

The Board of Zoning Appeals meeting was called to order by Chair Clark at 7:32 p.m. on February 16, 2010, in the Council Chamber of the Troy City Hall.

### ROLL CALL

Present:

Michael Bartnik  
Glenn Clark  
Kenneth Courtney  
Donald L. Edmunds  
Edward Kempen  
David Lambert

Absent:

Matthew Kovacs

Also Present:

Paul Evans, Inspector Supervisor  
Allan Motzny, Assistant City Attorney  
Kathy L. Czarnecki, Recording Secretary

### EXCUSE ABSENT MEMBERS

**Resolution # BZA 2010-02-001**

Motion by Bartnik  
Support by Edmunds

**MOVED** to excuse Mr. Kovacs from the meeting.

Yes: All present (6)  
Absent: Kovacs

**MOTION CARRIED**

### APPROVAL OF AGENDA

Mr. Evans requested to revise the agenda as follows:

- 1) Remove Agenda item #4 from Renewal Items, to accommodate public comment.
- 2) No action required on Agenda item #7; the item will be adjourned to a future meeting date.

Chair Clark designated Agenda item #4 Boys & Girls Club of Troy, 3670 John R, as Agenda item #6 A; and the variance request of Naveed Khan, 2735 E. Big Beaver, as Agenda item #6 B.

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF JANUARY 19, 2010**

Mr. Bartnik requested the draft minutes of January 19, 2010 to reflect the following revisions:

Page 8, third paragraph, fourth sentence to read (revisions noted in italics):

Mr. Bartnik also stated that it is the *constitutional* right of the property owner to use their property any way they can *within the law* and can sell or lease part of their property.

**Resolution # BZA 2010-02-002**

Motion by Bartnik

Support by Courtney

**MOVED**, To amend the minutes as indicated and approve the minutes of the January 19, 2010 meeting as amended.

Yes: Bartnik, Clark, Courtney, Kempen, Lambert

Abstain: Edmunds

Absent: Kovacs

**MOTION CARRIED**

Chair Clark introduced Donald Edmunds, newly appointed Planning Commission representative on the Board; and new City staff support from the Planning Department, Paul Evans, Inspector Supervisor, and Kathy Czarnecki, Recording Secretary.

**RENEWAL ITEMS**

**ITEM #2 – APPROVAL OF ITEMS #3 and #5**

**ITEM #3 – RENEWAL REQUESTED. GOOD DEVELOPMENT HOLDINGS, 4755 ROCHESTER**, for relief of the 6’ high masonry screen wall required along the north and west property lines where the property abuts residentially zoned property.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property

**ITEM #5 – RENEWAL REQUESTED. VFW POST, 2375 E. MAPLE**, for relief to maintain an existing legal non-conforming building and use, and relief of the 4’6” high masonry screen wall required adjacent to off-street parking.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property

**Resolution # BZA 2010-02-003**

Motion by Lambert

Support by Kempen

**MOVED**, To approve the renewal requests for item #3 and item #5 in accordance with the suggested Resolutions in the Agenda Explanation.

*Grant* Good Development Holdings, 4755 Rochester, a three (3) year renewal of a variance for relief of the 6' high masonry screening wall required along the north and west property lines where the property abuts residentially zoned property.

*Grant* VFW Post, 2375 E. Maple, a three (3) year renewal of relief to maintain an existing legal non-conforming building and use, and relief of the of the 4'6" high masonry screening wall required adjacent to off-street parking.

Yes: All present (6)

Absent: Kovacs

**MOTION CARRIED**

**ITEM #6 A – RENEWAL REQUESTED. BOYS & GIRLS CLUB OF TROY, 3670 JOHN R**, for relief of the 4'6" high masonry screen wall required along the east and north property lines between the parking lot and the adjacent residentially zoned property.

Mr. Evans presented a summary of the renewal request. He indicated the variance renewal last appeared before the Board in February 2007 and was granted relief for a period of three (3) years. A condition of the relief was to allow the construction of a berm in lieu of the required masonry screen wall. Mr. Evans indicated that uses surrounding the subject renewal request have not changed.

Mr. Evans reported that the City Engineer responded to a site drainage complaint received from residents immediately adjacent to the north of this property at 3710 John R. The City Engineer reported the berm on the Boys & Girls Club property was constructed correctly, and there is no apparent violation or conflict with the City Code. The City Engineer said they would continue to work with representatives of the Boys & Girls Club and the property owners to the north to amicably resolve the matter.

Mr. Bartnik asked where the berm and/or alternate screening is suppose to be on the east side of the property, and if screening is required on the south side of the property.

Mr. Evans replied the Zoning Ordinance requires a screen wall to be located in areas adjacent to a parking lot. The renewal request is for relief of the required masonry screen wall on the north and east property lines, adjacent to the parking lot. He indicated there is no screening required on the south side. He said the BZA record reflects that a berm was to be constructed in lieu of a wall wherever there is a wall required.

