

**ZONING BOARD OF APPEALS MEETING  
CITY OF WIXOM  
49045 PONTIAC TRAIL  
MONDAY, JULY 9, 2007 – 7:30 PM**

<b>APPROVED</b> <b>08/13/2007</b>
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Acting Chairman McNeff called the meeting to order at 7:30 pm.

**PRESENT:**

Dave Berry  
Mary Baumgartner  
Jeff Caplan  
David Dewar  
Dennis McMillan  
Jim McNeff, Acting Chairman  
Bill Reinhardt  
Louis Veros

**CITY STAFF:**

John R. Lipchik, Building Official

**RECORDING SECRETARY:**

Jennifer Garrett

**ABSENT:**

Jon Mogridge, Chairman (excused)

There being a quorum, the meeting was declared in session.

**APPROVAL OF MINUTES:**

**June 11, 2007**

Mr. Reinhardt stated on page two, second paragraph from the bottom, he believed that should read "Chairman Mogridge" as opposed to "Chairman Day."

**MOTION** and second by Mr. Caplan and Mr. Dewar to approve the June 11, 2007 minutes as amended.

**VOTE:**

**MOTION CARRIED**

**RULES OF CONDUCT:**

Recording Secretary, Jennifer Garrett, read the Rules of Conduct.

**NEW BUSINESS:**

**ZBA CASE #013-07: SANDY SPENCER, 2418 POTTER ROAD, WIXOM, MI 48393:** The applicant is seeking a variance to construct a detached garage. The Wixom Municipal Code, Sections 18.88.070 and 18.84.120 requires approval from the Zoning Board of Appeals. The property is located at 2418 Potter and zoned RA-1, Single Family Residential. The tax parcel number is 17-29-476-027.

**Lonnie Spencer**, 2418 Potter Road, Wixom, MI 48393, stated he lives on a private road off of Potter sometimes known as Spencer's Farm Lane. He is requesting to have a garage built if the Zoning Board permits it. He has several reasons why he would like to do that; and one is the fact that he has no place to put any of his cars, equipment or anything like that. It is all getting destroyed by the weather. The house has no garage. There are four houses on the street, and everybody has a garage. Some have two, and he has none. To resell the property (although he is not planning on selling) would be hard with no garage, and he just needs a place to put his stuff.

Looking at the diagram, Acting Chairman McNeff asked if the garage is going to go about where that stake truck is or in that vicinity.

Mr. Spencer told him his truck was parked there today if he was talking about today, and yes it is approximately where the garage would be.

Acting Chairman McNeff commented that is where he figured, and he just wanted to make sure. He went on to say in our ordinance we have frontage of public street rules and regulations, and we have obviously dealt with requests in your neighborhood in the past; and although our charter says we can't grant anything with public road access we have in the past and obviously for different reasons.

Mr. Spencer stated he does maintain the road. The road was in real bad shape when he moved into Wixom three years ago, and he has maintained it with the help of his neighbor on the west side. His equipment is also going to be parked inside the garage too. It is a tractor with a plow and all that stuff.

Acting Chairman McNeff commented that road has been in really bad shape in the past.

Mr. Reinhardt had a question on the diagram. He was trying to find the setback from the rear lot line and doesn't see a dimension. Do you know how far back the garage is going to be from the rear?

Mr. Spencer said he believed it is ten feet, but he just applied for it. If it calls for more or less he will comply with that, but he thinks it is ten feet right now.

Mr. Reinhardt stated he stands corrected. He meant the north lot line.

Mr. Spencer answered that he would say approximately 30 feet or more.

Acting Chairman McNeff asked if he is going to have a driveway coming off of the road there and if it is going to be a straight drive into the garage, and Mr. Spencer replied yes.

Acting Chairman McNeff asked if it would consist of gravel, concrete or asphalt.

Mr. Spencer told him it would be gravel (the same gravel that came off the road).

Acting Chairman McNeff then inquired if the existing shed would stay, and Mr. Spencer replied yes.

Acting Chairman McNeff asked if there were any other questions for the applicant. He then asked if there was anyone from the audience who would like to address this case. There being no comments from the audience, the public hearing for ZBA Case #013-17 was closed at 7:38 pm.

Acting Chairman McNeff commented that he knows we have granted some variances over in that area, but he is not sure he remembers exactly what they were. He thinks there was a house at the end of the neighborhood that at one point was requesting a variance.

Mr. Lipchik stated that was correct, and it was a garage. He did happen to bring with him tonight the motion on the garage which he thinks is the second house from the end. "Motion and second by Mr. Reinhardt and Mr. Berry that we grant a variance for ZBA Case #040-02 to allow the addition of a garage to the existing structure which is nonconforming because it is a nonconforming lot that does not front on a public road, and the practical difficulty is that this property owner based on our ordinance is deprived of the same rights as other property owners."

Acting Chairman McNeff stated he knew we had granted other ones from over there. He doesn't have any problem with a garage going over there. He is sure Mr. Spencer will be getting with the Building

Department before any permits are issued, and measurements would be done at that time to make sure everything complies. He is just glad to see someone maintaining that road, and he is sure the Fire Department is too.

Mr. Veros remarked that he was doing some real quick figuring here, and it appears that this new structure is going to be larger in square footage than the house. He asked if there is an issue with that.

Mr. Lipchik told him yes there is an issue with that.

