

Matthew Kovacs, Vice-Chairman, called the meeting of the Board of Zoning Appeals to order at 7:33 P.M., in Council Chambers of the Troy City Hall on Tuesday, July 19, 2005.

PRESENT: Kenneth Courtney
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

ABSENT: Christopher Fejes

Motion by Gies
Supported by Wright

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

Yeas: All – 6

MOTION TO EXCUSE MR. FEJES CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF JUNE 21, 2005

Motion by Courtney
Supported by Gies

MOVED, to approve the minutes of the meeting of June 21, 2005 as written.

Yeas: 5 – Gies, Hutson, Maxwell, Wright, Courtney
Abstain: 1 – Kovacs
Absent: 1 – Fejes

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

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

Motion by Courtney
Supported by Gies

ITEM #2 – con't.

MOVED, to approve renewal of Item #3 for a period of three (3) years as suggested in the Agenda Explanation and to schedule a Public Hearing for Item #4 and Item #5 in order to consider permanent variances for these items.

Yeas: All – 6

MOTION TO APPROVE ITEM #3 FOR A THREE (3) YEAR RENEWAL AND TO POSTPONE ITEM #4 AND ITEM #5 UNTIL THE MEETING OF AUGUST 16, 2005 TO ALLOW FOR A NEW PUBLIC HEARING ON THESE ITEMS CARRIED.

ITEM #3 – RENEWAL REQUESTED. MR. & MRS. AL KING, ATLAS VENEER FIREPLACE, 2212 LIVERNOIS, for relief of the Ordinance to maintain a metal fence in lieu of the 6' high masonry screening wall required along the east property line where this commercial property abuts residentially zoned property.

Mr. Stimac explained that the petitioner is requesting renewal of relief to maintain a metal fence in lieu of the 6' high masonry-screening wall required along the east property line where this commercial property abuts residentially zoned property. This Board originally this relief in 1983, primarily due to the fact that the petitioner owns the property to the east, which is undeveloped. This item last appeared before this Board at the meeting of July 2002 and was granted a three (3) year renewal. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant Mr. & Mrs. Al King, Atlas Veneer Fireplace, 2212 Livernois a three (3) year renewal of relief to maintain a metal fence in lieu of the 6' high masonry screening wall required along the east property line where this commercial property abuts residentially zoned property.

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

ITEM #4 – RENEWAL REQUESTED. INDEPENDENT BANK, 5950 ROCHESTER ROAD, for relief of the 6' high masonry screening wall required along the south and east property lines.

Mr. Stimac explained that the petitioner is requesting renewal of relief of the 6' high masonry-screening wall required along the south and east property lines where it abuts residentially zoned property. These property lines abut multiple-family residential zoning and relief was originally granted in 1977 based on the fact that a drain surrounded the area and there was a substantial brush growth that adequately screens the abutting residential land. This item last appeared before this Board in July 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.

ITEM #4 – con't.

MOVED, to postpone the request of Independent Bank, 5950 Rochester, for relief of the 6' high masonry screening wall required along the south and east property lines where it abuts residentially zoned property until the meeting of August 16, 2005.

- To allow the Building Department the time necessary to publish a Public Hearing in order to consider a permanent variance.

ITEM #5 – RENEWAL REQUESTED. OSPREY, LTD, 2701 TROY CENTER, for relief of the 6' high masonry wall required along the north property line.

Mr. Stimac explained that the petitioner is requesting renewal of relief of the 6' high masonry-screening wall required along the north property line where it abuts residentially zoned property. This variance was originally granted based on the fact that the petitioner would install 280' of decorative metal fencing and landscaping along this north property line that abuts a residential apartment complex. This item last appeared before this Board in July 2002 and was granted a three (3) year renewal. Conditions remain the same and we have no objections or complaints on file.

MOVED, to postpone the request of Osprey, LTD, 2701 Troy Center for relief of the 6' high masonry wall required along the north property line where it abuts residentially zoned property until the meeting of August 16, 2005.

- To allow the Building Department the time necessary to publish a Public Hearing in order to consider a permanent variance.

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. This split would result in a street frontage for this property of only 55 feet where Section 30.10.02 of the Ordinance requires that properties in the R-1B Zoning District have a minimum of 100' of frontage on a public street.

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 from its Beach Road frontage 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.

The petitioner was not present. Mr. Kovacs moved this Item to the end of the agenda, Item #11 to allow the petitioner the opportunity to be present.

ITEM #7 – VARIANCE REQUESTED. TIMOTHY BUNKER, 2861 DASHWOOD, for relief of the Ordinance to construction a family room addition. This proposed addition would move the rear line 24' to the south resulting in approximately 10' of the existing pool in a side yard location. Section 40.57.03 prohibits the placement of accessory buildings or structures in any yard except a rear yard.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a family room addition. This property has an above ground swimming pool located in the rear yard. The construction of the family room addition on the rear of the home would shift the rear yard line 24' to the south resulting in approximately 10' of the existing pool being located in a side yard location. Section 40.57.03 prohibits the placement of accessory buildings or structures in any yard except a rear yard.

Mr. Bunker was present and stated that his family needs the room this family room addition would provide and when this pool is taken down and another pool put up, it will be moved to the back of his property. This property is also in a flood plain and Mr. Bunker does not believe he could put another pool in this area.

