

The Chairman, Glenn Clark, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, June 16, 2009 in Council Chambers of the Troy City Hall.

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

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

Motion by Courtney
Supported by Kempen

MOVED, to move Item #7 and Item #8 to the end of the agenda to become Item #12 and Item #13.

Yeas: All – 7

MOTION TO MOVE ITEM #7 AND ITEM #8 TO THE END OF THE AGENDA TO BECOME ITEM #12 AND ITEM #13 CARRIED

ITEM #1 – APPROVAL OF MINUTES – MEETING OF MAY 19, 2009

Motion by Lambert
Supported by Kempen

MOVED, to approve the minutes of the meeting of May 19, 2009 as written.

Yeas: All – 7

MOTION TO APPROVE MINUTES CARRIED

ITEM #2 – APPROVAL OF ITEM #3 AND ITEM #4

RESOLVED, that Item #3 is hereby approved in accordance with the suggested resolution printed in the Agenda Explanation and Item #4 is also approved with the stipulation that at the end of the three-year period, a new Public Hearing is held to consider the possibility of granting a permanent variance.

Motion by Courtney
Supported by Kovacs

ITEM #2 – con't.

Yeas: All - 7

MOTION TO APPROVE ITEM #3 AND ITEM #4 CARRIED

ITEM #3 – RENEWAL REQUEST. THE LUTHERAN CHURCH OF THE MASTER, 3333 COOLIDGE, for relief of the Ordinance to maintain a berm along the west side of off-street parking in lieu of the required 4'-6" high masonry screening wall.

MOVED, to grant Lutheran Church of the Master, 3333 Coolidge, a three-year (3) renewal of relief to maintain a berm along the west side of off-street parking in lieu of the required 4'-6" high masonry screening wall.

- Conditions remain the same.
- There are no complaints or objections on file.

ITEM #4 – RENEWAL REQUEST. TROY SCHOOL DISTRICT, 4777 NORTHFIELD PARKWAY, for relief of the 4'-6" high masonry-screening wall required along the west side of off-street parking.

Mr. Mark Dziatczak, the Principal of Troy High School was present and stated that he was hoping that this Board would approve this renewal request.

MOVED, to grant Troy School District, 4777 Northfield Parkway a three-year (3) renewal of relief of the 4'-6" high masonry screening wall required along the west property line of the site that abuts residential zoning.

- Variance does not have an adverse effect to surrounding property.
- Conditions remain the same.
- We have no complaints or objections on file
- In 2012 a Public Hearing will be held in order for the Board to consider making this request a permanent variance.

ITEM #5 – VARIANCE REQUESTED. JOHN HERRICK, 3124 ADAMS, for relief of the Ordinance to maintain an existing accessory building located in a side yard, where Section 40.56.02 prohibits the location of an accessory building in any yard but a rear yard.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain an existing accessory building located in the side yard. Section 40.56.02 prohibits the location of an accessory building in any yard but a rear yard. In November 2006 the petitioner was issued a Building Permit to construct an addition on the rear of the home that placed the existing detached garage in a side yard location. A condition of the issuance of the building permit was that the existing garage had to be demolished. In October 2007 the petitioner obtained a Building Permit to relocate that garage to a

ITEM #5 – con't.

conforming location at the rear of this property. The petitioner submitted a letter in February 2008 stating that he now wished to leave the existing building in its original side yard location.

Mr. Kovacs asked if this building would comply with the Ordinance if a breezeway between the addition and the garage was constructed.

Mr. Stimac explained that the garage would no longer be in a side yard location but would be too close to the property line for an attached accessory building.

A discussion of the history of this building began and Mr. Stimac informed the Board that originally the petitioner was planning to move this structure to the proper location. Mr. Stimac further clarified the one site plan presented that showed the building moved to the rear of the site was submitted with the petitioner's request.

Mr. Lambert asked if any variances had been granted in the past.

Mr. Stimac said that he was not aware of any variances on this property.

Mr. Lambert questioned the letter from the petitioner dated February 2008 asking that the garage remain in its current location.

Mr. Stimac explained that the Building Department had received that letter and responded in March 2008 informing the petitioner that he would have to file an appeal with this Board in order for the structure to remain in its current location.

Jason Cardasis, the Attorney for Mr. Herrick and Mr. John Herrick were present. Mr. Cardasis stated that he had been retained by Mr. Herrick after Mr. Herrick lost his job. Mr. Herrick has filed Chapter 13 Bankruptcy and this is the reason for the delay in his coming to this Board. Mr. Cardasis stated that he understands that the lack of funding is not a reason to consider a variance, but Mr. Herrick does not have the funding to move this structure. Mr. Herrick is a master plumber and is now employed by a hospital. This property has a vacant lot on each side and Mr. Cardasis stated that he does not feel anyone will object to this request. With the market conditions the way they are it would be very difficult for the petitioner to obtain a loan to re-locate this building.

Mr. Kovacs asked if the petitioner would be receptive to having a time limit on this request to allow him the opportunity to get back on his feet.

Mr. Cardasis stated that the bankruptcy process will be ongoing for about the next four (4) years. This home has no basement and this garage is the only place to store equipment and is a necessary structure.

ITEM #5 – con't.

Mr. Bartnik stated that this Board cannot consider money issues as a valid reason for a variance and stated that there are bushes along the front property line along Adams that shield this structure from Adams.

Mr. Herrick stated that they are deciduous trees.

Mr. Bartnik asked about the fence on the property. Mr. Herrick stated that there is only a small area of fencing that was there when the home was purchased.

Mr. Bartnik asked why the petitioner put on an addition.

Mr. Herrick stated that they added a family room.

Mr. Bartnik said that the addition is not visible to traffic along Adams Road.

Mr. Clark 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.

