The Board of Zoning Appeals meeting was called to order by Chair Lambert at 7:30 p.m. on October 19, 2010, in the Council Chamber of the Troy City Hall.

1. ROLL CALL

Present:
Michael Bartnik
Kenneth Courtney
Donald L. Edmunds
William Fisher
A. Allen Kneale
David Lambert

Absent:
Glenn Clark

Also Present:
Paul Evans, Zoning and Compliance Specialist
Allan Motzny, Assistant City Attorney
Kathy L. Czarnecki, Recording Secretary

2. APPROVAL OF MINUTES

***Resolution # BZA 2010-10-044***
Moved by Edmunds
Seconded by Courtney

**MOVED**, To approve the September 21, 2010 Regular and Study Session meeting minutes as published.

Yes: All present (6)
Absent: Clark

**MOTION CARRIED**

3. POSTPONED ITEMS

A. **VARIANCE REQUEST, JOSEPH MANIACI, MONDRIAN PROPERTIES WESTON DOWNS LLC, VACANT SITES AT 694, 702 AND 710 SEABISCUIT AND 3901, 3909, 3925, 3933 AND 3941 APPALOOSA (WESTON DOWNS)** – In order to construct 8 detached condominium units, a variance to allow the minimum distance between buildings to be no less than 10 feet. Chapter 31.30.00 (L) of the Zoning Ordinance allows no less than a 20 foot minimum distance between buildings.

Mr. Evans announced receipt of written correspondence from the applicant requesting to withdraw the item. Mr. Evans said the applicant would be required to re-apply and proper noticing would be required in accordance with State law should the applicant wish to pursue the variance in the future. He indicated it would be appropriate for the Board to entertain a motion to accept the withdrawal request.

***Resolution # BZA 2010-10-045***
Moved by Courtney
Seconded by Fisher

***MOVED***, To accept the applicant's withdrawal request.

Yes: All present (6)
Absent: Clark

B. **VARIANCE REQUEST, YACOUB MURAD, VACANT LOT ADJACENT TO AND EAST OF 734 AMBERWOOD** – In order to build a new house, 1) a 5 foot variance from the required 10 foot side yard setback, and 2) a 15 foot variance from the required 45 foot rear yard setback.

Mr. Evans announced receipt of a letter from the applicant requesting to withdraw the item. Mr. Evans said the applicant would be required to re-apply and proper noticing would be required in accordance with State law should the applicant wish to pursue the variance in the future. He indicated it would be appropriate for the Board to entertain a motion to accept the withdrawal request.

***Resolution # BZA 2010-10-046***
Moved by Courtney
Seconded by Edmunds

***MOVED***, To accept the applicant's withdrawal request.

Yes: All present (6)
Absent: Clark

4. HEARING OF CASES

Chair Lambert announced that four (4) affirmative votes are required for approval to grant or deny a request. He indicated that because one Board member is absent at tonight's meeting, the Applicant has the option to request their item be postponed to a future date certain where a full Board might be present.

A. **REVIEW AND APPROVAL REQUEST, ROBERT AND GENOVEVA RASCOL, 635 HARTLAND** – A request to allow the temporary outdoor parking of a commercial vehicle (stake truck) in a one family residential district.

The applicant, Robert Rascol, was present. Mr. Rascol requested to postpone the request to the November 16, 2010 regularly scheduled meeting.

Mr. Evans confirmed that notice of this Public Hearing was given in accordance with the State law and the Zoning Ordinance, and that further notice is not required should the Board grant postponement to a date certain.

***Resolution # BZA 2010-10-047***
Moved by Courtney
Seconded by Kneale

***MOVED***, To postpone the item to the November 16, 2010 Regular meeting.

Yes: All present (6)
Absent: Clark

**MOTION CARRIED**

B. **VARIANCE REQUEST, DAVID J. ZABLOCKI, 3920 CHESTNUT HILL COURT** – In order to enlarge the existing deck so that it is 21 feet from the rear property line, 1) a 9 foot variance to the requirement that unenclosed decks may extend into the required rear yard setback by no more than 15 feet, and 2) a 4 foot variance to the requirement that the unenclosed deck be set back at least 25 feet from the rear property line.

The applicant, David Zablocki, was present. Mr. Zablocki indicated he would like the Board to hear his request tonight, acknowledging his right to postpone due to there not being a full Board.

Mr. Evans gave a brief report on the proposed variance request with respect to its location and zoning of adjacent properties and addressed the requested setback variances. He reviewed the photographs submitted by the applicant.

