The Vice- Chairman, Glenn Clark, called the special meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Thursday, November 13, 2008 in Council Chambers of the Troy City Hall.

PRESENT: Michael Bartnik
Glenn Clark
Kenneth Courtney
Matt Kovacs
David Lambert
Tom Strat

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

ABSENT: Marcia Gies

Motion by Courtney
Supported by Bartnik

MOVED, to excuse Ms. Gies from this meeting as she is out of the State.

Yeas: 6 – Clark, Courtney, Kovacs, Lambert, Strat, Bartnik
Absent: 1 – Gies

MOTION TO EXCUSE MS. GIES CARRIED

ITEM #1 – VARIANCE REQUEST. LISA COURY & JAMES STEWART, 924 HANNAH, for relief of the Ordinance to construct a two-story gambrel style roofed building with a building height of 17' where Section 40.56.02 limits detached accessory buildings to not more than one story and not more than a 14' maximum building height.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a detached accessory building. The plans submitted indicate the construction of a two-story detached garage/storage building. The plans further show this gambrel (barn) style roofed building with a building height of 17' as measured by the Zoning Ordinance. With this style of building there is a storage area located above on the second floor and by definition this is considered to be a two-story building.

Section 40.56.02 limits detached accessory buildings to not more than one story and not more than a 14' maximum building height.

This item first appeared before this Board at the meeting of October 21, 2008 and was postponed to allow the petitioners the opportunity of a full Board.

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Mr. Stewart passed out additional documentation to the Board members and Mr. Stimac explained that the only difference between the original site plan submitted and this site plan, was that the garage is proposed to be 13' from the rear property line rather than the previously submitted request of 8' from the rear property line. That change did not impact the variance requested or the public hearing notices that were sent.

Mr. Kovacs stated that the petitioner is proposing to construct a garage that is 24' x 28', and asked what amount of square footage would be allotted for this property.

Mr. Stimac said that it is most likely to be limited by the square foot area of the ground floor of the existing building. The proposed garage does fall within these limits. The land area may allow additional square footage, but an accessory building cannot exceed a certain percentage of the square footage of the ground floor of the existing building.

Mr. Stewart thanked everyone for coming this evening. Mr. Stewart stated that the Ordinance would allow him to construct a one-story building that is 40' long and 24' wide and all he is asking for is a variance of 3' in height. Mr. Stewart changed the location of the garage due to the location of the trees. One of the trees has a trunk that is approximately 4' wide and the tree located closer to the rear property line does not have as large a spread. Mr. Stewart checked with a water level measurement and the existing garage floor is 2" lower than the street. There is a 7' drop from the center of the existing garage floor to the proposed garage.

Mr. Courtney asked about the house located behind Mr. Stewart's property.

Mr. Stewart stated that the house behind is lower than their house. Mr. Stewart also spoke to the people in the area that objected to this request and explained what he could construct compared to what he is asking for. The homeowner at 951 Deetta stated that he approves of this request as long as Mr. Stewart did not run his business from this location.

Mr. Kovacs stated that he understood that the petitioner was attempting to save the existing trees and asked if Mr. Stimac was able to verify the square footage that would be allowed for an accessory structure on this property.

Mr. Stimac stated that it will, in fact, be regulated by the size of the land, which has 23,150 square feet of area. 2% of that figure is 463 square feet and the petitioner can have an additional 450 square feet, which would equal 913 square feet. Mr. Stimac said that would be slightly smaller than a 40' x 24' square foot building.

Mr. Kovacs said that he believes the Board could limit the amount of the ground floor of an accessory building to 672 square feet. Mr. Kovacs also stated that he did not want to grant a variance for 672 square feet and then have the petitioner come back and

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request the additional square footage of accessory buildings he would be allowed.

Mr. Stewart said that as long as he could get the size they were requesting they would not come back for a larger variance.

Mr. Courtney asked if the neighbor behind the petitioner understood the height of the proposed building.

Mr. Stewart stated that he had gone to all the neighbors and distributed paperwork showing what the proposed height of the garage was.

Mr. Bartnik asked if there was a fence or vegetation between their house and the property behind them.

Mr. Stewart stated that is the only area of open space between the neighbors. Further to the right there are pine trees that would block the view of this garage.

Mr. Bartnik asked what types of trees were located in the yard.

Mr. Stewart said that he believes they are maples.

Mr. Strat said that he believes there are other locations that this garage could be constructed without affecting existing trees. This garage could be constructed on the west side of the property.

Mr. Stewart said that he did not want to split up the yard and this is the main reason they want the garage in this location.

Mr. Strat said that what the petitioner is showing as a hardship is really their own hardship as to where they want to locate the garage. The doors don't have to necessarily face the north; there are other ways to locate the garage.