Mr. Courtney asked if the Board could grant an approval with a time limit.

Mr. Motzny said that the Zoning Ordinance does not provide for a time limit on variances.

Motion by Bartnik

Supported by Courtney

MOVED, to grant John Herrick, 3124 Adams, relief of the Ordinance to maintain an existing accessory building located in a side yard where Section 40.56.02 prohibits the location of an accessory building in any yard but a rear yard.

- Variance is not contrary to public interest.
- Variance will not permit the establishment of a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surrounding property.
- Property is unique as it is located on Adams Road.
- Large vacant yards are located on each side of this property.
- Garage appears to be in the rear yard since the addition is not visible from Adams Road.
- Moving the garage could create a more of a visual impact on the neighborhood than its present location.

Yeas: All – 7

ITEM #5 – con't.

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUESTED. JOSEPH CUPELLI, 190 HABRAND, for relief of the Ordinance to construct an addition to his home which would result in having an accessory building located in a side yard where Section 40.56.02 prohibits the location of an accessory building in any yard but a rear yard.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct an addition to his home. The construction of the addition on the rear of the home would extend the defined side yard 24' to the north, to the north line of the new addition. A detached garage is currently located in this extended side yard area. Section 40.56.02 prohibits the location of detached garages in a side yard location.

Mr. Joseph Cupelli was present and stated that he and his wife have three young children and recently his mother in law came to live with them. They are hoping to obtain this variance as they wish to expand the family living space that includes a family room and remodel of the existing kitchen. They have been planning to put this addition in for a long time and they feel this is the best location for this construction. The existing garage is in very good condition and they have a number of power lines about 20' behind the proposed addition. This property is 100' wide and 300' deep and the lot slopes down in the back for drainage. If the garage were to be moved it would be about 4' or 5' lower than its present location. Mr. Cupelli stated that he is self-employed and feels that this is the only way they can make this work. They love this neighborhood and do not want to move.

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

There are four (4) written approvals on file. There are no written objections on file.

Motion by Kovacs

Supported by Courtney

MOVED, to grant Joseph Cupelli, 190 Habrand, relief of the Ordinance to construct an addition to his home which would result in having an accessory building located in a side yard where Section 40.56.02 prohibits the location of an accessory building in any yard but a rear yard.

- Variance is not contrary to public interest or general purpose or intent of the chapter.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surrounding property.

ITEM #6 – con't.

- Property is unique in that it slopes down at the rear of the property and has utility lines overhead that would require that the garage be moved a considerable distance back from the house.
- Literal enforcement of the Ordinance precludes full enjoyment of the property and would be unnecessarily burdensome.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

(ITEM #7 AND ITEM #8 WERE MOVED TO THE END OF THE AGENDA TO BECOME ITEM #12 AND ITEM #13)

ITEM #9 – VARIANCE REQUESTED. A & M SERVICE CENTER, INC. 2075 AUSTIN, for relief of the Ordinance to install a 6' high chain link fence in lieu of the required 6' to 8' high required masonry screen wall for an outdoor storage facility adjacent to a freeway.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to install a fence in lieu of a masonry screen wall for an outdoor storage yard adjacent to a freeway. The rear lot line of this property abuts I-75. Section 38.30.04 requires storage areas in the M-1 (Light Industrial) Zoning District to be screened from freeways with a masonry obscuring wall 6' to 8' in height. The site plan submitted indicates a 6' high chain link fence in lieu of the required masonry wall along I-75. Petitioners were approved to have the outdoor storage of vehicles on this property and as part of that approval the screen wall is required.

Mr. Courtney asked if the screen wall was only required on the west side of the property.

Mr. Stimac explained that a screen wall is required along any public street and no screening is required at either the north or sound end of the property.

Mr. Kovacs asked if Mr. Stimac knew what the elevation of this property and I-75 were.

Mr. Stimac said that it appears based upon the petitioner's plans that the location of the wall is at an elevation of 644' and I-75 is at 650'.

Mario Valente was present and stated that because I-75 is higher than the property at this point the parking lot will be visible from I-75. There is another fence that is actually 50' farther back. This is a monetary issue as Mr. Valente believes that fence will have the same effect as the screen wall.

ITEM #9 – con't.

Mr. Lambert asked what types of businesses were located on either side of this property.

Mr. Valente said that there is an ambulance company to the south and a machine shop on the north side. The trucks for the machine shop are parked at the back of the lot.

Mr. Clark 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.

Motion by Kovacs
Supported by Bartnik

MOVED, to grant A & M Service Center, Inc. 2075 Austin, relief of the Ordinance to install a 6' high chain link fence in lieu of the required 6' to 8' high required masonry wall for an outdoor storage facility adjacent to a freeway.

- Variance is not contrary to public interest and general purpose and intent of the Chapter.
- Variance will not establish a prohibited use in a Zoning District.
- Variance applies only to the property described in this application.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Based on the topography of the site the required masonry screening wall will not provide the necessary screening.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #10 – VARIANCE REQUESTED. MR. & MRS. DON FAIRMAN, 2775 E.

SQUARE LAKE, for relief of the Ordinance to construct a new covered front porch that will result in a 13.1' front yard setback where Section 10.60.03 requires a 50' minimum front setback for acreage parcels in the R-1D Zoning District located on major thoroughfares.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new covered front porch. The site plan submitted indicates that the covered front porch as proposed will result in a 13.1' front yard setback. Section 10.60.03 requires a 50' minimum front setback for acreage parcels in the R-1D Zoning District located on major thoroughfares.

Mr. Bartnik asked Mr. Stimac to explain how measurements are taken regarding right of way lines.

ITEM #10 – con't.

