

The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, May 19, 2009 in Council Chambers of the Troy City Hall.

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

ABSENT: Glenn Clark

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

Motion by Courtney
Supported by Kempen

MOVED, to excuse Mr. Clark from tonight’s meeting as he is out of the county.

Yeas: 5 – Courtney, Kempen, Kovacs, Lambert, Ullmann
Nays: 1 - Bartnik
Absent: 1 – Clark

MOTION TO EXCUSE MR. CLARK CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF APRIL 21, 2009

Motion by Lambert
Supported by Courtney

MOVED, to approve the minutes of the meeting of April 21, 2009 as written.

Yeas: 6 – Kempen, Kovacs, Lambert, Ullmann, Bartnik, Courtney
Absent: 1 – Clark

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – APPROVAL OF ITEMS #3 THROUGH ITEM #6

Motion by Courtney
Supported by Lambert

Mr. Bartnik asked that Item #4 be pulled for discussion.

ITEM #2 – con't.

RESOLVED, that Item #3, Item #5 and Item #6 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Yeas: 6 –Lambert, Ullmann, Bartnik, Courtney, Kempen, Kovacs
Absent: 1 - Clark

MOTION TO APPROVE ITEM #3, ITEM #5 AND ITEM #6 CARRIED

ITEM #3 – RENEWAL REQUESTED. TROY INDUSTRIAL LLC, 2600 & 2710 BELLINGHAM, for relief of the Ordinance to maintain a 6' high berm in lieu of the 6' high masonry-screening wall.

MOVED, to grant Troy Industrial LLC, 2600 & 2710 Bellingham a three-year (3) renewal of relief to maintain a 6' high berm in lieu of the 6' high masonry-screening wall.

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

ITEM #5 – RENEWAL REQUESTED. BIG BEAVER UNITED METHODIST CHURCH, 3753 JOHN R., for relief of the 4'-6" high masonry wall required along the north and west sides of off-street parking.

MOVED, to grant Big Beaver United Methodist Church, 3753 John R., a three-year (3) renewal of relief of the 4'-6" high masonry wall required along the north and west sides of off-street parking.

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

ITEM #6 – RENEWAL REQUESTED. ST. ANASTASIA CHURCH, 4571 JOHN R., for relief to maintain a berm in lieu of the 4'-6" high obscuring wall between the parking lot and adjacent residential property.

MOVED, to grant St. Anastasia Church, 4571 John R. a three –year (3) renewal of relief to maintain a berm in lieu of the 4'-6" high obscuring wall between the parking lot and adjacent residential property.

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

ITEM #4 – RENEWAL REQUESTED. SAN MARINO SOCIAL CLUB, 1685 E. BIG BEAVER, for relief of the Ordinance of the 6' high masonry-screening wall required adjacent to the residential zoned district to the north.

ITEM #4 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the 6' high masonry-screening wall required adjacent to the residential zoned district to the north. This relief has been granted on a yearly basis since 1976, primarily due to the fact that the adjacent residential property is undeveloped land owned by the petitioner. This item last appeared before this Board at the meeting of May 2006 and was granted a three-year (3) renewal at that time.

Mr. Bartnik asked which property was owned by the petitioner to the north.

Mr. Stimac explained that the property in the front of the parcel is zoned O-1 and the property at the north end is zoned R-1E and the petitioner would be required to construct a wall through the middle of their property between the two zoning classifications.

Motion by Bartnik
Supported by Courtney

MOVED, to grant San Marino Social Club, 1685 E. Big Beaver, a three-year (3) renewal of relief of the 6' high masonry-screening wall required adjacent to the residential zoned property to the north.

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

Yeas: 6 – Kovacs, Lambert, Ullmann, Bartnik, Courtney, Kempen
Absent: 1 – Clark

MOTION TO APPROVE REQUEST FOR THREE (3) YEARS CARRIED

ITEM #7 – VARIANCE REQUESTED. SYED HAQUE, 1033 REDDING, for relief of the Ordinance to construct a roof over an existing deck that will result in a 35.23' rear yard setback where Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a roof over an existing uncovered deck. The site plan submitted indicates the construction of the roof over the deck will result in a 35.23' rear yard setback to the covered deck. Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

Mr. Tom Christy was present to represent the homeowner. Mr. Christy stated that Mrs. Haque has a medical condition that dictates she should be protected from the sun. Mr. Christy stated that in his opinion this variance request is minimal. The deck is already in this area and there is nowhere else to construct a covered deck. If they were to move

ITEM #7 – con't.

the deck, architectural changes would be required and would be cost prohibitive as a new sliding door would be required. The roof will architecturally match the house and would not be an eyesore.