Mr. Clark asked for some clarification regarding the restrictions regarding accessory buildings and why only one-story is allowed.

Mr. Stimac stated that the regulations regarding one-story limitations to accessory buildings have been around for at least 28 years. The garage on Alpine is a one-story building and also is attached to the house and therefore has different limitations to it. There are a couple of other accessory buildings in this area that are two-stories and they were granted variances over the years. The one-story 14' height limitation in the Ordinance only applies to detached accessory buildings.

Mr. Clark said that if he had a two-story detached garage in his neighborhood, he could guarantee that his neighbors would have a number of objections to this structure. Mr.

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Clark also asked what would prevent other people in the neighborhood asking for two-story structures.

Mr. Stewart stated that there are three (3) structures in the neighborhood that are larger than what the Ordinance allows. They purchased this home because it had a large yard and the neighbor right across the street has a larger building on their property. Mr. Stewart stated that they are trying to stay within the intent of the neighborhood and this would be a smaller building than what is allowed by the Ordinance. Mr. Stewart also said that the homes across the street from their home have access to garages at the rear of the property due to the fact that their lots back up to Lovell. This structure will fit the neighborhood. The farther south you go the larger the yards are. Mr. Stewart said that the "monster" garage did not help his case at all.

Mr. Strat said that he did not think the garage at 914 Hannah was as high as this one.

Mr. Stewart said that he was there and it is as high as what he is proposing. The second floor has more space because of the truss that was used. That garage also has a 4' high knee wall.

Mr. Strat asked why they need a two-story structure.

Ms. Coury said that they have two trailers that will take up most of the space and they plan to alter their existing garage into living space, and everything from that garage will have to fit into the new garage.

Mr. Stewart said that it would be used mainly for storage. Mr. Stewart plans to have the garage door go completely over the trailer and because of the height of the trailer the ceiling needs to be a little higher. Mr. Stewart has a lot of equipment and has a lot of stuff at his mother's home that he would like to bring over and store on his property.

Mr. Strat asked if Mr. Stewart was running a business out of his home.

Mr. Stewart said that he is a video operator and also has a business as a "handy man", although he is phasing that out as he makes more money as a video operator. There is a lot of equipment and some of it is used to rake the leaves on his property. Mr. Stewart said that he does have a business but does not necessarily work out of his home. He has a power washer and saws.

Mr. Kovacs asked if Mr. Stewart had employees that come to the house.

Mr. Stewart said that he has one employee and depending on where they are going he either parks in the driveway or Mr. Stewart picks him up. Mr. Stewart also stated that his business address is 2794 English Drive.

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Mr. Kovacs said that you cannot run a business out of your home. You can have a home office, but you are not supposed to have employees come to your house.

Mr. Stewart said that he has 10 or 15 customers that he power washes decks for and also did carpet cleaning. Mr. Stewart explained that he is a "handy man" and does odd jobs when people need them done.

Mr. Stimac questioned the fact that the office is located at 2794 English Drive.

Mr. Stewart said that address is his mother's house and one-half of his equipment is still at that location. She is unable to use her garage and this is one of the reasons he wants to bring his equipment home.

Mr. Courtney asked how long they have been at the present address.

Ms. Coury stated it has been ten (10) years.

Mr. Courtney asked how Mr. Stewart does advertising.

Mr. Stewart said that he doesn't advertise and uses his mother's address only because he moved and didn't change the address. He does not have a lot of mail that comes to him and does not have office equipment.

Mr. Courtney stated that Mr. Stewart has one employee now, but if there were more jobs the number of employees could increase.

Mr. Stewart stated that he is trying to get out of that business as he makes more money doing video and camera work. His employee either picks him up or he goes and picks him up.

Mr. Clark said that he thought that the renderings were very nice; however, he does not see a hardship that runs with the land. Mr. Clark also stated that he thought if this building was only one story the Board would not have a problem with it. Although, he understands Mr. Stewart's concern regarding storage, he does not believe a two-story building is the answer.

Mr. Stewart stated that he does not believe a hardship applies to a garage and that a hardship should apply to health issues. A garage could be constructed that would be much larger than this structure and all he is asking for is a 3' variance. A 40' building would be a "monster" garage in his opinion and he does not believe that anyone would be able to see the fact that this is a two-story building. Mr. Stewart said that he is trying to come up with the most desirable location for this building. The Ordinance would allow a 40' building and he is bringing it down to 28'.

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Mr. Clark said that he understands what Mr. Stewart is saying but the Board will either accept or reject this proposal. A large one-story building would be harder to see than a two-story building.

Mr. Courtney explained that the Board cannot consider financial or health issues as a hardship that would allow a variance. A hardship has to run with the land.

