The Chairman, Matthew Kovacs, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, April 19, 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
Allan Motzny, Assistant City Attorney
Pamela Pasternak, Recording Secretary

ITEM #1 – APPROVAL OF MINUTES – MEETING OF MARCH 15, 2005

Motion by Gies
Supported by Courtney

MOVED, to approve the minutes of the meeting of March 15, 2005 as written.

Yeas: 5 – Fejes, Gies, Kovacs, Maxwell, Courtney
Abstain: 2 – Hutson, Wright

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 – INTERPRETATION REQUEST. GEORGE REED, BETTY REED & THOMAS KRENT, 3129 ALPINE, appealing the issuance of a building permit to construct a garage at 3129 Alpine.

Mr. Stimac explained that the petitioners are appealing the issuance of a building permit to construct a garage at 3129 Alpine. In support of that appeal they are requesting interpretation of Sections 1.30.00, 2.30.00, 2.50.02, 4.20.01, 4.20.03, 4.20.65, 4.20.71, 4.20.139, 10.10.00, 3.40.03 and 40.57.02 of the Troy Zoning Ordinance as they apply to that structure. The permit for this structure was issued in 2003 because the structure was found to be in compliance with the requirements of the Troy Zoning Ordinance. This item last appeared before this Board at the meeting of March 15, 2005 and was postponed at the request of the petitioner.

Additional documents, provided by one of the petitioners and their attorney, as well as responses by the Building Department and City Attorney's Office are provided in your agenda packet.

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Mr. Kovacs explained that the Board members had received additional literature and asked for a breakdown of that literature, which includes feedback from the City Staff, Mr. Motzny, Mr. Kingsepp and Mr. Piscopo's attorney, Jill A. Bankey of Siegel, Greenfield, Hayes & Gross.

Mr. Courtney asked what the restrictions would be if this structure was a house addition. Mr. Stimac indicated that if it were habitable area there would be certain additional building requirements, which would include insulation levels, and if used for sleeping rooms it would require egress windows and other things like that. If it was a large recreation room without additional heating there would be no requirements for changes to the structure.

Mr. Kingsepp was present and stated that he has not had an opportunity to examine the position of council for the City or the Building Officials response so he is not aware of their position. Mr. Kingsepp said that he would like to save his comments as part of a rebuttal once the position of the City is expressed and once the position of the petitioner is expressed as it is probably set forth in the memorandum from Mr. Piscopo's attorney. Mr. Kingsepp also said that in the event that either Mr. Piscopo or Mr. Piscopo's attorney gets up regarding their position, he has a number of questions, which he distributed, that is obviously up to the discretion of the Board to use as needed.

Mr. Stimac provided Mr. Kingsepp with the documents prepared by the City.

Mr. Kovacs stated that this was a very unique situation and asked if the Board wished to go Ordinance by Ordinance. Mr. Maxwell stated that he just wished to ask questions on the material the Board members had received.

Mr. Maxwell said that Mr. Stimac had determined that this structure did not fit the description of an accessory building and did not feel that the questions of size or use in Section 04.20.01 applied to this structure. Mr. Maxwell also had questions regarding Mr. Stimac's statement that the legislative body that adopted the 1956 Troy City Zoning Ordinance, and deleted the phrase "or a portion of the main" building made a conscious act to delete this phrase. Mr. Stimac said that in providing the response to this request, he had researched the origin of the language and documentation provided to Council regarding changes. In looking at the definition of accessory building as it is currently defined in the Ordinance, that exact text was identical to that which was adopted in the 1956 Troy City Zoning Ordinance. The Troy Township Ordinance that preceded that was adopted in March 1955 and that document included the text, "or portion of the main building". He stated that is the text is used by other cities when they wish to regulate attached garages as accessory buildings. In the adoption of the City of Troy Ordinance this language was deleted. It is Mr. Stimac's opinion that all the words in the Ordinance have a meaning or purpose and because these words were deleted they did so purposely and the effect that the "portions of the main building" are no longer accessory

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buildings. Therefore, the definition of an accessory building does not apply to an attached garage and any additional language in that definition that applies other restrictions also do not apply. If it is not an accessory building you cannot apply standards of accessory buildings to it under that definition.

Mr. Maxwell also asked which Ordinance referred to an accessory building that is attached to a main building. Mr. Stimac said that this Section is 40.57.02. Mr. Stimac said that in his opinion Section 40.57.02 is there to give direction as to what to do with accessory buildings that are attached to the main building; they should be treated as the main building. If you apply the accessory building standards elsewhere in the Ordinance you will have conflicts that you cannot resolve such as accessory buildings have to be in the rear yard; yet if they are attached to the main building that is where the rear yard starts.

Mr. Maxwell also paraphrased Section 10.10.00. Mr. Maxwell said that Mr. Stimac said that the language of this section was not enforceable unless it is specifically referenced by other sections of the Zoning Ordinance containing mandatory language. Mr. Maxwell said that in his opinion one of the main things that the Board of Zoning Appeals does is to grant permission to break the law and we have to provide "special findings" to grant these variances. One of the special findings includes "literal enforcement of the Zoning Ordinance precludes full enjoyment of the permitted use and makes conformance unnecessarily burdensome. In this regard, the Board shall find a lesser variance does not give substantial relief and relief requested can be granted within the spirit of the Ordinance in the interest of public safety and welfare". Intent is purpose and lays out the foundation of the Ordinance and this Board looks at intent as part of what they do. Mr. Maxwell does think that intent is something that can be enforced. Mr. Maxwell also said that he believes that intent of the Ordinance is just as important as the letter of the law. This permit was issued according to "the letter of the law", and Mr. Maxwell did not wish to dispute the lot size, height, or coverage or any of those things, but does question whether or not this Building Permit meets the intent regarding the spirit of the Ordinance and he believes that intent should be part of their decision in making this interpretation decision.

