The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, May 17, 2005 in Council Chambers of the Troy City Hall.

PRESENT: Kenneth Courtney
Christopher Fejes
Marcia Gies
Michael Hutson
Matthew Kovacs
Mark Maxwell
Wayne Wright

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

ITEM #1 – APPROVAL OF MINUTES – MEETING OF APRIL 19, 2005

Motion by Gies
Supported by Courtney

MOVED, to approve the minutes of April 19, 2005 as written.

Yeas: All – 7

MOTION TO APPROVE MINUTES CARRIED

ITEM #2 – VARIANCE REQUESTED. SPECIAL TREE REHABILITATION, INC., 1640 AXTELL, for renewal of relief of the 6' high masonry screening wall required along the north property line.

Mr. Stimac explained that after some research it has been discovered that this property has been sold to the property owner next door. The renewal on that property is due to come to the Board in December and therefore this request will be addressed at that time. No further action is required on this item at this time.

ITEM #3 – VARIANCE REQUESTED. MR. & MRS. MICHAEL LARCH, 91 BILTMORE, for relief of the Ordinance to construct a second floor addition and covered front porch that will result in a 20.3' front yard setback. Section 30.10.06 requires a minimum 25' front yard setback in R-2 Zoning Districts.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a second floor addition and covered front porch to their home. The site plans submitted indicated a 20.3' front yard setback to the proposed covered front porch. Section 30.10.06 requires a 25' minimum front yard setback for single-family homes built in the R-2 Zoning District.

J-1d

ITEM #3 – con't.

Ken Navaroli, of Quality Fast Construction was present representing Mr. & Mrs. Larch. Mr. Navaroli said that this a growing family of four, including one child that has special educations needs and they need a larger home. Mr. Navaroli brought in pictures taken from this home showing the relation of this home to other homes on the street. This property appears to be setback further and the covered front porch would make the home more aesthetically pleasing. This variance will aid in making this home more in line with the newer homes on the street and also increase the value of the home.

Mr. Kovacs asked if this home met the setback requirements if it was not adding a covered front porch. Mr. Stimac said that this house was in compliance with the 25' setback requirement. Mr. Kovacs then asked if this Board could place a stipulation on this variance that if granted, it would have to remain a covered front porch. Mr. Stimac said that if this Board were to allow a covered front porch with a 20.3' front yard setback, where 25' is required, that would be the stipulation of the motion.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

Mr. Stimac did point out that the difference in the line of the homes was because this was actually two (2) different subdivisions, one that includes the eastern block and one that was originally platted that makes up the western block. This portion of Biltmore was platted with a 70' width, which is larger than the normal interior right of way. The properties in the second block utilized the 60' right of way dimension, which makes the road narrower.

Motion by Maxwell
Supported by Gies

MOVED, to grant Mr. & Mrs. Larch, 91 Biltmore, relief of the Ordinance to construct a second floor addition and covered front porch that will result in a 20.3' front yard setback where a minimum 25' front yard setback is required by Section 30.10.06.

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

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

Mr. Hutson stated that the petitioner indicated that without this variance the home would not be aesthetically pleasing and although this would not justify as a hardship, he does feel that this request is appropriate.

ITEM #4 – VARIANCE REQUESTED. MR. & MRS. RICHARD SHORT, 502 RANDALL, for relief of the Ordinance to construct a family room addition that will result in a 36' rear yard setback where Section3 0.10.04 requires a 40' minimum rear yard setback in R-1C zoned districts. The proposed addition will also result in the existing pool being located in a side yard. Section 40.57.03 prohibits the placement of a swimming pool in any yard but a rear yard.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance to construct a family room addition to their home. The site plan submitted indicates a family room addition on the rear of the home with a proposed 36' rear yard setback. Section 30.10.04 requires a 40' minimum rear setback in R-1C Zoning Districts. The plans also show an existing swimming pool that is currently located in the rear yard. Since the proposed addition extends into the rear yard farther than the pool, the pool would then be located, at least in part, in a side yard. Section 40.57.03 prohibits the placement of a swimming pool in any yard but a rear yard.

Mr. Short was present and stated that when the Public Hearing notices were sent out there was some confusion regarding the location of the pool, and Mr. Short went through the neighborhood and had a petition signed indicating approval of this plan. They would like to put on this addition because the fireplace is in the middle of the room, and basically they cannot put furniture in this area. They also entertain a lot and do not have a formal dining room. This addition would increase their living space and allow for the dining room. Mr. Short said this plan is the most cost effective and would fit in with the other homes in the neighborhood.

Mr. Kovacs said that when he had driven through this area, he saw that this house is a two-story home that backs up to the house behind them. Mr. Kovacs asked if this was the garage and Mr. Short said that it was. Mr. Kovacs then asked if this addition would be one or two stories and Mr. Short said it was going to only be one story. Mr. Kovacs also asked if they had planned to move the fireplace and Mr. Short said that they plan to move the fireplace into the corner of the room to make the space more usable.

