The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:32 P.M. on Tuesday, March 17, 2009 in Council Chambers of the Troy City Hall.

PRESENT: Michael Bartnik
Glenn Clark
Kenneth Courtney
Ed Kempen
Matthew Kovacs
David Lambert
Lon Ullmann

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF FEBRUARY 17, 2009

Motion by Courtney
Supported by Clark

MOVED, to approve the minutes of the meeting of February 17, 2009 as written.

Yeas: All – 7

MOTION TO APPROVE MINUTES CARRIED

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

Mr. Bartnik asked that Item #5 be removed for discussion.

Motion by Courtney
Supported by Lambert

RESOLVED, that Item #3, and Item #4 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Yeas: All - 7

ITEM #3 – RENEWAL REQUEST. KMART, 100 E. MAPLE, for relief of the Ordinance to allow for an outdoor display of plant material in front of Kmart along the north side of the fenced area and a four foot section of the sidewalk at the west end of the building adjacent to the building.

ITEM #3– con't.

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

- Conditions remain the same.
- There are no complaints or objections on file.
- Display out only during the months of April through July.

ITEM #4 – RENEWAL REQUEST. ST. GEORGE ORTHODOX CHURCH, 2160 E. MAPLE, for relief to maintain a 5' high landscaped berm, in lieu of the 4'-6" high masonry wall along the south and east property lines, and relief of the 4'-6" high masonry wall required along the west property line where the parking lot is adjacent to residentially zoned land.

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

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

ITEM #5 – RENEWAL OF APPROVAL REQUESTED. MAZIN & SENNICA NAFSU, 3769 MEADOWBROOK, for approval under Section 43.74.00 to park a commercial vehicle outside on residential property.

Mr. Stimac explained that the petitioner is requesting renewal of approval granted under Section 43.74.00 to park a commercial vehicle outside on residential property. The Ford cube van described in the application does not meet the exceptions as described in Section 40.66.00 of Chapter 39 of the Troy City Ordinance.

This item last appeared before this Board at the meeting of March 20, 2007 and was granted approval for one-year. Since that time the petitioner has expanded the driveway on the north side of his home such that the vehicle is now parked an additional 20' back from the front property line.

Mr. Bartnik stated that he did not think this item should be placed on the Agenda as a renewal item. Mr. Nafsu appeared before this Board in 2007 and was granted approval for one-year. Because he is past the one-year approval Mr. Nafsu does not meet the requirements of the Ordinance.

ITEM #5 – con't.

Mr. Motzny said that approval of commercial vehicles is done on a temporary basis and the Ordinance does not address what happens when the temporary approval lapses. The Ordinance does not prohibit this type of request as a renewal item; it does not address this issue at all. Mr. Motzny also said that the Board can make the call to address this item as a renewal.

Mr. Bartnik said that Chapter 43.70.02 states that the Board of Zoning Appeals may grant approval for a period of two years for commercial vehicles. Chapter 43.76.00 addresses variances and renewals for screen walls. Due to the fact that the Ordinance does not address renewals of approval for commercial vehicles Mr. Bartnik feels this item should be removed from the agenda and handled as a Public Hearing.

Mr. Stimac said that upon reading the specific language of the ordinance he agrees with Mr. Bartnik and states that the renewals addressed in the Ordinance apply to screen wall, antenna height and temporary structures. There is no language in the Ordinance for the Board to renew commercial vehicle appeals.

Motion by Bartnik
Supported by Clark

MOVED, to postpone the request of Mazin & Sennica Nafsu, 3769 Meadowbrook, for approval under Section 43.74.00 to park a commercial vehicle outside on residential property until the meeting of April 21, 2009.

- To allow staff to determine what the language in the Ordinance means and whether it addresses renewals of approval for commercial vehicles.
- To allow staff to send notices of a Public Hearing, if necessary for approval of this request.