Mr. Kovacs explained that the Board has no power to grant a variance based on medical conditions and the variance has to be something that relates to the property in question.

Mr. Christy stated that he believes the Zoning Ordinance provides for practical difficulties and State Law provides for practical difficulties and he believes that the cost of relocating this structure as well as the medical conditions would classify as a practical difficulty. Relocating the deck could also result as an eyesore to the neighbors.

Mr. Kovacs asked why this covered structure couldn't be built in the area behind the garage off to the east.

Mr. Christy stated that because of the configuration of the house they would have to add an additional sliding door and they do not want to put it in this area. The rooms inside would also have to be re-configured.

Mr. Kovacs stated that he did not think they would need an additional door as access could be gained by walking out onto the existing deck and over to the covered area.

Mr. Christy stated that he did not think their request would be contrary to public interest as there was already an existing deck that could be covered. Mr. Christy thinks that a covered deck that is twice as big would be more of an eyesore rather than covering the existing deck.

Mr. Kovacs said that the petitioner indicated there would be structural changes required if the deck was moved, but there are four windows in the area proposed for the roof structure, which would probably have to be moved.

Mr. Christy explained that the windows would overlook the deck.

Mr. Ullmann stated that the petitioner has 150' to the property line and it seems like if this is what the petitioner wants it could be placed in another area.

Mr. Haque stated that the existing deck is attached to the family room and there is a door that allows access to the basement from the outside.

Mr. Ullmann asked what the setback was for an uncovered deck.

Mr. Stimac explained than an uncovered and unenclosed deck could encroach 15' into the required rear yard setback.

ITEM #7 – con't.

Mr. Ullmann had questions regarding the windows in the home and Mr. Haque and Mr. Christy came to the podium and went over the pictures submitted to the Board with Mr. Ullmann.

Mr. Haque said that it would be very costly for him to add an additional deck onto the side of the house and it would be much less costly to cover the existing deck. The roof would help his wife's medical condition.

Mr. Christy stated that he feels the Zoning Ordinance covers practical difficulties and the cost of a new deck should be considered.

Mr. Courtney stated that the Zoning Ordinance can be interpreted in a way that indicates everything is a practical difficulty. It does not mean that the Board would have to grant the request. A very easy, inexpensive way to address this problem is to buy large umbrellas.

Mr. Haque said that this house was built in the corner of the lot and the wind blows and they have had two umbrellas, but they blow over. Mrs. Haque has a day care center and the children are at the home both in the morning and afternoon and it would be easier for her to watch these children with a protective covering over the deck. Mrs. Haque may have to shut down or scale down her Day Care center if this variance is not granted.

Mr. Courtney asked about the use of this property.

Mr. Haque said that his property is both commercial and residential.

Mr. Ullmann asked how deep the deck was and suggested that Mr. Haque just cover half of it.

Mr. Haque said that it was 16' x 25' and said that he would like the entire deck covered. Mr. Haque does not like the idea of covering only half of the deck.

Mr. Kovacs asked how large a roof could be put over the existing deck.

Mr. Stimac said that the 16' depth results in a 35.23' setback so that in order to comply with the 45' setback you would have to take 10' off which means that 6' of the existing deck could be covered.

Mr. Kovacs stated that when granting a variance he looks for cases where a natural feature would be destroyed. The Board cannot vote on a medical condition and it appears as though this would be more of an inconvenience of cost, which the Board cannot consider as a reason to grant a variance. There is a lot of property that the petitioner can make use of without covering this deck.

ITEM #7 – con't.

Mr. Christy said that the practical difficulty would be the existing structure and the placement of the house on the property.