Mr. Hutson asked Mr. Short if he had a choice, which variance would he rather have – the setback variance or the placement of the pool in the side yard. Mr. Short said if he had a choice he would like both variances, but if he had to choose only one it would be the setback variance. Mr. Short indicated that this was an aboveground pool and eventually would probably be taken down.

Mr. Kovacs asked how large the pool was and Mr. Short was it was 12' x 22' and he could move it back, but it would be rather expensive.

Mr. Courtney asked for clarification on these variance requests and Mr. Stimac explained that if the family room complied with the 40' rear yard setback, there would no overlap in the existing location of the pool.

ITEM #4 – con't.

Mr. Kovacs asked how much room is available for Mr. Short to build on the east side of his property. Mr. Stimac explained that this is a double front corner lot so it has front yard setbacks along both Randall and Tallman and in R-1C Zoning Districts the minimum is 30', which would indicate that there is no room of the east side of the property. The west side of the property appears, based on the dimensions provided, to be about 24' and the side yard requirement for an interior lot is 10'. Mr. Kovacs said that he was trying to determine if there was any other location on the property for this shed.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

Mr. Kovacs said that he believes a double front corner lot creates a hardship for the property owner.

Mr. Wright stated that the only reason the pool would require a variance is because of the addition and in his opinion; he would not have a problem with either variance request.

Motion by Wright
Supported by Fejes

MOVED, to grant Mr. & Mrs. Richard Short, 502 Randall, relief of the Ordinance to construct a family room addition that will result in a 36' rear yard setback where Section 30.10.04 requires a 40' minimum rear yard setback in R-1C Zoned Districts; and relief of Section 40.57.03, which prohibits the placement of a swimming pool in any yard but a rear yard.

- Double front corner lot creates a hardship.
- Variances would not be contrary to public interest.
- Variances would not have an adverse effect to surrounding property.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #5 – VARIANCE REQUESTED. MR. NELSON K. WESENBERG OF BARRETT PAVING MATERIALS, 2040 BARRETT, for relief of the Ordinance to install new dust collection equipment. The current use of the property is for an asphalt batch plant, which is not permitted as a principal use by Section 28.20.00 of the Troy Zoning Ordinance. The use is therefore classified as a legal non-conforming use. Section 40.50.05 of the Troy Ordinance prohibits expansion of a legal non-conforming use.

ITEM #5 – con't.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to install new dust collection equipment. The current use of the property is for an asphalt batch plant. Such use, although it has been in existence for many years, is not permitted as a principal use by Section 28.20.00 of the Troy Zoning Ordinance. The use is therefore classified as a legal non-conforming use. Section 40.50.05 of the Troy Zoning Ordinance prohibits the enlargement, extension, construction, reconstruction, movement, or structural alteration of a legal non-conforming use.

Mr. Hutson explained that Mr. Sawyer who is a partner in his Law Firm represents Barrett Paving Materials. Because of this, Mr. Hutson stated that he should be excused from hearing this request.

Motion by Maxwell
Supported by Gies

MOVED, to excuse Mr. Hutson from hearing this matter due to the appearance of a conflict of interest..

Yeas: 6 – Maxwell, Wright, Courtney, Fejes, Gies, Kovacs

MOTION TO EXCUSE MR. HUTSON CARRIED

Mr. Huston stepped down from the board and left the Council Chambers.

Mr. Courtney asked what would happen if this Board did not grant this variance. Mr. Stimac stated that perhaps the petitioner would be able to provide more information on this facility; however, Mr. Stimac said that he did not have any information that the EPA or State was mandating that this equipment be installed.

Mr. Sawyer, Nelson Wesenberg, Plant/Sales Manager, Robert Downie, General Superintendent of Plants and Mike Davis Asphalt Plants Manager were present. Mr. Sawyer explained that this plant has been in operation since 1946 and the present equipment is outdated and not functioning efficiently or properly. In 1974 permission was granted and this dust collection equipment has lasted thirty-one (31) years. This new equipment is state of the art and would not have an adverse effect to surrounding property.

Mr. Wesenberg stated that the EPA is in favor of improving the equipment and this would be very beneficial to improving the operation of this business.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

ITEM #5 – con't.

Mr. Fejes asked if there had been any complaints on file regarding this Company. Mr. Stimac stated that complaints had been received many years back. In 2002 the petitioners appeared before this Board for a variance to put in a new line and since that has occurred there have not been any complaints regarding the operation of this plant.

Mr. Kovacs asked if this business was allowed anywhere in the City of Troy. Mr. Stimac explained that currently under the provisions of the Zoning Ordinance, there is no location in the City that is zoned Heavy Industrial. The difference in the Troy Ordinance between Heavy Industrial and Light Industrial is whether you are using raw materials to produce a product, or if you are using that product and changing it in some manner to make it into a second product. This type of facility under the Troy Ordinance is classified as Heavy Industrial.

Mr. Maxwell asked if the petitioners were guaranteeing this equipment to be quieter, have less dust and have less emissions. Mr. Wesenberg stated that this equipment is more modern and designed to operate at similar velocity as to what the air is already moving.