Steve Kosuda, Board President of the Boys & Girls Club, 2970 John R, was present. Mr. Kosuda said the Boys & Girls Club and the school district agreed not to construct a berm or screen wall on the east side. He explained this allows visible site lines to the children, who come directly from the school to the club and use the area as a playground during the summer. Mr. Kosuda said the agreement between the two parties was part of the original variance request, and the site plan was designed accordingly.

Mr. Bartnik requested copies of the meeting minutes that address the original variance and conditions.

Mr. Evans referred to a February 28, 2006 letter from the City to the applicant in which the excerpt of the meeting minutes was addressed. The excerpt indicates relief of the required 4'6" high masonry screen wall along the east and north property lines between the parking lot and the adjacent residentially zoned property was granted for a period of one (1) year, and the one (1) year time limit applies to the berm in lieu of the wall. The resolution also addresses the aesthetics and maintenance of the berm.

Discussion followed on:

- Applicable minutes of Planning Commission and City Council meetings.
- Pertinent information on record for renewal requests (i.e., previous motions, meeting minutes, agreements between parties).
- Wall/alternate screening not required on the south side because there is no parking lot; fenced retention pond currently exists on the south side.
- Boys & Girls Club and City administration working with property owner to the north to resolve drainage concern.
- Professional survey of property conducted by residents to the north. Results indicate flat spot at the bottom of the berm and inappropriate pitching of water.
- Offer by Boys & Girls Club to trench along the berm edge and funnel water to the drainage sewer at the back of the property, when warmer weather sets in.

Chair Clark opened the floor for public comment.

Andrea Witkowski of 3710 John R, Troy, was present. Ms. Witkowski is the property owner to the north of the Boys & Girls Club. Ms. Witkowski addressed the drainage problem on her property. She stated that the flooding began with the construction of the berm on the Boys & Girls Club property. Ms. Witkowski discussed the matter with Steve Toth of the Boys & Girls Club, but she has not heard anything from the organization since the fall. Ms. Witkowski also expressed concern with headlights from the vehicles in the Boys & Girls Club parking lot shining into her house.

Ronald Harris of 3710 John R, Troy, was present to speak on behalf of the Witkowski family. Mr. Harris addressed the existing drainage problem and the potential that a screen wall would resolve the drainage problem. Mr. Harris distributed to the Board members photographs of the property, showing the property before and after the construction of the berm and existing flooding. Mr. Harris said the headlights shining into the Witkowski house and the noise from the children provide no privacy for the Witkowski family.

Chair Clark asked how the Witkowski family would like the matter handled.

Mr. Harris questioned if a screen wall would be a more appropriate resolution to the existing drainage problem.

Mr. Kosuda said the Boys & Girls Club wants to be a good neighbor and expressed willingness to resolve the matter. He addressed concern with the potential cost to repair the drainage problem. Mr. Kosuda said an alternative solution might be to get volunteers to appropriately trench the berm, once the weather breaks.

The following items were discussed:

- Height of the screen wall and appropriate landscaping to provide privacy.
- Creative alternatives to address existing flooding and privacy concerns.
- Original intent of the berm not being met.
- Action to table the matter; City administration to work with Boys & Girls Club on alternative options and clear understanding of Board's expectation.
- Communication between Boys & Girls Club and the Witkowski family to discuss alternative options.
- City Engineer report citing that the berm is satisfactorily constructed.
- Potential expense to Boys & Girls Club.
- The Boys & Girls Club position that they are not at fault.
- Normal drainage flow on the property.

Chair Clark closed the floor for public comment.

**Resolution # BZA 2010-02-**

Motion by Courtney

Support by Edmunds

**MOVED**, To table to the March 16, 2010 Board of Zoning Appeals meeting and that the Boys & Girls Club provides to the City by the Thursday prior to the meeting further information and its plan as relates to the drainage problem.

**Discussion on the motion on the floor.**

Mr. Bartnik addressed the positions of both parties and indicated the Board is trying to accomplish an agreement where both parties are satisfied and the matter handled in a procedural manner. In order to make a decision on the matter, Mr. Bartnik requested that the Board is provided with the appropriate minutes of meetings conducted by the Planning Commission, City Council and/or the Board of Zoning Appeals, as well as the letter from which Mr. Evans quoted the relevant motion; further, that the Board is provided with existing drawings and elevations before and after the construction of the berm.

Mr. Kempen suggested to table the matter for sixty (60) days in order to provide enough time for both parties to gather information.

Motion to amend the motion on the floor.

**Resolution # BZA 2010-02-004**

Motion by Kempen  
Support by Bartnik

**MOVED**, To amend the motion on the floor to table the matter to the regularly scheduled April 2010 Board of Zoning Appeals meeting.