Mr. Courtney stated that he felt that the deletion of the language regarding "a portion of the main building" was so that people could have garages that were attached somewhere near the front of the house. If that section was left in you would outlaw just about every attached garage in Troy. Mr. Stimac said that he did not have the 1955 Troy Township Ordinance in front of him, but if the same language existed restricting an accessory structure to a rear yard was there, he would agree that Mr. Courtney's interpretation would be correct.

Mr. Kovacs read Section 40.56.00 regarding the definition of a garage and in all of the documentation provided by the attorneys, petitioners and City Staff this structure is referred to as a garage. There is 100% agreement that this is a garage as defined by

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the Zoning Ordinance. Mr. Kovacs asked why Mr. Stimac no longer considered this an accessory structure and why a garage would be listed as an accessory structure in Section 40.56.00. Mr. Stimac explained that if there is a detached building that is used to park vehicles it is defined as a garage under the accessibility standards, but does not mean that every building used for that purpose is an accessory building. Every building used for the parking of vehicles that is detached from the main building is a garage, but does not mean that every building used for the parking of vehicles is necessarily an accessory structure. Mr. Kovacs questioned the language in 40.56.00 stating that a garage was an accessory building. Mr. Stimac said that the front-end definition of an accessory building states that it must be a supplemental building, a separate building. Mr. Kovacs then questioned whether Mr. Stimac defined this structure as a garage. Mr. Stimac stated that in his opinion this was a garage, but not an accessory building. Mr. Kovacs then asked why there was language in 40.57.01, 05 & 06 talking about detached accessory buildings, if an attached building is now part of the main building. Mr. Kovacs asked what the intent of this language was. Mr. Stimac said that the additional language in there is regarding detached buildings, and there is only one section that deals with attached, Section 40.57.02. The rest of the sections deal with detached buildings. The fact that is says a detached accessory building does not necessarily mean that there are different rules for an attached accessory building. By the definition, all accessory buildings are detached.

Mr. Courtney said that he disagreed with the language because all accessory buildings are not detached because 40.57.02 says that where accessory buildings are structurally attached, they are required to follow the restrictions of the main building. Mr. Courtney also stated that he feels the requirements are different between a detached accessory building and an attached accessory building.

Mr. Kovacs said that he did not feel Section 40.57.02 needs to exist. Mr. Stimac said that he thinks this Section is there for clarification. Mr. Kovacs said that under 40.55 this is just a general definition of an accessory building and that this structure does not have to meet the general requirements of this Section. Mr. Stimac said that based on the definition of accessory buildings found in Chapter 4 of the Ordinance, an attached garage is not an accessory building.

Mr. Fejes asked Mr. Motzny for clarification regarding the use of the building and what the intent was for putting up the building and what the building was going to be used for. If the intent was not to use this building as a garage, and it would be used for something else, were they planning on running a commercial business out of it. If this building is to be used as a garage to park vehicles in, then it should not be used for anything else. Mr. Fejes also asked about clarification of the definition of garage. Mr. Fejes further stated that he did not feel Mr. Stimac made any mistake in judgment granting this permit, but if the building was put up for the purpose of anything other than a garage, he should have the right to tell Mr. Piscopo to take it down. Mr. Motzny said that if the evidence before this Board leads the Board to believe that this building cannot be used

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for a residential purpose, and if this Board reaches the conclusion that this building can only be used for commercial purposes, then the Board would have the power to make that interpretation. On the other hand, if the evidence suggests that this building can be used for permitted residential purposes, and there is no evidence contrary to that, the Board would have to assume that the building was going to be used for residential purposes as allowed. Mr. Fejes asked if the Board could tell him to take the structure down if it was not used for residential purposes. Mr. Motzny said that after tonight, if this building is allowed to exist and if there is evidence that the building is not being used for permitted residential uses, it would become an enforcement issue, and the City would be obligated to prosecute for a Zoning violation for a use that is not permitted in a residential district.

Mr. Fejes asked for clarification regarding a statement made by Mr. Piscopo's attorney, that if this Board decided that this building had to come down, the City would not be able to enforce this action because of estoppels. Mr. Motzny explained that the case provided by counsel of the property owner was an equitable case where the defense of estoppel prevented the municipality from enforcing its Ordinance, but that issue is not before the Board and that the Court would decide issue. In that particular case, the Court stated that because the permit was issued, there was reliance on the permit and in that particular case the Court decided the municipality was estopped from enforcing its Ordinance on equitable principles. The Board would not have the right to make that decision, it would come further down the line as an enforcement action.

Mr. Fejes asked if Mr. Piscopo would speak tonight. Ms. Bankey, Mr. Piscopo's attorney stated that both she and Mr. Piscopo were present and would be willing to speak. Mr. Fejes stated that he would like to be able to hear from Mr. Piscopo and ask questions as necessary. Mr. Kovacs asked if the Board would be allowed to hear from Mr. Piscopo. Mr. Motzny said that this Board would have the right to ask questions of Mr. Piscopo or his attorney, allowing him to make a presentation would probably require the Public Hearing to be re-opened. If there are specific questions that need to be answered, Mr. Piscopo or his attorney could be addressed.

