

Mark Maxwell called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, December 21, 2004 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
Michael Hutson
Mark Maxwell
Robert Schultz

RECEIVED

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CITY OF TROY
CITY MANAGER'S OFFICE

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

ABSENT: Christopher Fejes
Marcia Gies
Matthew Kovacs

Motion by Courtney
Supported by Hutson

MOVED, to excuse Mr. Fejes, Ms. Gies from this meeting as they are out of town and Mr. Kovacs due to illness.

Yeas: All – Courtney, Hutson, Maxwell, Schultz

MOTION TO EXCUSE MEMBERS CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF NOVEMBER 16, 2004

Motion by Courtney
Supported by Hutson

MOVED, to approve the minutes of the meeting of November 16, 2004 as written.

Yeas: 3 – Courtney, Hutson, Maxwell

Abstain: 1 – Schultz

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – VARIANCE REQUESTED. JAMES JONAS, 888 W. BIG BEAVER, LLC, 888 W. BIG BEAVER, for relief of the Zoning Ordinance to maintain a 4588 square foot habitable space in the parking garage.

Mr. Stimac explained that this petitioner has obtained and attached additional land to this development. With this additional land the project now complies with the maximum allowable building area per acre of land. This variance is no longer required and no additional action is necessary by the Zoning Board of Appeals.

J-1c

ITEM #3 – VARIANCE REQUESTED. MR. ENCLOSURE REPRESENTING MR. & MRS. LLOYD GEERING, 4451 REILLY, for relief of the Ordinance to construct a patio enclosure that would result in a proposed 25.3' rear yard setback where Section 34.20.03 of the Zoning Ordinance requires a 35' minimum rear yard setback in R-1C Zoning Districts utilizing the open space option.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a patio enclosure that would result in a 25.3' rear yard setback. Section 34.20.03 of the Zoning Ordinance requires a 35' minimum rear yard setback in R-1C Zoning Districts utilizing the open space option.

Mr. Hutson asked what the difference was between a R-1C Zoning District and the open space option. Mr. Stimac explained that in an R-1C Zoning District the front yard setback would be 30' and the rear yard setback would be 40'. In this case the front yard is the same and the rear yard setback has been reduced to 35'.

Mr. Hadad and Mr. Geering were present. Mr. Hadad asked Mr. Stimac if the setbacks had changed after this home was built. Mr. Stimac stated that this subdivision was developed with the open space option and the rear yard setback has always been 35'.

Mr. Hadad stated that they were asking for this variance because this property was very well hidden and this sunroom would not have a negative effect to any of the surrounding property. Mr. Hadad also explained that several other communities in the area have changed their setback requirements when a room of this type is mostly glass. Mr. Hadad did not think that the intent of the Troy Zoning Ordinance was to limit the setbacks on glass structures and thought that this should be taken into consideration. Mr. Hadad also brought up another variance that was granted on a property in Troy and felt that the situations were very similar.

Mr. Maxwell explained to Mr. Hadad the request for a variance is related to this property only and the Board would not consider granting a request based on a variance granted in another part of the City. Mr. Maxwell also stated that although the Board appreciated the information regarding variance changes in other cities, these changes do not apply to the restrictions in the Troy Ordinance, and a variance would only be granted based on a practical difficulty. Mr. Hadad said that he understood that and only wanted the Board to know that he felt these two properties were similar.

Mr. Hadad also said that Mr. Geering's elderly mother lives with them and is confined to a wheel chair. It is very difficult for her to get around and he does not believe that the legislative intent of the Ordinance would be to limit her enjoyment of this property. Mr. Hadad went on to say that this site is very remote and hidden by trees. Mr. Maxwell informed Mr. Hadad that he as well as other members of the Board had visited this site.

Mr. Maxwell opened the Public Hearing.

ITEM #3 – con't.

Mr. Kenneth Hietikko, 4447 Reilly was present and stated that he is the neighbor south of this property and is in favor of this request.