Mr. Kovacs asked approximately what the distance would be between the pool and the proposed addition. Mr. Bunker stated that it is about 16 to 18 feet.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are eight (8) written approvals on file. There are no written objections on file.

Mr. Hutson asked if a variance could be granted for a term of years. Ms. Lancaster said that she did not believe a stipulation could be placed on this request with a time limit, however, she did state that it would be possible to place the condition that if and when the pool was replaced it would need to be moved to a location that is conforming to the Ordinance.

Mr. Kovacs advised the petitioner that if he changed his mind in 10 or 12 years and decided he would like to replace the pool and leave the pool in the same location, he could come back to this Board and request a variance. Mr. Bunker stated that he had a very large lot and would not have a problem with complying with the Ordinance.

Motion by Maxwell
Supported by Courtney

ITEM #7 – con't.

MOVED, to grant Timothy Bunker, 2861 Dashwood, relief of the Ordinance to construct a family room addition, which would move the rear line 24' to the south resulting in approximately 10' of the existing pool in a side yard location.

- Variance is not contrary to public interest.
- If pool is replaced it would be moved to a conforming location.
- Variance request applies only to the existing pool.
- Variance applies only to the property in this application.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

Mr. Courtney told Mr. Bunker that he thought the present location of the pool was fine, and in the future if the pool was replaced, the petitioner would have the option to ask for a variance from this Board.

ITEM #8 – VARIANCE REQUESTED. H. W. CARTER, 1751 EASTPORT, for relief of the Ordinance to construct a covered front porch that would result in a 21' front yard setback. Section 30.10.06 requires a 25' minimum front yard setback in R-1E Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a covered front porch. The site plan submitted indicates constructing a roof over an existing uncovered front porch resulting in a proposed 21' front yard setback. Section 30.10.06 requires a 25' minimum front yard setback in R-1E Zoning Districts.

John Swanson from Oakland Building Company was present and stated that there is a disabled person residing at this address and the covered porch would help to protect him from the elements and allow access to the front of the house.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are six (6) written approvals on file. There is one (1) written objection on file.

Motion by Hutson
Supported by Wright

MOVED, to grant H.W. Carter, 1751 Eastport, relief of the Ordinance to construct a covered front porch that would result in a 21' front yard setback, where Section 30.10.06 requires a 25' minimum front yard setback in R-1E Zoning Districts.

- Variance will not cause an adverse effect to the surrounding property.

ITEM #8 – con't.

- Variance would not be contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.
- Without a variance, public health, safety and welfare could be negatively affected.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

ITEM #9 – VARIANCE REQUESTED. WESLEY MUELLER, 41 BILTMORE, for relief of the Ordinance to construct a second floor addition on his home. This home was constructed with a covered front porch, which has an 11'-3" front yard setback and is considered a legal non-conforming structure. The proposed second floor addition would continue this 11'-3" setback. Section 40.50.04 of the Ordinance prohibits expansions on non-conforming structures in a way that increases the non-conformity.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a second floor addition on his home. Section 30.10.06 requires a 25' minimum front yard setback for a single family home constructed in the R-2 (Duplex) Zoning District. The plot plan submitted indicates the existing house has a covered front porch with an 11'-3" front yard setback and is a legal non-conforming structure. The site plan submitted indicates expanding the second floor over this porch continuing the 11'-3" front setback. Section 40.50.04 prohibits expansions of non-conforming structures in any way that increases the non-conformity.

Mr. Wesley Mueller was present and stated that the wished to add this addition in order to make the second floor into habitable space. They wish to put in three bedrooms and two baths upstairs.

Mr. Kovacs asked if the front porch would remain a porch and Mr. Mueller stated at this time they plan to leave this space as a front porch.

Mr. Maxwell asked what the square footage of this home was and Mr. Mueller stated it is approximately 871 square feet and with the addition the square footage would be increased to just about 2000 square feet.

Mr. Kovacs asked what the second floor is used for now and Mr. Mueller stated that basically it is an attic and they use it for storage.

Mr. Kovacs opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written objections or approvals on file.

ITEM #9 – con't.

Motion by Maxwell
Supported by Wright

MOVED, to grant Wesley Mueller, 41 Biltmore, relief of the Ordinance to construct a second floor addition on his home that will result in a 11'-3" front yard setback.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance would increase the area of the non-conformity of this home, but the setback would not be changed.

Yeas: All – 6

MOTION TO GRANT VARIANCE CARRIED

ITEM #10 – VARIANCE REQUESTED. LISA HIGH OF CDPA ARCHITECTS, 1639 E. BIG BEAVER (PROPOSED ADDRESS), for relief of the Ordinance to construct a new building for the Suma Medical Center. The site plan submitted indicates that 9,176 square feet of landscaping is provided. Section 39.70.02 and Section 39.70.04 requires that 14,738 square feet of landscaping be provided for a building of this size.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new building for the Suma Medical Center. Section 39.70.04 requires that ten (10) percent of the net site area be developed as landscaped open space. This landscaping must be located in the front or side yard and must be in addition to the 10' green belt required by Section 39.70.02. The required landscaping for a site this size is 14,738 square feet. The site plan submitted indicates that only 9,176 square feet of landscaping is provided, making the site deficient 5, 562 square feet. Mr. Stimac also explained that this piece of property is zoned as O-1, P-1, E-P and R-1E.