Yeas: All – 7

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF APRIL 21, 2009 CARRIED

ITEM #6 – APPROVAL REQUESTED. HARRY MAZEI, 39 HICKORY, for approval under Section 43.74.00 to park a commercial vehicle outside on residential property.

Mr. Stimac explained that the petitioner is requesting approval under Section 43.74.00 to park a commercial vehicle outside on residential property. The Ford dump truck described in the application does not meet the exceptions found in Section 40.66.00 of Chapter 39 of the Troy City Ordinance.

ITEM #6 – con't.

This item first appeared before this Board at the meeting of February 17, 2009 and was postponed to allow the petitioner to bring evidence to the Board that shows he attempted to find an alternative location for this vehicle.

Mr. Mazei was present and passed out two estimates that he had obtained relating to the construction of a new garage. Mr. Mazei said that he was apprehensive about calling companies to come out when he knew this was not something he could afford. Furthermore, Mr. Mazei found out that he could not just add a higher garage door as the garage is not long enough for the truck to fit into.

Mr. Kovacs asked about setback requirements for a new garage.

Mr. Stimac stated that the setback would be 6' from the existing property line and there would be limitations placed on the size of the garage based on the square footage of the house.

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

Mr. Courtney said that he likes the location that the truck is parked in as it is between the existing garage and the screening wall of the adjacent property. Mr. Courtney would like Mr. Mazei to look for another location in the future to park this vehicle.

Mr. Mazei said that he trying to sell this vehicle and if approval is granted at least he would have the time to do that.

Motion by Courtney
Supported by Ullmann

MOVED, to grant Harry Mazei, 39 Hickory, approval under Section 43.74.00 to park a commercial vehicle outside on residential property for a period of two (2) years.

- Petitioner has met the criteria indicated in Item B and Item C.
- Approval is not contrary to public interest.
- Property to the west is commercial.
- Vehicle must be parked between the garage and the screen wall.

Yeas: All – 7

MOTION TO GRANT APPROVAL FOR A PERIOD OF TWO (2) YEARS CARRIED

ITEM #7 – APPROVAL REQUESTED. ANDREW AN, 2019 LANCER, for approval under Section 43.74.00 to park a commercial vehicle outside on residential property.

Mr. Kovacs indicated that the Board had received a letter from Mr. An indicating that he wished to withdraw his request.

Motion by Courtney
Supported by Bartnik

MOVED, to accept the withdrawal of Andrew An, 2019 Lancer, for approval under Section 43.74.00 to park a commercial vehicle outside on residential property.

Yeas: All – 7

MOTION TO ACCEPT WITHDRAWAL CARRIED

ITEM #8 – VARIANCE REQUESTED. DAVID PRZYGODA OF JD NAUGHTON LLC, 1010 NAUGHTON, for relief of the Ordinance to expand an existing parking lot in the M-1 (Light Industrial) Zoning District.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to expand an existing parking lot. This property is located within the M-1 (Light Industrial) Zoning District. Paragraph L of Section 31.30.00 requires that the 50' front yard setback required by Section 30.20.09 be free of parking. The plans submitted indicate that the parking lot is being expanded to within 14' of the front property line along Acacia and within 23'-7" of the front property line along Naughton.

A similar variance was granted by this Board on August 15, 2006 to Denver Associates; however, the expansion of the parking lot was never done. Section 43.85.00 states that if the work authorized by a variance is not commenced within 12 months of the action of the Board, then the variance is void. Mr. Przygoda is the new owner of the property. Other than that fact, the request is identical to the 2006 request.

Mr. Przygoda was present and stated that they had purchased this building in August 2008. A lot of work has been done which includes removing asphalt along the north and west sides of the building. They are planning to completely re-do the parking lot and plan to add extra landscaping. New windows have been put in as well as interior improvements.

Mr. Kempen asked if there was a lot of traffic in this area.

Mr. Przygoda said that there is very little traffic.