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

There are no written approvals or objections on file.

Mr. Hutson stated that although he sympathizes with Mr. Geering, he is not in favor of this request, as the petitioner has not shown a hardship that runs with the land. Mr. Hutson also stated that he feels that this is a very large variance request.

Mr. Hadad said that he appreciated Mr. Hutson's comments, but had spoken to the neighbors and they did not object to this request. Mr. Hadad also said that this sunroom would be in keeping with the requirements of lot coverage.

Mr. Hutson stated that the lot coverage was not an issue, but the Board was considering the request for a reduced setback.

Mr. Maxwell stated that he was concerned with this request because of the proximity to the neighbor behind. Mr. Maxwell said that this variance would bring this room to within 60' of the neighbor's home and was concerned because of the close proximity of the sunroom.

Mr. Schultz stated that he did not see a practical difficulty with the land and was concerned about the size of this variance request. Mr. Hadad said that without a variance the use of the yard is limited for a handicapped member of this family.

Mr. Schultz asked Ms. Lancaster if a person's health concern was one of the reasons to grant a variance. Ms. Lancaster informed him that a practical difficulty that runs with the land is the reason to grant a variance. Ms. Lancaster also stated that once a variance is granted it stays with the property and not the person.

Motion by Schultz
Supported by Maxwell

MOVED, to postpone the request of Mr. Enclosure, 4451 Reilly, for relief of the Ordinance to construct a patio enclosure that would result in a proposed 25.3' rear yard setback where Section 34.20.03 of the Zoning Ordinance requires a 35' minimum rear yard setback in R-1C Zoning Districts utilizing the open space option until the meeting of January 18, 2005.

- To allow the petitioner the opportunity of a full board.

Yeas: All – 4

ITEM #3 – con't.

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF JANUARY 18, 2005
CARRIED

ITEM #4 – VARIANCE REQUESTED. MERI BORIN, 2317 VERMONT, for relief of the Ordinance to maintain a shed constructed without first obtaining a Building Permit located in the side yard, with a side yard setback of 2.4' to the east property line and a distance of 7.5' to the attached garage.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a shed that has been constructed without first obtaining a Building Permit. The site plan submitted indicates that the shed has been constructed in a side yard with a side yard setback of 2.4' to the east property line and with a distance of 7.5' to the attached garage. Section 40.57.03 prohibits the placement of any accessory building in any yard except a rear yard. Section 40.57.05 requires a 6' minimum setback from an accessory building to any property line and a 10' minimum distance to the main structure.

Mr. Stimac also informed the Board that a copy of the original Building Permit from 1985 was found and indicated that this permit was for a 10' x 9' metal shed.

Ms. Borin was present and stated that the existing shed was in a state of disrepair, and all she did was repair that shed and in so doing left it in exactly the same area it was in. Ms. Borin indicated that she did not realize a permit was required. Ms. Borin also said that due to the condition of the original shed, animals were getting inside. The perimeter of her yard has been professionally landscaped and she does not feel that this shed could be placed in any other location. Ms. Borin also stated that her neighbor, David Gralewski, signed the affidavit of notification indicating approval of the location of this shed. There are no neighbors to the east of this property and the rear of the lot backs up to Brinston Park. Ms. Borin said that the only part of the shed that is visible from the street is the roof and does not think this creates a problem for the neighbors. Ms. Borin also said that all she was doing was putting the shed in the same location as the original shed and did not believe this was a problem.

Mr. Maxwell stated that it does not matter if the original shed was in this location or not, the Ordinance dictates that an accessory structure has to be a minimum of 6' from the property line.

Mr. Hutson stated that he understood her concern about the landscaping, but thinks this is a very large lot and the petitioner has not demonstrated a hardship that runs with the land.

Mr. Stimac asked for clarification regarding Ms. Borin's statement that Mr. Gralewski said that this was the location of the original shed. Ms. Borin said that Mr. Gralewski had signed the affidavit from the City. Mr. Stimac explained that this form is a notification that a shed is going to be built and not a verification of the location.

