

The Chairman, Glenn Clark, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, December 15, 2009 in Council Chambers of the Troy City Hall.

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

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

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

Motion by Lambert
Supported by Courtney

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

Yeas: All – 7

MOTION TO APPROVE MINUTES CARRIED

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

Motion by Courtney
Supported by Kovacs

Yeas: All – 7

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

ITEM #3 – VARIANCE REQUESTED. CONGREGATION SHIR-TIKVAH, 3900 NORTHFIELD PARKWAY, for relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required along the east side of their off-street parking area where it abuts residential zoned property.

MOVED, to grant Congregation Shir-Tikvah, 3900 Northfield Parkway a three (3) year renewal of relief to maintain landscaping in lieu of the 4'-6" high masonry-screening wall required along the east side of their off-street parking area where it abuts residential zoned property.

ITEM #3 – con’t.

- Variance is not contrary to public interest.
- There are no complaints or objections on file.
- Variance would not have an adverse effect to surrounding property.

ITEM #4 – VARIANCE REQUEST. CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, 2784 E. SQUARE LAKE, for relief of the 4’-6” high masonry wall required along the east and west sides of off-street parking.

MOVED, to grant Church of Jesus Christ Latter Day Saints, 2784 E. Square Lake, a three (3) year renewal for relief of the 4’-6” high masonry wall required along the east and west sides of off-street parking.

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

ITEM #5 – VARIANCE REQUESTED. WALLACE HALEY, OF HALEY LAW FIRM PLC, 1890 E. SQUARE LAKE (proposed address), for relief of the Zoning Ordinance to construct a 120’ high cellular phone antenna tower within 49’ of the west property line where the site abuts residentially zoned property. Paragraph C of Section 20.25.01 requires that the setback of the tower from abutting residentially zoned or used property be at least five times the height of the structure, which would mean that this tower would be required to be at least 600’ setback from residentially zoned property.

The petitioner was not present.

Motion by Lambert
Supported by Kempen

MOVED, to move this item to the end of the agenda, Item #7 to allow the petitioner the opportunity to be present.

Yeas: All – 7

MOTION TO MOVE THIS ITEM TO ITEM #7 CARRIED

ITEM #6 – APPROVAL REQUESTED. LARY LLEWELLYN, 475 LOVELL, for approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property.

Mr. Stimac explained that the petitioner is requesting approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property. The utility 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.

Mr. Llewellyn was present and stated that he parks this vehicle on the east side of his garage where it is screened by landscaping and shrubbery. Mr. Llewellyn said that he does not believe this vehicle detracts from the property surrounding his and is not aware of any objections from his neighbors. Mr. Llewellyn further stated that the reason he needs the vehicle at his home is because he is on call 24 hours a day 7 days a week and is required by Comcast to respond to an emergency call within thirty (30) minutes.

Mr. Clark asked Mr. Llewellyn to describe this vehicle.

Mr. Llewellyn stated that the body of the truck is the same as an F450 pickup truck and with the boom he believes it is approximately 9' tall.

Mr. Bartnik indicated that it would be helpful if the Board members had pictures of this vehicle.

Mr. Clark asked if Mr. Llewellyn was called out in the middle of the night.

Mr. Llewellyn said that he has been called out approximately three times. He is on call 24/7 for a week at a time.

Mr. Kovacs asked if Comcast was aware of the restrictions of the Troy Zoning Ordinance.

Mr. Llewellyn stated that he had contacted his supervisor and was told that it was up to him to appear before this Board to gain approval to keep this vehicle at home.

Mr. Kovacs asked if Comcast had made any other provisions for the parking of this vehicle.

Mr. Llewellyn said that he could park it in Sterling Heights at the Comcast facility located on Van Dyke.

Mr. Kovacs asked where most of Mr. Llewellyn's calls were.

Mr. Llewellyn stated that the bulk of his jobs are in Macomb County, but that he could be called to go anywhere.

Mr. Lambert addressed the requirements for approval of commercial vehicles as dictated by City Council and asked Mr. Llewellyn if had looked into the possibility of building a garage, or adding to the existing garage.