Motion by Courtney
Supported by Gies

MOVED, to approve the request of Nelson K. Wesenberg of Barrett Paving Materials, 2040 Barrett, for relief of the Ordinance to install new dust collection equipment, which will result in the alteration of a legal non-conforming use as classified in Section 40.50.05 of the Troy Zoning Ordinance.

- New equipment will be cleaner, quieter and more efficient.
- Variance is not contrary to public interest.
- Variance will have an improved effect to property in the surrounding area.

Yeas: 6 – Wright, Courtney, Fejes, Gies, Kovacs, Maxwell
Excused: 1 – Hutson

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUESTED. MR. & MRS. JAMES HARTMAN, 1307 W. SOUTH BOULEVARD, for relief of the Ordinance regarding the size of the attached garage under construction. This attached garage is 2,370 square feet while the first floor living space on the home is only 1,300 square feet. The Board of Zoning Appeals has determined that Chapter 39, Section 04.20.01 of the Troy Zoning Ordinance requires that all accessory buildings (including attached garages) must be smaller than the footprint of the living space on the main floor of the house.

ITEM #6 – con't.

Mr. Stimac explained that the petitioners are requesting relief of the Ordinance regarding the size of an attached garage under construction. Building Permit #PB2004-1147 was issued on October 6, 2004 for the construction of this 2,370 square foot attached garage. The first floor living space of the home is only 1,300 square feet. The Board of Zoning Appeals has recently determined that Chapter 39, Section 04.20.01 of the Troy Zoning Ordinance requires that all accessory buildings (including attached garages) must be smaller than the footprint of the living space on the main floor of the house.

Mr. James Hartman was present and stated that they have three (3) children, ages 12, 10 and 8 and they like the area they are living in. Originally there was a small-detached garage that no longer met their needs, and they looked into moving but because they love the Troy area, they made a decision to put up this garage and stay in their present location. They had submitted their plans to the City, received approval and had started construction in good faith. Mr. Hartman stated that this is his dream garage and believes that it fits in with the character of the neighborhood and would not have an adverse effect to the surrounding property. Mr. Hartman also indicated that this garage is between 75% and 80% complete. All of their construction has been approved and they are about two weeks away from a rough building inspection. Mr. Hartman said that he does not understand how you can retroactively go back to something that was approved when a new decision is made. Mr. Hartman has spoken to his neighbors, a large number of them have indicated approval of this construction, and he would like this variance granted so he could complete this project.

Mr. Hutson asked Mr. Hartman several questions regarding this construction, regarding an architect, builder, etc. Mr. Hartman said that he had designed the plans but had employed a builder. Mr. Hutson then asked if the foundation, floor, shingles had been put on. Mr. Hartman said that all of that work was done and had been approved by the City. Mr. Hutson then asked approximately how much money Mr. Hartman had spent on this project. Mr. Hartman said that right now it's about $45,000.00 out of pocket expense. Mr. Hutson clarified that this permit was issued seven (7) months ago and stated that the Building Permit states that this is a 2370 square foot garage and that it must meet all codes and inspections. Mr. Hartman said that this garage is about 75% complete and he has to add wiring, a firewall, and some window and door trim still. Mr. Hutson said that Mr. Hartman has made substantial progress on this garage and Mr. Hartman agreed.

Mr. Wright asked how high the garage door is and Mr. Hartman said that the garage door is 18' wide and 9' high and is a custom door. Mr. Wright said that he thought the garage door was only 8' high. Mr. Hartman said that a standard door would have saved him a lot of money, but he was trying to make it match his home to add value to the home.

ITEM #6 – con't.

Mr. Maxwell asked what the height of the house and garage were. Mr. Hartman said that the house was built in 1937 and he thought the height is 25' and the roof of the garage is about 23'.

Mr. Kovacs asked what type of siding Mr. Hartman proposes to put on the garage. Mr. Hartman said that they are planning to put on vinyl siding, which will match the back of the house. Mr. Hartman plans to tie it in so that it is the same material. Mr. Kovacs then asked how many windows Mr. Hartman plans to put in. Mr. Hartman said that there are three on the east side, one on the west end and two or three at the back. Mr. Hartman plans to use Anderson windows so that they will match the windows in the house. Mr. Kovacs then asked how Mr. Hartman came up with 2300 square feet. Mr. Hartman said that has eight (8) cars, two of which were willed to him. He plans to store cars in the garage as well as lawn equipment, bikes and four wheelers. He designed it as an eight (8)-car garage and his passion is to tinker with cars. There are two drivers in the home.

The Chairman opened the Public Hearing.

Mr. Lee Hansen, 1331 W. South Boulevard was present and stated that he is in full support of this request and that this whole issue baffles him because someone has put a lot of time and effort into this project and now has to come before this Board for a variance. Mr. Kovacs asked how large his garage was and Mr. Hansen said that his is 24' x 28' and wished he could put in a larger garage. Mr. Hansen also said that he does not consider this an accessory structure because it is attached to the house, and there are several detached garages in the neighborhood. Mr. Kovacs said that if this Board grants a variance not only could he have a 2300 square foot attached structure, but also an additional detached structure. Mr. Kovacs then asked Mr. Stimac how large a detached structure could be. Mr. Stimac said that based on the size of the home, he could put up an additional 2000 square foot detached structure. Lot coverage and other calculation would have to be verified, but Mr. Stimac believes the maximum would be 2000 square feet. Mr. Stimac also suggested that this Board could limit the amount of accessory structures by placing a condition on the approval of a variance.