Chair Lambert noted the application indicated the primary reason for the variance request is a safety concern for his children in relation to the slope of the pond. He asked if there are any other steps legally that the applicant could take to address the safety concerns, such as filling in the pond or putting up a fence.

Mr. Evans said the applicant would be allowed to put up a six-foot high fence along the rear and side property lines.

Mr. Bartnik said it appears from the photographs that the deck is already under construction.

Mr. Evans agreed, and said the applicant would address that.

Mr. Zablocki said he would like to expand the existing deck for the safety of his children when they are outside. He addressed concerns with the lot elevations, the natural pond owned by his neighbor and the Rouge River to the south. Mr. Zablocki confirmed that construction of the deck is in progress. He voluntarily stopped the project when he heard by word of mouth that the City requires a permit, and it is his intent to comply with City requirements. Mr. Zablocki stated his neighbors are supportive of the project because they believe the deck will add value to the neighborhood. Mr. Zablocki noted documentation from neighbors in support of the

deck is on file. Mr. Zablocki addressed the deck design and appearance, and its relation to the sight line of his children when they are outside.

There was discussion on how to redesign the deck so that it might fit within the required setbacks. The existing deck is approximately 10 feet deep at its maximum depth. The deck expansion would be at the same elevation and blend into the existing deck. It was determined that the existing deck could be lengthened by about 7 feet maximum and still be within the zoning requirements.

Mr. Edmunds asked the applicant to address the practical difficulty with the land that necessitates the requested variance.

Mr. Zablocki addressed the layout of the property; the elevation and slope variations, the pond, the Rouge River, the existing walkout basement and sight distance to keep children in view. He said installing a fence along the rear property line (263') would be a financial challenge, as well as taking away the beauty of the lot. Mr. Zablocki indicated the existing berm is necessary to prevent potential flooding problems. Mr. Zablocki said they moved into the house in August of this year, and they believe the deck would add value to their home as well as to neighboring homes.

Mr. Motzny stated the City Ordinance as well as the Zoning Enabling Act does not allow the Board to grant a variance based solely on financial considerations, but he noted the Board can consider financial information as relates to other determinations made under the Ordinance.

Mr. Kneale asked if the Board can consider the impact of an aesthetic issue to the property as part of its determination.

Mr. Motzny replied that a portion of the City Ordinance allows the Board to consider environmental impacts; for instance, a practical difficulty based on a significant natural feature that would be negatively affected.

Mr. Evans confirmed that the same dimensional setback requirements would apply if a patio at ground level were proposed.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted that written correspondence from three neighbors in support of the variance request is on file.

PUBLIC HEARING CLOSED

Discussion continued on modifications to the deck design.

***Resolution # BZA 2010-10-048***
Moved by Bartnik
Seconded by Edmunds

***MOVED***, To deny the variance request.

*Special Findings:*
- There is not a practical difficulty that runs with the land. It is a self-created problem as the property has been purchased within the last several months and a matter of which the applicant should have exercised due diligence prior to buying.
- There are significant natural features that would be negatively impacted if the variance were granted; namely, the pond and the Rouge River are both natural features which should be preserved. In this instance, there would be some encroachment onto the aesthetic view of those features.

Discussion on the motion on the floor.

Mr. Courtney said he does not see the deck as a detriment to the pond or the Rouge River. He is not sure that one can see the Rouge River from the deck unless the trees are bare, and he believes the pond is located too far away for any negative impact.

Mr. Bartnik said that although he wants people to move into Troy and buy beautiful pieces of property, from viewing the photographs provided by the applicant, it appears the deck would extend out into the visual area of the pond and interfere with the natural features of the pond.

Mr. Zablocki said they took into consideration the pond, the Rouge River and the differences in elevations when they bought the house.

Mr. Zablocki further discussed the deck dimensions and photographs. He voiced the support of his neighbors to build an aesthetically pleasing deck. Mr. Zablocki said the deck would not impact any view of the water, nor interfere with visual sight line of the water and pond from neighboring properties. He addressed the elevation issues and said they cannot be resolved by fill.

Discussion continued on alternative ways to expand the deck within the parameters of the Zoning Ordinance:
- Expand width of existing deck in other locations.
- Construct deck along the entire rear width of the house.
- Reconfigure stairs.