Mr. Llewellyn stated that right now it was not financially feasible to add another accessory building and also stated that power lines run through his property which would make the addition of a garage difficult.

ITEM #6 – con't.

Mr. Kovacs asked who owned this truck and Mr. Llewellyn stated that Comcast owns the truck but it is his option to bring the truck home.

Mr. Kovacs said that it doesn't make sense because of the fact that Mr. Llewellyn does not own this vehicle.

Mr. Stimac explained that the Zoning Ordinance does not dictate the ownership of the vehicle, but rather the owner of the property. Mr. Kovacs said that he feels this is a very unusual situation.

The Chairman 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 objections on file.

Motion by Bartnik
Supported by Courtney

MOVED, to deny approval requested by Lary Llewellyn 475 Lovell for approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property.

- Comcast is asking permission to break the Ordinance and should be the petitioner on the request.

Mr. Bartnik stated that the reason he moved to deny this request is because he finds it offensive that Comcast requires the petitioner to bring this vehicle home rather than leave it at his work place.

Mr. Courtney stated that he believes that Comcast provides this vehicle to its employees so that they do not have to buy a second car. The bulk of the service coverage for the petitioner is in Macomb County.

Mr. Clark stated that he believes this vehicle is very well hidden. Mr. Clark also said that he has friends that have on-call jobs and he does see a problem with this vehicle. Mr. Clark also stated that he would like to see more pictures.

Mr. Bartnik said that Comcast is one of the largest corporations in the world and they should not be allowed to break the law. This is not the petitioner asking for approval it is Comcast.

Mr. Kovacs said that he agrees with what Mr. Bartnik is saying and is struggling with the vehicle in this area. Mr. Kovacs asked how far away the Comcast storage facility is.

ITEM #6 – con't.

Mr. Llewellyn stated that is approximately 7 or 8 miles and is located on Van Dyke near 15 mile.

Mr. Kovacs said that most people drive at least that far to get to work and does not believe that is a hardship. Mr. Kovacs also stated that he understands that Mr. Llewellyn is on call but thinks it is reasonable for Mr. Llewellyn to drive this distance to pick up his truck.

Mr. Llewellyn said that they are required to respond to an emergency situation within 30 minutes of the call and if it takes him longer to respond, that will be reflected at the time he receives his evaluations from Comcast.

Mr. Kovacs said that he understands where Mr. Bartnik is coming from. Comcast is the one asking the petitioner to break the law. Mr. Kovacs said that he would like to see this request postponed for thirty (30) days in order for the petitioner to either bring in a representative from Comcast or to bring in something in writing from Comcast.

Mr. Llewellyn said that he had spoken to his supervisor and was told that he was on his own regarding this appeal.

Mr. Courtney asked if Comcast requires their employees to bring their vehicles home.

Mr. Llewellyn said that he has the option to either bring it home or park it in the storage lot in Sterling Heights.

Mr. Ullmann stated that there is an alternative parking spot for this vehicle and believes this request is unreasonable. There are no Comcast people before this Board protecting their interest and believes this is Comcast's problem, not Mr. Llewellyn's.

Mr. Lambert asked how long Mr. Llewellyn has owned this home. Mr. Llewellyn stated that they have lived in Troy approximately four and one-half years. Mr. Lambert then asked if this vehicle has always been in this location and Mr. Llewellyn stated that it has.

Mr. Kempen stated that he believes Mr. Llewellyn has met the criteria listed as "C" and asked about alternative locations or adding a larger garage.

Mr. Llewellyn said that he had looked at building another garage but it is much too expensive.

Mrs. Llewellyn said that she was quite upset with this Board's reaction to this request as there are a number of very large recreational vehicles as well as other commercial vehicles parked in the area. Furthermore, there are a number of homes on this street that are not kept up.

ITEM #6 – con't.

Mr. Bartnik told Mrs. Llewellyn to call the Building Department to report these violations.

Vote on motion to deny this request.