Mr. Kovacs said that he believes one of the reasons this variance was granted in the past was because of the location of this property.

ITEM #8 – con't.

Mr. Kempen asked if traffic would increase once this building gets going.

Mr. Przygoda stated that a dental lab office is going to move into this location. They will have approximately 15 to 25 full time employees and will hold a clinic on a monthly basis.

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

There are no written approvals or objections on file.

Motion by Bartnik
Supported by Lambert

MOVED, to grant David Przygoda of JD Naughton, LLC, 1010 Naughton, relief of the Ordinance to expand an existing parking lot in the M-1 (Light Industrial) Zoning District.

- Variance does not establish a prohibited use in a Zoning District.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Property is located next to Stephenson Highway.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #9 – VARIANCE REQUESTED. URBANICAL-OAKLAND PLAZA, LLC, 124 JOHN R. (PROPOSED ADDRESS), for relief of the Ordinance to construct a new commercial building. (Sonic Restaurant)

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new commercial building (Sonic Restaurant). The site plan submitted shows the following: 1. A canopy that is located only 10' from the front property line where Paragraph G of Section 31.30.00 requires a 25' front setback for canopies in the H-S (Highway Service) Zoning District. 2. A driveway on the east side of the building that is only 12' wide where Paragraph G of Section 31.30.00 requires a minimum one-way driveway width of 15'. 3. A 27'-4" rear yard setback where Section 30.20.08 requires a 30' rear yard setback. 4. Only six (6) vehicle waiting spaces for the drive-up window where Paragraph C of Section 23.25.01 requires a total of nine (9) vehicle spaces. 5. Parking spaces encroaching into the 10' wide landscape greenbelt along the front property line required by Section 39.70.02. 6. Only 2,463 square feet of countable landscaping where Section 39.70.04 requires a minimum of 4,408 square feet of landscaping for a site this size.

ITEM #9 – con't.

Mr. Courtney stated that he felt the petitioner was asking for a lot of variances and feels that what they are planning to construct is larger than what the space will allow. Mr. Courtney also asked if this was proposed to be a drive in restaurant.

Mr. Stimac explained that this use could be compared to an A & W Restaurant. The property has recently been re-zoned at the request of the petitioner to allow for the drive in restaurant.

Mr. Kovacs asked what the previous zoning was and Mr. Stimac said that it was B-2. Mr. Stimac also explained that this property is now zoned H-S. The setback in B-2 Zoning is 75' whereas in H-S Zoning the setback is 40'.

Mr. Lambert clarified the location of this property which sits between a gas station and a Bank. Oakland Plaza is to the east of this site and on the southeast side is an existing Burger King.

Mr. Bartnik asked for clarification regarding the landscaping requirement.

Mr. Stimac explained that on a site this size Section 39.70.04 requires a minimum of 4,408 square feet of landscaping. The petitioner is proposing only 2,463 square feet of countable landscaping. In order for landscaping to be counted it must be located in the front or side yards of the property. Due to the fact that some of this landscaping is located in the rear yard, it is not considered to be countable landscaping.

Mr. Kempen asked how the traffic flow would be handled on this site.

Mr. Stimac said that there are two (2) entrances both on the north side of the property. There is a two way drive directly from John R. that will connect with the traffic system of the shopping center to the east. The drive in service will have parking along John R. or in front of the building. There are also nine (9) parking spaces available on the east side of the building.

Mr. Courtney asked if you had to have two (2) entrances as a matter of public safety.

Mr. Stimac stated that there is not a public safety requirement. He noted that if the removal of the driveway out to John R. would be a condition of the variance the Board should indicate how that condition related to the variance.

Mr. Kovacs asked if this matter had come before the Planning Commission.

Mr. Stimac explained that they went before the Planning Commission as part of the re-zoning but they have not had site plan approval at this time.

ITEM #9 – con't.