Mr. Kingsepp stated that Mr. Piscopo's counsel has submitted a memorandum and said that they would like to address this body, and his opinion was that they should be allowed to the opportunity to address the Board so there would be a complete record.

Mr. Piscopo and Ms. Jill Bankey, his attorney were present. Ms. Bankey said that Mr. Piscopo followed the Zoning Ordinance and received his Building Permit in 2003. Construction is just about complete. Ms. Bankey said that they oppose the request of Mr. George Reed, Ms. Betty Reed and Tom Krent and are in support of the interpretation made by Mr. Stimac.

Ms. Bankey proceeded to give a history of this case. Mr. Piscopo has a large collection of vehicles and went before City Council regarding the storage of his commercial

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vehicles. It was by the suggestion of City Council that a structure be built to house these vehicles. Mr. Piscopo went to the Building Department and received the interpretation that as long as the building is attached to the main structure and did not exceed 30% of the lot coverage, it would comply with the Ordinance and a variance would not be required. Mr. Piscopo had a petition signed by several of his neighbors indicating approval of a detached structure that would be larger than what is permitted by the requirements for an accessory building. The last time Mr. Piscopo appeared before City Council, Mr. Stimac educated City Council on the status of the Building Permit and the garage. The Piscopo's hired an architect and had them go over the Ordinance and come up with plans that would comply with the Ordinance. Nothing that Mr. Piscopo did, "blinded" City Council or "tricked" anyone into giving him a Building Permit.

Ms. Bankey addressed Mr. Fejes regarding the use of this structure. Ms. Bankey said that actually there are two issues involved here, one, being how Mr. and Mrs. Piscopo can make use of the property they own. The City of Troy has issued guidelines as to how he could use this property and Mr. Piscopo's application and drawings met the letter of the Ordinance. This is an attached garage. They met all the criteria regarding this property and the City of Troy Ordinance requires that all commercial, recreational, or other equipment, camping equipment, etc. be stored in an enclosed building. Mr. Piscopo abided by the rules of the Ordinance, he is living in the house, he owns the house, and he is the owner of the vehicles that are going in the garage, and his home and garage do not occupy more than 30% of his lot. Under the Zoning Ordinance, it meets the requirements of lot coverage, and the City Ordinance requires commercial vehicles, etc. to be stored inside an enclosed structure. Everyone is saying this is a "commercial structure", but there is no evidence to support this claim. Mr. Piscopo has never referred to it as a commercial building. The size of it does not stamp it as a "commercial structure". You have to look at the use and Mr. Piscopo is using it to store his vehicles that the City allowed him to park outside on the streets. Mr. Piscopo did what the City wanted him to do. Twenty months and $90,000.00 later, when the neighbors saw the steel beams they came to the City. Ms. Bankey said that they should have tried to get injunctive relief from the Courts to have this construction stopped before all of the money and materials were invested in this structure. Ms. Bankey said that if you look at 40.57.02 you automatically look at what restrictions apply to the main building. This will also link you into the R-1B Zoning regulations and covers the density requirements, and 30.10.02 covers the 30% of lot coverage by all buildings. Ms. Bankey said that she knows the neighbor do not like looking at this building, but Mr. Piscopo own this property and did follow the requirements of the City and the Zoning Ordinance. This building has passed every inspection called for and is just waiting for the final inspection. The Zoning Ordinance contains published criteria which governs the construction of this garage.

Mr. Kovacs said that Ms. Bankey states that in a R-1B Zoning District, a garage constitutes an accessory building and is subject to the controls of 40.55.00 and City of

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Troy Zoning Ordinance 40.56.00. Mr. Stimac's interpretation is that this structure is not an accessory building, and is not governed by 40.55.00 because it is attached to the main building. Ms. Bankey said that in the definition of accessory buildings contained in Chapter 4, 4.20.01, which says an accessory building is incidental, and then you refer to Section 40.55.00, which states that a garage is an accessory building, and from there you are referred to 40.57.02 which defines an attached structure then you go back to the restrictions that cover the main building. Mr. Kovacs asked if Ms. Bankey believes this structure should be governed by Section 40.55.02, which states that an accessory building or structure by definition and nature, shall be secondary and clearly incidental to the principal building on a parcel of land. Ms. Bankey said that this garage whether attached or detached is both secondary and incidental. Secondary and/or incidental is not defined in the Ordinance by size, height or material, but is defined by use. Mr. and Mrs. Piscopo plan to live on this property and use this garage to house their personal vehicles. Incidental is never defined as being smaller. Mr. Kovacs asked what Ms. Bankey's definition of incidental was. Ms. Bankey said it was just as she stated, the main purpose of this property is that live there, and eat their meals there and have family visit there and incidentally they have a very large garage where they store vehicles and equipment. Ms. Bankey said that the way she looks at it, is what the main reason for people to go there. Ms. Bankey also asked where in the Zoning Ordinance is the maximum size of a garage regulated. Ms. Bankey said that based on the Zoning Ordinance the size limitations of a garage is arbitrary and only Section 40.57.02 contains the only public guidelines for the size of a garage that is attached to your house. Under 40.56.00 the Ordinance addresses the minimum size. There is nothing in the Ordinance that dictates the maximum size.