Mr. Veros said okay because he is looking at what codes are listed here, and unless he is looking in the wrong codes right now he is not seeing it listed as being an issue.

Mr. Lipchik stated the garage is not supposed to exceed the footprint of the house.

Mr. Veros stated two codes are listed on this case, unless he is looking at the wrong ones. We have frontage on a public street and a nonconforming structure. He asked if that is the one for square footage or if there is another one he is missing.

Mr. Lipchik said he thinks what you would have to do is put the allowable square footage in your motion if you think it is the right thing to do.

Mr. Veros asked if there is no specific code then that we need.

Mr. Lipchik indicated he didn't believe so. He thinks you could say in your motion that you are granting a garage to be built in "X" number of square feet. He believed Mr. Spencer's house is on an acre.

Mr. Spencer stated it is one and a third acres.

Mr. Veros asked if that also factors in with this as well, and Mr. Lipchik replied yes.

Acting Chairman McNeff stated so in the motion (whether you are going to accept or deny) he would imagine you make sure about that square footage if you are going to allow the entire square footage as on the diagram.

Mr. Caplan asked if that is all structures on the property or just the new structure because the new structure is slightly smaller. He thinks the way they get larger is they are adding in the existing structure of 100 square feet. There is a little calculation on our plot plan which shows the house at 2,277 square feet and the new structure is going to be 2,204 square foot; but it looks like the existing puts another 100 square feet on there which will give him a total of 2,304 square feet. He asked if it is a combination of the two, and Mr. Lipchik replied no.

Mr. Caplan stated so the new structure really won't go over according to his calculations he has right here.

Mr. Veros said he was just doing some quick calculations, and he is just thinking it is almost like a one to one ratio. He thought there was a percentage we had to maintain (the existing structure to new), and then Mr. Lipchik brought up the fact of the lot size too which is also another part of the equation.

Mr. Lipchik stated right. He believes the way the ordinance reads is that you cannot exceed 35% of a required rear yard, but if you look at how big the piece is that they have then the 10x10 structure doesn't

come into play. So if the new garage is slightly smaller than the home he guesses that would be conforming.

Acting Chairman McNeff commented that the structure is not going in the rear yard.

Mr. Lipchik said actually it is going in the side yard, but if you look at a required side yard that is even smaller. He thinks you would have a problem with that.

Mr. Berry stated (based on his scribbling and fuzzy math) it would appear that the garage will be around 2,128 square feet and the house (including the little extension off the front) will be 2,111 square feet which is a difference of 17 square feet between the garage and the house.

Acting Chairman McNeff said well again, it is a big garage. Whatever you decide to entertain you can make the garage conform or request the garage to conform. He then asked what kind of equipment is going to be put in the garage.

Mr. Spencer responded that it is just going to be his personal equipment like yard maintenance, road maintenance, his car and truck.

Acting Chairman McNeff questioned what the road equipment is, and Mr. Spencer told him a tractor with a plow and bucket on the front.

Mr. Dewar asked how high the garage is going to be, and Mr. Spencer said maybe 10 feet or 13 to 14 feet maximum height.

Acting Chairman McNeff indicated his suggestion would be to leave the height alone until he gets his plans into the Building Department, and if that height is going to be a problem at that time then he can come back and entertain a height variance.

Mr. Dewar said being that he lives behind him he would like to know.

Acting Chairman McNeff commented that is something we can address now or wait until he brings in his plans.

Mr. Caplan stated he thinks if he stays within the ordinance it won't really matter.

Mr. Lipchik advised it is not supposed to exceed 14 feet at mid span, and when Acting Chairman McNeff stated that is pretty tall he said he was sure you could put a ten foot wall and still not exceed that.

Mr. Spencer indicated it will be no taller than any other structure there now.

Mr. Caplan said if we look at the calculations that are on the plot plan, he doesn't know who made those calculations.

Mr. Spencer told him Todd Arnold from the Building Department did.

Continuing, Mr. Caplan stated by that calculation he is still smaller (barely) with the garage than he is with the house. So he thinks we could leave it up to Mr. Arnold to determine if there is a square footage issue. Unless we have a percentage issue with side yard, he doesn't think he would worry about the square footage issue because according to Mr. Arnold's calculations he is within the square footage.

Mr. Lipchik said yes because the existing 100 square foot shed would not be counted. You are looking at the house being 2,277 and the garage being 2,204 so that is 73 feet square feet smaller than the house.

Mr. Caplan stated he supposed if Mr. Arnold says he is off he can either adjust it or come back if that is an issue, but he doesn't know if the side yard is an issue.

Mr. Lipchik indicated the side yard is not because it is on an acre and a third.

Mr. Caplan stated our only concern today is the two ordinances that have been addressed.

Referring to that ten feet and the rear lot line, Mr. Reinhardt asked if the garage is ten feet from the rear lot line; and Mr. Lipchik replied yes.

Mr. Reinhardt stated we need a variance there.

Mr. Lipchik told him no we don't because detached garages and out buildings are allowed to be within three feet of the lot line.

Mr. Berry stated his understanding here is that we don't have any issue with the size of the garage, and we don't have an issue with the side or rear yard setbacks. So it is just an issue of whether or not we grant him the opportunity to build his garage.

Mr. Caplan said one of the issues he thinks we are looking at is nonconforming and private road.

Acting Chairman McNeff stated again which we have granted before under those same two things.