Mr. Kovacs said that the reason he brought it up was so that Mr. Hansen would be aware that he could add an additional 2000 square foot building. Mr. Hansen said that as long as it complied with the conditions of the Ordinance it would not bother him at all.

Mr. Fejes asked if someone else bought this house down the road, would it be possible for them to convert this garage into living space. Mr. Stimac said that it could. Mr. Fejes then asked if they could place a stipulation on this request that this garage could only be used as a garage. Mr. Stimac said that it would depend on how the variance was worded.

ITEM #6 – con't.

Mr. Fejes then asked the petitioner if he was just storing vehicles or if he planned to work on these vehicles. Mr. Hartman explained that he is in engineer and not a mechanic and tinkering with these cars is his hobby and passion.

No one else wished to be heard and the Public Hearing was closed.

Mr. Kovacs asked the petitioner if he would be opposed to the Board granting this variance with a stipulation that this would be the only accessory structure allowed on this property. Mr. Hartman said this is his dream garage and he would not have a problem with this stipulation. Mr. Kovacs then asked if had any commercial vehicles and Mr. Hartman stated he did not.

Mr. Courtney said that with the change in the way they are now looking at things there are a lot of people out there that have non-conforming garages, and asked if this garage would be considered non-conforming also. Mr. Stimac explained that if the Board grants this variance, this structure would be considered conforming.

Mr. Kovacs explained that at last month's meeting the neighbors of 3129 Alpine filed a request for an interpretation request of the Zoning Ordinance regarding the "monster garage". The Board interpreted the Zoning Ordinance differently than Mr. Stimac did. Mr. Kovacs then asked Mr. Stimac to explain this action further.

Mr. Stimac said that there are basically three stages to a construction project: the first stage would be the submission of an application and plans, which the Building Department reviews for the compliance of the Zoning Ordinance. In October 2004 it was determined that this application was in compliance with the Zoning Ordinance. The second stage is the construction phase. At that time the Building Permit is picked up, construction begins and inspections are made at numerous times to verify that the construction taking place in the field is in compliance with the approved plans and to adjust for and account for any field conditions that would warrant the department's consideration. This process has been going on since October 2004. The third phase is the completion of the project and approval of all construction at which time a final Certificate of Occupancy is issued. In this case, the petitioner was in the middle of stage two and before stage three the Board of Zoning Appeals rendered an interpretation that said that stage one and two were wrong. Based on this decision, the Building Department is precluded from completing stage three and a Certificate of Occupancy cannot be issued. Mr. Stimac also explained that this structure does not gain the status of a legal non-conforming structure. The Board of Zoning Appeals did not change the Ordinance at the meeting of April 19, 2005 and does not have the authority to change the Ordinance. The Board of Zoning Appeals interpreted the existing language of the Ordinance and basically rendered a decision that said that the existing text of the Ordinance does not allow a garage of this size.

ITEM #6 – con't.

Mr. Hartman asked for clarification regarding the use of this structure. Mr. Stimac explained that there are three different types of non-conformity: 1 – non-conforming use, which means that the use would not be permitted in the Zoning District in which it is located; 2 – non-conforming lot, which means that the lot does not meet the minimum area or width requirements of the Ordinance, and 3 – non-conforming structure, which means that the structure does not meet some technical term of the Ordinance. This building does not receive the status of a legal non-conforming structure, but would be considered a non-conforming structure; however, if the variance is granted it will then become a conforming structure.

No one else wished to be heard and the Public Hearing was closed.

There is one (1) written approval on file. There are no written objections on file.

Mr. Hutson stated that he disagreed with Mr. Stimac and believes this is a legal non-conforming use. The Board's action last month declared everyone who is the process of building these garages, created non-conforming use. Mr. Hutson stated that a 1993 Michigan Supreme Court Case talked about what is needed to have a vested right in a structure when there is a Zoning change. In part ".....to establish a prior non-conforming use, the property owner must engage in work of a substantial character, done in preparation for actual use of the premises. The actual use that is non-conforming must be apparent and manifested by a tangible change in the land and preliminary operations are insufficient. Work of a substantial nature beyond the mere preparations must materially and objectively change the land itself." By Mr. Hartman's own testimony this project is 75% completed and this work was started with the blessing of the City of Troy, which said that it conforms to all requirements. Mr. Hutson does not believe a variance is required in this case and does not believe that the City has any power to condemn this structure. Mr. Hutson said that if he is correct, the action of the Board has made the "monster garage" a legal non-conforming structure. Mr. Hutson also said that if the City goes forward and orders the demolition of any of these structures, there would be immediate lawsuits and the City's budget would take a tremendous blow. Mr. Hutson further stated that he did not believe a variance was necessary.