Mr. Kneale commended the applicant in following through with City regulations. Mr. Kneale said he does not believe there is an aesthetic impediment to the Rouge River, the pond or the scenic nature of the trees. He believes there are other options the applicant could consider to build a deck without getting a variance from the City.

Mr. Edmunds said the applicant has not demonstrated a practical difficulty with the land. He said the applicant purchased the property knowing that with two small children there always is a safety concern with a pond, and putting up a temporary fence is an alternative.

Mr. Courtney agreed that there appears to be no practical difficulty with the land.

Chair Lambert indicated he would be voting no on the motion to deny the request. Chair Lambert addressed what he sees as practical difficulties with the land; the unusual configuration of the property and the unusual slope in the back yard. He would like to see the applicant consider alternative modifications to the deck design.

Vote on the motion on the floor.

Yes: Bartnik, Courtney, Edmunds, Fisher, Kneale
No: Lambert
Absent: Clark

**MOTION CARRIED**

5. COMMUNICATIONS

None.

6. PUBLIC COMMENT

There was no one present who wished to speak.

7. MISCELLANEOUS BUSINESS

***Resolution # BZA 2010-10-049***
Moved by Courtney
Seconded by Fisher

**MOVED**, To excuse Member Clark from attendance at this meeting.

Yes: Courtney, Lambert
No: Bartnik, Edmunds, Fisher, Kneale
Absent: Clark

**MOTION FAILED**

Mr. Motzny addressed the following questions posed by Mr. Edmunds, as relates to the granting/denial of commercial vehicle appeals:

- Can and/or should the BZA consider financial hardships in making a determination?

  Mr. Motzny: *Under the Zoning Ordinance, it is indicated that in determining whether or not to approve the temporary parking of a commercial vehicle, except for the specific provisions relating to commercial vehicles, the matter should be considered like any other variance request. A variance cannot be granted based on a financial hardship alone. However, that does not mean that financial implications cannot be considered. In determining whether to grant a commercial vehicle request, this Board must determine whether alternatives such as another storage area or building a garage is practical or feasible. In my opinion, if someone presents financial information relating to finding an alternative place to locate a vehicle, I think it is appropriate for the Board to consider financial information as far as the cost involved or the distance involved in making a determination whether or not the alternatives are practical or feasible.*

- Is there any limit as to how many times a permit can be granted?

  Mr. Motzny: *The Zoning Ordinance does not state a limit on the number of times one can apply for a commercial vehicle temporary use. I think the intent of the Ordinance is that one could apply again after an approval lapses. Arguably Section 43.74.02 can be interpreted to mean that the Board may only grant a temporary approval for up to two years so that after the two years have elapsed, one cannot re-apply. However, this Board has the authority to make its own interpretation in administering the Zoning Ordinance, so if that question came up, this Board could interpret that Ordinance as it deems appropriate.*

- What constitutes evidence that a person seeking a permit has contacted an alternate secure storage for the vehicle?

  Mr. Motzny: *There is no clear answer. In those cases where our office is required to defend in Circuit Court a Board of Zoning Appeals decision, we have to show the decision is supported by substantial, competent and material evidence on the record. Such evidence may include testimony from the applicant that indicates practical and feasible alternatives to store a commercial vehicle were researched. I do not believe swearing-in the applicant is necessary, as long as the information offered in support of the request is part of the public record. I think it would be helpful to give an applicant a list of local storage areas from which quotes can be obtained and presented to the Board so it can use that information in determining whether efforts by the applicant reveal there are no feasible alternative locations for parking of the subject commercial vehicle.*

- What is the City's notification procedure for renewals of Commercial Vehicle Permits?

  *Mr. Motzny: Under the Ordinance there is no procedure for a renewal of a commercial vehicle request. If you are granted permission to store a commercial vehicle, once that initial period has expired, it is my opinion you must submit a new application. It is not a renewal.*

  *Mr. Evans: When a commercial vehicle approval expires, should the applicant want to pursue it, he is required to go through the standard application procedure. Proper noticing similar to a variance request (300' radius) is provided, and the Board considers factors a, b and c of the Ordinance.*

There was discussion on the following items:

- Rewrite of Zoning Ordinance.
  - Input from Board of Zoning Appeals.
  - Notification of screen wall renewals.
- Master Plan presentation.
- Commercial/recreational vehicle regulations.

8. ADJOURNMENT

The Board of Zoning Appeals meeting adjourned at 9:12 p.m.

Respectfully submitted,

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David Lambert, Chair

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Kathy L. Czarnecki, Recording Secretary

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