**MOTION** and second by Mr. Caplan and Mr. Berry on ZBA Case #013-07 to grant the applicant a variance to construct a detached garage from Codes Sections 18.88.070 (Nonconforming Lot) and 18.84.120 (Private Road) to allow him to utilize his property as everyone else is able to.

**VOTE:**

**MOTION CARRIED**

**ZBA CASE #014-07: PATRICIA MATTHEWS, 1515 FLAMINGO, WIXOM, MI 48393:** The applicant is seeking a 24 foot front yard setback variance to construct an addition to the house and garage. The Wixom Municipal Code, Schedule of Regulations, 18.76.010 requires approval from the Zoning Board of Appeals. The property is located at 1515 Flamingo and zoned RA-1, Single Family Residential. The tax parcel number is 17-29-327-017.

**Patricia Matthews and Andy Potter** (1515 Flamingo) were present for this case.

Ms. Matthews stated we would like to extend the garage over. She had some pictures for the board of where his truck goes, and it shows approximately how far out the garage will go. He is already parking over there, and we want to be able to put both our vehicles in the garage. As of now, just one can fit in there. She has an SUV, and he has a van.

Acting Chairman McNeff noted that on their diagram it says existing concrete drive. He asked if that is going to change at all, and Ms. Matthews replied no.

Mr. Potter stated that slab off the side there is 8.5 foot from the edge of the garage to the edge of the slab. We are going four foot with the garage so there will be an additional four foot beyond the side of the garage.

Acting Chairman McNeff stated so it would end up going approximately to the edge of the driveway where the concrete is now.

Mr. Potter indicated that is 8.5 feet. The edge of the garage here with four feet will be just enough to get both vehicles in the garage.

Ms. Baumgartner noted that in the write-up it says an addition to the house and the garage. She inquired if it is just the addition to the garage.

Mr. Caplan stated they have a house addition too.

Ms. Matthews said we want to hook the house and garage together and take it out behind the garage.

Acting Chairman McNeff remarked that this is certainly the same type of problem. We have nonconforming lots in the entire neighborhood over there.

Mr. Caplan added that he thinks part of the problem too is the corner.

Ms. Matthews stated that is why she brought the pictures so the board could see. The van there takes up more room than if we extend out and put the van in the garage.

Acting Chairman McNeff pointed out with corner lots we are always concerned with sight problems and so on.

Mr. Potter said that is why he showed the stop sign.

Acting Chairman McNeff commented he was over there today and didn't see any problems.

Mr. Potter stated with my truck parked there it takes up eight feet from the edge of the garage and takes up the whole slab there.

Mr. Veros asked if they are going to remove this existing garage and then replace it with a new one, and Mr. Potter said basically.

Mr. Caplan asked if they are not going to bring the driveway in off the other road, and Mr. Potter replied no.

Acting Chairman McNeff asked if there were any other questions for the applicant. He then asked if there was anyone from the audience who would like to address this case. There being no comments from the audience, the public hearing for ZBA Case #014-07 was closed at 8:01 pm.

Mr. Veros stated we have had numerous cases in this subdivision before, brought before us because of the either irregular shaped lots or small size lots. His personal opinion is he doesn't believe this is an issue.

Acting Chairman McNeff commented it seems like everyone that he can remember who has come before us who has had some sort of issue coming from the board has improved the neighborhood.

**MOTION** and second by Ms. Baumgartner and Mr. Reinhardt on ZBA Case #014-07 to grant the applicant a 24-foot front yard setback to construct an addition to the house and garage due to a nonconforming lot and two front yards.

**VOTE:**

**MOTION CARRIED**

**ZBA CASE #015-07: BRIVAR CONSTRUCTION, 7258 KENSINGTON, BRIGHTON, MI 48116:**

The applicant is seeking a 5 foot landscape variance. The Wixom Municipal Code, Section 18.84.040 C.4a, requires approval from the Zoning Board of Appeals. The property is located at 29240 Beck Road and zoned M-1, Light Industrial. The tax parcel number is 22-09-101-003.

**Steven Varilone**, 7258 Kensington Road, Brighton, MI 48116, stated he is one of the owners of Brivar Construction Company and also one of the owners of the proposed development. He said we are proposing a five-foot variance to the setback on the north property line. The natural features of the site dictate that we put our detention basin on the south side of the site rather than the north side of the site. If we could put it on the north side we would and probably would not be here this evening, but the natural features dictate that. We had many productive meetings with the City officials and the City planner. One of the things, while it is not specifically required by the zoning ordinance there was a desire for us to maintain a 30-foot-wide access drive around the proposed buildings. To do that requires space, and so we couldn't provide that 30 foot and still maintain the 15-foot landscape setback. In fact, it was one of the suggestions of the planner that we consider coming to get a variance approved to accommodate this 30-foot access drive issue because we couldn't provide the 30 foot access drive and be allowed to meet the ordinance in terms of the allowable impervious surface of site development. We just couldn't do both without getting this variance.