Mr. Kovacs stated that it is up to the homeowner to look at the property when they first purchase the home. Mr. Kovacs does not see a practical difficulty that runs with the land that would justify a variance.

Mr. Courtney said that he thinks once a roof is over the deck, the next practical difficulty would be to have the children playing outside in the winter and the room would need to be enclosed.

Mr. Kovacs agreed with Mr. Courtney and said he is also concerned about enclosing this space.

Mr. Bartnik stated that he believes that is the intent of the petitioner. The contract between the homeowner and the contractor indicates that they would be putting in electric, insulation and a sub floor. Mr. Bartnik does not believe this scope of work would be done if the petitioner did not plan to enclose the structure. Mr. Bartnik also stated that he believes the contract could be considered disingenuous.

Mr. Christy said that he did not believe the intent of the petitioner was to enclose this deck.

Mr. Haque stated that they did want electricity on the deck.

Mr. Bartnik asked if the petitioner would require a variance to cover one-half of the deck.

Mr. Stimac explained that technically one-half of the deck would be 8' and based on the previous discussion the petitioner would only be able to cover 6' of the existing deck and comply with the Ordinance

Mr. Bartnik stated that the homeowner could put up a retractable awning and does not see a hardship. This is a large piece of property. Mr. Bartnik stated that he did not see a practical difficulty that runs with the land. Mr. Bartnik pointed out several reasons why variances are granted and stated that he did not see where the petitioner met any of these requirements. There is a berm on the east side and evergreen trees on the property.

Mr. Ullmann agreed with Mr. Bartnik that the contract indicates that this area would be enclosed.

Mr. Haque stated that they wanted the roof done for their own protection. Furthermore, due to the location of the windows it would be very difficult to put up an awning.

ITEM #7 – con't.

Mr. Kovacs stated that he would be more in favor of a retractable awning and perhaps the variance request would be smaller.

Mr. Haque said that it is too hard to open and close an awning. Mr. Haque also stated that he had an awning company come out and look at his property and they indicated it would be very difficult to put an awning in this location.

Mr. Christy stated that a 6' overhang above the deck would not provide much shade for the petitioner as this deck has a southern exposure.

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

There is one (1) written objection on file. There are no written approvals on file.

Mr. Lambert questioned the petitioner regarding the fact that they are running a Day Care center and asked how many children they were licensed to have at this location.

Mr. Haque stated that his wife has been doing this for years and is licensed to have twelve (12) children, although presently she only has eleven (11).

A discussion began regarding the length of time this home has been operating as a Day Care center. Mr. Stimac explained that originally Group Day Care Centers were never allowed to operate in Troy, however, in November 2005; City Council passed a resolution that grandfathered the existing Day Care Centers. Based upon the petitioner's testimony it would appear that this Day Care Center was licensed in 1999 at this location and from a zoning standpoint it would be grandfathered in and would be allowed.

Mr. Kovacs stated that the petitioner is asking for a very large variance and he would not support this request. Medical conditions are not a consideration and the petitioner has a lot of buildable area on the property. Petitioner has not demonstrated a practical difficulty with the land that would warrant a variance.

Motion by Courtney
Supported by Ullmann

MOVED, to deny the request of Syed Haque, 1033 Redding, for relief of the Ordinance to construct a roof over an existing deck that will result in a 35.23' rear yard setback where Section 30.10.02 requires a 45' minimum rear yard setback in R-1B Zoning Districts.

- Petitioner did not demonstrate a practical difficulty that runs with the land.
- Variance would be contrary to public interest.

ITEM #7 – con't.

- Variance would have a negative impact to surrounding property.
- Petitioner has other options to construct a covered structure.

Yeas: 6 – Lambert, Ullmann, Bartnik, Courtney, Kempen, Kovacs
Absent: 1 – Clark

MOTION TO DENY REQUEST CARRIED

ITEM #8 – VARIANCE REQUESTED. CITY OF TROY, 60 W. WATTLES, for relief of the Ordinance to move various buildings and expand the parking lots at the Troy Museum and Village Green. The changes will result with the relocated Barnard House within 40' of the front property line along Wattles; and, new and expanded parking lots within 20' of the front property line of Wattles, 35' of the property line along Livernois and within 10' of the property line of Lange. Paragraph A of Section 18.50.01 requires a 50' front setback adjacent to any public street and requires this setback be free of parking.