Mr. John Gabor, the Attorney for this client, Mr. Bob Middleton, Construction Manager, Mr. Jim Butler, the Civil Engineer and Ms. Allison Maxwell, representative of Urbanical-Oakland-Plaza, LLC were present.

Mr. Gabor explained that the property was re-zoned due to the size constraints of the site. A viable building with parking did not work out in B-2 Zoning. Sonic is expanding in southeast Michigan and can operate successfully in this site. They will appear before the Planning Commission within the next month. Both the Planning Commission and City Council knew that a number of variances would be required for this site.

Mr. Bob Middleton, Construction Manager, stated that this restaurant does not have any inside seating. Customers either go into a stall and place their order, which is brought out to them or use the drive thru window. They have a very small outside patio that is rarely used. The unique aspect of this building is that they actually have a by-pass door so that if someone is ordering something that does not need cooking, their servers can bring it to their cars so that they can eliminate a backup of cars. Very few customers ever get out of their cars.

Mr. Kovacs asked what the percentage of people using the drive in was.

Mr. Middleton said that the volume in the winter is significantly decreased because people do not want to sit in their cars and eat, however, in the summer people are inclined to use the drive in. Mr. Middleton said that a Sonic restaurant has 1,000 different combinations of drinks and said it is a hamburger joint, a Dairy Queen and a 7-11 combined.

Mr. Kovacs asked if there was a curb in the drive in.

Mr. Butler explained that there is a 1' wide island with a 3" to 4" raised area.

Mr. Courtney asked how many cars could go through the drive thru.

Mr. Butler said that theoretically there could be eleven.

Mr. Kovacs asked about the cars in the drive thru lane and their effect on the cars in the drive in portion of the site.

Mr. Stimac said that if there were additional cars in the stacking lane, they would obstruct the cars in the stalls.

Mr. Courtney asked about the landscaping that was going to be provided.

Mr. Butler said that they are putting in over 10,000 square feet of landscaping, but due to the location it is not all counted.

ITEM #9 – con't.

Mr. Bartnik asked if the company had done any studies on how many vehicles are in line at different times of the day.

Mr. Middleton said that he does not have that information but there are over 3,000 restaurants in the country.

Mr. Kovacs asked if this was a typical Sonic restaurant.

Mr. Butler said that the building is genetically the same but the site plan is a little different.

Mr. Middleton said that they have to satisfy a lot of people to make this a viable site and this is the smallest building that the corporate office would allow.

Mr. Ullmann asked where supplies were delivered.

Mr. Middleton said that they are restricted on this site to when deliveries can be made and they are made behind the drive thru area at the back of the building.

Mr. Ullmann asked if the delivery trucks would be able to get in and out of this site.

Mr. Middleton said that the plaza has strict regulations regarding the deliveries and believes they can only be made very early in the morning.

Mr. Butler addressed each of the variances requested. The front canopy will extend 15' where 25' is required. This is just large enough to cover the cars. The area is dimly lit and will be visible from the John R. side. A row of trees will be in front as well as a row of shrubs to help obstruct the view of the cars in the drive in stalls. Mr. Butler believes that the Ordinance addresses canopies as they relate to gas stations rather than in this instance.

The one-way drive on the east side of the site is proposed to be 12' wide. They would prefer to have the drive narrower, but Paragraph G of Section 31.30.00 requires a minimum one-way driveway width of 15'.

Mr. Butler went on to say that the rear yard setback is required to be 30'. They are asking for a variance of 2'-6" with a rear yard setback that will result in 27'-4".

The stacking lane proposed will accommodate six (6) vehicles. The Ordinance requires a stacking lane to accommodate nine (9) vehicles. They are trying to expedite traffic going in and out and want to eliminate waiting vehicles as quickly as they can.

The front setback parking space over hang is minimal and will encroach into one (1) corner of the parking space. A row of shrubs will hide the front of the vehicles.

ITEM #9 – con't.