Mr. Kovacs asked for an explanation of the E-P (Environmentally Protected) Zoning Classification. Mr. Stimac stated that basically the E-P Zoning District is in place for two reasons: one is to preserve environmentally sensitive areas such as wetlands, nature preserves and the second reason is to use it as a buffer between different zoning classifications where an area of a certain width and size is provided between an office development and a residential area. Mr. Kovacs asked if this area was allowed in the calculation regarding the landscape requirement and Mr. Stimac said that the only landscaping that can be counted is in the front and side of the proposed building.

Mr. Wright stated that one of the reasons for the E-P Zoning is to increase the line between the different properties because there is either an oil or gas line on this section of the property and therefore could not be developed. This item had appeared before the Planning Commission and they recommended this Zoning Classification to City Council because of this condition.

ITEM #10 – con't.

Lisa High was present and stated that because this property is long and narrow it is very difficult to make use of this site and create parking at the same time. In order to achieve the landscaping requirement they would have to move the building back 56', which would eliminate eighteen (18) parking spaces and would also place the front of this building 64' behind the building next door. This would reduce visibility from the west and also compromise the existing streetscape. They have provided several trees and a landscaped walk at the rear of the building.

Mr. Courtney asked if it wouldn't make more sense to move the building farther back and place landscaping up front. Ms. High stated that they were trying to maintain the building in line with the building next door and if they have to move it farther back it would decrease visibility. They are trying to maintain the building with the edge of the building next door.

Mr. Maxwell asked how large this lot was. Ms. High said that it is 1,305.8 ft. in length and they are proposing to develop an area of 883'-9". Mr. Maxwell asked how wide the property was and Ms. High stated that the width of the property is 166.92'.

Mr. Kovacs asked if there was a possibility of either adding a structure for parking or creating underground parking for this building. Ms. High said that they had not considered it because it was cost prohibitive and they were planning to use the basement for storage.

Mr. Kovacs asked what the square footage of the E-P zoning was. Ms. High said that she did not break it out individually however the square footage was indicated on the drawing they submitted. Ms. High said that is was roughly about 30,000 square feet. Mr. Stimac said that he calculated the E-P zoning to be 28,713 square feet.

Mr. Hutson said that if the size of the building was reduced, it could be moved farther back and they would not have a parking deficit of eighteen (18) spaces. Ms. High indicated that was probably correct. Mr. Hutson said that he thought this was a very narrow lot and they were attempting to overbuild this lot. Mr. Hutson went on to say that he was very concerned and did not want to see Troy turned into a miniature Southfield, where all you see along the road are office buildings and the 10% landscaping requirement would help to soften this look. Ms. High said that they are providing landscaping in the front of the building and the look would be softened. They have provided parking in the front of this building.

Mr. Courtney stated that if they moved the building further back they would have a lot of parking and also plenty of landscaping. Ms. High said that if the building were placed farther back the visibility would be decreased. Mr. Courtney stated that this would not be the only building that was set back farther from the road.

ITEM #10 – con't.

Mr. Kovacs asked if the E-P Zoning could be counted toward the landscape requirement and Mr. Stimac explained that if it was at the front yard or side yard of the property it would be countable. Mr. Stimac also stated that the total landscaping on this site significantly exceeds 10% of this area, but in addition to a requirement of the percentage required there is also a stipulation that the landscaping must be in the front and side yards of the property.

Mr. Kovacs 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 no written approvals on file.

Mr. Maxwell stated that he would like more information as to why the petitioner wants this building in this location as he has not heard a strong enough case as to why they want it this close to Big Beaver. Ms. High stated that they wished to maintain visibility and would like people to be able to find it easily. Mr. Maxwell asked if there were any other reasons and Ms. High said that they just wish to make it easier for people to find this building. Mr. Maxwell also stated that this is a very narrow property.

Motion by Courtney
Supported by Gies

MOVED, to deny the request of Lisa High of CDPA Architects, 1639 E. Big Beaver (proposed address), for relief of the Ordinance to construct a new building for the Suma Medical Center that will result in 9,176 square feet of landscaping where Section 39.70.02 and Section 39.70.04 requires that 14,738 square feet of landscaping be provided for a building of this size.

- Petitioner did not demonstrate a hardship that runs with the land.
- Petitioner is attempting to over-build this site.

Mr. Kovacs said that he does not agree that this property would be over-built and asked if Mr. Courtney just wanted to see this building placed farther back on the property. Mr. Courtney stated that they could move the building farther back and therefore meet the landscaping requirement and he did not feel that the petitioner had met the hardship requirement regarding a variance. Mr. Kovacs asked if Mr. Courtney felt that the width of the lot created a hardship and Mr. Courtney said that he feels the placement of the building is the only hardship because they want drive by traffic.

Ms. High stated that they are concerned because if they move the building back it would not meet the setback line established by the building next door. This lot is narrow compared to the lot next door, which enabled them to meet the landscaping requirement. Also, this building is a medical office building, has very strict parking requirements, and requires one parking spot for each 100 square feet. They are hoping

ITEM #10 – con't.

to be able to land bank parking spaces when this project is completed. They have done everything they can to screen and soften the front of this building.