Mr. Kovacs asked for interpretation from the City Attorney. Mr. Courtney said he did not believe the fact that this structure was conforming or non-conforming was relevant. Mr. Courtney said that he believes that now there are a lot of garages in the City that are non-conforming and should probably be torn down.

Ms. Lancaster said that she agrees with Mr. Courtney and a lot of this is semantics. The Board changed the interpretation of the existing language of the Ordinance, they did not change the Ordinance. There is not a lot of case law regarding interpretation; however, if the Board wishes Ms. Lancaster would be more than happy to do research on this topic.

ITEM #6 – con't.

Mr. Hutson said that he wished to express his opinion and while the Board was trying to get rid of the "monster garage", he believes the action of this Board in April created a "whole bunch of mini monsters". Mr. Hutson further stated that he watched City Council wrestle with trying to make an amendment to the Ordinance and believes this is a nightmare. Mr. Hutson further stated that the petitioner has been caught in the middle of all of this and he is very sympathetic to the petitioner.

Mr. Hartman said all he would like to do would be able to finish what he started. Mr. Hartman also asked if he would have to come back to this Board if in fact there was a change in the Ordinance. Mr. Stimac stated that the Ordinance is very specific regarding structures under construction when changes in the Ordinance language take place. The structures become legal non-conforming structures and the main hazard with this classification is if the structure is destroyed more than 60%, the property owner would require a variance to rebuild it, or would have to rebuild it in compliance with the Ordinance.

Ms. Gies asked how many garages under construction were affected by this interpretation. Mr. Stimac said that after research it has been determined that presently the Board's interpretation would affect four (4) garages. Ms. Gies then asked if the Board of Zoning Appeals fee is being waived for these four (4) people and Mr. Stimac stated that it was not.

Mr. Kovacs said that in this case he believes this structure definitely looks like a garage and matches the home. Mr. Kovacs went on to say that this space could be converted to living space and the property owner could then put up an accessory structure that would be 2000 square feet. Mr. Kovacs also said that if a variance was passed, he would vote no to granting a variance unless a stipulation was made that no other accessory structures could be put on this site. Mr. Kovacs said that this garage fits in with the character of the home and his vote would be contingent on not having any other accessory structures on the property.

Mr. Maxwell said that this is a very busy road and this particular structure would not have any impact on surrounding property. Basically this is not a residential area per-se. Mr. Maxwell said that he would be in favor of this variance, but would limit the size of accessory structures on this property to 2370 square feet.

Motion by Maxwell
Supported by Wright

ITEM #6 – con't.

MOVED, to grant Mr. & Mrs. James Hartman, 1307 W. South Boulevard, relief of the Ordinance regarding the size of the attached garage under construction.

- Variance would not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.
- This site is limited to 2370 square feet of accessory structures.

Yeas: 6 – Courtney, Fejes, Gies, Kovacs, Maxwell, Wright
Nays: 1 – Hutson

MOTION TO GRANT VARIANCE CARRIED

Mr. Hutson stated that he objects to the amendment on this motion and does not believe the Board should limit the size of accessory structures. Mr. Hutson also said that this Board made the interpretation and that causes problems.

ITEM #7 – VARIANCE REQUESTED. CHUCK FAULKNER, 4011 BUTTERNUT HILL, for relief of the Ordinance to maintain a shed constructed without first obtaining a Building Permit in the front yard of his property. This lot is a double front corner lot. The shed is located 6' from the south property line along West Wattles. Section 30.10.01 requires a 40' minimum front setback in R-1A Zoning.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a shed constructed without first obtaining a Building Permit in a front yard of his property. This lot is a double front corner lot. As such, it has front yard requirements along both Butternut Hill and West Wattles. The site plan submitted indicates the shed is located 6' from the south property line along West Wattles. Section 30.10.01 requires a 40' minimum front setback in R-1A Zoning.

Mr. Kovacs asked what the limitations of sheds were. Mr. Stimac said that according to the Ordinance detached accessory buildings cannot occupy more than 25% of the required rear yard, they cannot exceed 40% of the non-required rear yard and cannot exceed ½ the ground floor area of the main house or 600 square feet whichever is greater. Currently there is no limit on the number of detached accessory buildings that can make up the square footage.

Mr. Faulkner was present and stated that they had just recently moved into this area and brought the shed from their other house. Mr. Faulkner said that he did not realize he needed a Building Permit and when he found out one was required, he brought his plans in to the Building Department and this is when he found out it was in the wrong area. He stores stuff in the shed that he uses for work and he put it close to the driveway so that it was easy to load and unload from his vehicle. Mr. Faulkner has added shrubbery around it and does plan to add more shrubbery. If he has to move the shed, he would have to remove some of the existing landscaping and mature trees.

ITEM #7 – con't.

Mr. Kovacs asked if the shed could be placed anywhere else on the property and Mr. Stimac created a picture indicating where it could be put. Mr. Stimac also stated that it has to be in the rear yard and has to be 10' away from the main structure. Mr. Kovacs said that it could be located behind his house as long as it was 10' away.