The petitioner is proposing 10,000 square feet of landscaping. The Ordinance calculates allowable landscaping as that which is in the front or side yard setbacks. This building will be visible from all sides and this is one of the reasons they are putting the landscaping around the entire site. Most commercial sites do not have visibility from both the front and rear sides of a site. Mr. Butler said that he believes that they have fully met the spirit and intent of the Ordinance and have tried to minimize the variances required on this site. These variances will not have an adverse effect to surrounding property; they will not be contrary to public interest; absent a variance will preclude the petitioner from full enjoyment of this property and literal enforcement of the Ordinance will be unnecessarily burdensome.

Mr. Ullmann asked how far the parking was from John R. to the property line.

Mr. Butler said that he thought it was approximately 10' back from the property line.

Mr. Ullmann asked how high the canopy was and Mr. Butler said he thought it was about 9'-3".

A discussion began regarding the landscaping and the visibility along John R. Mr. Butler stated that they had exceeded the landscaping requirements.

Mr. Courtney asked if there were other Sonic locations in the Detroit area.

Mr. Middleton said that there is one in Southgate, one in Flint and one in Macomb.

Mr. Courtney asked if the ones in Flint and Macomb are the same as this proposed building.

Mr. Middleton said that there is more landscaping as they are on larger pieces of property. The others are similar to this proposal but this building is smaller. The petitioner stated that they have been working very hard to make this a viable site.

Mr. Bartnik pointed out that one of the objections received addressed the distance between the sidewalk and the southwest corner of the site. Mr. Bartnik asked why this portion of the sidewalk jogged out to John R. and who would ultimately be responsible to correcting the situation.

Mr. Stimac said that this sidewalk has probably been in place for approximately thirty (30) years and this is one of the issues that would be handled by the Planning Commission.

The Chairman opened the Public Hearing.

ITEM #9 – con't.

Mr. John Mackey, Manager of the Burger King at 35 E. Fourteen Mile was present. In 1996 this Burger King was remodeled and they did not ask for any variances. They met all of the requirements of the City. There are a number of things involved with this request and he believes that this restaurant will be detrimental to the area. There is already massive traffic congestion and there is a lot of difficulty for cars going in and out of the area. Mr. Mackey said that they have been in this location since 1978 and believes the Board should consider the safety of people visiting these sites.

Mr. Bartnik said that he understands that this is a competitor and asked about the entrances to the Burger King.

Mr. Mackey said that they have one entrance and one exit on Fourteen Mile. They have been at this site for more than 20 years. Mr. Mackey also stated that he had visited the Sonic restaurant in Macomb on a Tuesday afternoon and said that there were cars backed up into the street waiting to get in. The restaurant had been opened for approximately six (6) weeks at that time.

Mr. Lambert asked if Mr. Mackey had appeared before the Planning Commission to express his concerns before the property was re-zoned.

Mr. Mackey said that he had not attended due to family obligations.

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

There are two (2) written objections on file. There is one (1) written approval on file.

Mr. Ullmann stated that McDonald's said that 80% of their business is drive thru and asked what the percentage of drive thru business was for this restaurant.

Mr. Middleton said that he does not have that information however; their staff is trained for a period of 3 to 6 months and is trained in crowd control. They are the busiest for the first three (3) months of operation and then their business levels off.

Mr. Ullmann asked what the typical wait time was for service.

Mr. Middleton does not have any of that type of information. Mr. Middleton explained that he works on the construction end of the business.

Mr. Ullmann said that he would be a lot more comfortable making a decision if he had this information in hand.

Mr. Courtney said that he would like the opportunity to visit the other two locations and would be interested in postponing this request. He also indicated that he would like the petitioner to look into the possibility of closing off one of the entrances on John R.

ITEM #9 – con't.