Yeas: 2 – Ullmann, Bartnik

Nays: 5 – Kovacs, Lambert, Clark, Courtney, Kempen

MOTION TO DENY REQUEST FAILS

Motion by Bartnik

Supported by Kempen

MOVED, to grant Lary Llewellyn, 475 Lovell, approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property for a period of six (6) months.

- Petitioner has met the criteria listed as “B” and “C”.

Mr. Bartnik went on to say that the reason he recommended six (6) months is because he feels it is unconscionable that Comcast would ask an employee to do this. Mr. Bartnik also stated that he feels somebody should respond from Comcast.

Mr. Courtney said that he would like to see this request postponed until January to allow Comcast to clarify its position.

Mr. Motzny stated that it is at the Board's discretion to postpone this request.

Motion by Courtney

Supported by Kovacs

MOVED, to postpone the request of Lary Llewellyn, 475 Lovell for approval under Section 43.74.01 of the Troy Zoning Ordinance to store a commercial vehicle outside on residential property until the meeting of January 19, 2009.

- To allow the petitioner to obtain a letter from Comcast indicating the use of this vehicle.
- To allow the petitioner to bring in an estimate of the cost of constructing a garage.

Yeas: All – 7

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF JANUARY 19, 2009 CARRIED

ITEM #7 (ITEM #5) - VARIANCE REQUESTED. WALLACE HALEY, OF HALEY LAW FIRM PLC, 1890 E. SQUARE LAKE (proposed address), for relief of the Zoning Ordinance to construct a 120' high cellular phone antenna tower within 49' of the west property line where the site abuts residentially zoned property. Paragraph C of Section 20.25.01 requires that the setback of the tower from abutting residentially zoned or used property be at least five times the height of the structure, which would mean that this tower would be required to be at least 600' setback from residentially zoned property.

Mr. Stimac explained that the petitioner is requesting a variance to construct a new 120' high cellular phone antenna tower. Paragraph C of Section 20.25.01 requires that the setback of the tower from abutting residentially zoned or used property be at least five times the height of the structure, which would mean that this tower would be required to be at least 600' setback from residentially zoned property.

The petitioners are proposing to place this tower 49' from the west property line where the site abuts residentially zoned property. The adjacent property is currently developed and used as a religious facility.

This item first appeared before this Board at the meeting of November 17, 2009 and was postponed to allow the petitioner the opportunity to review the site for a possible alternate location farther east from the original proposal.

Mr. Stimac further stated that the petitioner had provided revised drawings indicating an alternative location behind the bowling alley which would result in a 208' setback from the west property line.

Mr. Haley was present and stated that they had met with the owner of the bowling alley and got permission to move this tower. They have moved it as far to the east as they could without blocking the existing driveway to the south. Mr. Haley also provided photo's indicating what this tower would like. Mr. Haley said that there are not any parcels in this area that would not require a variance. The setback is based on aesthetics and Mr. Haley believes this tower will fit in with the Master Plan. The setback to the Church building will be over 300' and the house on the church site will now have a setback of 500'. This is an unmanned, unlit facility and consistent with the type of use in this area. The tower will be the most visible at this time of year, but the "monopine" tower will fit in better with the trees in the area. There is no other location to place this tower and Mr. Haley believes this is the parcel that is least obtrusive.

Mr. Ullmann asked how this location was determined to be the best location available.

Mr. Haley stated that AT & T and other carriers look at an area and determine where there is a "hole" that would cause dropped calls, lack of service or blocked calls. This project was started approximately six or seven years ago.

Mr. Ullmann stated that he lives approximately one-half mile from this area and has not had any problems with dropped calls or coverage. Mr. Ullmann further stated that he

ITEM #7 – con't.

travels all over Michigan and does see towers placed every square mile. The service is acceptable in this area and Mr. Ullmann doesn't understand why towers are needed one mile apart.