Mr. Stimac gave an explanation based on the State statutes of “Road by User” and stated that originally these properties went to the center of the road. The original 33’ of right of way is based on Square Lake Road being a public road. The City or the County actually acquired an additional 27’ and the setback is measured from the 60’ right of way. In terms of the actual pavement, there may be two lanes going each way because of the entrance to the Church, so the actual distance from the 60’ right of way line to the actual pavement would be about 35’.

Mr. Courtney asked what setback would be required if this was a lot in a subdivision.

Mr. Stimac stated that if the subdivision was platted prior to 1977 it would be a required setback of 25’ and if it was platted after 1977 it would still have the 50’ setback requirement.

Mr. Kovacs questioned the master thoroughfare plan and asked how close to the road this house would be.

Mr. Stimac said that the master thoroughfare plan for Square Lake Road ultimately will result in a 120’ right of way and would most likely result in 5 lanes of pavement which would be approximately 62’ in width and would result in 29’ from the property line to the edge of the property.

Mr. Kovacs asked if this house would be bought by the City when Square Lake was widened and stated that he would hate to see someone put money into a house that was going to be taken by the City.

Mr. Stimac stated that he had no idea if that was going to happen if the right of way does not impact the structure itself. Square Lake Road is not on the list of immediate roads to be widened.

Mr. Clark stated that he was concerned about the safety issues regarding setbacks. Mr. Clark asked about the proximity of other homes compared to the location of this home.

Mr. Stimac said that there are a number of situations where there are houses on the thoroughfare such as Livernois and Square Lake and because of their age, they are not even 33’ from the center line of the road. Lots here were much deeper however; the newer subdivision behind these houses was constructed on the northern portion of these parcels. There are a number of homes within the City that have existed before the setbacks were changed in 1977.

Mr. Courtney asked about the requirement for a covered porch.

Mr. Stimac stated that based on the plan submitted by the petitioner the proposed size of this porch is 8’ x 11’.

ITEM #10 – con't.

Mr. Bartnik said that the material submitted by the petitioner indicates that this is a non-conforming structure due to the fact that this home was constructed in the front setback.

Mr. Stimac said that the house probably predates the 1977 Ordinance.

Mr. Bartnik asked if this house was in the 50' setback and Mr. Stimac said that it was.

Mr. Don Fairman and Mr. Zack Ostroff from the Pine Building Company were present. Mr. Ostroff stated that they had spoken to Mitch Grusnick in the Building Department and he informed them that the house was built in the front setback. The existing deck is 720 square feet and protrudes quite a bit to the south. They are proposing to take off the existing deck and add a 175 square foot covered porch. If they were to construct this porch 50' from the front property line it would be located toward the back of the existing house.

Mr. Ullmann asked if the proposed porch was going to be smaller than the existing porch.

Mr. Fairman stated that they are planning to remove the deck and replace it with this porch.

Mr. Kovacs asked why this construction would require a variance.

Mr. Stimac stated that because they are proposing to cover the porch a variance is required.

Mr. Clark 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. Bartnik pointed out that two (2) of the objections are from the same property.

Motion by Kovacs
Supported by Bartnik

MOVED, to grant Mr. & Mrs. Don Fairman, 2775 E. Square Lake, relief of the Ordinance to construct a new covered front porch that will result in a 13.1' front yard setback where Section 10.60.03 requires a 50' minimum front setback for acreage parcels in the R-1D zoning District located on major thoroughfares.

- Variance request is minimal.
- As a condition of the variance the covered front porch cannot be enclosed and will remain a covered porch only.

ITEM #10 – con't.

- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Literal enforcement of the Ordinance precludes full enjoyment of the property and would be unnecessarily burdensome.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #11 – VARIANCE REQUESTED. CITY OF TROY, 60 W. WATTLES, for relief of the Ordinance to add new and expanded parking lots within 10' of the front property line of Wattles and within 15' of the property line along Livernois, where Paragraph A of Section 18.50.01 requires a 50' front setback free of parking adjacent to any public street.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to add to and expand the parking lots at the Troy Museum and Village Green. This site is located in the C-F (Community 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. The site plan submitted indicates new and expanded parking lots within 10' of the front property line of Wattles and within 15' of the property line along Livernois.

Previous action of the Board of Zoning Appeals at the meeting of May 19, 2009 allowed parking within 20' of the front property line of Wattles and within 35' of the property line along Livernois.

Mr. Kovacs asked how many parking spaces are on this site and how many parking spaces were proposed to be added.

Mr. Stimac said that presently there are 48 parking spaces in the existing parking lot and they are proposing to add 120 more parking spaces.

Mr. Kovacs asked the petitioner why more parking was needed.

Mr. Gene Hopkins of Hopkins Burns Design Studio was present. Mr. Hopkins stated that with the expansion of the site additional parking will be required depending on the type of functions that are held at the site. Mr. Hopkins said that they have studied the site and determined this was the best solution to splitting up the parking.

Mr. Courtney said that actually 30 parking spaces are on the lawn.

ITEM #11 – con't.

Mr. Hopkins said that was correct and this would be considered overflow parking as they do not plan on using them very often. Mr. Hopkins apologized to the Board and said that the dimensions originally presented were a technology error and the dimensions were shifted because the drawings were shifted. Mr. Stimac had found the error and this is the reason they are before the Board again.

Mr. Kovacs stated that he concerned that there is a lot of additional parking proposed that may not be required and asked if the petitioner had entertained any thoughts to asking for less parking.

Mr. Hopkins said that in their Planning Commission request they had asked for less parking. Mr. Hopkins further stated that they do have an agreement signed for overflow parking and busing to take people off site if the need arises for special events. In the design process they broke down the parking and really looked at what requirements would be needed to meet 75% of the demand for parking and this is where the additional parking came in at the front of the site. They have also added additional overflow parking on Lang Street. Mr. Hopkins said that it is not their intent to have a “sea of asphalt” and are trying to create a safe situation by not allowing any parking in the turnaround site. The parking lots will align with the existing parking lots of the adjacent business and they are hoping to add a light landscape buffer that will not obstruct the view of the site from people driving by this area.