Mr. Kovacs asked how far back this building would have to be moved to meet the landscaping requirements. Ms. High stated that it would have to be moved back 56' and that would put the front of the building 64' behind the building next door, which would limit visibility. Mr. Courtney also said that they could eliminate some of the parking in the front of the building by making the building smaller. If they eliminate the parking now, it would not meet the parking requirement because of the size of the building, however, if the building was made smaller they could eliminate some of the parking and meet the requirements by putting landscaping in front.

Mr. Kovacs said that he thought there was a lot of parking provided. Mr. Stimac said that the parking requirements for medical office uses compared to other office uses are in fact more than double. Mr. Kovacs said that this is a very thin lot and he sees a lot of parking and he does not feel that they should have to move the building back. Mr. Courtney said that if they took the parking out of the front, they would have to eliminate a couple of hundred feet of the building, but they could meet the landscape requirement and in his opinion the proposed plan is over-building.

Mr. Wright stated that he agrees somewhat with Mr. Courtney, but if part of this parcel was not zoned E-P, there is enough room on that site to build an even larger building. This is a difficult site because of the pipeline running through it and the petitioner has tried to mitigate the impact this development would have to the residentially zoned property to the north with the E-P zoning.

Mr. Courtney said that this parcel is also zoned R-1E and he does not think this should be added in the total area of the site any more than the E-P zoning area should be included. Mr. Courtney also said this is a multi-zoned property and they could back later and develop the R-1E Zoning District.

Mr. Kovacs said that he did not understand because he is seeing 20,713 square feet of undeveloped E-P, and really does not think this building seems too large for the site. Mr. Kovacs said that there are a lot of issues with this site.

Mr. Hutson said this is not the only use that this land can be put to use for. They could use it for something else and would not require a landscaping variance. Mr. Kovacs said that if they used it for an office building that is something that would not be needed.

Mr. Hutson said this was beside the point as this site could be used for something else and a variance would not be required.

Mr. Stimac said that officially the E-P zoned property is considered to be part of their development and goes into their landscape required. The site area that the landscape

ITEM #10 – con't.

calculations are done from does include the E-P zoned property and therefore another 2,800 square feet of landscaping is required.

Mr. Maxwell said that he would like to see this building as far away from future residential development as possible. This is a unique property in that there is a chunk of land that could not be developed, and he agrees with the petitioner in the location of this building. Mr. Maxwell does not think this property is being over-built at all.

Mr. Kovacs called for a vote on the motion made by Mr. Courtney to deny this request.

Yeas: 3 – Courtney, Gies, Hutson
Nays: 3 – Kovacs, Maxwell, Wright

MOTION TO DENY FAILS

Motion by Maxwell
Supported by Wright

Moved to postpone the request of Lisa High of CDPA Architects, 1639 E. Big Beaver (proposed address), for relief of the Ordinance to construct a new building for the Suma Medical Center that will result in 9,176 square feet of landscaping where Section 39.70.02 and Section 39.70.04 requires that 14,738 square feet of landscaping be provided for a building of this size until the next scheduled meeting of August 16, 2005.

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

Yeas: All – 6

MOTION TO POSTPONE REQUEST UNTIL AUGUST 16, 2005 CARRIED

ITEM #11 (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. This split would result in a street frontage for this property of only 55 feet where Section 30.10.02 of the Ordinance requires that properties in the R-1B Zoning District have a minimum of 100' of frontage on a public street.

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 from its Beach Road frontage 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.

ITEM #11 – con't.

Mr. Kovacs asked if other subdivisions in the R-1B Zoning Districts that are on cul-de-sacs that have 100' of frontage. Mr. Stimac explained that the required width has to be measured as a straight line between the side lot lines at the front yard setback. Mr. Stimac explained how this process works with a map of the area on the overhead screen. In doing a subdivision, there is also something called "lot averaging" and you can do a reduction of lot width of up to 10%, therefore in the development of a new subdivision under the Subdivision Control Ordinance, that 100' wide minimum parcel can be reduced to 90'. This is not a subdivision and these provisions are not applicable in this case. Mr. Kovacs asked if they could put a round stub at the end of this street. Mr. Stimac said that the petitioner would have to dedicate right of way for the extension of Prestwick and in Mr. Stimac's opinion, he would no longer meet the setback requirements. Mr. Kovacs then asked what the average width of a driveway was and Mr. Stimac said that depending on whether it is one or two cars, it would be between 12' and 16'.

Mr. Hutson asked if a variance would be required if the owner owns both parcels and wishes to split it. Mr. Stimac said that each parcel used for single-family residential, one and two-family development have frontage on a public street meeting the minimum width requirement. If the petitioner wished to split the lot, he could request a piece with 50' of frontage to Beach Road.

Mr. Wright stated that right now, these two parcels are recorded as one parcel. Mr. Stimac said that there are two different legal descriptions however, are owned by the same person. Contiguous parcels owned by the same entity are considered to be an undivided parcel. Even though it is made of two different descriptions and has two separate tax bills, it is still considered to be one parcel.

Mr. Courtney asked for clarification regarding the statement that the petitioner could request 50' of frontage to Beach Road. Mr. Stimac said that the petitioner could have requested a variance to have 50' on Beach Road for parcel in the back and then the parcel described as parcel #1 would be conforming. Because of the configuration of the lot in the back it would be larger than the front parcel.

Mr. Kovacs asked if they would need a variance to have 50' of frontage on Beach and Mr. Stimac said that they would.