Mr. Kovacs asked if Ms. Bankey felt that the petitioners had other recourse before coming to this Board. Ms. Bankey said that she knew they appeared before City Council, and have written letters, but the City has never placed a Stop Work Order on this property and she believes that the reason for this was because this structure did conform to the Zoning Ordinance. Mr. Kovacs then asked if she felt the petitioners could have done anything else regarding this structure, and she stated that she felt there were other avenues that they could have pursued. Ms. Bankey also said that she thought this petition could have been filed when they first saw the steel beams on the property. Ms. Bankey also indicated that she felt that someone had advised them to come before this Board.

Mr. Courtney pointed out that Mr. Piscopo stated that the cost of this structure was $88,000.00 and not $90,000. 00 as stated and also that the neighbors are in harmony with the fact that they do not want this structure to remain. Ms. Bankey indicated that she understood that, however, she only wished that they could be in harmony with Mr. Piscopo.

Mr. Kovacs asked if Ms. Bankey thought the neighbors understood what they were signing with Mr. Piscopo's petition. The petition states that "….. hereby support the

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below named petitioner and join in his request to seek relief from the City of Troy Zoning Ordinance thereby allowing the erection of an out building (for parking of vehicles and storage) greater than fifty percent (50%) of his residence at 3129 Alpine, Troy, Michigan". Mr. Kovacs went on to say that the footprint of the building was basically 2,000 square feet and under that, he believes the neighbors would have thought this garage was going to be about 1,000 square feet and not 6,000 square feet. Ms. Bankey said that at this point Mr. Piscopo said this was going to be a very large detached building. Mr. Kovacs asked what the size of the building was going to be at this point and Ms. Bankey said that the petition stated that the building was going to be 50% larger than the home. Ms. Bankey said that Mr. and Mrs. Piscopo were in contact with the neighbors indicating that he was going to build a very large structure. Mr. Kovacs said he did not believe these neighbors were aware of how large this structure was going to be.

Mr. Piscopo said that he was a friend to all of his neighbors and showed them the plans for the structure. Ms. Bankey said at the time the Building Permit was issued, the surrounding property owners were not notified because this structure complied with the regulations of the Zoning Ordinance and did not require any variances.

Mr. Maxwell said that the petition was for a detached structure and the petition does have the signatures of George Reed and Tom Krent. Now these petitioners are against this. Ms. Bankey said at the time of this petition, the Piscopo's were not the owners of this property, but became the owners and designed this home with the attached garage. They also felt that as long as the garage was attached and was not in violation of 30% of the lot coverage it would comply with the Ordinance.

Mr. Kovacs asked Mr. Krent what he thought was going to be constructed at the time he signed the petition. Mr. Krent, 3184 Alpine said that when Mr. Piscopo brought the petition he was not the owner of the home and was renting it from his father. The existing Ordinance for an accessory structure allows for 50% of the ground floor area of the main building or 600 square feet whichever is greater. It stated in the petition that this was going to be an out-building that was 50% greater than his residence, and at that time his residence was approximately 1,000 square feet. They expected that this structure would be between 700 and 750 square feet, but it would have to come before this Board to be approved and therefore the neighbors felt that they would be protected. They did believe it would be larger that a 500 square foot garage.

Mr. Piscopo said that Mr. Krent had submitted the preliminary drawing of his house and garage, which was approximately 2300 square feet, and at that time this drawing had the 14' high garage door, and the 9' high garage door and the entry way door. Mr. Krent did not have any objections to these plans. Mr. Krent gave Mr. Piscopo some great ideas that Mr. Piscopo incorporated into the building of his home.

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Mr. Fejes asked how the size of the garage went from 2,300 square feet to 6,000 square feet. Mr. Piscopo said that as he learned what was allowed by the Ordinance, he decided not to settle for something small. Mr. Fejes asked what Mr. Piscopo was going to do with a 6,000 square foot garage and Mr. Piscopo said "whatever he wants".

Mr. Fejes then asked what he was going to put in the garage and at the time he applied for his Building Permit he stated that was applying for a permit for garage to store his extra equipment, etc. Mr. Piscopo said that the City made him build a garage, because they told him they would no longer grant any variances unless he put up a garage. Mr. Fejes said that they wanted Mr. Piscopo to store his commercial buildings in a garage. Mr. Piscopo said that he was going to put his commercial vehicles, his equipment and his vehicles in the garage. Mr. Piscopo said that everyone in this building had miscellaneous things that they store in their garages. Mr. Piscopo also indicated that he could have made his garage 50' larger, but did not think he needed the extra room. Mr. Fejes said that from everything he has in front of him, Mr. Piscopo has done everything correctly. Mr. Fejes also said that seeing the situation as it now is what would Mr. Piscopo had done differently. Mr. Piscopo said that he probably would have done something else. Mr. Fejes then asked how much square footage Mr. Piscopo thought was really necessary. Mr. Piscopo said that he could not answer as to the amount of square footage however he has nine (9) vehicles, yard equipment, a trailer in the yard. Mr. Fejes asked what Mr. Piscopo's occupation was and Mr. Piscopo said that he is a master plumber. Mr. Fejes then asked how many commercial vehicles Mr. Piscopo owns. Mr. Piscopo said that he has two vehicles that he uses to make service calls. Mr. Fejes asked if these vehicles would be parked inside the garage and Mr. Piscopo stated that they would be along with the other miscellaneous vehicles.