Mr. Kovacs said that he is not opposed to the parking along Wattles, but does not want to see a lot of asphalt along Livernois Road.

Mr. Hopkins said that the amount of the parking was based on the use and functions of the Church and not as much from the Ordinance criteria. Mr. Hopkins indicated that they want to be able to provide parking for people using that Church.

Mr. Bartnik said that the drawings and plans are the same as what was submitted except for the numbers on the plans.

Mr. Hopkins said that was correct and the numbers shown near Livernois were actually switched.

Mr. Bartnik said that the parking line along Wattles coincides with the business to the east on Wattles and asked where the 15' setback was from Livernois.

Mr. Hopkins said that the parking is from the property line and it will be a sustainable parking lot that will look more natural and also provide parking for people that are using this site. Mr. Hopkins indicated that they are working with the Planning Department to determine what type of material they can use in this area to not only provide parking but also easily accommodate walking in that area.

ITEM #11 – con't.

Mr. Kempen believes that this is an asset to the City of Troy and believes it is important to maintain visibility along Livernois.

Mr. Clark opened the Public Hearing.

Ms. Margaret Pence, 106 Miracle was present. Ms. Pence stated that she lives across Wattles and asked where the setback was on Wattles and asked if the proposed parking was going to come out closer to Wattles.

Mr. Stimac explained that the current parking lot to the west of the entrance goes right out to the front property line and that line will go back 10' and that the new parking lot at the east end of the site will move closer to the property line along Wattles.

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

There are no additional approvals or objections on file.

Motion by Kovacs

Supported by Courtney

MOVED, to grant the City of Troy, 60 W. Wattles relief of the Ordinance to add new and expanded parking lots within 10' of the front property line of Wattles and within 15' of the property line along Livernois, where Paragraph A of Section 18.50.01 requires a 50' front setback free of parking adjacent to any public street.

- Variance will not have an adverse effect to surrounding property.
- Variance does not establish a prohibited use in a Zoning District.
- This is a historical site for all of the City of Troy and the variance will allow full enjoyment for the entire City.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- The setbacks for the parking lot are at least equal to the setbacks for the parking lot on the adjacent commercial property.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #12 – (ITEM #7) – VARIANCE REQUESTED. KIRCO DEVELOPMENT LLC, 153 W. BIG BEAVER (PROPOSED ADDRESS), for relief of the Ordinance to construct a new one-story restaurant that would result in a total gross building area per acre of 31,425 square feet where Section 26.70.00 limits developments in the O-S-C Zoning District to not more than 30,000 square feet of gross building acre of land.

ITEM #12 – con't.

Mr. Bartnik informed the Board that he is a sub-tenant of Columbia Center and felt that he should let the Board know so that Board members could determine if this was a conflict of interest.

Mr. Motzny stated that in his opinion Mr. Bartnik has a remote interest in this site and does not believe it would cause any type of conflict.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a new one-story restaurant on the Columbia Center site. This proposed building would result in a total gross building area of 31,425 square feet per acre. A previous variance granted in 1995 limited the development to not more than 30,992 square feet of gross building area per acre where Section 26.70.00 of the Troy Zoning Ordinance limits developments in the O-S-C (Office Service Commercial) Zoning District to not more than 30,000 square feet of gross building area per acre of land.

Mr. Bartnik stated that there a lot of other changes on this property and asked if the only variance the petitioner required was the square feet of gross building area.

Mr. Stimac indicated all of the other provisions of the Zoning Ordinance have been met by the petitioner.

Mr. Alan Kiriluk of Kirco Development, LLC and Mr. Steven Thomas of Yamasaki Associates were present. Mr. Kiriluk stated that they are very familiar with the Big Beaver Corridor study and felt that there was a need for a restaurant to meet the needs of the occupants of the Columbia Center. Mr. Kiriluk said that they are planning a high level of architecture and plan a garden seating area. Essentially they are asking for about a 1% increase in the density allowed.

Mr. Thomas said that this restaurant will increase the number of jobs in the area both in the building of the structure and also with people that will be employed by the restaurant. This restaurant would be an enhancement to this area and Columbia Center has a very high occupancy rate. All the landscaping requirements will be met or exceed the minimum requirement and this structure will be an improvement in this area.

Mr. Clark asked what type of restaurant would be going in this location and the name of the proposed restaurant.

Mr. Kiriluk said that they have been in the process of getting this plan approved for the last two (2) years and did not believe it was appropriate to approach a tenant until all of the requirements were approved by the City. Mr. Kiriluk also said that they expect to have a restaurant that would offer food in the moderate to upper end price range in keeping with the profile of the tenants at Columbia Center. They are basing this site on sites they have visited in New York City such as Tavern on the Green, which brings the outside in.

ITEM #11 – con't.

Mr. Clark asked about the garden seating that would be available.

Mr. Kiriluk said that right now the garden seating is located to the south of this proposed building and closer to Columbia Center. They have enhanced the garden area and have extended it toward the building and plan to incorporate it into this proposed restaurant.

Mr. Clark said that the Ordinance has strict guidelines regarding the square footage and asked why they could not make the existing square footage work.

Mr. Kiriluk stated that restaurants have strict guidelines regarding their footprint and they are trying to be able to meet these requirements. They have to supply a certain percentage of square footage for seating, staging and the kitchen area and this is difficult to do inside the existing building

Mr. Courtney said that he has been to Columbia Center a number of times and has a difficult time finding a parking space.