Mr. Kovacs asked what type of foundation the shed was on. Mr. Faulkner stated that it is on 6" beams and in that regard the shed was in compliance with the City of Troy's requirements. Mr. Kovacs asked if a cement foundation was required and Mr. Stimac explained that either a cement foundation with a rat wall or an elevated floor is acceptable. Mr. Kovacs asked how Mr. Faulkner knew of these requirements, but was unaware that a Building Permit was required. Mr. Faulkner said that the requirements were printed on the leaflet for the shed. Mr. Faulkner said that if they put it anywhere else, it would be visible to the neighbor behind him.

Mr. Hutson asked what the side yard setback would be along Wattles if this was not a double front corner lot. Mr. Stimac said that in the R-1A Zoning District, a 15' side yard setback is required on a non-double front corner lot. Mr. Hutson said that he thinks this is the perfect location for this shed because of the landscaping, not only around the shed but also the entire yard.

Mr. Kovacs said that if there was not a house on Wattles would it still be a double front corner lot. In the R-1A Zoning classification the side yard setback is 15'; if this were an interior lot the side yard setback is 6' for a detached accessory building.

Mr. Courtney asked for clarification regarding a double front corner lot. Mr. Stimac explained that if no one fronted on either side of Wattles Road in the block, it would not be counted as a double front corner lot.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There are two (2) written objections on file.

Mr. Kovacs said that he thinks this is the perfect location for the shed also. His shed is at the back of his property and is not very convenient. Mr. Kovacs also asked if the Board could grant this variance with the stipulation that shrubbery remains to screen this shed. Ms. Lancaster stated that as long as it is stipulated to the variance, it could be stated as part of the motion. Mr. Faulkner said that he planned on adding more shrubs.

Motion by Hutson
Supported by Courtney

ITEM #7 – con't.

MOVED, to grant Chuck Faulkner, 4011 Butternut Hill, relief of the ordinance to maintain a shed located 6' from the south property line along West Wattles where Section 30.10.01 requires a 40' minimum front setback in R-1A Zoning.

- Sufficient shrubbery will be provided to screen this shed.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.
- Only one detached accessory building would be allowed.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #8 – VARIANCE REQUESTED. MRS. ELISABETH GOLUS, 816 HARRIS, for relief of the Ordinance regarding the size of the attached garage under construction. The attached garage is 1076 square feet while the first floor living space of the home is only 755 square feet. The Board of Zoning Appeals has determined that Chapter 39, Section 04.20.01 of the Troy Zoning Ordinance requires that all accessory buildings (including attached garages) must be smaller than the footprint of the living space on the main floor of the house.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance regarding the size of an attached garage under construction. Building Permit #PB2004-0399 was issued on May 6, 2004 for an addition resulting in a 1,076 square foot attached garage. The first floor living space of the home is only 755 square feet. The Board of Zoning Appeals has recently determined that Chapter 39, Section 04.20.01 of the Troy Zoning Ordinance requires that all accessory buildings (including attached garages) must be smaller than the footprint of the living space on the main floor of the house.

Ms. Golus was present and stated that they had obtained a Building Permit on May 6, 2004 for the construction of this garage. They have passed all inspections and the structure is more than 50% complete and would like to be able to finish this construction. They also built on top of the house and added a full master suite. Mr. Kovacs asked how large the master suite was and Ms. Golus said that it was approximately 17' x 22'. Mr. Kovacs then asked what the square footage of the home was and Ms. Golus stated that it was 2,000 square feet.

The Chairman opened the Public Hearing.

James Savage, 800 Harris was present and stated that he lives on the west side of the petitioners and supports this petition. Some of the neighbors have indicated support of this project also. Whenever there has been an issue on the street, they have usually had 100% support. The neighbors look out for one another. Mr. Savage went on to say

ITEM #8 – con't.

that he is a little confused, because he was sure that they would have obtained the proper permits, and if they have done everything they should he doesn't know how he can change the outcome. Mr. Savage also asked what would happen to this family if this request was denied.

Mr. Kovacs said that one of the key factors this Board has to find is that the variance would not be contrary to public interest and the Board takes all approvals and objections into consideration. Mr. Kovacs also said that this input was very important to the Board.

Chris Komasara, 5287 Windmill was present and said that according to what has been stated there is approximately 500 square feet of living space above the garage. If this structure is considered to be a legal non-conforming structure, and something happened to the structure, could the petitioner re-build. Mr. Stimac said that if this structure was considered to be a legal non-conforming structure and there was a residence above that structure, and if that structure was destroyed to an extent more than 60% of its replacement value, it could only be rebuilt in compliance with the Ordinance. Mr. Kovacs then asked if they could seek a variance and Mr. Stimac said that this was correct and they could seek a variance. Mr. Komasara also said that he was in support of this request.

No one else wished to be heard and the Public Hearing was closed.

Mr. Kovacs asked what size detached structure would be allowed on this site. Mr. Stimac said that he understands the ground floor area of the house is 1,825 square feet, and the way the Ordinance is written, approximately 862 square feet of detached structure would be allowed. Mr. Kovacs asked if they had any future plans for a detached structure. Ms. Golus stated that they did not.