Yes: All present (6)  
Absent: Kovacs

**MOTION CARRIED**

Discussion.

Mr. Lambert addressed the original motion as presented. He said it sounds like the onus is placed on the Boys & Girls Club only, and wonders if that is appropriate in light of the City Engineer report stating the Boys & Girls Club is in complete compliance. Mr. Lambert suggested that both parties meet and come back to the Board with an agreed-upon resolution to the problem within sixty (60) days.

Motion to amend the original motion, as amended.

**Resolution # BZA 2010-02-005**

Motion by Lambert  
Support by Edmunds

**MOVED**, To amend the motion that both parties to this particular dispute come back to this Board with a proposed solution, and all information be filed with the City administration by the Thursday before the April 2010 regularly scheduled Board of Zoning Appeals meeting.

Yes: All present (6)  
Absent: Kovacs

**MOTION CARRIED**

Vote on the original motion, as amended, and reads as follows:

**Resolution # BZA 2010-02-006**

Motion by Courtney  
Support by Edmunds

**MOVED**, To table to the regularly scheduled April 2010 Board of Zoning Appeals meeting, and that both parties to this particular dispute come back to this Board with a proposed solution, and all information and its plan as relates to the drainage problem be filed with the City administration by the Thursday before the April 2010 Board of Zoning Appeals meeting.

Yes: All present (6)  
Absent: Kovacs

**MOTION CARRIED**

City administration will provide copies of the Engineering Department memorandum dated January 27, 2010 and internal electronic message dated January 29, 2010 to the Boys & Girls Club and the Witkowski family.

### **PUBLIC HEARINGS**

**ITEM #6 B – VARIANCE REQUESTED, NAVEED KHAN, 2735 E. BIG BEAVER**, for relief of the ordinance to allow repairs to a nonconforming structure that has been destroyed to an extent of more than 60 percent of its replacement cost. Zoning Ordinance Section 40.50.04 (B) does not allow nonconforming structures destroyed to an extent of more than 60 percent of its replacement costs, exclusive of the foundation, to be reconstructed.

Mr. Evans presented a summary of the renewal request. Mr. Evans noted the petitioner's single family home suffered interior water damage resulting from freezing pipes. The home was built in 1951 and the front yard setback is 38.5 feet. Mr. Evans stated Section 10.60.03 of the Zoning Ordinance requires a 50 foot setback from a major thoroughfare; thus the home has a nonconforming setback. An estimated repair cost prepared by the contractor is approximately 71.5 percent of the structure's replacement costs, excluding the foundation, and does not entail any addition or enlargement of the structure. Mr. Evans confirmed that the future right of way has already been taken from the subject property.

Mr. Evans said the Planning Department received one electronic communication on the variance request. The communication from Jim Hytinen (unknown address) expressed opposition to the requested variance.

The petitioner, Naveed Khan, 2735 E. Big Beaver, was present. A contractor from Young and Sons Construction, 24657 Halsted Road, Farmington Hills, was also present. The contractor stated there is no structural damage to the house.

Mr. Khan, who owned the house for over three years, said he did a lot of work on the house such as new concrete in the front, new garage roof, interior painting and new windows. Mr. Khan said the exterior of the house is in good shape. Mr. Khan said the damage occurred while he was on vacation during the New Year holiday season.

Mr. Edmunds questioned if replacement of the house would be covered under the petitioner's insurance policy. He noted, if so, the house could be rebuilt at no cost to the petitioner and would conform to the required setbacks.

Mr. Khan said the insurance company is waiting to hear the decision of the Board.

The contractor said the petitioner's insurance does not cover replacement cost of the house. He said the policy covers the cost of repairs only, even if the Board denied the variance.

Mr. Bartnik questioned the type of damage and location of damage that occurred.

The contractor explained that a copper pipe in the attic froze and resulted in the upper, main and basement floors to flood the whole house.

Mr. Khan said he came home from his vacation and found his home flooded. He immediately called 911 and was cautioned by the responding police officer to turn off all the power because the situation was dangerous.

Mr. Edmunds asked what history there is in granting variances for nonconforming structures destroyed to an extent of more than 60 percent of its replacement cost.

Mr. Evans replied that he did not research that in anticipation of this meeting.

Mr. Courtney addressed the setbacks of abutting homes on Big Beaver. He said there are no future plans to expand Big Beaver, and it does not seem worthwhile to require the subject house to be set back 12'.

Mr. Khan noted neighboring houses, such as 2689 E. Big Beaver, are closer to Big Beaver than his home.

#### PUBLIC HEARING OPENED

No one was present to speak.

#### PUBLIC HEARING CLOSED

There was discussion on the calculations used to arrive at the replacement cost.