Mr. Varilone went on to say the parcel to the north is master planned industrial. It is currently occupied as a residence; and in the absence of this variance request we would be held to a higher standard because it is likely that, sooner or later because it is master planned industrial, it will ultimately be developed industrial at some point. When we were considering this development one of our partners did approach the landowner there to see if they would be interested in selling, and they indicated they were not at this time and not certainly in the near term. So we actually considered including this property which is one of the last along this stretch of Beck Road that is being developed. We tried to be very sensitive to the property owner to the north. One of his partners did make contact with them, offered to meet with them; but they had been up to the City and seen the plans and such. We did try to be sensitive to them; our building is set back from the property line 60 feet rather than the allowable 50 feet. We have provided the required screen fence, and we have very heavily landscaped that ten-foot strip rather than 15-foot strip that was required. We very heavily landscaped it to the point where his landscape architect tells him we literally couldn't plant anymore trees in that. Again, that was in working with the City planner to heavily buffer that area.

Mr. Varilone said he thought those were all the particular points he wanted to hit. He added that he did have the landscape drawing in case the board members would like to see it. He didn't know if they have the benefit of that or deem it relevant or not.

Acting Chairman McNeff told him we have a layout plan here. He noted that Mr. Varilone said the house to the north is occupied. He noticed there is a good size fence in there and asked if that is on his property or on the homeowner's property.

Mr. Varilone stated there is at least a portion of the fence that is on our property, and it was our intention to take that portion of the fence down and reconstruct a newer fence.

Acting Chairman McNeff asked where the fence is, and Mr. Varilone told him it is in the middle of the property.

Acting Chairman McNeff asked what the reason is for taking a portion down and then reconstructing if there is already a fence there.

Mr. Varilone commented he supposes it would only be required if grading operations or planting of trees would in any way damage that fence. He doesn't know that there was any specific intent; just thinking that oftentimes when you are doing that work it is sometimes just easier and better for everyone to just put up a new fence rather than trying to maintain the existing. We certainly would be willing to do that, but frankly he should know but doesn't know if that is our fence or the neighboring property owner's fence. He doesn't know them and doesn't know if the property owner is here or not, but they could maybe clarify that and certainly if it would be their preference to leave it we would certainly do that. Again, we tried to make a contact and are absolutely committed to being a good neighbor.

Acting Chairman McNeff said he knows what it is zoned but again he knows they are industrial and he is residential. He would hate to disrupt any privacy he may have, whether he is going to be there a day or a ten years and a day. If there is a fence that he feels one way or another is his privacy between you and him and is a good fence, personally he would prefer seeing it stay unless you have made some arrangements with him to tear it down and build as good if not a better fence. That would be a concern of Mr. McNeff. You have headlights coming in and have all kinds of in and out traffic coming in, and he understands the zoning but it is still residential.

Mr. Varilone stated we have certainly no intent or anything to gain by taking down that existing fence.

Mr. Berry said to Mr. Varilone he understands what they are trying to do and this is based on the design plan, but what he is basically asking us to do is cut down our green barrier space requirements in order to accommodate his 30 foot perimeter traffic lane. He asked if he could explain to him how our zoning ordinance encroaches on his ability to drive around his property when it is really the size of the facility they are designing to put in there that creates the problem. He asked if he can explain to him why he needs to make an allowance for him to cut down on our zoning requirement in order for him to have this 30-foot traffic lane and how it impacts him as a hardship.

Mr. Varilone stated that was fair question. He would only respond that there was long debate, discussion meetings with the City and the representative to determine a way to accommodate their request to provide the 30-foot drive around the building. He chooses to use that word because the ordinance doesn't specifically require 30 feet. Now in fairness, the Planning Commission and the Planning consultant would say that over time they have interpreted that a 30-foot drive is required. We are trying to be a good neighbor, and we wanted to come in and develop a project that Wixom doesn't have presently and frankly trying to work with them and not fight while your ordinance doesn't say that. So we are not going to do it, but rather if that makes sense and if that is something the City wants we are willing to accommodate that but in doing so you are not allowing me to achieve what is clearly required or allowed by the ordinance to maximize the use of my site. Providing those 30-foot-wide drives does that, and it was thought that a possible solution was to take that greenbelt from 15 feet to 10 feet. There is a hardship he would argue that has been imposed on us because we are being asked, requested and required to provide something that your ordinance doesn't specifically require. Again, we are just trying to be sort of cooperative in doing that; but it leaves us short on that north side.

Mr. Lipchik offered that the reasoning behind the increase of the width to the 30-foot width is because now they are driving bigger semis than they were when our ordinance was written. So we are looking for 30 turning radiuses, and that is the reasoning we have come to you and the Planning Commission.

Acting Chairman McNeff asked if that is pretty much standard now on plans like this.

Mr. Lipchik answered yes and said in our new zoning ordinance (when the board receives that here probably soon) that will be reflected.

Mr. Caplan asked if the new ordinance also shrinks the greenbelt; and Mr. Lipchik said no, it does not.

Mr. Caplan questioned if in the ordinance as it reads today it specifically states 30 feet or if that is just what you ask of them.

Mr. Lipchik replied that is what we ask, and that is also what the Fire Department asked for.

Mr. Caplan said but it is not the ordinance today that states that, and Mr. Lipchik told him no.

Mr. Veros commented that by reducing this down to a ten-foot setback he stated they have increased the amount of trees. Do you feel like they have over-compensated now for the reduction in this five feet with the additional vegetation they are proposing?

Mr. Lipchik indicated he would never say anybody would over-compensate, but they have tried.

Mr. Caplan asked how badly two and a half feet hurts you on your buildings, and Mr. Varilone said well that might seem small but it is huge.