Mr. Courtney asked if the other properties along Beach Road would be inclined to split their property if the Board was inclined to grant this variance. Mr. Stimac stated that it was a possibility, however a hardship running with the land would have to be found in order to split these other properties.

Mr. Kovacs asked what the purpose of the stub street Prestwick was. Mr. Stimac explained that this stub street is the same as other stub streets in Troy, and that they

ITEM #11 – con't.

are put in place so that the subdivision could be developed farther. These streets act as an interconnection of properties to other streets in the subdivision.

Mr. Donnellon, representing Choice Development was present. Mr. Donnellon stated that he wished to clarify an issue in that he believes the Ordinance deals with two adjacent parcels owned by the same person that do not comply with the Ordinance are considered to be one parcel, however, these properties do comply and each one can be built on separately. The smaller lot has not built on as of this date. When this property was purchased they were in the form of a flag lot and the other lot facing Beach and he believes that this has been that way for the past thirty-(30) years. In reality, the house and driveway coming in off of Beach, could be considered a double front corner lot. Mr. Donnellon also said that the front yard is 55' off of Prestwick and he believes this variance will allow them to create a better lot. The house at 4254 Beach would be more secluded and the petitioner plans to do a great deal of remodeling to it. It makes more sense to create two (2) nice lots, less non-conforming. In this case the property facing Beach would be 150' wide and the property in the back of Beach would be more secluded and would be a higher quality lot.

Mr. Wright asked if the petitioner was planning on leaving that house and Mr. Donnellon said that was their plan. Mr. Wright said this is a wonderful location and would love to have that location as you can barely see the house from Prestwick. Mr. Wright also asked if Mr. Donnellon was planning to leave the existing vegetation. Mr. Donnellon said that they also wish to add additional landscaping as the subdivision under construction now had removed a large number of the trees. If Prestwick went through and connected to Beach the two parcels would be non-compliant. The parcels are too small for a developer to put in a through road. The petitioner does not intend to multiply the parcels or make them bigger, they just wish to rearrange the existing square footage. Mr. Wright asked if they had gotten any input from the people on the north side of Prestwick. Mr. Donnellon stated that they have not talked to them in terms of this application.

Mr. Maxwell asked if the petitioner owned the property to the north of this parcel. Mr. Donnellon indicated that they did not own either 4298 or 4342 Beach Road. Mr. Maxwell then asked if they owned property to the north of that. Mr. Donnellon stated that he wanted to point out that there was a heavy wetland running through 4298 Beach and also 4342 Beach. The access driveway for 4342 is 20' wide not 55' wide. Mr. Maxwell asked if he had been involved in negotiations regarding the property at 4342 Beach and Mr. Donnellon said that he had not. Mr. Maxwell said that this property has been for sale for quite a long time. Mr. Donnellon said that even if you get 20 more feet, the depth of the parcel on beach would not be large enough to build on. Previous decisions have created a problem and they are attempting to make two nice lots out of this property and build two quality homes. Mr. Maxwell also said that the configuration could change dramatically as they have seen with the development to the south.

ITEM #11 – con't.

Mr. Kovacs stated that there is nothing on parcel 1 and Mr. Donnellon stated that was correct.

Mr. Courtney stated that the petitioner intended to remodel the existing house and have it addressed on Prestwick and asked if the house would then face Prestwick. Mr. Donnellon said that they were planning on putting the numbers there and in the process of remodeling, they were going to re-landscape along the driveway to improve the look of the property. The north side of the property is much nicer and the whole south line of the property needs to have trees added.

Mr. Kovacs opened the Public Hearing.

Terry Farnell, 4298 Beach was present and stated that he has lived in this location since the late 1970's. The property at 4342 Beach runs 150' north of his home. The developer owned the stub street on Prestwick and the City required him to buy it as an access road to Beach Road. Mr. Farnell believes at this time the property owner of 4254 Beach was able to purchase 50' of this stub street, which resulted in a lot size of 150' x 420'. When they moved on Beach Road, there was a sign indicating that this was a scenic road but it was taken down when the developers moved in. They have lost a large number of trees up and down the road, and Mr. Farnell is concerned about a string of birch trees planted about 1900 being removed as this property is developed. The petitioner has the opportunity to take this large lot and build one beautiful home on this property. Mr. Farnell said that when they moved in they talked to the City Assessor and was informed that R-1B Zoning required at least 100' of frontage if there was a sewer available and 150' of frontage if there was a septic field. Mr. Farnell also said that the existing structure could be dressed up and it would be worth at least a million or one and a half million dollars. Mr. Farnell said that the petitioner had not demonstrated a hardship other than financial and he is very opposed to this request.

Kyle Jones, 4280 Wentworth was present and stated that he extremely opposed to this petition. In the preamble read at the beginning of this meeting it states that the petitioner has to demonstrate a hardship to justify breaking the law, and this petitioner does not have a hardship just an accommodation. The petitioner is asking to double the amount of development on this property and in so doing impose their will on the adjacent subdivision. The character of this area is already set. There are a certain number of homes, with basically the same size lots and square footage of the homes and the 100' required frontage is in place for a reason. Mr. Jones said that they want to take the axial of the street and call it frontage. His opinion is that it is up to the Board to uphold the Ordinance and he does not feel this would be accomplished by opening up the stub street. Mr. Jones also feels that opening this stub street will have a domino effect in that traffic will begin using Wentworth and Prestwick as a shortcut to Beach. Mr. Jones said that the address in question has a temporary license as a group home and developmentally or injured people. All they are asking is to make this house part of the Greentree Subdivision and impose the negative property value and consequences

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to this Subdivision. Mr. Jones further stated that he believes all this petitioner wants to do is create two lots out of one and there are a great deal of negatives that would impact this area if this variance is granted and strongly urged the Board to deny this variance. There is no authority under the Ordinance or with the power of this Board to grant this variance as there is no hardship.