#### **Resolution # BZA 2010-02-007**

Motion by Bartnik

Support by Edmunds

**MOVED**, To approve the variance. This particular piece of property is nonconforming in terms of front yard setback. Other homes in the vicinity along Big Beaver have similar or less front yard setback, the setback is not a major problem and it would be an unfair burden to the property owner if he would not be permitted to make the repairs that are contemplated. It would be an unfair restriction on his use of property. The variance allows for the continued legal lawful use of his property. The request of variance is specifically limited to this piece of property and is not contrary to the purpose of the Zoning Ordinance.

Yes: All present (6)

Absent: Kovacs

#### **MOTION CARRIED**

**ITEM #7 – VARIANCE REQUESTED, JAMES GREEN, 2325 KINGSBURY**

Item adjourned to a later date.

**ITEM #8 – VARIANCE REQUESTED, NORM JOHNSON, 1090 ROCHESTER**, for relief relating to expanding the building by erecting a canopy over an existing restaurant outdoor seating area. Section 30.20.09 of the Zoning Ordinance requires the canopy to be set back 50 feet from the proposed Rochester Road right of way line. A portion of the canopy will extend 4.5 feet into the proposed right of way. Additionally the existing building is nonconforming due to its distance from the proposed Rochester Road right of way line. Section 40.50.04(A) of the Zoning Ordinance prohibits the expansion of a nonconforming structure in a way that increases its nonconformity.

Mr. Evans presented a summary of the renewal request. The existing building extends into the future Rochester Road right of way. He said the size of the proposed canopy is 14' x 27' and has no sides. He addressed drawings that showed views of the canopy from the south and from Rochester Road. The proposed canopy will be further from Rochester Road than the existing building. The outdoor dining area was granted approval by the BZA on June 17, 2008.

Mr. Edmunds questioned the size of the deck in relation to the size of the proposed canopy.

The petitioners, Norm and Carla Johnson of 1090 Rochester Road, were present. Mr. Johnson explained that the canopy would cover approximately one-third of the outdoor patio. The canopy would provide protection from the hot summer sun but not take away from the outdoor feel of the patio.

Mr. Edmunds said one of the conditions at the time approval was granted for the outdoor patio was to provide additional plantings in the dining area. He asked the petitioner for an explanation as to why there are no such plantings.

Mr. Johnson addressed the landscaping. He said the arborvitae planted last year did not survive the summer sun. Mr. Johnson said they sought advice from a local nursery, and they intend to plant appropriate landscaping this spring that will survive the direct sun.

Mr. Bartnik noted there are two nurseries in the City from which Mr. Johnson could get advice.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Chair Clark announced the Planning Department received one outside communication from the applicant, Carla Johnson, relating to the variance request.

**Resolution # BZA 2010-02-008**

Motion by Lambert

Support by Courtney

**MOVED**, To approve the variance with the preliminary findings that the variance:

- Would not be contrary to public interest.
- Does not permit establishment of a prohibited use within the zoning district.
- Does not cause an adverse affect to properties in the immediate vicinity or zoning district.
- Relates only to the property described in the application for variance.

With a special findings that:

- Conforming is unnecessarily burdensome.
- Variance is not excessive.
- Practical difficulties are the unusual characteristics of the property, primarily its configuration with Rochester Road.

Yes: All present (6)

Absent: Kovacs

**MOTION CARRIED**

**OTHER BUSINESS**

Mr. Evans addressed the variance request of James Green, 2325 Kingsbury (adjourned Agenda item #7). He announced the petitioner is requesting the Board's consideration to call a Special meeting; a suggested date of the Special meeting is March 11, 2010. Three members advised they could attend, a fourth indicated he would know tomorrow. Four members would be required to conduct business.

Mr. Evans announced City administration is moving forward with providing electronic versions of the BZA agenda and meeting packet. Mr. Evans asked for insight from the members.

Mr. Courtney said he would like to continue to receive hard copies because he does not have a computer. He indicated that hard copies are convenient when conducting site visits.

Chair Clark addressed costs associated with paper agenda and meeting packets. Chair Clark said hard copies are convenient when conducting site visits.

Mr. Bartnik requested copies of the actual applications be inclusive of the agenda packet. He asked if the Board members would have any input on the direction to go paperless.

Mr. Edmunds addressed the smooth transition in which Planning Commission went paperless.

Mr. Evans addressed the following as relates to going paperless:

- City-provided laptops at meetings.
- Reduction of costs related to agenda preparation and distribution.
- Digital submissions could be required from petitioner.
- Non-digital information could be easily converted to digital by staff.

Mr. Evans thanked the Board for their feedback.

The Board of Zoning Appeals meeting adjourned at 9:11 p.m.

Respectfully submitted,

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Glenn Clark, Chair

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Kathy L. Czarnecki, Recording Secretary

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