Mr. Fejes asked why Mr. Piscopo built this 6,000 square foot steel garage. Mr. Piscopo said that he already owns nine (9) cars that he cannot put in his driveway. Mr. Fejes said that as long the vehicles are correctly tagged and up to date, they could be parked there. Mr. Piscopo said that he did not believe that. Mr. Fejes said that neither Mr. Piscopo nor Mark Stimac made a mistake, the City made no mistake. The City is not saying that there is a mistake but it is the neighbors. Mr. Piscopo said that he did not think this ever would have come to this if they had not planned to put in the condo complex down the street. Mr. Piscopo said that he had a real estate agent come to his home and offer to buy both of the houses he owns and Mr. Piscopo believes the development company sent him there as they do not want the garage. Mr. Piscopo also said that if they wished to offer him a lot of money for his home, he would be more than willing to sell it. Mr. Kovacs asked if that is the reason he built this structure. Mr. Piscopo stated that he was not aware that the condo complex was going in.

Mr. Courtney asked how many business vehicles Mr. Piscopo had. Mr. Piscopo said that he has two that he uses for service calls. There are others that are owned by the Company that would also be considered commercial vehicles, although they are cars. Mr. Courtney then asked if someone comes to Mr. Piscopo's home to pick up a vehicle

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and Mr. Piscopo states that they take the vehicle home. Mr. Piscopo said that the City is cracking down on the workingman and that is what brought this City to where it is at now. Eventually they will run the small businessman out of the City and not all of us have the education or up bringing to be a pencil pusher. Mr. Courtney said that a lot of people go somewhere else to pick up their commercial vehicles. Mr. Piscopo said that is the reason he lets him take the vehicle home, he has no intention of storing the vehicle on his property unless it is absolutely necessary. Mr. Kovacs said that Mr. Piscopo cannot use the garage for commercial purposes. Mr. Courtney said that only Mr. Piscopo would be allowed to take the vehicles in and out of the garage. Mr. Kovacs said that the other small business owners keep their vehicles on commercial property and this is where they get them. Mr. Kovacs also said that if Mr. Piscopo has employees coming in and out of the building, he would be cited by the City for a violation of the use of this building. Mr. Piscopo said that in his subdivision there are at least ten (10) in home businesses. Mr. Kovacs said that when you have your home office and he would say that there are at least 95% of his neighbors that are against this building and if they see people other than Mr. Piscopo coming in and out of the building, they will contact the City and Mr. Piscopo will be cited for a use violation. Mr. Kovacs then asked if when Mr. Piscopo built this structure it was with the intention of only him using it and Mr. Piscopo said that it was. Mr. Piscopo did say that the information Mr. Kovacs had given him regarding someone else pulling a vehicle out of the garage was a surprise to him. Mr. Kovacs said that he wanted Mr. Piscopo to be aware of this as his neighbors would probably be paying close attention and report any unusual activity. Mr. Piscopo said he was sure that could happen based on his experience with his next-door neighbor who he had considered a good friend. Mr. Piscopo said that he purchased the neighbor's home in order to make him happy and he thinks the value of the property is going to up once the condo complex goes in.

Ms. Gies asked how Mr. Piscopo would feel if he lived next door to this structure and did not have a car collection. Mr. Piscopo said that he would look at it as a privacy fence and the people that he rented the property next door to, think it is the next best thing to sliced bread. Mr. Piscopo said that the neighbor has one of the most secluded back yards in Troy. Mr. Piscopo said he believes the right person would be very happy with it. Ms. Gies then asked if there were any landscaping plans in the future to camouflage this structure. Mr. Piscopo said that he had contacted a landscaper and did have plans drawn up. He said that he has never try to fool or hurt any of his neighbors and was shocked when he found out that they objected to it. Ms. Gies asked Mr. Piscopo if he thought this garage was a little extreme and Mr. Piscopo said that he could have made it bigger and spitefully he now wishes he would have. Mr. Piscopo said that he is very hurt, these neighbors were his friends, he talked to them every day, and now they no longer speak to him. He feels that if they had a problem they should have come to him. The neighbor that sold his house came to Mr. Piscopo first. This neighbor had been a friend to Mr. Piscopo and at one time Mr. Piscopo had given him a boat. Mr. Piscopo feels badly that this neighbor does not feel he received a fair amount of money for his

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home. He had no intention of hurting him financially and if he had extra money would gladly give it to him.

Mr. Courtney asked if Mr. Piscopo planned to implement the landscaping plan. Mr. Piscopo said that he plans to put in trees, pines as well as shrubbery. Mr. Courtney asked if that would help to hide this structure. Mr. Piscopo said that Channel 7 drove right by the house and could not find the location. Mr. Piscopo also said that he is very disappointed that his neighbors feel this way. Mr. Kovacs asked Mr. Piscopo if in his opinion it was difficult to find this structure. Mr. Piscopo said that unless you are looking for it, you cannot find it. Mr. Kovacs asked Mr. Piscopo if he was trying to say that a 150' long structure that is 24' high is difficult to see when driving by and Mr. Piscopo said that it was. Mr. Kovacs said that he had driven by many times and did not find it at all difficult to see.

Mr. Kovacs said that he was going to re-open the Public Hearing and they have a lot of facts and documents before the Board. They know how many people do not want the structure and they have a petition signed by every person in the subdivision objecting to this garage. This in an interpretation request and if someone in the audience has comments regarding the interpretation request, the Board would be very interested in hearing them. If someone just wants to complain, the Board really does not need to hear it. The Board is looking for valuable input to come to a decision. Mr. Kovacs said that they understand the neighbors think this structure is big and ugly. Mr. Maxwell said that anyone in support of this structure should also be allowed to speak.