Mr. Berry asked what the typical turning radius requirement is in a development typical of this.

Mr. Lipchik stated we are asking for 30 feet because of the increase of the size of the semis that go into these sites.

Mr. Berry indicated he heard that part but wanted to know what is called out for in the regular ordinances outside of this exception of 30 feet.

Mr. Lipchik said he thinks it is 27 feet if he is not mistaken.

Mr. Berry commented in regard to his site plan and the way it is laid out and the square footage of his buildings in comparison to his neighbors, that falls into the same category of style and development, single entrance, dual building. He asked if his cross sectional square footage is bigger or smaller than the other neighbors.

Mr. Lipchik said he falls under the allowable 75% of the property. It is done by a percentage, and he is at 74%.

Mr. McMillan stated he is assuming the angled parking on either side is also to try to meet that requirement, and Mr. Varilone replied yes.

Acting Chairman McNeff offered that it appears to him, from what has been said tonight, that the company is trying to conform to what the City is requesting. As long as they are taking the five feet and putting vegetation in there that it can handle. Of course his concern is the residents, and he wants to make sure that resident's privacy is protected. That is kind of his concern.

Mr. Caplan said he thinks what we are looking for here is maybe some type of compromise. It sounds like what he is trying to do with the City here is he may be able to go in there and put 27 foot roads in.

Mr. Lipchik advised that is not the way it was agreed to at the Planning Commission level.

Mr. Caplan said right, in a compromise come to the ZBA to try and pick up your five feet that way. It sounds like he is trying to work with the community. If he is pushed to the wall he could say he wants his 27-foot roads. He understands it is hard on the City, Fire and trucking; but it could be an option for him. He thinks it sounds like a fair compromise.

Acting Chairman McNeff mentioned that if he waited two months for the ordinance to come in he wouldn't have to worry about it.

Mr. Caplan stated then he would be pushed to do 30-foot roads, but today he could do 27-foot roads and picks up six feet and he only needs five.

Mr. Varilone wanted to reiterate that we are trying to work with the neighbor. If there is anything in addition that is reasonable we are not close minded. Again, he is happy to show you the landscape plan. It was professional designed, and we are doing everything we can to maintain that buffer. We recognize we are coming in and are taking down a large number of trees on that site, but in return we are planting them all back.

Acting Chairman McNeff asked if there was anyone from the audience who would like to address this case.

**Nick Kennedy**, 29250 Beck Road, Wixom, MI, 48393 stated he is the property to the north; he is the resident. The reason Mr. Varilone couldn't pick him out is because he has never seen the man or heard from him in his life. As for them talking about being a good part of our life, ever since these guys bought that property and the first tenants they put in there were 18 Honduran immigrants that worked on a lawn care company. The guys that were right directly next to us were about three or four families that lived in the house that threw garbage and stole from our house. They even took our baby ducks two doors down, and we had to go get them. He had to call the Police constantly on them. He called Mr. Zurlag about all the noise and he kept saying he would take care of it. So much for him actually following through on being a good part of his life or being a good neighbor.

Mr. Kennedy stated as for the fence they are talking about, Mr. Nelson (who bought that house in 1967) built the fence; and it was a four-foot board on board. The first set of neighbors that rented it from him tore that fence down, laying over sideways; and he put up a cow fencing just to keep his animals in his yard. His neighbors kept tearing that down too. He had to go back and keep reinforcing that.

Mr. Kennedy stated as for the five feet we are talking about, he appreciates that you are concerned about our property. His first experience here in Wixom with a developer was a man named David Stewart, and when he told him he wouldn't agree to something he said he would sue him into poverty. He said Mr. Lipchik has been out there many times helping him. The City is not putting these people out indirectly. When Oleg built the building behind us (the Potter Distributing building) he had to live by the same 15-foot setback, and he lives with that against his property and the next three parcels down. When Dart Container built their industrial parcel they also had to live with the 15-foot setback, probably believing that at some point in time those properties would turn over to industrial.

Mr. Kennedy said he was just a young dumb kid at 27 when he bought the house and didn't know what a master plan was. Has he learned a big story! We bought an old farm house that was built back in the 1850's, and our house doesn't have air conditioning. He is not looking for sympathy, but what we do have is windows open with fans. His big concern is when they start putting semi trucks five feet closer and the diesel fumes right under my bedroom window that is going to be a problem. The other concerns are when they go to maintain the property the snowplow service in the middle of the night is pushing that snow right next to his house, and the sound of the plow dragging down the street is going to be a problem.

He still has young kids that are going to school here and his whole family has grown up in this area. He was the Scout master here in Walled Lake. He has participated in the Lakes Athletic Association as coach, and he has donated his money and time to the Lakes Athletics.

Mr. Kennedy indicated when the City of Wixom needed that 30 feet for turning semi trucks they came over and asked him if they could cut his driveway in half; and they did, and he told them that was no problem. They needed it, so we gave it to them so they could turn onto Magellan. All this is done (and Mr. Lipchik is aware) of it being created. So semi trucks start turning sooner and putting a pot hole on the other side of his driveway. He wishes the Zoning Board would not grant them these five feet. He is not looking to get this stuff any closer to his house. They have the back of the buildings facing his house. He already knows what happens in industrial parks around here. We have had it where guys that work a night shift open the back door and blast their radio and he has had to call the Police numerous times on noise problems. These guys are all professionals in the real estate industry, commercial development. This is nothing new to these guys. They knew exactly what they were buying when they bought it three or four years ago. They have never come to his door. So they must be misinforming the gentleman from the construction company.

