The Board of Zoning Appeals meeting was called to order by Chair Lambert at 7:30 p.m. on November 16, 2010, in the Council Chamber of the Troy City Hall.

1. ROLL CALL

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

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

Mr. Clark apologized for his absence at the October 19, 2010 Regular meeting. He said he was on call at work and had no prior knowledge that he would not be able to make the meeting.

***Resolution # BZA 2010-11-050***
Moved by Clark
Seconded by Bartnik

**MOVED**, To reconsider Resolution #BZA 2010-10-049 relating to the unexcused absence of Member Clark at the October 19, 2010 Regular meeting and to let the record show the absence as excused.

Yes: All present (7)

**MOTION CARRIED**

***Resolution # BZA 2010-11-051***
Moved by Courtney
Seconded by Fisher

**MOVED**, To excuse Member Clark from attendance at the October 19, 2010 meeting.

Discussion on the motion on the floor.

Several Board members commented on the viability and reasonableness of contacting City Hall in the event of an unscheduled absence.

Mr. Clark said he was on call at work and was called out of the area and very busy that evening. Mr. Clark believes the absence is not in conflict with any ordinance or Board ethics or procedures, and said he would appreciate an affirmative vote to excuse his absence.

Vote on the motion on the floor.

Yes: All present (7)

**MOTION CARRIED**

2. APPROVAL OF MINUTES

Mr. Bartnik suggested to strike from the minutes the responses from the Assistant City Attorney to questions posed by Mr. Edmunds, under Agenda item #7, Miscellaneous Business. He stated that because there was no motion technically on the table to constitute any action by the Board, the discussion is not germane or pertinent to any matter before the Board. Mr. Bartnik also stated that responses by the Assistant City Attorney were not official legal opinions requested by the majority of the Board, and if they were, most likely an executive session would have been called.

***Resolution # BZA 2010-11-***
Moved by Bartnik
Seconded by

**MOVED**, To amend the October 19, 2010 Regular meeting minutes with a correction that the discussion on pages 7 and 8, relating to questions posed by Mr. Edmunds, are stricken from the minutes, and that the minutes simply read: "Mr. Motzny addressed questions posed by Mr. Edmunds."

Discussion.

There was general discussion regarding the Board's history of obtaining legal opinions, whether having a pending motion was pertinent, that the Board was not taking any particular action relative to the comments, and the necessity of having the information in the minutes for the benefit of the public and City Council.

Mr. Forsyth said the purpose of minutes is to reflect the actions of a particular board and not necessarily reflect any detailed description of a discussion. Mr. Forsyth said he does not however see any problem with what was written into the October 19th minutes and sees no need to add any clarifying language. Mr. Forsyth said approval of the minutes, either way, is the Board's discretion.

Mr. Kneale referenced page 4 with respect to a reply by the Assistant City Attorney to his question relating to whether the Board can consider impact of an aesthetic issue to the property as part of its determination. He expressed uncertainty that the reply, as written in the minutes, adequately summarizes the intent of the Assistant City Attorney's reply.

Motion on the floor failed because of lack of support.

***Resolution # BZA 2010-11-052***
Moved by Edmunds
Seconded by Courtney

**MOVED**, To approve the October 19, 2010 Regular meeting minutes as published.

Discussion on the motion on the floor.

Mr. Bartnik offered the following amendment to the motion on the floor.

***Resolution # BZA 2010-11-053***
Moved by Bartnik
Seconded by Lambert

**MOVED**, To amend the motion by inserting the following additional language on page 8 immediately after the sections discussed earlier and after Paul Evans' comments, to read: "Board Members discussed the above without any Resolution."

Discussion on the motion on the floor.

Mr. Edmunds asked for an opinion from the Assistant City Attorney.

Mr. Forsyth replied that the Zoning Enabling Act states that minutes should be a record of proceedings and Robert's Rules of Order states that minutes should reflect the actions that a Board takes. Mr. Forsyth stated approval of the minutes is the Board's discretion as to what level of detail it would like the minutes to reflect, as long as the public has an idea of what was discussed at the meeting.

Vote on the motion to amend the original motion.

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

**MOTION CARRIED**

Vote on original motion as amended.