The Chairman opened the Public Hearing.

Suzan Bamford, 3244 Alpine was present and stated that she liked Mr. Piscopo and he had approached her stating that he was going to build a very nice house and a large garage because he was sick of the City giving him citations for the huge pile of junk in his back yard. Mr. Piscopo said that he needed a place to store his cars and the other stuff that was in the yard.

Mr. Courtney asked a question regarding a petition with three signatures on it. Mr. Kovacs stated that it was not part of the public record. Mr. Piscopo said that he had not submitted it and basically when confronted with the objections of his neighbors, took a petition around and asked if the neighbors were for or against this structure. Mr. Piscopo said that three (3) of the neighbors signed it but the rest of the neighbors were against the structure.

Michael Bartnick, 3842 Burkoff was present and stated that in interpreting the Ordinance for 47 or 48 years it has been interpreted there has never been another structure like this put up. Mr. Bartnick also said that in listening to the comments it is pretty clear that he is running a business out of back yard. If you want to go into business either as a tradesmen or professional, the rules are very clear that you should

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rent a commercial building in a commercial district, an industrial building in an industrial district or office space in an office building. If you are working out of your home you have to be very clear on exactly what it is you are going to do and have to be very restrictive as to what you are going to do.

Ms. Barr, 3165 Alpine was present and said that she was delighted to hear Mr. Maxwell explain the definition of intent. Ms. Barr thought that both Mr. Stimac and Ms. Bankey had difficulty explaining their interpretation of the Ordinance and also say that the intent is irrelevant. Ms. Barr said that the intent is very relevant and the current failing here may be honesty and truth or evasion of the truth. Ms. Barr said that she feels the truth is with intent, and that is to do with commercial activity and believes it is very obvious what is going to happen here. Ms. Barr does think this is a garage, for a SUV or lawn tractor, but because it is 6,000 square feet it is not just a garage.

Ronnie Moski, 3109 Alpine was present and stated that he has had five (5) different people come to his door because they could not find this garage. If you know the garage is there you will find it, because it is enormous, but if you do not know where it is he believes it is very difficult to see. In his opinion this structure makes a great privacy fence and truly believes that unless you are looking for it, you will not see it. There is a nice line of trees that are next to the garage. Mr. Kovacs asked if Mr. Moski was north or south of 3129 Alpine. Mr. Moski said that he is on the south side of this address and there are a large number of trees on this side. Mr. Moski said that gawkers go past this garage every day. Mr. Moski also said that Mr. Piscopo had put vinyl siding on the front of the garage to tie it into his house to make it look nice. Mr. Kovacs questioned this as the last time he had driven by the front of the garage was corrugated steel. Mr. Moski said that Mr. Piscopo was trying to make everyone happy. Mr. Moski also said that if he could he would build a structure like this so that he could put whatever he wanted to in it. If you want to see a beautiful home being built, Mr. Moski suggested stopping in front of 3129 Alpine and this is exactly what you will see.

Steve Japar, 4518 Whisper Way was present and stated that at the previous meeting there was a section that addressed the construction of structure that would decrease the value of surrounding property. There are several quotes from realtors that said that this building would have a negative impact to the surrounding property. Mr. Japar believes this has to be part of the Board's consideration. Mr. Japar also said that he had driven by this building once and had no trouble finding it. The fact that no one else can find it is not germane. Anyone wishing to buy property in this area would certainly know that this building is there. Mr. Japar also said that he believes the point of this meeting is was the City proper in allowing the building of this structure in the first place. It is good that Mr. Piscopo followed all the rules in the first place, but the issue is if the City made a mistake in allowing the building to be put up.

ITEM #2 – con't.

Valerie Piscopo, Mr. Piscopo's mother was present. As a young man he rented the house for 15 years and always said that someday he would have his dream. His father did not live to see his dream come true but she did and feels he is very deserving of it.

Charles Miller, 6793 Limerick Lane was present and stated that he knows Paul both personally and professionally. He has seen a lot of words used and he thinks intent is going to "what is Paul going to do with this garage" and believes it is incorrect to take that approach. He has known Paul going on fifteen (15) years and he would not do anything to cause someone else problems. Mr. Miller does not believe there is anything in the Ordinance that addresses intrinsic property values. Mr. Miller also said that he understands that in Cities it is important to be good neighbors and to try and do what is right, but at the same point you can't make everyone happy and intent should be used as neutrally as possible to try to accommodate the people.

Zak Abuzaid was present and stated that he lives across the street from Mr. Piscopo. When he was first approached by Paul he had signed his petition, but did not know how big or large it was going to be. As he now sees, the number of neighbors that are against it, makes him believe that there may be something wrong with it and is not able to judge whether it should pass or not. Mr. Abuzaid believes that the neighbor's opinions and property values should be taken into consideration. He does not think the front of it looks bad, it is just very large. Mr. Abuzaid said that he is neither for nor against the building.

Eugene West, 3205 Alpine was present and stated that he lives approximately four houses away from Paul. Paul has his dream, they have his nightmare. This garage is not a garage, it is a commercial structure. If it was a garage there would not be anyone here complaining. Steel I beams, steel sides and 20' high walls are not a garage.