Mr. Stewart stated that the garage is smaller than what would be allowed by the Ordinance and he is only asking for a 3' variance. Furthermore, if he attached the garage to his home, it could be constructed at 2 ½ stories and would not look good at all.

A discussion began regarding the possible location and size of the garage that would be allowed as well as putting a condition on approval of this request that would limit the size of any additional accessory buildings.

Mr. Strat explained to the petitioner that this Board could only grant a variance if the petitioner demonstrated a hardship. There are guidelines in place instructing the Board on the conditions that would permit a hardship. The petitioner could put this garage in a different location that would not destroy natural vegetation and would not require any type of variance.

Mr. Clark opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are five (5) written approvals on file. There is one (1) written objection on file.

Mr. Courtney stated that he felt the problem was that Mr. Stewart wanted a two-story building where one story should be sufficient.

Mr. Stewart said that the height of one of the trailers was 7' high and he would want at least an additional foot above that. Mr. Stewart also stated that he didn't want to waste his time and is trying to build something that he can get the most use of. He does not want to move it to another location as they have always wanted a large yard.

Mr. Bartnik said that this is a very large property and he believes that the garage could be constructed in another location without a variance.

Mr. Stewart said that there are telephone wires in the middle of the yard and the reason they chose this location was because of the large yard.

Mr. Bartnik stated that the Ordinance states that detached accessory buildings can only be one-story and the petitioner has not demonstrated a hardship that runs with the land.

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Mr. Lambert stated that he understands the petitioner's needs, but would like clarification from staff on the natural features provision and how it would justify a variance.

Mr. Stimac stated that the Ordinance does have special findings that state that"...absent a variance natural features would be negatively affected." The petitioner has stated that in order to get a 913 square foot building, he would have to remove existing trees. One of the questions that the Board needs to address is if it is appropriate to build a 913 square foot building? Just because the ordinance allows for a 913 square foot building does not mean that it is appropriate to build one on every site. The second question is if the building could be put in another location that would not impact the existing trees?

Mr. Kovacs stated that if he did approve this variance he would want to put a limit on the size of any additional accessory structures. Mr. Kovacs also stated that he believes that the petitioner could build so much more than what he is asking for.

Motion by Kovacs
Supported by Lambert

MOVED, to grant Lisa Coury and James Stewart, 924 Hannah, relief of the Ordinance to construct a two-story gambrel style roofed building with a building height of 17' where Section 40.56.02 limits detached accessory building to not more than one story and not more than a 14' maximum building height.

- Variance is not contrary to public interest.
- Variance does not permit the establishment of a prohibited use in a zoning district.
- Variance would not have an adverse effect to surrounding property.
- Absent a variance natural features would be destroyed.
- Conformance would be unnecessarily burdensome.
- Detached accessory structures would be limited to 672 square feet.
- Attached accessory structures would be limited to 280 square feet, which is what is currently on the property.

A discussion began about moving the garage further back and how the existing trees would be affected.

Mr. Strat stated that the building could be constructed as a one-story building and a variance would not be required.

The orientation of the garage on the property was discussed and there are other solutions available to the petitioner.

Mr. Stewart stated that the Ordinance would allow him to build a "monster" garage and this is something he did not want to do.

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Mr. Strat stated that the Planning Commission is working on addressing the language in the Ordinance regarding detached accessory buildings, but did not have any idea of when or if that language would be changed.

Motion by Courtney
Supported by Clark

MOVED, to amend the original motion to include a restriction that once a permit is issued to modify the existing home, that the area of the attached accessory structure would have to be eliminated.

Mr. Clark questioned this amendment and Mr. Courtney stated that if this variance is granted, and the petitioner makes changes to his home, he would not be able to build a second attached garage.

Mr. Kovacs said that he thought this condition would be overly burdensome for the petitioner.

Discussion began regarding this amendment and it was determined that if a Building Permit was issued to change the existing home the attached garage would have to be converted living space or removed.

Vote on the amendment.

Yeas: 3 – Lambert, Clark, Courtney
Nays: 3 – Kovacs, Strat, Bartnik
Absent: 1 – Gies

MOTION TO AMEND MOTION FAILS

Vote on original motion to grant variance.

Yeas: 2 – Lambert, Kovacs
Nays: 4 – Strat, Bartnik, Clark, Courtney
Absent: 1 – Gies

MOTION TO GRANT VARIANCE DENIED

Mr. Kovacs stated that he would like to see the Board state the Special Findings when making a motion to approve or deny a request.

Mr. Clark stated that he would not be at the meeting of November 18, 2008 as he will be out of town.

The Board of Zoning Appeals meeting adjourned at 9:05 P.M.

Glenn Clark, Vice-Chairman

Pamela Pasternak, Recording Secretary