The site plan submitted also indicates that the relocated Barnard House will be located within 40' of the west property line where the adjacent property is in the R-1B (One-Family Residential) Zoning District. Paragraph B of Section 18.50.01 requires a 50' side yard setback from adjacent residential property.

Mr. Stimac explained that the petitioner is requesting to move various buildings and expand the parking lot at the Troy Museum and Village Green. This site is located in the C-F (Communities Facilities) Zoning District. Paragraph A of Section 18.50.01 requires a 50' front setback adjacent to any public street. This section further requires this setback be free of parking. Also, Paragraph B of Section 18.50.01 requires a 50' side yard setback from adjacent residential property. The site plan indicates the relocated Barnard House within 40' of the front property line of Wattles Road and 40' from the side property line of the adjacent R-1B (One Family Residential) zoned property to the west. The site plan also indicates new and expanded parking lots within 20' of the front property line of Wattles, 35' of the property line along Livernois and within 10' of the property line of Lange.

Mr. Courtney asked if this site plan had been approved by the Planning Commission.

Mr. Stimac said that the plan is in the process of being reviewed and approved. Since this is a City owned property, City Council has the final approval of the site plan. The Planning Commission will make its recommendations to City Council and this is the first stop in that process.

Mr. Courtney asked if the plan took into consideration a new right of way line.

ITEM #8 – con't.

Mr. Stimac explained that the dimensions were based on a 60' right of way for both Livernois and Wattles. This plan complies with the Master Thoroughfare plan.

Mr. Lambert asked if the only thing the Board was considering was the new Barnard house and the re-location of the Town Hall.

Mr. Stimac stated that the plans also make reference to the proposed rear setback variance required for the location of the Town Hall. Further review of the Ordinance regarding that indicates that since the southeast corner of the property is in the B-1 Zoning District, the 50' setback does not apply.

Ms. Tamara Burns was present and asked if the Board had any questions for her regarding this request.

Mr. Bartnik stated that his only concern is the bus entrance and turn around on Lange as is it a residential street.

Ms. Burns stated that the main bus drop off is on Wattles and one of the reasons they wanted to add this area for the buses was so that the children could be dropped off and the buses would come around and park in a designated parking space. They will also use this area to get back on the buses. They have contacted the neighbors and they do not object to this proposal although they would like additional landscaping added.

Mr. Bartnik asked who was involved with the meetings regarding this expansion.

Loraine Campbell, the Museum Manager was present. Ms. Campbell stated that since they have begun this process they have approached the neighbors to the west and also the property owners on Lange and basically their only concern was that the property continues to be maintained as it is because they like the view of the museum from their home. There are a number of children arriving by private car and they have found that often there is a conflict between the buses and these children. By providing the bus pick-up on the north side of the property the children getting on the bus will not be next to the private vehicles coming in. 50% of the children come by bus. Ms. Campbell also indicated that one of their main concerns was the safety of the patrons visiting this site. Ms. Campbell said that they want to maximize the parking for the other patrons coming to this site and indicated that they have not received any negative feedback from the surrounding neighbors. Ms. Campbell also sent out three (3) letters to the homeowners to come to meetings regarding this proposal.

Mr. Bartnik asked if anyone came to the meetings.

Ms. Campbell indicated that no one from the area came to the last meeting and she has not received any negative feedback from the surrounding property owners.

ITEM #8 – con't.

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

There are no written approvals or objections on file.

Motion by Courtney
Supported by Ullmann

MOVED, to grant the City of Troy, 60 W. Wattles relief of the Ordinance to move various buildings and expand the parking lots at the Troy Museum and Village Green. The changes will result with the relocated Barnard house within 40' of the front property line of Wattles Road and 40' from the side property line of the adjacent R-1B (One Family Residential) zoned property to the west. The site plan also indicates new and expanded parking lots within 20' of the front property line of Wattles, 35' of the property line along Livernois and within 10' of the property line of Lange.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance does not establish a prohibited use in a zoning district.
- Variance applies only to the property described in this petition.
- Variance will improve this property.