There are five (5) written approvals on file. There are no written objections on file.

Mr. Courtney asked if there was a shed in the yard and Ms. Golus said there was not.

Mr. Fejes asked if the other Board members felt that they should add the condition to the variance request that no other accessory structures would be allowed on the property. Mr. Kovacs said it is up to his discretion although in this case he was not as concerned because the lot was smaller. Mr. Fejes asked if this should be an automatic condition until the Planning Commission determines what the right language is going to be. Mr. Courtney stated that he did not believe that condition was necessary to this request.

Mr. Maxwell said that he believes each case should be judged on its own merits and does not believe this condition would be required on this variance and would not be in favor of adding any conditions.

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Motion by Fejes
Supported by Courtney

MOVED, to grant Mrs. Elisabeth Golus, 816 Harris, relief of the Ordinance regarding the size of the attached garage under construction, which is 1076 square feet.

- Variance is not contrary to public interest.
- This garage matches the outside of the house and is aesthetically pleasing.
- Variance would not have an adverse effect to surrounding property.

Yeas: 6 – Fejes, Gies, Hutson, Maxwell, Wright, Courtney
Nays: 1 – Kovacs

MOTION TO GRANT VARIANCE CARRIED

Mr. Kovacs said that he is comfortable with this structure but is concerned that in the future another detached building may be added.

ITEM #9 – VARIANCE REQUESTED. FRANCO MANCINI, 6399 NORTON (EXISTING ADDRESS), 650 QUILL CREEK (PROPOSED ADDRESS), for relief of the Ordinance to develop the property located on the south side of Quill Creek Drive (originally platted as Booth) west of Norton. The existing home will remain and has a 39.22' front yard setback. Section 30.01.02 of the Troy Zoning Ordinance requires a 40' minimum front yard setback in the R-1B Zoning Classification.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to develop the property located on the south side of Quill Creek Drive (originally platted as Booth) west of Norton. The dedication of additional right of way to allow for the development of the public street for Quill Creek Drive as part of this project results in a 39.22' front yard setback to the existing home at 6399 Norton. This existing home is proposed to remain and will become 650 Quill Creek Drive when the project is completed. Section 30.10.02 of the Troy Zoning Ordinance requires a 40' minimum front yard setback in the R-1B Zoning Classification.

Mr. Stimac further explained that at the time this subdivision was platted it was done with a ½ street along the western property line, a ½ street along the southern property line, and a ½ street along the eastern property line. The property to the south is an acreage parcel and is not part of any subdivision. The existing house on parcel 1, addressed on Norton was constructed quite some time ago. As part of this development the petitioner is dedicating additional right of way ends up resulting in a 39.22' setback to the existing home at 6399 Norton. Petitioners are asking for approval for a 9 ½" variance.

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Franco Mancini was present and stated that to the east of what was originally called Booth is now being changed to Quill Creek and T's into what is called Norton. After engineering plans were prepared it was discovered that the west end of this home has a front setback of 40.42' and 39.22' at the east end of the home. The Building Department indicated that this created a setback issue.

Mr. Kovacs asked if Mr. Mancini was the current homeowner and Mr. Mancini said that he was not, but the current homeowner planned to stay in this home.

Mr. Courtney asked what would happen if the variance was not granted and why an approval was required to dedicate the Road. Mr. Stimac said that there were a couple of options, one of which was that he could not dedicate the road and would have to abandon the project or seek additional right of way to the north; the other option would be to remove a portion of the house so that he would comply. Mr. Courtney said that he did not understand why this street would be stopped. Mr. Stimac explained that this was a separate piece of property and not part of this subdivision.

Mr. Kovacs asked what happens when the City is in this position. Mr. Stimac said it goes back to a master thoroughfare that goes back to 1972 and the City does pay compensation when a property becomes non-conforming because of the acquisition of additional property. Mr. Stimac also said that the City does not acquire land for perpendicular streets, and interior streets are left up to the developers to complete. Booth was not part of the master thoroughfare plan in 1972. Mr. Kovacs said that there are homes that remain that do not meet the setback. The City cannot do this without the Board of Zoning Appeals approval. Structures on major thoroughfares became non-conforming in 1972 with a change in the Ordinance. This is not being done by a change in the Ordinance, but is being done by a developer.

The Chairman opened the Public Hearing.

Mr. Rick Hurst, 665 Ottawa drive was present representing his parents who live on Ottawa. Mr. Hurst stated that this developer should have known there was going to be a problem at the time he purchased this property. The construction on these lots is creating a problem to his parents' property because of debris. Furthermore, in April they were pumping out several thousand gallons of water and flooded the back of his parents' property. Mr. Hurst had Jennifer Lawson from the Engineering Department come out to inspect this site and she did inform Mr. Mancini that he could not pump water out onto other property. Mr. Hurst indicated that his parents oppose this variance request.

Mr. Kovacs asked how his objection related to the property. Mr. Kovacs said that he feels that these objections are related more to the way the builder is developing this property rather than the size of the parcel. Mr. Hurst said that he is disrespecting his parents and wants to know what else he is going to do to damage the property at 665

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Ottawa. Ms. Lawson was supposed to come out and do an inspection, but Mr. Hurst stated that he did not think she did. Mr. Hurst also said that he would be sending letters to the City indicating his disapproval.