Mr. Kiriluk said that when they went through the approval process they had to do a traffic study. Each tenant has more square footage which allows for lower density. Historically there is enough parking. Because of the parking deck this restaurant should have a minimal impact on parking. There is also off-peak parking and different parking requirements would be needed at different times of the day. There will not be any restaurant parking in the morning and there probably will not be a lot of office parking on a Saturday night.

Mr. Kovacs said that in looking at this site he does not see where there is a density problem and asked Mr. Stimac for clarification.

Mr. Stimac said that this site has two 14-story office buildings. The minimum building height is 3-stories and if these buildings were taken apart into four three story buildings the end result would be eight or nine times the footprint of the building. That would probably make the site seem much more crowded. There is also a three-story parking deck that allows the site to have more landscaping. 330' is the maximum height in the O-S-C Zoning District.

Mr. Clark stated that this variance request is only related to the square footage, but we do know that in Troy the lunch time is very busy and asked how many parking spots would be required during the business day.

Mr. Thomas said that they are required to have 139 and received a modification on the parking last night from the Planning Commission.

ITEM #11 – con't.

Mr. Kiriluk said that the last thing they want to do is to destroy the parking available. 40% of the parking deck is available at 9:00 A.M.

Mr. Clark said that he thinks most of the people that are in the office will use the parking available in the lot and wondered where people will be able to park if they come in to the restaurant at lunch time.

Mr. Courtney said that people in the office will probably park in the deck as it is actually closer to the building.

Mr. Lambert asked if this density is in keeping with the Big Beaver Corridor study.

Mr. Stimac said that the Big Beaver Corridor study anticipates a denser development in the buildings that run along Big Beaver Road. Mr. Stimac does not know if a specific square footage was part of this study.

Mr. Bartnik said that he has not experienced any type of parking problem with this site.

Mr. Thomas said that these buildings are 87% to 97% occupied at this time.

Mr. Bartnik asked what will happen with the handicapped parking spots.

Mr. Kiriluk said that they are all accounted for and they will be adding additional handicap parking at the restaurant site.

Mr. Clark 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 Kovacs

Supported by Kempen

MOVED, to grant Kirco Development LLC, 153 W. Big Beaver, relief of the Ordinance to construct a new one-story restaurant that would result in a total gross building area per acre of 31,425 square feet where Section 26.70.00 limits developments in the O-S-C Zoning District to not more than 30,000 square feet of gross building acre of land.

- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a Zoning District.
- Variance will not have an adverse effect to surrounding property.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- This restaurant will not cause this site to be over-built.

ITEM #11 – con't.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #13 (ITEM #8) – VARIANCE REQUESTED. URBANCAL-OAKLAND PLAZA, LLC, 124 JOHN R (PROPOSED ADDRESS), for relief of the Ordinance to construct a new commercial building (Sonic Restaurant) with the following variances: 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 on 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. Section 39.70.02 requires a 10' wide landscape greenbelt along the front property line along John R. The site plan submitted indicates that the overhang of the parking spaces adjacent to the greenbelt encroaches approximately 1'-9" into the 10' width.

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 on 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. Section 39.70.02 requires a 10' wide landscape greenbelt along the front property line along John R. The site plan submitted indicates that the overhang of the parking spaces adjacent to the greenbelt encroaches approximately 1'-9" into the 10' minimum width.

Mr. Stimac indicated that the petitioner came up with 0.62' by using a standard type vehicle. Depending on whether you center the car and depending where you actually park your vehicle the encroachment changes. For the purpose of determining the Ordinance, Building Department staff takes the dimension of the parking space, 9.5' x 19' wide space and projects it forward by 2' and that is where the 1'-9" or 1.75' comes from.

Mr. Bartnik stated that the pavement or edge of the parking spot is at 10' whether the encroachment is 1.75' or 0.62' and because it is angled parking the encroachment changes.

Mr. Clark stated that they refer to the average size of vehicle and asked what type of car is that.

Mr. Stimac stated that for the purpose of the Ordinance the size of the parking space and not the size of the vehicle is what determines the overhang.

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Mr. John Gaber, the Attorney for the property owner, Allison Maxwell White, Urban Retail, Jim Butler, PEA Associates, Mike Labadie, the traffic consultant from Wells and Associates, and franchise owners and designers of Sonic Restaurants were present.

Mr. Gaber passed out letters from tenants at Oakland Plaza indicating approval of this proposed construction. Mr. Gaber said that this is the right location for a Sonic Restaurant. Originally they were asking for six (6) variances and have now made changes to the plans and brought that number down to three (3) variances. Mr. Gaber stated that the Planning Commission tabled this request so that they could appear before this Board to obtain these variances. The canopy hasn't changed and the overhang of the cars hasn't changed and Mr. Gaber said that they still feel the 12' drive through lane is more than sufficient. This is not a two way drive so there will be no adverse traffic in that area. This building was originally set back 5' further and they have moved the building forward 5' and moved the parking from the rear to the side yard area and this has enabled them to remove three (3) of the variance requests. They have also increased the stacking lane to nine (9) cars and now meet the requirements of the Ordinance. Also, by moving this building they have the correct setback between the building and the rear property line. Furthermore, by switching the site plan around the landscaping requirement will also be met.

Mr. Bartnik asked who owns this property. Mr. Gaber said that Urban Retail Properties own Oakland Mall and Oakland Plaza.

Mr. Butler said that they have changed the site plan and now have provided more green space. Regarding the frontage landscaping the car is a typical mid-size sedan. He doesn't agree totally with Mr. Stimac's measurement but feels that people will stop before they get to the curb. Mr. Butler said that they have met with the Oakland County Road Commission, the Engineering Department and the Planning Commission and they are required to put in a taper lane on John R that will be 75' long. The entrance from John R will be a right turn in only and there will not be any egress to John R. They will also be required to put in an 8' sidewalk. They are proposing to put in a dense row of hedges in this area to screen the headlights of the cars under the canopy and they are required to have one street tree for every thirty feet. They are planning to put in seven (7) trees. These changes do meet the intent of the Ordinance.