Yeas: 6 – Ullmann, Bartnik, Courtney, Kempen, Kovacs, Lambert
Absent: 1 – Clark

MOTION TO GRANT VARIANCE CARRIED

ITEM #9 – VARIANCE REQUESTED. MR. & MRS. LEO LENNOX, 2117 KIRKTON, for relief of the Ordinance for a major reconstruction of the existing house and to construct a rear yard addition that would extend an existing 3.8' side yard setback for an additional 16' towards the rear. Section 30.10.06 requires a minimum 5' side yard set back. This home is a legal non-conforming structure. Section 40.50.04 (A) prohibits expansions of non-conforming structures in a way that increases the non-conformity.

This proposed reconstruction work exceeds 60% of the replacement cost of the existing house. Section 40.50.04 (B) requires that the house be reconstructed to comply with all provisions of the Zoning Ordinance including a 5' minimum side yard setback.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance for alterations and an addition to their home. The plans submitted indicate major reconstruction of the existing house and constructing an addition on the rear of the home which would extend an existing 3.8' side yard setback an additional 16'. The existing 3.8' side yard setback exists where Section 30.10.06 requires a minimum 5' side yard setback. Due to the age of this house, this condition makes it a legal non-

ITEM #9 – con't.

conforming structure. Section 40.50.04 (A) prohibits expansions of non-conforming structures in a way that increases the non-conformity.

Also, since the reconstruction work exceeds 60% of the replacement cost of the existing house, Section 40.50.04 (B) requires that the house be reconstructed to comply with all provisions of the Zoning Ordinance including a 5' minimum side yard setback on the existing home.

Mr. Leo Lennox was present and stated that he was very surprised to find out that his home was considered to be a legal non-conforming structure.

Mr. David Bungero, of Bungero Building was present and stated that the petitioner wants to add to what is already there. The homeowners have no intention to move.

Mr. Kovacs asked the petitioner why he wanted to stay in this house and not look for another location in Troy since so much of this home was going to be changed.

Mr. Lennox stated that he has lived here thirty-five years and loves the neighborhood and his neighbors. Mr. Lennox said that they would like to stay here.

Mr. Kovacs stated that he believes it is unreasonable to ask the petitioner to move the foundation of his home 1.2' to bring this property up to conformance.

The Chairman opened the Public Hearing.

Michael Sculthorpe, 2064 Kirkton was present and stated that he lives across the street from the petitioner. Mr. Sculthorpe stated that Mr. and Mrs. Lennox were great neighbors and he had absolutely no objection to this request. Mr. Sculthorpe said that he is hoping that the Board will allow this construction.

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

There are seven (7) written approvals on file. There are no written objections on file.

Motion by Bartnik

Supported by Lambert

MOVED, to grant Mr. & Mrs. Leo Lennox, 2117 Kirkton, relief of the ordinance for a major reconstruction of the existing house and to construct a rear yard addition that would extend an existing 3.8' side yard setback an additional 16' towards the rear.

- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Variance applies only to the property described in this application.

ITEM #9 – con't.

- Conformance would be unnecessarily burdensome as the foundation would have to be moved 1.2'.
- Practical difficulties result from the unusual characteristics of the property in that the property is 71' wide and 185' deep.

Yeas: 6 – Bartnik, Courtney, Kempen, Kovacs, Lambert, Ullmann

Absent: 1 – Clark

MOTION TO GRANT VARIANCE CARRIED

Mr. Kempen informed the petitioner that the Board had received a lot of positive feedback regarding this request.

ITEM #10 – ELECTION OF OFFICERS

Motion by Courtney

Supported by Lambert

MOVED, to elect Mr. Clark, Chairman and Mr. Bartnik, Vice-Chairman for the 2009-2010 year.

Yeas: 6 – Bartnik, Courtney, Kempen, Kovacs, Lambert, Ullmann

Absent: 1 – Clark

MOTION TO APPROVE MR. CLARK, CHAIRMAN AND MR. BARTNIK, VICE-CHAIRMAN CARRIED

The Board of Zoning Appeals meeting adjourned at 8:34 P.M.

Matthew Kovacs, Chairman

Pamela Pasternak, Recording Secretary