Benjamin Blaszak, 761 Ottawa was present and said that there have been problems with this builder from the beginning. He had put in a farmer's fence post, and one of the bulldozers working in the area knocked this post down and now Mr. Blaszak will require another survey. Mr. Blaszak also said that a creeks runs through the back of this property, and he believes that additional construction will increase flooding in this area. The pumping of the water from the first basement not only flooded the Hurst property but also flooded his property. Mr. Blaszak also said that if he was the one developing this property he would have made sure that he had enough property to begin with, and you should know what you are doing. Mr. Blaszak said that this area has a large flooding problem and believes another street will increase the flooding problem by changing the flow of water.

Mr. Kovacs asked where Mr. Blaszak's property was in relation to this property. Mr. Blaszak said that his property is to the south and east of this development. Mr. Blaszak said that if the street is moved back a little farther, would be right on the edge of the creek and does believe it will create a larger flooding problem. Mr. Kovacs said that if Mr. Mancini did acquire additional property from the property owner to the north, the street would still go in. Mr. Kovacs asked if the petitioner could go 9 ½" closer, and Mr. Stimac said that he thought he could because he is proposing a 50' right of way. The road is proposed to be off center. Mr. Kovacs said that this variance is 9 ½" and the objections presented so far, are because of flooding issues and the fact that they do not like the way the builder is building the house. These objections do not apply to the variance, but to the builder. Mr. Blaszak said that he did not have an objection to the builder, but he does object to a 9 ½" variance.

Mr. Courtney asked how granting a variance for 9 ½" would create a problem. Mr. Blaszak said that he understands where Mr. Courtney is coming from, but this is not a small request, this is poor engineering. Mr. Blaszak also said why grant a variance, when the bottom line is that the developer made a mistake.

Mr. Hurst came back to the podium and said that once this road goes in, this will become a through road and noise and traffic is going to increase. This area will become the main shortcut.

Mr. Stimac explained that Norton was not developed but there was a ½ street platted with Booth, another ½ street was platted as Overland, another ½ street was platted as Montclair and when the subdivision was done on the other side was platted for traffic. The land being developed by Mr. Mancini will now be platted, developed and opened for traffic. Mr. Stimac went on to say that there were always ½ streets platted, they were just not developed.

ITEM #9 – con't.

Mr. Hurst said that if this street goes in, the whole street will be completed. Mr. Kovacs asked how it would affect his parents and Mr. Hurst said that they will be able to hear the extra traffic and will create a problem. Mr. Hurst said that he feels that Mr. Mancini should have known this was a problem before this project was started. Mr. Courtney said that he did not think this would create a large traffic problem. Mr. Kovacs said that he thought the houses were setback quite far from the street and did not think the noise would be that bad. Mr. Hurst said that his parents had received the notice of a Public Hearing and he was here to represent them and indicate their disapproval. Mr. Kovacs said that these homes will add value to his parents home. Mr. Hurst said he understood that but this objection is presented at his father's request.

Mr. Mancini said that when they improved Booth to Quill Creek the drainage was improved in this area and they plan to improve the drainage in this area as well. They have developed the roads and it is now a much higher standard of road. Mr. Mancini said that they are adding rear yard drains, and it is possible that the excess dirt did divert the water. Mr. Mancini also said that Jennifer Lawson called them and told them there was a problem with the water and they went to the site to look at the problem. The quality of the work that they do is of the highest standard and they do not downgrade the property but upgrade the property they work on. Engineering did survey this property and did admit that an error was made. The surveys were re-comped and the variations were achieved. If the property to the north had been for sale, they would have purchased the property and a variance would not be required.

No one else wished to be heard and the Public Hearing was closed.

There is one written objection on file. There are no written approvals on file.

Motion by Maxwell
Supported by Wright

MOVED, to grant Franco Mancini, 6399 Norton (existing address), 650 Quill Creek (proposed address), relief of the Ordinance to develop the property located on the South side of Quill Creek Drive (originally platted as Booth) west of Norton, which will result in a front yard setback of 39.22' where Section 30.01.02 of the Zoning Ordinance requires a 40' minimum front yard setback.

- Variance request is minimal.
- Variance would not have an adverse effect to surrounding property.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

ITEM #10 – ELECTION OF CHAIRMAN & VICE CHAIRMAN – BOARD OF ZONING APPEALS, 2005-2006

Motion by Courtney
Supported by Gies

MOVED, to elect Christopher Fejes to Chairman, and Matthew Kovacs to Vice-Chairman.

Yeas: 6 – Hutson, Maxwell, Wright, Courtney, Fejes, Gies
Nays: 1 – Kovacs

MOTION TO ELECT OFFICERS AS STATED CARRIED

The Board of Zoning Appeals meeting adjourned at 10:15 P.M.

6/21/2005

Matthew Kovacs, Chairman

Pamela Pasternak

Pamela Pasternak, Recording Secretary