Mr. Kovacs stated that someone had stated that this stub street was never intended to go to Beach and asked Mr. Jones what he thought the purpose of this stub street was. Mr. Jones stated that he didn't know. Mr. Kovacs went on to say that if there was never meant for traffic to flow in this direction, they would not have put the stub in. Mr. Kovacs also said that he did not see any purpose to put this street and asked who would use this road to cut through beside the residents of the Greentree Sub. Mr. Jones stated that anyone that did not want to wait for traffic to clear westbound on Wattles could use that street as a shortcut. Mr. Jones said that he does not know how this property is going to be developed, and all they see is an intentional detachment from the easterly parcel that was intended to front on Beach. Mr. Kovacs asked if the 55' of frontage on the axial wasn't more than some of the other homes in the sub that front on cul-de-sacs. If there was a slight angle in this road, Mr. Kovacs believes the petitioner would meet the requirements of the Ordinance. Mr. Jones said that his property is on one of these cul-de-sacs and thinks Mr. Kovacs has to look at the area and will see a tremendous number of cul-de-sacs that creates a circle of homes that is very attractive. Mr. Jones stated that he did not believe that it was not up to this Board to make suggestions to the developer as to how he could meet the requirements of the Ordinance. If they are going to remodel this house, all they are going to do is attach the driveway to the stub end of Prestwick and call it frontage. Mr. Kovacs then asked if Mr. Jones thought cul-de-sacs were created for aesthetic purposes. Mr. Kovacs also said that this Board does have the power to make this type of decision. Mr. Jones said that he believes it is up to the Board to make a decision based on a hardship and not as an accommodation. Mr. Kovacs asked if he would rather see this petitioner improve these lots, or would he rather see this property sold to a developer and create a number of homes in this area.

Mr. Wright said that in looking at this area, the best way to make certain that Prestwick was never extended to Beach, would be to allow the petitioner to connect to Prestwick. Mr. Wright said that he does not see why the petitioner objects to this variance. Mr. Jones stated that he is concerned because this property has a temporary license to be a group home and does not want to see it attached to the Greentree Subdivision.

Ms. Lancaster addressed the Board and stated that the City of Troy does not regulate group homes the State regulates group homes. Furthermore, the City of Troy does not have the authority to deny group homes. Furthermore, if this Board uses the fact that this is a group home as part of their decision regarding this variance, the City will be sued. The City has no control over group homes. The State licenses group homes and are considered as residential use.

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Mr. Jones said that they do not object to group homes, they object to the fact that it will be connected to their subdivision, and since it is already connected to Beach Road that is where they should leave it. Mr. Kovacs stated that he understands that Mr. Jones is objecting to the traffic generated by the group home, however that cannot be a reason that the Board uses to deny this variance request. Mr. Kovacs said that they have to consider this a R-1B residential property.

Mr. Jones said that the City cannot consider the placement of the home, but asked if they could consider traffic or consequences of its existence. Mr. Stimac said that the City and Village Zoning Act specifically say that a duly licensed residential facility, foster care facility is to be considered a single-family use. If the use of that property is going to have a negative impact regarding traffic that is the statement that has to be made.

Mr. Jones said that he does not want the decision of this Board to be unfairly swayed by any negative or emotional comment that he may have made. In his opinion there is no need to do what the petitioner is asking there is no hardship pertaining to this piece of property other than build two homes.

Leroy Barnes, 2296 Prestwick, was present and stated that he against this variance. Mr. Barnes stated that he did not understand why they would land lock a piece of property and then come in and ask for a variance in order to gain access when there is enough frontage available on Beach Road to make the split. Mr. Kovacs asked if he rather see a double frontage on Beach Road rather than one frontage on Prestwick. Mr. Barnes said it is his understanding that there is 150' of frontage on Beach Road and believes there is more than enough for a driveway. Mr. Barnes stated that he thinks this is a very poor use of this Board's time and attention to come in and ask for this waiver.

Mr. Farnell came back and asked the Board how this property could be split when there was only 150' of frontage on Beach Road. Mr. Stimac explained that the Board did not say this property could be split Mr. Barnes did. Mr. Stimac also said that although there are two separate descriptions, owned by the same person and according to the Zoning Ordinance they are considered to be a single parcel undivided. A second house could not be built on this property.

Oakie Meyers, 4257 Wentworth was present and stated that he objects to this variance request as he believes this will create a problem with snow plowing and garbage pickup. Mr. Meyers stated that he does not see a hardship with this property other than a financial one. Mr. Meyers also said that this is not a cul-de-sac and he believes all that would happen if this was opened up is that it would create an alley.

