The burden of the Board is to grant a variance allowing for the same setback variance that is presently on the property. If they don't know for sure what he is going to build and the new structure is larger it could be construed as an expansion to a non-conforming structure. If the Board grants a variance and the petitioner decides to build something different at a later date he would have to come back before the Board.

Mr. Kovacs asked Mr. Frandle if he knew what he wanted to do at this point. Mr. Frandle said he knows exactly what he wants to do and that is to repair his home and move his family back into it. He would like to add additional living space by raising the knee walls. The footprint of the house would not be changed at all.

Mr. Kovacs asked if raising the walls by 5' would increase the non-conformity.

Mr. Courtney asked Mr. Frandle if he could start to rebuild exactly the same house now and then come back to the Board if he still wished to expand the second floor. Mr. Frandle said he did not think the insurance company would go along with that type of situation.

Mrs. Drake-Batts said that she did not have a problem with granting a variance and allowing Mr. Frandle to expand the second floor. Mr. Courtney said that he did not have a problem granting this variance as long as the Public Hearing notice would cover this situation, as he does believe this is an expansion of a non-conforming structure.

Mr. Kovacs asked for an opinion regarding the non-conformity. Mr. Maxwell said that he thinks the reason he is here is because essentially the non-conformity no longer exists and it is up to the Board to grant a variance that will allow for a new non-conformity. If Mr. Frandle wants to ask for an addition to the height it could be part of the new non-conformity.

**ITEM #8 – con't.**

Mr. Stimac said that if the Board is inclined to allow the petitioner to rebuild a structure damaged to this extent that is one issue and if part of that reconstruction includes raising the height of the roof on the second floor as part of that reconstruction, a resolution could be passed indicating that the variance is granted as long as he does not expand the walls outward.

Mrs. Drake-Batts asked if someone were to build a new house they would not have to come before this Board. Mrs. Drake-Batts said that all this Board is doing is giving him back his non-conforming status. Mr. Kovacs said that in the past when you have additional square footage that is an increase to a non-conforming structure. Mr. Stimac said that he believes what the petitioner is asking for is to take a 1 ½ story bungalow and alter it to become a full 2<sup>nd</sup> story home.

The Chairman opened the Public Hearing.

Mr. Frandle brought in several approval letters.

John Lovell from Montgomery & Sons was present and said he is the contractor for this project. Mr. Lovell explained that they were using the loft area as living space and the only reason they would raise the walls would be to meet the Residential Building Code. Basically this was a one-bedroom house. His insurance policy will cover this area because he was using it as living space.

Mr. Stimac asked if the distance from the knee wall on the north side of house would remain the same as the distance from the knee wall on the south side of the house. Mr. Lovell said that they were going to raise the knee walls 5' and also move them out to be in line with the first floor walls.

Steve Giordanno a neighbor of Mr. Frandle was present and stated that he is in favor of granting this variance and does not see how reconstruction could create a problem.

Mr. Frandle's daughter was present and stated that she is in support of this request and also feels that the extra space on the second floor would be beneficial to everyone.

Mr. Murray of 1128 Boyd was present and said that he lives next door to the petitioner. Mr. Murray said that the petitioner is basically trying to rebuild what he has and thinks the Board should grant this variance.

Paula Ellis, 1205 Boyd was present and stated that this neighborhood has always looked the same. Ms. Ellis said that the neighbors do not care if there is an extra 5' on the top of the house; they just want this family back in their home.

**ITEM #8 – con't.**

Tim Wiggins, 1186 Boyd was present and stated that he lives about three houses from the petitioner. Mr. Wiggins said that he is in support of this variance and the proposed construction would not be any type of eyesore.

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

There are eleven (11) written approvals on file as well as the approvals brought in by Mr. Frandle. There are no written approvals on file.

Mr. Kovacs said he personally did not see a problem with rebuilding the structure.

Motion by Courtney  
Supported by Gies

MOVED, to grant Larry Frandle, 1142 Boyd, relief of the Ordinance to reconstruct a fire damaged home.

- Reconstruction includes the expansion of the 2<sup>nd</sup> floor.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 6

**MOTION TO GRANT VARIANCE CARRIED**

Mr. Kovacs asked when elections were held for officers on the Board of Zoning Appeals. Mr. Stimac said that these elections are held in May.

The Board of Zoning Appeals meeting adjourned at 9:46 P.M.

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Matthew Kovacs, Chairman

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Pamela Pasternak, Recording Secretary