Mr. Ullmann clarified that Mr. Butler said that they were going to have a 5' greenbelt between the deceleration lane and the sidewalk. Mr. Butler said that was correct. Mr. Ullmann said that a 12' deceleration lane, 8' for the sidewalk and a 5' greenbelt adds up to 25'.

Mr. Butler also stated that they would be putting in another 3.75' of green space.

Mr. Ullmann said that he does not see a greenbelt area on this plan. Mr. Butler approached the podium and explained where this greenbelt area would be.

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Mr. Butler stated that they are not planning to plant any deciduous trees in this area.

Mr. Ullmann said that a larger vehicle may not stop and Mr. Butler said that hopefully people will stop before they hit the landscaping.

Mr. Ullmann said that this plan started out with a crowded condition and now they are moving the sidewalk, adding twelve more feet of concrete and losing green space. Mr. Ullmann also clarified that this was one of the smallest Sonic Restaurant sites.

Mr. Butler stated that was correct and does believe this restaurant fits in with the intent of the Ordinance. Mr. Butler also stated that they do not believe they will need a deceleration lane but they are planning to put one in.

Mr. Ullmann pointed out that the report their traffic consultant prepared, stated that Troy would require a deceleration lane and a taper lane. Mr. Ullmann said that he understands Mr. Butler's job but believes that the size of this site will not support the restaurant.

Mr. Butler said that if you look up and down John R there are no 8' wide sidewalks and there are not any deceleration lanes.

Mr. Ullmann said that the petitioner could use the driveway that goes into Oakland Plaza.

Mr. Butler said that they have indicated in the past that it will not work for them to use that driveway for this site.

Mr. Ullmann said that in his opinion the petitioner is proposing more use that this property can handle. The petitioner is proposing a high intensity use and this is not the best use of the site.

Mr. Butler said that this drive in restaurant will work and believes that they are asking for minimal variances.

Mr. Ullmann said that he does not believe this proposal is in keeping with the Master Plan. The City is trying to create more urbanized areas and Mr. Ullmann believes this restaurant is something from a bygone era and does not believe this is the best use of this property. Mr. Ullmann also stated that if this was a fast food restaurant these variances would not be required. Mr. Ullmann further stated that he believes the petitioner did a good job with what he has, but still feels this is too small a space to handle this type of restaurant.

Mr. Courtney confirmed that egress will not be permitted onto John R and asked what steps would be taken to make sure that traffic does not try to use this drive.

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Mr. Butler stated that a sign will be put up indicating that there is no access to John R and also believes that the bump out in the drive will also restrict access.

Mr. Courtney brought up the fact that a letter was received from Mr. Douglas Mossman, the previous owner of Oakland Mall and Oakland Plaza indicating the reasons for not developing this property.

Mr. Mike Labadie, the traffic consultant for Sonic Restaurant stated that they did a traffic study for the site back in February. Mr. Courtney asked if anything had been done in December of last year and Mr. Labadie said that the only study was done in February. Mr. Labadie said that they verified the scope with the City Planner, the Oakland County Road Commission and the City Engineer. The Road Commission owns the road and they have certain guidelines that have to be followed. Mr. Labadie said that they have tried to address the concerns of the Board regarding this being a fast food type of place although it is not typical compared to other fast food type restaurants. This study was done during mid-day hours and also during P.M. peak hours. The mid-day study of John R indicated that there were 905 vehicles heading northbound and in the afternoon there were 1499 vehicles. The next thing they looked at was to try and determine how many of these vehicles would use this site. Based on mid-day there would be 71 total trips, 37 inbound and 34 out; the peak hour would be 27 vehicles inbound and 25 out for a total of 52 vehicles. In looking at a 24 hour total it appears there would be 762 trips. Part of the operation of a fast food restaurant that has access to a strip mall means that someone going to the mall may also use the restaurant and also may go to the restaurant and then go to the mall.

Mr. Labadie also said that this site is proposed to be a right turn only, no access to John R. This site is compounded in that there are crossovers on John R. MDOT has standards on that and this is something that is unique to Michigan. The proposed driveway meets the MDOT requirements. A lot of multi-lane roadways do not have tapers as you approach driveways because people become confused by them and they become hazardous. In this case the Road Commission told the petitioner in the beginning that this site meets the requirement for taper but may not be required to be installed. After this study was done it appears that the only requirement would be a taper. The Road Commission and the City got together and decided that a deceleration lane would also be required. Sonic will also put in a deceleration lane even though it is not required based on criteria. Locating the driveway properly amongst other driveways and crossovers is very important and this driveway will meet or exceed all of the necessary requirements.

Mr. Kovacs asked the petitioner why they would put in a deceleration lane even though they are only required to put in a taper.

Mr. Labadie stated that he believes the owner is trying to compromise and move this project along. Mr. Labadie also stated that the Road Commission may have some

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concerns regarding this area. The property owners and developers are willing to put this lane in anyway.

Mr. Kovacs asked where the sidewalk on John R was 8' wide and asked how it correlates to the sidewalk around this property.

Mr. Stimac stated that there are 8' wide sidewalks north of Elliott on the east side of John R, and on the north side of 14 mile in front of Krispy Kreme and Logan's Roadhouse.

Mr. Kovacs said that he was not aware that these sidewalks were 8' wide.

Mr. Stimac said that the 8' width requirements went into effect in the mid 1990's and Oakland Mall was built before that and as sidewalks are being replaced and new development takes place, the sidewalks are 8' wide.