David Boyer, 4301 Wentworth stated that he also objects to this request. Mr. Boyer stated that in his opinion a cul-de-sac is designed for a turning radius for ambulances and school buses. With the stub on Prestwick being opened up he believes this would create a problem not only for emergency vehicles and snowplows as well as for the

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property owner at 4293 Prestwick whose driveway is connected to Prestwick. Currently the petitioner has two lots and would like to get \$400,000 for each house. This house would be far less than the million dollar homes that are being built to the south of this property. The petitioner also has the opportunity to purchase the land to the north of this site and develop that. Mr. Boyer feels that we should get away from building very large homes on very small lots. Mr. Boyer said that he is concerned about the traffic, emergency vehicles and does not see any type of hardship other than financial. This is a non-conforming lot now and access to Prestwick will continue the non-conformance.

Mr. Kovacs stated that if this lot was divided the way the petitioner was requesting it would be the best chance to avoid another subdivision going in. Mr. Boyer did not agree with Mr. Kovacs and said that the petitioner could tear down the existing house, purchase the property to the north and put in another subdivision. They have already done that and they could connect right to Beach Road. Mr. Kovacs said that the Board could not stop them from building a subdivision if they acquire the property. Mr. Boyer said he agrees and granting access to Prestwick would encourage this. Mr. Boyer also said that he believes this is exactly what this developer is trying to do.

Larry Walatkiewicz, 4285 Wentworth was present and stated that his home is located four houses north of the stub street. Mr. Walatkiewicz asked the Board if they had read every letter they had received. The Board stated that they had. Mr. Walatkiewicz asked if these conditions existed or if there had been any type of change to this property since the Choice Group had purchased this property. Mr. Stimac said that he did not know when the Choice Group bought the property and was unable to give any information as to what they knew and didn't know. Mr. Walatkiewicz said that in his opinion this property was purchased as an investment and now that investment has diminished, which brings him here to ask for a variance. No one knows what the decision was when the stub road was put in. Mr. Walatkiewicz said that he also wants to check further with the City regarding the policy of the City and rental homes. Mr. Stimac said that the Zoning Ordinance as well as the Building Codes require and regulate the use of a property and the use of this property is designated as a single-family residential dwelling. It does not stipulate whether or not that has to be owner occupied or whether that can be rental. There is neither requirement for the registration or inspection nor certification for a single-family home that is not owner occupied.

Mr. Walatkiewicz said that the City Services will be negative affected by this variance and it would be a terrible situation with the School Bus services. Basically those are Mr. Walatkiewicz's concerns and he personally contacted the Choice Group and asked them to withdraw this request.

Joe Cracchiolo, 4881 Riverchase was present and stated that he is the owner of the property to the south. Mr. Cracchiolo said that he does not feel there is a hardship that runs with the land, but merely a financial hardship for the petitioner. His property is R-1B Zoning and he has to have lots that conform to the requirements of this Zoning

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District. The trees that were removed were dead and he has just spent \$75,000 to landscape the back of his lots and another \$75,000 for additional landscaping on Beach Road. Every house that is built there is landscaped. His other concern would be fire. Fire trucks going down Prestwick to the existing house could create a problem. Mr. Kovacs asked if he would rather have the house front Beach. Mr. Cracchiolo said that the Ordinance states that a house has to front a public street and this house does not front a public street. In the current condition the house does front on Beach Road, but if accessed to Prestwick the garage would become the front of the house. The homes that are being built south of this property are in the million-dollar range and he is concerned about the type of houses the Choice Group would plan to construct. Mr. Cracchiolo went on to say that he had to do a floodplain study and a wetland study and did not believe this petitioner has done that.

Mr. Kovacs asked if Mr. Cracchiolo had attempted to purchase this property and Mr. Cracchiolo said he did not. Mr. Stimac said that the Ordinance says that the property has to have frontage on a public street the width of which has to meet the minimum requirements of the Ordinance, however, it does not state which way the house has to face.

Mr. Walatkiewicz came forward and said that theoretically you could build a house backwards. Mr. Stimac said there is nothing in the Ordinance that states you have to have a front door, or that the house has to face a certain way. The Ordinance states that it has to comply with the setbacks.

Mr. Cracchiolo came back up and asked who would buy a house that fronts on Beach Road but has a Prestwick address. Mr. Kovacs asked what his concern was and Mr. Cracchiolo said that he thought the property values would drop because of the address change. Mr. Cracchiolo also said that in the last month the Choice Group had removed all the trees on this property. Mr. Kovacs said that this was not something that the Board was concerned with and felt that during the remodeling process the house could be changed to look like it was facing Prestwick.

Oakie Myers said that if a developer came to the Board with a new development showing a street with houses on both sides and asked for a 55' foot variance for an additional house, it would not be approved and he did not think this request should be approved either.

Najib Bahura, 4245 Wentworth was present and stated that when he purchased this property in 1972 he was assured that Prestwick would never be opened or extended. This was the main reason he bought this property. Mr. Bahura said that he believes it is in the records that Prestwick would not be opened either as a street or a driveway. Mr. Kovacs said that the reason a stub street is put in is for a future extension and did not believe that it would be written that the street would never be extended. Mr. Bahura said that the reason the stub street was put in was for a fire hydrant and this was a part

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of the City record that this street would not be extended. Mr. Kovacs said that he could assure Mr. Bahura that there would not be a record that this street would never be extended as the main purpose of a stub street is for future expansion. Mr. Bahura also said that the reason this home was constructed at the back of this property was because of a high water table. He does not believe the front lot would ever be buildable and asking to put in a road. Mr. Kovacs said they are not putting in another road, they are asking to put a driveway in off of the stub street Prestwick. Mr. Bahura said that he should not be able to do this as he does not own the property. Mr. Stimac said that officially the public owns the property so everyone owns the property. Mr. Bahura said that he does not believe he has a right to have a driveway here. Mr. Kovacs explained that all the petitioner is asking for is a driveway to this property.