***Resolution # BZA 2010-11-052 (as amended)***
Moved by Edmunds
Seconded by Courtney

**MOVED**, To approve the October 19, 2010 Regular meeting minutes as amended, by inserting the following additional language on page 8 immediately after the sections discussed earlier and after Paul Evans' comments, to read: "Board Members discussed the above without any Resolution."

Yes: All present (7)

**MOTION CARRIED**

3. POSTPONED ITEMS

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.

**ORDINANCE SECTION: 43.74.00**

Mr. Evans gave a brief report on the request to park a commercial vehicle at 635 Hartland. He addressed location, adjacent zoning, types of commercial vehicles allowed in residential districts and Board of Zoning Appeals history with this matter at this location. Mr. Evans stated the item was postponed from the October Regular meeting at the request of the petitioner to have an opportunity of a full board present this month.

There was discussion on the following:

- Potential to build garage (based on City Assessor's figures).
  - Detached garage - 1356 square feet.
  - Attached garage - 645 square feet.
- Sidewalks not constructed along road.
- Street width of the pavement (based on GIS estimation).
  - 22 feet (approximately).
- Distance between homes of applicant and neighbors (based on GIS estimation).
  - 21 feet (approximately) to the west.
  - 30 feet (approximately) to the east.
- Orientation of applicant-provided photograph containing a deck.

Robert Rascol of 635 Hartland was present. Mr. Rascol stated the request continues to meet both criteria standards "b" and "c" for parking commercial vehicles in residential districts. He identified the photograph with the deck is taken from his neighbor's deck. Mr. Rascol estimated the distance from the neighbor's deck to the side of the vehicle closest to the deck is approximately 8 feet, the width of the pine tree.

Mr. Rascol said he would have no problem parking the truck anywhere on his property. He noted the truck appears to be less visible where he currently parks it. Mr. Rascol said he operates a trim trimming business out of his house, and the truck is parked on the property mostly during evening hours and weekends. Mr. Rascol said he has received no complaints from neighbors. He said the house in the photograph with the deck has a side window, from which his parked truck is visible.

Mr. Rascol said he has not specifically looked for alternative locations to park his truck.

Mr. Courtney encouraged the applicant to ask his neighbor where he would like the truck parked, should the Board grant approval this evening.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted there is one communication in support of the variance request on file.

PUBLIC HEARING CLOSED

Mr. Edmunds said the proximity of the applicant's home to the neighbor on the west, where the truck is parked, is extremely close. Mr. Edmunds noted that the written communication in support of the request is not the applicant's direct neighbor.

***Resolution # BZA 2010-11-054***
Moved by Courtney
Seconded by Clark

***MOVED***, To grant the request for a two-year period.

- The location on the site does not appear to be a problem with the adjacent residential property.
- The request does not negatively impact pedestrian or vehicular movement along the frontage.
- The petitioner has investigated a garage on this site and it cannot reasonably be constructed to accommodate the commercial vehicle.
- The request meets criteria standards "b" and "c" of the Zoning Ordinance.

Discussion on the motion on the floor.

Mr. Bartnik said he is opposed to granting the request. He believes the evidence does not support criteria standard "c" in that parking a commercial vehicle on the premises will negatively impact the adjacent residential properties and negatively impact pedestrian and vehicular movement along the street. He addressed previous approvals of parked commercial vehicles by the Board.

Mr. Courtney thinks satisfying criteria standard "c" is self-evident since there are no objections to the request. He said the commercial vehicle has been there for some time now with no complaints, is not easily visible from the street, and has not negatively impacted vehicular movement.

Mr. Edmunds said he is not comfortable in continuing the applicant's request. He addressed the history of the applicant's file, the applicant's lack to explore alternative sites to park the commercial vehicle, and the responsibility of the Board to hold the Zoning Ordinance to a high standard.

Mr. Bartnik addressed the potential negative impact to vehicular and pedestrian traffic with a commercial vehicle entering and exiting a relatively narrow street. He believes that is a violation of the Zoning Ordinance and the spirit of the Ordinance.

Mr. Clark stated he is in favor of the request. Mr. Clark said he has driven the street many times. It is his assessment the street is not narrow and traffic flows at a fast pace. Mr. Clark said the parked truck is not visible from the street. He addressed the economic downturn with respect to operating a business and previous approvals of parked commercial vehicles by the Board.