Ms. Barr, 3165 Alpine came up to speak again and stated that she thinks the people that are for the garage, are very new residents and are appearing for the courtesy of Mr. Piscopo.

Geoffrey Barr, 3165 Alpine came up to speak and stated that every time he goes into his back yard this huge building is there and he is very annoyed.

John Hunter, 3356 Alpine was present and stated that when he saw the house going up he was very pleased as the house is beautiful but the garage is really out of proportion. Mr. Hunter said that he is both drawn to it and appalled by it and compared it to a car wreck. You look at it because you can't quite believe it. This is a terrible structure and not appropriate in a residential area. Mr. Hunter wished Mr. Piscopo well and felt that he deserves what he has because he has worked very hard for it and he also encouraged the Board to find a moderate solution, a residential garage and not anything that smacks of commercialism.

ITEM #2 – con't.

Brenda Bodenbach, 3355 Alpine was present and stated that she has lived here for 52 years. There has been so much spin put on the Ordinances and in 52 years she has never seen such an obscene injustice done as far as the Building Code goes. We have all improved our homes, worked very hard, and as a widow cannot afford to lose $40,000 - $60,000 and because she owns the lot next door feels that she will lose twice as much. This was supposed to give them some security in their old age, and now that she is spending her old age alone and this is the worst spin that she has ever heard in her life that the City perpetrated on the residents in this subdivision. Ms. Bodenbach believes this is wrong because of the size and use of the building.

Shirley Jordan, 3268 Alpine was present and asked what the rules were on an out building or garage. Mr. Kovacs said that as far as the structure this garage has, the structure itself meets all City Codes. If it was detached it would also meet that requirement. Mr. Stimac said that the requirements of the exterior shell for a garage are identical whether the structure is attached or detached. The same rules and requirements regarding the method of construction are both the same. Inspections have been done and the building is in compliance with the building code. Ms. Jordan said that when she first saw the concrete going in, she thought they were building a tennis court and felt that it could be reverted to something like that without being a big expense for Mr. Piscopo. This is really wrong and she was just trying to look for something in the Code. Mr. Kovacs also said that this is the reason the petitioner is here, is for the Board to look at the Code and determine if it was interpreted correctly. Ms. Jordan also said that they were not aware of the condo complex coming in at the end of the street. Mr. Kovacs said that this Board was not the body to address that issue.

Mr. Kingsepp came up to speak and mentioned what Mr. Stimac had said regarding interpretation. It is good to back into history to determine what the legislature intended when they enacted or modified certain Ordinances. In Mr. Kingsepp's opinion there was a deletion of language that was restrictive in that particular Ordinance, but the existing language has a very plain meaning especially with the definition of a garage.

With respect to intent, the intent of the Zoning Code is for the purpose of giving direction to the residents and the Building Official of what the planners and legislative body deemed to be important regarding those considerations. Mr. Kingsepp used the Billboard Ordinance as an example and stated that the Court upholds this intention as an appropriate expression of a legislative body as to what is important to a community. Therefore the intention in this case, in that it is in an R-1 district is the most restrictive use gives you guidance regarding what is important in a residential district and really not to depart from the character of what exists, and that is a low density type of community. Where you have a change that is as dramatic as the one that is here, you have to question whether that flies in the intention.

ITEM #2 – con't.

The Ordinance talks about Home Occupation that will not be detrimental to the surrounding community and will not cause the loss of property values to the surrounding community. That is an intention that is expressed regarding Home Occupation and should be addressed as given credence with respect to this development.

The next thing that needs to be taken into consideration is the intention of the applicant himself. He was the only one who knew what he had in mind with what he had in mind what he was going to do. Mr. Kingsepp said that he had the opportunity to express in the application exactly what his intention was. The Building Department would have the benefit of that information as well as any resident that wanted to know what his intention was. In two documents garage and attached garage was referenced; in a supplemental document large garage was referenced in order to store his equipment and/or a commercial vehicle. Tonight it has been said that there are going to be collector vehicles as well as other vehicles in the name of the Corporation. Mr. Piscopo also indicated that the use of the structure will be for "whatever he wants to put in it". This indicates to Mr. Kingsepp that this will be above and beyond the home occupation, something above and beyond what would normally be the use of a residential accessory, detached, attached building. Garage is clearly defined within the Community and is expressive and limited. The intention expressed by Mr. Piscopo this evening goes beyond what is in the Ordinance. The documentation that was shown to Mr. Kingsepp's client shows a structure that was 2,000 square feet and not 6,000 square feet. An additional document talks about a size that is 50% greater that the size of the residence, which was substantially a less size than that which is now constructed. As the process went along Mr. Piscopo, the only person with the knowledge of what was going to go in there, to expand the structure. Mr. Kingsepp said that this has to be looked on with respect to the interpretation given by the City. The City can rely on certain things that are presented to it and give its interpretation. If in some point and time the applicant by their own decision goes above and beyond by what has been presented to the Building Official, then that individual runs the risk of entering into the zone where objection and criticism is appropriately leveled against them. Mr. Kingsepp said that he thinks this is what happened in this case.

Mr. Kingsepp stated he was not hired by the developer of the proposed condo complex, but was referred to his client by an official within this community. Mr. Kingsepp said that he is not tied into the proposed development and does not have any knowledge of who the developer is.