ITEM #4 – con't.

Mr. Maxwell opened the Public Hearing.

Ms. Borin's fiancée was present and stated that he had helped with the re-building of the shed and did not realize a permit was required from the City. He also indicated that they're a number of mature trees in the yard and did not think the shed could be moved to another location. He also said that they had about \$1,000.00 tied up in the materials for the shed and they would not be able to re-use these materials.

Mr. Maxwell said that he thought the roof would probably not be destroyed but he also felt that the other materials could be salvaged to rebuild this shed.

Ms. Borin's fiancée stated that the neighbor's house is closer to the property line than this shed.

Ms. Borin stated that there is a fence line that would have to be moved and also there is another area of mature trees and her neighbor stated that he did not have a problem with the shed in this area.

Mr. Maxwell stated that when a variance is granted it stays with the land. Ms. Borin's fiancée stated that he thought this shed had very little impact on any of the surrounding neighbors.

Mr. Maxwell opened the Public Hearing.

Mr. & Mrs. Douglas Smith, 2320 Vermont were present. Mr. Smith stated that this shed is visible to him from both his front window and the front door. Mr. Smith said that when he was going to build a shed he called the City and spoke to Mitch Grusnick in the Building Department, who was extremely helpful and receptive to questions. Mr. Smith also said that Ms. Borin had completely torn down the original shed and rebuilt it from scratch. Mr. Smith indicated that he had seen the cement truck come in to pour the foundation. From his home it appears as though the house extends right into the shed. Mr. Maxwell asked how much of the shed was visible to the Smith's. Mr. Smith indicated that he could see about 3' to 4' of the roofline. Mr. Smith also said that he objects to this request.

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

There are no written approvals on file. Mr. Smith brought in one (1) written objection from the neighbor at 2300 Vermont.

Ms. Borin's fiancée asked when the City required permits. Mr. Stimac stated that the City of Troy is under the State of Michigan Building Code and also the Troy Zoning Ordinance. Permits are required when changes are made to any type of walls, and also to determine Zoning Compliance according to Section 40.57.12 of the Zoning

ITEM #4 – con't.

Ordinance. Mr. Stimac also stated that the work that was done to this shed did require a Building Permit.

Mr. Maxwell stated that the bottom line is that Ms. Borin has a shed that is 2.4' from the side property line.

After reading the letter brought in by Mr. Smith, Ms. Borin indicated that this objection was from a man she had sued and won her case and who is also a business partner of Mr. Smith's. Ms. Borin felt that these objections should not be taken into consideration because of this lawsuit.

Mr. Schultz asked if Ms. Borin had contacted the City before beginning the repairs to this shed. Ms. Borin stated that she did not as she did not believe a permit was required.

Motion by Hutson
Supported by Courtney

MOVED, to postpone the request of Meri Borin, 2317 Vermont, for relief of the Ordinance to maintain a shed constructed without first obtaining a Building Permit located in the side yard, with a side yard setback of 2.4' to the east property line and a distance of 7.5' to the attached garage until the next meeting of January 18, 2005.

- To allow the petitioner the benefit of a full board.

Yeas: All – 4

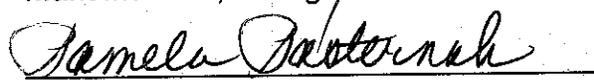
MOTION TO POSTPONE REQUEST UNTIL JANUARY 18, 2005 CARRIED

Mr. Courtney stated that his opinion was formed on his own observations and not because of other factors. Mr. Maxwell also said that his decision will be made solely on the proximity of this shed to the property line.

Mr. Maxwell wished everyone a Happy Holiday.

The Board of Zoning Appeals meeting adjourned at 8:26 P.M.


Mark Maxwell, Acting Chairman


Pamela Pasternak, Recording Secretary