Vote on the motion on the floor.

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

**MOTION CARRIED**

Chair Lambert suggested the applicant consider other alternatives for parking the commercial vehicle in the future, given he barely received approval this evening.

4. HEARING OF CASES

A. **VARIANCE REQUEST, ROBERT WALDRON OF PRO ENTERPRISES INC., PRO CAR WASH WEST, 3785 ROCHESTER ROAD** – In order to modify the front of and construct an addition to the rear of the existing car wash, the following variances are requested: 1) A 1 foot variance to the required 40 foot front yard setback, 2) an 8 foot variance to the required 75 foot rear yard setback, 3) a variance from the requirement that two trees be provided along the front of the property, and 4) a 1,539 square foot variance to the requirement that 10% of the site area be landscaped (10% of the site area is 2,927 square feet).

**ORDINANCE SECTIONS: 30.20.07, 30.20.07 (note G), 39.70.02 and 39.70.04**

Mr. Evans gave a brief report on the proposed variances for Pro Car Wash West, 3785 Rochester Road, with respect to the Rochester Road right of way, setback requirements and landscape requirements.

Mr. Evans said there is an active Special Use and Preliminary Site Plan application before the Planning Commission. As a result of the Rochester Road widening, the petitioner is proposing to enlarge the existing car wash facility and is required to obtain Special Use approval.

Mr. Forsyth provided general background information on the Rochester Road widening project. He addressed the condemnation proceeding, the taking of approximately 35 feet of right of way, and its affect on the Pro Car Wash facility to which the petitioner is seeking the proposed variances.

Mr. Evans confirmed the proposed landscaping is just under 50% of the required landscaping.

The petitioner, Robert Waldron of Pro Car Wash West, 3785 Rochester Road, was present. Mr. Waldron said the Rochester Road widening is the principal reason he is in front of the Board requesting the four variances. He addressed the hardship imposed on the car wash facility with respect to the elimination of the acceleration lane, building layout for line production, conveyors and drying area, and limited property for landscaping. Mr. Waldron said they have always been short on landscaping.

Mr. Edmunds said there is a very attractive mature spruce tree as you enter the car wash facility. He addressed the similarity of the proposed variance request to the variance granted for the car wash facility on the east side of Rochester Road.

PUBLIC HEARING OPENED

No one was present to speak. Chair Lambert noted there is no written correspondence on file.

PUBLIC HEARING CLOSED

***Resolution # BZA 2010-11-055***
Moved by Bartnik
Seconded by Edmunds

***MOVED***, To grant the variances as requested.

*Preliminary Findings:*
- That the variances would not be contrary to the public interest.
- That the variances do not permit the establishment of a prohibited use within a zoning district.
- That the variances do not cause any adverse effect to properties in the immediate vicinity or immediate zoning district.
- That the variances relate only to the property described in the application.

*Special Findings:*
The petitioner has the following practical difficulties as disclosed in the record and the complete documentation provided, and is part of the record:

- No reasonable use can be made of the property as desired by the existing business without unnecessarily burdensome conformance.
- Practical difficulties result from the unusual characteristics as described in the petition and by the petitioner in his presentation this evening, relating to the size, location, narrowness of the lot and configuration.

Discussion on the motion on the floor.

Chair Lambert said he is very sympathetic with the issues before the petitioner, and the City of Troy is happy the applicant is staying and operating his business in the City.

Vote on the motion on the floor.

Yes: All present (7)

**MOTION CARRIED**

5. COMMUNICATIONS

Chair Lambert acknowledged receipt of a communication received from Paul Evans on the revised Board of Zoning Appeals Application.

6. PUBLIC COMMENT

There was no one present who wished to speak.

7. MISCELLANEOUS BUSINESS

There was discussion on the following items:

- Downloading agenda packet from City website and external website.
- Budget monies available for training.
- Status of Zoning Ordinance re-write.

8. ADJOURNMENT

The Board of Zoning Appeals meeting adjourned at 8:42 p.m.

Respectfully submitted,

_____
David Lambert, Chair

_____
Kathy L. Czarnecki, Recording Secretary

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