Mr. Courtney asked if the right turns were doubled and the traffic was doubled would it still fall into the taper. Mr. Labadie said that was correct. Mr. Courtney asked how far back the deceleration lane would be to the south. Mr. Labadie said that he did not believe it would go back as far as the gas station.

Mr. Gaber stated that he does not believe these variances are not contrary to public interest, City Council contemplated the construction of a Sonic Restaurant at the time they approved the re-zoning request; these variances will not cause a negative impact to surrounding property; absent a variance no reasonable use can be made of this property. Mr. Gaber said that they have looked at other uses and no other use can be made of this property.

Mr. Gaber addressed the letter received from Mr. Mossman and believes because it is on Oakland Mall letterhead it is very misleading. Mr. Butler went to the City and reviewed the files and did not find anything indicating that this space was to be used as a greenbelt area at the time Oakland Plaza was developed. This site was larger originally, but Burger King is using 57' for a drive for their site. Mr. Gaber also stated that they could not get a curb cut, but this petitioner has found out that the Road Commission will allow a curb cut. The approval letters from the tenants in Oakland Plaza indicate that they would like this type of business in this location to help increase their business. Mr. Gaber said that they have listened to the Planning Commission and this Board and have reduced the number of variances required to develop this site. The Sonic Development was something that was originally submitted last fall and City Council has looked at it and approved the rezoning of this property. The timing is such that they need to move this project along.

Mr. Courtney asked where the other letters were from the other tenants located in this site.

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Mr. Gaber said that he believes that the Mall Director went to a sampling of the tenants of this site and presented these letters to them and none of these tenants reacted negatively to this proposal.

Mr. Courtney stated that he thinks it would be difficult for a tenant to disapprove of a request that was presented to them by a landlord.

Mr. Gaber said that was true, but these are the people that would be affected the most by this restaurant.

Mr. Kempen said that this parcel was split off of Oakland Plaza and asked how it would affect the green space requirement of this site.

Mr. Butler said that Oakland Plaza is required to have 66,000 square feet of landscaping and presently they have 86,000 square feet of landscaping. This site will take away approximately 8,000 square feet and therefore will not have an impact on the landscape requirement.

Mr. Clark said that the Burger King proprietors main concern is that traffic from 14 Mile will cut through and go out to John R or go to Sonic. This will adversely affect their business and this is something that has to be taken into consideration. There could be a lot of people cutting through this site either going to Sonic or going on to John R.

Mr. Gaber said that he is not anticipating traffic going through Burger King to go to Sonic but was addressing traffic that will try to avoid the traffic light and cut through John R. This site will not allow access to John R.

Mr. Clark said that people coming in may not know that they can't use this site as access to John R. Mr. Clark also stated that he believes there are other reasonable uses for this property.

Mr. Clark opened the Public Hearing.

Mr. Tony Versaci, the CEO of Multi-King was present and stated that he opened the Burger King on Fourteen Mile thirty (30) years ago and never received any type of variance from the City. This original Burger King was a "flagship" restaurant. Mr. Versaci also went on to say that Multi-King's headquarters are in Troy. Mr. Versaci also stated that Mr. Mossman indicated in his letter that he was the former owner of this property. In the course of a day approximately 1,000 cars go through the drive-thru at this restaurant. In addition, there are a number of vehicles that use this drive as way to cut through and avoid the traffic light at Fourteen Mile and John R. Mr. Versaci believes that this Sonic Restaurant will increase the amount of traffic in this area and does not believe that this is the appropriate site for this restaurant. Mr. Versaci is concerned about the safety of people walking in this area as well as the safety of customers

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utilizing his restaurant. Mr. Versaci said that he visited the site of the Sonic Restaurant on the east side and there was two-hour staging as well as police directing traffic. Mr. Versaci is trying to protect his restaurant but is also looking at the safety of his customers and the traffic discipline on his property. Burger King has been at this location for thirty (30) years and this is a very crowded area. Multi-King has three (3) locations in Troy and they have never required any type of variance. The Burger King on Rochester Road is going to be re-built and will not require any variances, but will comply with the requirements of the Ordinance. Mr. Versaci said that Sonic is a wonderful brand but this is an incredibly high density traffic area and he does not feel it should be in this location.

Mr. Clark asked about the space taken from the original parcel for Burger King.

Mr. Versaci said that when they opened the restaurant and the business exceeded what they had projected Mr. Versaci approached Mr. Kogan, the owner of the property at that time, and asked if they could purchase that site and were told they could not because it was designated to be greenspace. Mr. Mossman came to Multi-King when the new owners were purchasing this property and asked that they cooperate with the new owner. Mr. Mossman's standards were impeccable over the years and they complied with Mr. Mossman's request to make the sale of this property as smooth as possible. Mr. Versaci also stated that his partner, Mike Lucci, was unable to attend this meeting because of prior engagement.

Mr. Bartnik said that Mr. Lucci was before this Board previously. Mr. Bartnik asked Mr. Versaci if the driveway off of John R being changed to a one-way drive would affect Mr. Versaci.

Mr. Versaci stated that he had not had the opportunity to look at this change.

Mr. Kempen said that the drive into Burger King shares access to Oakland Plaza and asked if it was possible for the petitioner to move that entrance back into the general drive in order to ease some of the traffic using this site as a cut thru.

Mr. Versaci said that they are before other cities for approval of restaurants and he understands what these gentlemen are going through and moving the drive is something that he will look into.

Mr. Kovacs asked about the traffic at the Sonic Restaurant on the east side.

Mr. Versaci said that it was very busy on the day he was there and he has been at other locations throughout the country and they are not as busy.