Mr. Kennedy stated again this fencing has been torn down, and he put up a cow fence. That was all he could do to keep their tenants out of his yard. He said if you would like please come out and take a look. He is concerned about the grade difference (which you are not part of) but his property is higher than theirs, and if they bring it up they will flood part of his yard. Please, this is nothing new to these guys. They knew it was there. It is just going to encroach on his property and encroach on the quality of our life. As for whether or not the thing is going to be industrial, maybe some day after he dies. He has lived there 23 years, and in 1994 we got a beautification award from the City. It was great. We have been trying to fix it up and trying to be a good part of this neighborhood. These gentlemen are here to make some money, and he hopes they do. It is their property, and they should be able to build whatever is within the tolerance of the City zoning, boards and all the rest of the restrictions. He hopes that when they are long gone they can make money, but after they are long gone he is still going to be living here looking at it. That house has been around for so long. In fact, a mayor from 1940 (a Mr. Arnold) lived in that house. It has a lot of history and is an interesting old house, and he is going to live there until he dies. You will have to put up with me on that aspect of it, but he has been a good neighbor in this community; and like he said when they talk about being a good neighbor so far they have not shown it.

Acting Chairman McNeff asked if there was anyone else from the audience that would like to address this case, and Mr. Varilone asked if he could comment on some of the things Mr. Kennedy had mentioned.

Mr. Varilone stated he appreciates the comments there, and part of the whole process is to take buildings that have been leased to individual tenants. He is a new owner in the property, but he apologizes for his partners and for what Mr. Kennedy experienced. One of the things he didn't mention and maybe it will help or maybe it won't, but he really wanted to articulate the fact that what we are proposing here is very different than what Wixom typically has. What we are developing has been perfected by a fourth generation project in Scottsdale, Arizona. We have spent a lot of time studying the movement and the needs of small entrepreneurial owners. Brivar Construction has been in business for 19 years, and he has built millions of square feet of industrial space. By and large, the smaller mom and pop type folks that are doing industrial work are unfortunately and very sadly going by the way side. You have a whole bunch of vacancies in Wixom because that sector of the market is struggling right now. We are not building that product. We are building multiple tenant projects that will have suites that will range from 2,400 to 3,800 square feet. These are professional folks. They are going to have a significantly higher percentage of office. Typically these people have percent offices of 50% to 70% and just need a small back area for maybe the owner's vehicle or to warehouse some material. So when you go to this site and as you visit these properties (and he knows it is in Arizona and he can't send you down the road to do it),

but one of our discussions with the Planning Commission and the Planner was that he can't tell you there will never be a semi in that site because he would be exaggerating at best. But the frequency of semis coming on that site are nothing like a typical industrial use because these people that have 2,500 square foot sites don't take deliveries of stuff in semis. They just don't because they are not manufacturers per se. They will have possibly an industrial element and might be printers or engineering types that have a truck or something that they will pull into their shop, but the only thing he wanted to do is to let the neighbor to the north and the members of the board know that this is different; and that semi truck traffic in the middle of the night is so unlike anything that is in southeastern Michigan that is likely to happen.

Mr. Kennedy said if that is the case where you would like to have it where it is going to 50% to 70% office why not have him post a bond that they will only rent to people that are only going to take 50% to 70% office because the way it is today it is already 70% office and 30% warehouse, and they have trucks coming and going all day long. Make him post a bond then and have it be assured that way because what he is saying is that it is great for Arizona and great for a whole different economy. He's glad he thinks it is going to work here, but make him post a bond and make him stay with what he's saying he is going to do.

Acting Chairman McNeff asked if there was anyone else from the audience that would like to address this case. There being no further comments from the audience, the public hearing for ZBA Case #015-07 was closed at 8:32 pm.

Acting Chairman McNeff stated we have heard pros and cons, and he thinks we are kind of in a spot. We have an M-1 Light Industrial with a residential. Whether there is truck traffic in and out or not we have Fire Department vehicles that we have to be concerned with. He certainly feels for the homeowner. He doesn't know how much five feet is going to change the smell of diesels (maybe it will, and maybe it won't). He can only hope that if we were to grant that the greenbelt in between there may absorb some of that. He doesn't know, and he doesn't know what kind of night shift work would be done there. There is no way for us to know that.

Mr. Berry stated his comments in regard to this case are kind of two fold. One, we have an area of mixed use (residential versus obviously light industrial). In regard to the City's request for the 30-foot turning radius he is assuming that was an agreement that was detailed in the Planning Commission. We don't have access to those minutes as of right now, but as far as he is concerned the situation is self-created by the size of the building and the layout and the planning for development. He would be more inclined to vote in favor of not granting a five-foot variance and give relief to the residential community around the perimeter of this property because family is the back bone of Wixom.

Mr. Veros stated part of his problem is not self-created. He is obliged by what the City and different boards have asked him to do, so he didn't self-create that part of the problem. He asked if there is any reason why this whole plat couldn't be moved to the south to accommodate the 15-foot setback to the north, and then we might have to give a variance for the south.