Mr. Clark stated that he had only been at one Sonic restaurant and that was located in Florida. It was at the front of a Wal-Mart and was on a larger piece of property. This is a very small parcel and he believes this restaurant will have a high impact on the area. The traffic in this area is horrific and believes that the driveway on the south side of the site would be incredibly unsafe. Mr. Clark further stated that the petitioner is asking for a lot of variances and believes this is the wrong parcel for this restaurant. He would like answers regarding the traffic flow and would like to hear more on the volume of cars. This area is over taxed with traffic and if this was a normal parcel and the variances were minimal, he would be more inclined to consider this request.

Mr. Butler stated that they need the entrance on John R. and believes that there will be breaks in traffic because of the traffic light at fourteen mile. The Burger King did have problems and are leasing an easement from the Plaza owners, which enabled them to re-do their site without asking for a variance. The owners of this parcel do not have that luxury. No reasonable use can be made of this property without these variances. Although they are asking for six (6) variances, Mr. Butler believes that some are more significant than others.

Motion by Courtney
Supported by Clark

MOVED, to postpone the request of Urbanical-Oakland Plaza, LLC, 124 John R., for relief of the Ordinance to construct a new commercial building (Sonic Restaurant) until the meeting of April 21, 2009.

- To allow the petitioner the opportunity to provide the Board members with the numbers of cars using the drive-thru an hour, as well as wait time involved.
- To allow the petitioner the opportunity to provide the Board members with the total number of customers per hour.
- To allow the petitioner to determine the percentage of business that goes through the drive through.
- To allow the petitioner to give the Board a traffic impact study of this area.
- To allow the petitioner to determine if they can eliminate one drive from John R.

Mr. Kovacs asked if this Board should determine what type of restaurant should go on this site and also to ask for the percentages involved.

Mr. Motzny stated that the Board has to determine if the variance would have an adverse effect to property in the immediate area. Traffic could be considered an adverse effect.

Mr. Ullmann said that if this Board were to grant these variances the Planning Commission does not necessarily have to approve the site plan.

ITEM #9 – con't.

Mr. Motzny stated that if the variances were granted, the Planning Commission will still have to look at Special Use Approval.

Mr. Kempen said that he thought the petitioner may be able to look into an alternative business for this site.

Mr. Butler stated that this is the smallest building for Sonic. Other sites are larger and have larger buildings.

Mr. Middleton said that they had to get special approval from Sonic to put this building in this area.

Mr. Butler said that they have been looking at alternate uses and are unable to provide any alternative uses.

Mr. Courtney asked how long they have been looking.

Mr. Butler stated that the current owners have owned this property approximately three (3) years.

Mr. Kovacs asked if the petitioner could go before the Planning Commission before they come back to the Board.

Mr. Stimac stated that because this is a Special Use Approval this Board should act on this request first. Mr. Stimac further stated that if it is already on the Planning Commission agenda, they would probably address this issue before the next meeting of this Board. The Planning Commission has slightly different criteria that they use for Special Use Approval.

Mr. Bartnik stated that he feels the petitioner provided enough information at this meeting and would be voting against postponing this request.

Mr. Lambert said that he agrees with Mr. Bartnik and feels the petitioner has answered the concerns of the Board and feels that granting the variances would be appropriate.

Mr. Kovacs said that he agrees with Mr. Bartnik and Mr. Lambert and the surrounding area is all commercial. This use will fit into this site.

Vote on Mr. Courtney's motion to postpone this request until the meeting of April 21, 2009.

Yeas: 4 – Clark, Courtney, Kempen, Ullmann
Nays: 3 – Bartnik, Kovacs, Lambert

ITEM #9 – con't.

MOTION TO POSTPONE THE REQUEST OF URBANICAL-OAKLAND PLAZA LLC TO THE MEETING OF APRIL 21, 2009 CARRIED

The Board of Zoning Appeals meeting adjourned at 9:52 P.M.

_____
Matthew Kovacs, Chairman

_____
Pamela Pasternak, Recording Secretary