Mr. Bahura said that he objects because he thinks lots of other developers are going to come in and create more lots. Mr. Kovacs said that was correct in that other developers could come in buy the property to the north and put in a street. Mr. Kovacs explained that this was not the reason this petitioner was there. This petitioner only wanted a variance to be able to put in a driveway off of Prestwick. Mr. Kovacs also said that there is no guarantee that in the future someone does not come in, buy all this property, and put in another subdivision.

Mr. Wright stated that he had served on the Planning Commission for twenty-five years and when stub streets are approved, they are always there for future connectivity to a future subdivision. They do not put in stub streets so that there are dead ends, they are always put in for future expansion.

Mr. Bahura asked about the setback and Mr. Kovacs said that he meets all the setback requirements, he does not meet the 100' of frontage and that is the reason he is asking for a variance. Mr. Bahura said the subdivision is already created and opening this street would be changing the original subdivision. Mr. Bahura asked if he could guarantee that this is the only thing he is going to do and Mr. Kovacs said that he does not have to guarantee anything.

Mr. Maxwell said that this stub was built in 1972 and just because there is a stub there does not automatically guarantee that there will be another subdivision there.

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

There are five (5) written objections on file. There are no written approvals on file.

Mr. Courtney said that he thinks this should be a development taking in the lots to the north, and granting a variance at this point would be to place an impediment to the development of the property to the north and because of that he is opposed to this variance. Mr. Kovacs said that he did not understand Mr. Courtney's objection and the variance is based on the frontage of the road. Mr. Courtney said that the more buildings

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you put up the harder it is to consolidate and if this variance is granted there would be two buildings instead of one and it would be harder to consolidate them with building to the north. Mr. Courtney said that he did not believe this Board should grant a variance that would allow for financial assistance to a developer as it will allow for twice as much property and twice as much development. There is no hardship that runs with the land, the only hardship is financial.

Motion by Courtney
Supported by Hutson

MOVED, to deny the request of David Donnellon, of the Choice Group to split an existing parcel of land, 4254 Beach, from its Beach Road frontage, which would result in a street frontage for the property of only 55 feet where Section 30.10.02 of the Ordinance requires that properties in the R-1B Zoning District have a minimum of 100' of frontage on a public street.

- Petitioner did not demonstrate a hardship that runs with the land.
- Variance would be contrary to public interest.
- Variance would have an adverse effect to surrounding property.

Mr. Hutson said that he does not believe there is a practical difficulty that would allow for this variance to be granted. Mr. Hutson also said that the petitioner had the ability to put another house on this property without a variance.

Mr. Kovacs said that parcel #1 is not buildable. Mr. Stimac said that this property legally has 150' frontage on Beach Road, it is two different parcels owned by the same person. Section 40.50.02 of the Ordinance says ".... If two or more lots or combination of lots and portions of lots with contiguous frontage in single ownership of record at the time of passage of amendments to this Chapter and if all or part of the lots do not meet the requirements of lot width or area as established by this Chapter, the lands involved shall be considered to be an undivided parcel for the purposes of this Chapter and no portion of said land shall be used or occupied that does not meet the lot width and area requirements established by this Chapter nor shall any division of the parcel be made which leaves remaining any lot with a width or area below the requirements as stated in this Chapter". In effect, this is considered to be one parcel of land with 150' of frontage and can only support one house. Mr. Hutson said that even though they cannot build a second house on this property, he still does see a practical difficulty that runs with the land.

Mr. Wright asked for clarification regarding the sale of Parcel #1. Mr. Stimac said that technically they could sell Parcel #1, however the Building Department would not allow them to build a house on this parcel.

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Mr. Maxwell said that he would like to see another alternative as he did not think that opening up this property to Prestwick is the best solution.

Mr. Kovacs called for a vote on Mr. Courtney's motion to deny this request.

Yeas: 3 – Hutson, Maxwell, Courtney
Nays: 3 – Gies, Kovacs, Wright

MOTION TO DENY FAILS

Mr. Donnellon asked that this request be postponed until the next scheduled meeting to allow him to do more research and consult with his client.

Motion by Maxwell
Supported by Gies

MOVED, to postpone the request of David Donnellon, the Choice Group, 4254 Beach Road, for relief of the Ordinance to split an existing parcel of land from its Beach Road frontage. This split would result in a street frontage for this property of only 55 feet where Section 30.10.02 of the Ordinance requires that properties in the R-1B Zoning District have a minimum of 100' of frontage on a public street until the meeting of August 16, 2005.

- To allow the petitioner the opportunity to develop an alternative plan.

Yeas: All - 6

**MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF AUGUST 16, 2005
CARRIED**

The Board of Zoning Appeals meeting adjourned at 10:03 P.M.

Matthew Kovacs, Vice Chairman

Pamela Pasternak, Recording Secretary