Mr. Lipchik stated we had discussions with the developers in regards to the detention basin that is going to be located at the south. Now, there are ways of putting storm water detention under ground at a cost. If part of that was placed underground or if the detention basin was somehow reconfigured you could gain your footage.

Acting Chairman McNeff remarked so there are options.

Mr. Lipchik indicated there are always options. The only problem with most options is they cost money one way or the other.

Acting Chairman McNeff commented one way or another, if we grant or deny, it is going to be a cost to somebody.

Mr. Dewar opined that the way Beck Road is going and Magellan he doesn't see how you can't give the variance. Five feet of green is not going to do anything. He drives that road every day, and the least of his problem is one diesel truck next door when you have fourteen going up every half hour; and they have cut that Magellan Drive. There is a huge hole there so this five feet is not his problem. His problem is in an industrial part of Wixom, and it is just getting bigger.

Acting Chairman McNeff stated his concern is the north line. Whatever the board's decision is, he hopes that is addressed in a motion.

As far as the landscaping to the north, Mr. Veros asked what the majority type of vegetation is that is going in there. Is it going to be trees, evergreens or a combination of both?

Mr. Lipchik responded that as he recalls it at the Planning Commission meeting there was talk of a fence that would help block traffic noise, and that is what occurred on the north side of Mr. Kennedy's property. There is an eight foot board on board fence, and that seems to have helped immensely. There are also evergreen trees planted there, and he thinks that also helps.

Mr. Berry inquired if right now in the zoning ordinance the maximum turning radius requirement is 27 feet, and Mr. Lipchik replied yes.

Mr. Berry stated so this guy's request is based on the City asking him to extend it an extra three feet, and Mr. Lipchik said yes. Mr. Berry went on to say he is only doing this out of the good neighbor policy he quotes.

Mr. Lipchik stated once again he believes the applicants could take us to court and sue. They didn't choose to do that. They chose to make a commitment with the Planning Commission and put it on public record that we would have this 30-foot turning radius.

Mr. Berry indicated the other half of his statement would be that right now legally all he has to do is comply with the 27 feet.

Mr. Lipchik replied yes. Legally he put himself on record saying he would, in accordance with the approval on the site plan, do the 30-foot so that is also legally held.

Mr. Caplan commented that could have been based on the fact that he is coming here for relief, and Mr. Lipchik said sure.

Mr. Caplan asked if he doesn't get relief here, and Mr. Lipchik told him then he would have to go back in front of the Planning Commission or go see an attorney.

Mr. Berry asked the applicant what his timing for breaking ground is, and Mr. Varilone stated it is our hope that if we are successful at getting this variance we will immediately submit for final engineering and then submit for building permits and break ground as soon as we possibly can.

Mr. Berry remarked so his building permit is based on what we decide here today, and Mr. Lipchik stated his building permit is based on a whole lot more than what is decided here tonight.

Mr. Berry asked if this is his major hurdle to get over right now, and Mr. Lipchik told him that is a hurdle he has to overcome.

Mr. Dewar asked if we can force him to build a fence on the north side, and Acting Chairman McNeff stated we can ask him anything we want to ask him.

Mr. Varilone mentioned that he offered to show this a couple times and should have insisted, but if I could right now. It was always our intent, and in fact the ordinance requires a six-foot board on board fence. That was always our intention to install. It is a requirement, and he is happy to make the commitment now. Unfortunately it is his understanding that Mr. Zurlag did try to contact Mr. Kennedy because we wanted to talk to him about what we could incrementally do to help, and if helping means an eight-foot fence instead of a six-foot fence we are happy to do that. We have very heavily landscaped that north property line with a combination of deciduous and evergreen trees, mostly evergreens because they provide a more solid barrier and provide a barrier year round more substantially than a deciduous tree which obviously loses its leaves in the winter. We have tried to accommodate that.

Mr. Varilone showed the board members what the landscaping would look like on the north property line.

**MOTION** and second by Mr. Veros and Ms. Baumgartner on ZBA Case #015-07 to grant the applicant a five-foot landscaping variance to Wixom Municipal Code, Section 18.84.040 C.4a based on the fact that the applicant is trying to accommodate the City’s request for a 30-foot turning radius and 30-foot driveway; and also part of this motion is that the applicant increase the fence height from six feet to eight feet along the north side of the property line.

**ROLL CALL VOTE:**

<b>YEAS (6)</b>	Baumgartner, Caplan, Dewar, McMillan McNeff, Reinhardt, Veros
<b>NAYS (1)</b>	Berry
<b>ABSENT (1)</b>	Mogridge
	<b>MOTION PASSED</b>

**ZBA CASE #016-07: RITCHE BROS. AUCTIONEERS, 9319 BETSIE DRIVE, GRAND BLANC, MI 48439:**

The applicant is seeking an exception for a temporary use permit as required to hold an auction of heavy construction equipment on Wednesday, July 18, 2007. The Wixom Municipal Code, Section 18.108.050 requires approval from the Zoning Board of Appeals. The property is located at 29100 Wixom Road and zoned M-1, Light Industrial. The tax parcel number is 22-08-100-008.

**Rick Masitch**, 29100 Wixom Road, Wixom, MI 48393, stated he is president of Waterland Trucking, which has been in the community since 1964 and is across from the Ford Plant. He said we want to have an auction of some of our excess equipment and chose Ritche Brothers because they are the largest auctioneer in the world, and they know how to sell something professionally and do it right.