Mr. Doug Hailey, the Designer for Sonic Restaurants was present. Mr. Hailey said that they opened the first Michigan store in Southgate and this promises to be a very typical

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Sonic. This restaurant actually helps other businesses in the area and he believes that there are other opportunities for people to get into this site without going through the Burger King. Stacking of vehicles is as much of a concern to Sonic as it is to the City. They want this property to be successful and do not want to make people wait a long time to be served as they will probably just go somewhere else. This is a nostalgic restaurant and celebrates the car. In the beginning they are expecting a lot of traffic at this site but believe that the traffic will slow down after a few weeks. Mr. Hailey said that this restaurant will add a lot of interest in this area because it is new and different. They have kids on roller skates delivering food and they also have a patio for people to use for dining. Mr. Hailey also said that this restaurant will bring vibrancy to this area that is presently lacking. Mr. Hailey said that the entrance in was more important than the entrance out.

Mr. Carl Chandler said that he is actually the behind the scenes guy. With regards to the traffic cut through, they will not be cutting through to get to John R because this will be an entrance only. Mr. Chandler said that he does not believe people will be using the drive in at Burger King in order to get to Sonic. This is the smallest model of Sonic but there are several hundred same size restaurants around the country. Sonic would not allow them to put a restaurant on a site that wouldn't work. The tenants that signed the approval letters had the option to sign the letter or not and they also had the opportunity to send in objections to the City. Oakland Mall and the restaurants along John R need cars to make their businesses viable. These business owners need cars to survive. Mr. Chandler said that they decided to put in the deceleration lane in order to add extra safety for this site. This particular intersection ranks 22nd compared to other intersections in the City regarding the incidence of accidents and this deceleration lane will help to create safety. Mr. Chandler said that he believes they have compromised and addressed the concerns of this Board and hopes that these variances are granted.

Mr. Ben Cheshire, the future franchisee of this site was present and stated that he has been a resident of the City for ten (10) years. They have brought the variance requests down from six (6) to three (3) minor variances. Mr. Cheshire also said that they have closed the exit onto John R. This will be an entrance only drive. Mr. Cheshire said that he will be happy to provide a sign for Burger King stating that they cannot use their drive to get to Sonic. Mr. Cheshire wants to be able to bring this business to Troy and their time has run out and Mr. Cheshire feels that they have met most of the requirements of the City.

Mr. Kevin Birnes of Burger King was present and stated that they had done a training video in August and there were 200 cars in the drive thru in one hour and the drive thru is 65% of our business. In February there were 100 cars that went through the drive thru at McDonald's in one hour. Mr. Birnes stated that he just wanted to make the Board aware of the amount of traffic using these businesses.

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

There is one (1) written objection on file. Twelve (12) written approvals were brought in by the petitioner.

Motion by Bartnik

Supported by Lambert

MOVED, to grant Urbancaal-Oakland Plaza, LLC, 124 John R. relief of the Ordinance to construct a new commercial building (Sonic Restaurant) with the following variances: 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 on 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. Section 39.70.02 requires a 10' wide landscape greenbelt along the front property line along John R. The site plan submitted indicates that the overhang of the parking spaces adjacent to the greenbelt encroaches approximately 1'-9" into the 10' width.

- Variances are not contrary to public interest or to the general purpose or intent of the Ordinance.
- Petitioner has compromised and worked diligently to meet the concerns of the City.
- Variances will not permit the establishment of a prohibited use in a Zoning District.
- City Council approved the re-zoning of this property.
- Variances will not have an adverse effect to surrounding properties.
- This area relies on cars for the success of their businesses and it would be unrealistic to put a restriction on this property.
- Variances apply only to the property described in this application.
- Absent a variance no reasonable use can be made of the property.
- Literal enforcement would preclude full enjoyment of a permitted use and would be unnecessarily burdensome.

Mr. Kovacs stated that this request is very much different than what was originally submitted and Sonic has done their best to address the concerns of the Board. The stacking has been changed and the entrance from John R has been changed to a one-way drive. The width of the driveway to 12' rather than 15' is very minimal, and Mr. Kovacs said that he agrees with the petitioner that this would not be a problem as it is a one-way drive. Mr. Kovacs further stated that he does not believe the variance regarding the overhang of the cars is outrageous and is in support of this request.

Mr. Ullmann said that this plan was presented six (6) months ago and this petitioner has only owned the property for one year. Mr. Ullmann said that he believes the statement

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made by the petitioner that this is the only reasonable use for this property is not appropriate. Mr. Ullmann further stated that he believes this restaurant is too intense for this property and that there is too much going on here.

Mr. Courtney stated that he did not believe City Council granted re-zoning for this property as he does not think they visualized a drive-in restaurant at this site. Mr. Courtney said that he does want to see Sonic in Troy but thinks this location is very tight.

Mr. Clark said that Troy is a very large community and has a lot of businesses in the area and this Board does not have a right to approve something that is not permitted and that will adversely someone else's property. Mr. Clark thinks that Sonic is a very well run restaurant but Mr. Clark does not believe this is the right area for it. This is a very high impact business and thinks it would be better on another location. Mr. Clark said he will be voting no and thinks the amount of variances requested are excessive for this parcel and does believe there are other areas available.

Mr. Kovacs said that he believes the Board has to look at the type of variances they are requesting and does not think this request is excessive.

Mr. Kempen said that in his opinion he felt that the Board members were being strong-armed when this whole proposal came forward. Mr. Kempen does believe that the petitioner has made several compromises and although he does have concerns about this site he will be in support of this request.

Yeas: 5 – Bartnik, Courtney, Kempen, Kovacs, Lambert
Nays: 2 – Clark, Ullmann

MOTION TO GRANT VARIANCES CARRIED

Mr. Stimac informed the Board that he will not be present at the meeting of July 21, 2009.

The Board of Zoning Appeals meeting adjourned at 10:50 P.M.

Glenn Clark, Chairman

Pamela Pasternak, Recording Secretary