Mr. Haley stated that urban areas have towers close together because there are a lot of users in the area. Growth is based on the types of use and not necessarily more users. People no longer use cell phones only in their cars but also within their homes. They may get very good coverage from one of the towers in the area. There are a number of other carriers that are interested in this site. There is a lot of traffic in this area and although you may be able to make a call early in the morning, that same call may fail later in the day.

Mr. Ullmann asked how many carriers were in the Bloomfield area. Mr. Haley mentioned a number of carriers and towers in and around Birmingham and Bloomfield.

Mr. Lambert asked what action was taken when they decided to put in a monopine tower versus a regular tower.

Mr. Haley stated that he had appeared before the Planning Commission and they stressed how important this site was and said that they were willing to work with the City and because of the conditions they wanted to do put the best possible tower in this location.

Mr. Lambert asked how a 120' tall tower would compare to the height of the trees in this area.

Mr. Haley said that the trees in this area are quite large and range from 35' in height to 75' in height.

Mr. Courtney asked if the height of the tower covers a larger area.

Mr. Haley said that that the height provides a certain amount of coverage. They want the tower higher than the trees so that there is no interference.

The Chairman opened the Public Hearing.

Mr. Stephon Bagne, an attorney speaking on behalf of Holy Trinity Romanian Orthodox Church stated that this Church was founded in 1970 and has 300 families that attend this parish. The Pastor lives on the property and his home is within the 600' setback required by the Ordinance. The Church is very concerned about the location of this tower and is actually considered re-locating both the Church and the Pastor's home based on health concerns. This Church could have had this tower on their property but because of these concerns they decided not to. There are a number of summer camps, summer school and a playground located at the back of the Church. The Ordinance

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requires a 600' setback and there is no indication that this tower is needed. Mr. Bagne said that he travels all over the City and has T-Mobile as his cell phone provider and has never had a problem with dropped or blocked calls. Mr. Bagne also stated that he does not believe it is up to this Board to try and create an even playing field among cell phone competitors. Mr. Bagne's client is very concerned as children are very susceptible to the effects of these towers. The existence of this Church fits in with the Master Plan and the people that live in this City should not have to deal with the detrimental effects of this tower.

Mr. Dumitru Puiu, Council President of the Church was present and spoke about the negative effects of people driving and either talking on cell phones or texting. Mr. Puiu gave a few examples of accidents that were caused because of the use of cell phones. Mr. Puiu went on to explain that they have to raise \$3,000.00 a month to pay the mortgage and other expenses involved with the Church. Mr. Puiu said that they pray, socialize and have services in the evenings. The area behind the Church has a lot of birds and people come and take pictures of them.

Mr. Constantin Marandici, a member of the Church was present. Mr. Marandici stated that he has a master's degree in engineering and stated that the towers in Troy are very dangerous as they emit a low level of radiation. Mr. Marandici had reports substantiating this claim. Mr. Marandici further stated that this is a very serious problem and the Board should follow the 600' setback.

Mr. Kovacs asked if Mr. Marandici had a cell phone and he replied that he did. Mr. Kovacs then asked why Mr. Marandici would keep this cell phone when he has so many concerns about the effects on his health. Mr. Marandici said that he only uses this phone for emergencies.

Father Calin Barbolovici, the Parish Priest was present and stated that he and his family are subscribers to AT & T. Father Barbolovici said that he does not believe another tower is needed in this area because the coverage is so good, both inside and outside his home. Father Barbolovici is against this request.

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

Mr. Kovacs expressed concern regarding this request, because there have not been any complaints regarding coverage or dropped calls in this area and believes this tower is not needed.

Mr. Haley said that he did not have a record of dropped or blocked calls and he would be willing to obtain those records if the Board wanted more information.

Mr. Courtney stated that he makes calls all times of the day and has never had dropped calls. Mr. Courtney said that he would like to see more information supporting this

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request. Mr. Courtney also asked if the Planning Commission or the petitioner decided that the monopine tower would be better in this location.

Mr. Haley stated that they went to the Planning Commission and discussed the idea of what they were going to do. They supplied pictures of different types of towers and the Planning Commission felt that because of the wooded nature of this site the monopine tower would be more aesthetically pleasing.