**Steve Gorman**, Betsie Drive, Grand Blanc, MI 48439, stated we have been in business for over four years; and we are a publicly held company traded on the New York Stock Exchange and Toronto Stock Exchange. Last year we did gross auction sales of three billion dollars. Some of the public safety issues we have looked at and worked with Mr. Lipchik on. As far as public safety and the welfare of the community we have contacted the Wixom Police Department to maintain public safety and the controlling of traffic. We have hired and approached the police officers here in town to work the sale day traffic and have asked to hire two or three officers to take care of any situation or safety concerns that may be there. Some of the other things we do is we collect the sales tax on the sale and remit it so the local communities profit from the collection of sales tax on the sale. Also because of the company we are and advertisement and things like that we bring in and help the local community from the hotels and

restaurants and things like that, so we do have some economic value to your community for one day. The sale is going to be from normal business working hours 9:00 a.m. and probably conclude somewhere around 4:00 pm. We are just asking for a temporary permit for July 18 and only July 18 for the sale day.

Acting Chairman McNeff asked with the economic times in Michigan what kind of traffic this is going to be. He inquired if people are coming from all over the country buying this stuff, and Mr. Gorman replied all over the world.

Acting Chairman McNeff questioned if he could go in there and buy a road grader if he wanted to, and Mr. Gorman replied yes. He went on to say it is open to the public and everyone is welcome from that standpoint. All of the safety issues we look at are not only from the standpoint of keeping on site. We bring in local caterers and have on the sale site EMT's in case anyone gets ill. That is standard practice, and we look at every safety issue that possibly could be out there and try to manage that situation accordingly.

Acting Chairman McNeff asked if the purchases made that day are taken that day or if we are going to have 500 flatbeds out there hauling equipment out.

Mr. Gorman told him the equipment needs to be paid in full before it leaves. We do give a time variance to remove the equipment, so it is not going to be there for one year. We typically allow seven days to remove the equipment, so it is there and gone. We help maintain that, and we will be there through the seven-day period to help manage any type of traffic concerns or issues that may be out there.

Mr. Veros mentioned that he saw their plan for parking. He asked if they feel that is going to be adequate on the grounds they have now.

Mr. Gorman replied if we need excess parking we have permission from the hotels, and we have hired a shuttle bus to help facilitate any overflow parking. We have also contact Meijer to use some additional parking space if needed.

Mr. Veros commented he noticed probably since yesterday that they have brought additional equipment.

Mr. Gorman stated we just brought up from the front to sort of stage the equipment. We are only going to have equipment he believes on the one side, and we are keeping 98% of the equipment back behind the berm. It is just out there for sales day purposes to make it safer for everyone, and then we will move that equipment back into the yard.

Mr. Veros stated I noticed some flags, is that all the advertising. There is going to be no balloons or gorillas or whatever.

Mr. Gorman shared a funny story that they had a sale up in Grand Rapids last fall, and the local dealership (Michigan Caterpillar that has been in Novi for many years) had a giant gorilla that said huge savings here. But he answered no, none of the structures are permanent; and we are not going to be digging into any utilities. So nothing is set from that standpoint.

Mr. Veros commented the only reason he asked is he just wanted to make sure if we grant the variance there is nothing else we would have to add to it.

Mr. Gorman told him no. The flags and all that will be taken down right after the sale or within a couple-day period.

As a point of clarification, Ms. Baumgartner asked if all the equipment is already on site or if we are going to be bringing equipment in at one period of time to house it there for the auction.

Mr. Gorman told her no. He thinks right now we have maybe 99% of the equipment on site.

Acting Chairman McNeff commented that forever he saw gravel trains there, and so there must have been a yard somewhere else that the heavy equipment was kept.

Mr. Masitch said we had them at various places, usually job sites.

Acting Chairman McNeff stated so everything you have is there, and that is all going.

Mr. Masitch replied not everything we have; this is not a liquidation sale.

Acting Chairman McNeff asked if there were any other questions for the applicant. He then asked if there was anyone from the audience who would like to address this case. There being no comments from the audience, the public hearing for ZBA Case #016-07 was closed at 8:55 pm.

Mr. Veros asked if there was another date planned incase of bad weather.

Mr. Gorman answered no and said it will still be held on the same day.

**MOTION** and second by Ms. Baumgartner and Mr. Caplan on ZBA Case #016-07 to grant the applicant an exception for a temporary use permit to hold an auction of heavy equipment on Wednesday, July 18, 2007 from 9:00 a.m. to 4:00 p.m.

**VOTE:**

**MOTION CARRIED**

**CALL TO THE PUBLIC:**

There were no comments made by the public.

**BOARD MEMBER COMMENTS:**

Mr. Veros commented on the nice article in yesterday's Detroit Free Press Real Estate Section on the new downtown.

Acting Chairman McNeff thought it was nice too but said he was a little disappointed in the picture of the man and his daughter. As nice as that place looks over there, they have this guy standing on a balcony with air conditioners in the back; and it's really a bad-looking picture. He thought it could have been a nicer picture.

**STAFF COMMENTS:**

There were no comments made by staff.

**ADJOURNMENT:**

This meeting of the Wixom Zoning Board of Appeals was adjourned on motion and second by Mr. McMillan and Mr. Caplan at 8:59 pm.

Jennifer Garrett  
Recording Secretary  
July 11, 2007