Mr. Bartnik asked if there was an impact to the blue herons from this tower. Mr. Haley said that the tower would not have an impact to the heron rookery.

Mr. Bartnik asked if one of the requirements for this tower was an environmental impact study. Mr. Haley stated that there is a consulting firm that does that and he is not sure if that has been done.

Mr. Kempen asked if there was any other type of technology available to provide greater service rather than a 120' tower.

Mr. Haley said that there are other options but they only provide minimum coverage. AT & T has looked at them but feels that this is the best solution.

Mr. Kempen asked about the zoning requirement regarding the setback of the tower.

Mr. Stimac explained that this Ordinance went to City Council in 1998 with the recommendation from staff and the Planning Commission that the setback be equal to the height of the tower. At that meeting City Council made a motion to amend that recommendation and stated that the setback should be equal to 5 times the height of the tower.

Mr. Clark said that he feels the petitioner should bring back more information.

Mr. Stimac stated that it is not the job of this Board to grant variances that have the effect of a change to the Ordinance. If the Board feels that the Ordinance should be changed then an application should be made to the Planning Commission, who will then review it and recommend it to City Council.

Mr. Courtney stated that he believes the distance was increased because people were afraid that the towers would fall over.

Mr. Kovacs asked what the setback was to commercial property. Mr. Stimac said that the restrictions apply to property that is residentially zoned or used as residential property.

ITEM #7 – con't.

Motion by Bartnik
Supported by Ullmann

MOVED, to deny the request of Wallace Haley, of Haley Law Firm, PLC, 1890 E. Square Lake for relief of the Zoning Ordinance to construct a 120' high cellular phone antenna tower within 208' of the west property line where the site abuts residentially zoned property. Paragraph C of Section 20.25.01 requires that the setback of the tower from abutting residentially zoned or used property be at least five times the height of the structure, which would be a 600' setback.

- Petitioner has not demonstrated the need for more coverage necessitating the tower.

Mr. Kempen said that the petitioner has indicated that there is enough coverage now but as the use increases there may not be enough coverage in the future.

Mr. Lambert stated that in an ideal world there would be plenty of coverage without any towers. Mr. Lambert said that he would like to see more concrete data before making a decision regarding this request and would like to see it postponed.

Mr. Ullmann stated that the petitioner has failed to demonstrate a hardship. Right now there is adequate coverage and does not see how the Board can grant a variance in case there is a problem in the future.

Mr. Courtney said that he would like to see more data regarding dropped and blocked calls including days and times. Mr. Courtney would like to see this item postponed.

Mr. Stimac reminded Board members that at the last meeting Mr. Bartnik had made a motion to approve this request and that motion was postponed until tonight's meeting. That is the current standing motion.

The Chairman ruled the motion to deny out of order as there was a standing motion for approval that was postponed from the last meeting.

Motion by Courtney
Supported by Kovacs

MOVED, to postpone the request of Wallace Haley, of Haley Law Firm, PLC, 1890 E. Square Lake for relief of the Zoning Ordinance to construct a 120' high cellular phone antenna tower within 500' of the west property line where the site abuts residentially zoned property. Paragraph C of Section 20.25.01 requires that the setback of the tower from abutting residentially zoned or used property be at least five times the height of the structure, which would be a 600' setback until the meeting of January 19, 2010.

ITEM #7 – con't.

- To allow the petitioner to provide more data regarding dropped and blocked calls, including days and times.

Yeas: All – 7

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF JANUARY 19, 2010 CARRIED

Mr. Lambert asked if the City had a consultant that could provide any impartial review on the information regarding this request.

Mr. Stimac said that he was not aware of such a consultant, but if any information is obtained it will be distributed to Board members.

Mr. Clark asked if the Parish Council could also provide any additional information to the Board and was told that if any new information was provided it would be distributed to Board members.

The Board of Zoning Appeals meeting adjourned at 9:17 with the Chair wishing everyone the happiest of holidays.

Glenn Clark, Chairman

Pam Pasternak, Recording Secretary