Mr. Kingsepp then stated that there has been a reference made that landscaping is going to be put up. This body has authority to impose conditions, but feels that Mr. Motzny would recommend that these conditions be realistic in relationship to the subject matter that is under the Board's consideration. In this instance the main issue is merely an interpretation of whether or not the Building Permit was issued was proper in accordance with common sense meaning and definition contained in the zoning text, which everyone had the right to rely on based on the representations by the applicant.

ITEM #2 – con't.

To that extent, Mr. Kingsepp stated that he does not believe you can impose conditions that might be zoning issues or landscaping. Mr. Kingsepp does not believe this Board has the enforcement power regarding these conditions. This is a rare circumstance asking for an interpretation. Record is complete with the information that we have.

Everyone within this community has the right to rely on the common clear meaning of the Ordinance as they apply. They have the right to rely on the fact that where there are questions the Building Department will refer that to you, because that is where the variance power is. Too many variations that go on. Flexibility must exist and the Building Official has to say no, to allow these matters to appear before the Zoning Board. This matter should have come here but it did not. We suggest a number of reasons why this did not occur in this case, but it should have. This Board is confronted with an interpretation that was made by a very competent Building Official. Mr. Kingsepp stated that he is not challenging his qualifications or credibility. The situation here is the language of the Ordinance and if there is a problem, it is up to the Building Department to advise the administration what changes should be made to the Zoning Text. The language is clear, simple and applicable to this situation and cries out for an interpretation that says that in this instance the Building Permit should not have been issued. What happens after that is not this Board's concern. Mr. Kingsepp respectfully requests that based on the documentation that was presented that the Board would support the request of the petitioners.

Ms. Bankey stated that she had one quick response and that was that Mr. Piscopo was not the only person that knew what was going to be constructed, the City was totally aware of what type of building was going up. The challenge when interpreting the Ordinance is that you find the provision that if the accessory building is attached to a main building then the density requirements apply. If that provision is not given meaning and you look at the accessory building controls, and it only has a minimum size, how does the Building Department know what you want to be built. Where do you look in the Ordinance to tell you what the area and density requirements, side yard setbacks for an attached garage. The only place it is found is in the interpretation of the Building Department. Only reasonable interpretation to give it meaning is 40.57.02.

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

The meeting recessed at 9:35 P.M. on Tuesday, April 19, 2005.

The meeting reconvened at 9:42 on Tuesday, April 19, 2005.

Mr. Kovacs said that if the Board finds that the interpretation of the Zoning Ordinance by the Building Department was correct there would be no need to go through the Ordinance section by section. Mr. Kovacs asked for a motion indicating that the Ordinance as interpreted by Mr. Stimac was correct. If the Board finds that this is the case there is no need to do anything else.

ITEM #2 – con't.

If the Board finds that he did not interpret the Ordinance correctly, they would have to go through line by line to determine where they feel the Ordinance was interpreted incorrectly. Each section would have to be mentioned and they would have to go through and state which sections were not interpreted correctly.

Mr. Kovacs then asked if anyone wished to make a motion at this time. Mr. Maxwell said that he agrees with Mr. Kovacs and believes they should only discuss the sections that they think were not interpreted correctly and state the reasons for this conclusion.

Mr. Kovacs said that in Mr. Stimac's opinion this is part of the main structure and not an accessory structure and therefore Section 40.55 does not apply. Mr. Kovacs then asked Mr. Stimac if he had ruled this garage as an accessory building, if he would have granted a permit. Mr. Stimac said that both he and Ms. Bankey took two different routes, but came to the same conclusion that this is a portion of the main building is not an accessory building, therefore these rules do not apply. Mr. Piscopo's attorney took the route that it is an accessory building, but because it is attached to the main building, these rules do not apply. One-half the ground floor area of the main structure does not apply, the 14' height limitation would not apply, or the limitation of the 6' setback and the mandatory location in the rear yard do not apply.

Mr. Fejes clarified that what they were going to do was to determine if Mr. Stimac made an error in issuing this Building Permit. Mr. Kovacs stated that was correct that this was all they were here to do and that was to interpret the Ordinance. Mr. Fejes said this is very difficult as Mr. Piscopo did not do anything wrong and the City did not do anything wrong, but there is a structure that is wrong. Mr. Fejes said that he cannot go through each section and point out what was wrong and say that Mr. Stimac made a bad judgment because he did not make a bad judgment. Mr. Fejes also said that he could tell you that there are people that were grieved by the size of this garage and he does not feel in his heart that this is a garage. Mr. Fejes further stated that regardless of whatever you are going to do with it, people are grieved by the size of this structure, even though Mr. Stimac was right. Mr. Fejes said that he cannot vote that Mr. Stimac made a mistake because he did not. Mr. Fejes felt that he is going to be forced to vote someway that is incorrect because he needs something to go with this structure. What about the personal side? Mr. Piscopo did nothing wrong and the City did nothing wrong, but Mr. Fejes cannot sit there and not say that this structure needs to be dealt with. Mr. Fejes said that he is having a problem dealing with this.

Mr. Kovacs said that in his opinion if someone on the Board feels that there was an error made by the City staff, it is up to them to convince Mr. Fejes of that and therefore vote accordingly. Mr. Kovacs said that right now Mr. Fejes is saying that the City staff did not make a mistake and interpreted the Ordinance correctly. All they have before them is the language. Mr. Fejes said that in the City's Attorney words, there is something written about someone being grieved. Mr. Kovacs said that there is a particular section that discusses property values. Mr. Motzny stated that in his memo

ITEM #2 – con't.

regarding a party being grieved that was only in respect if someone had standing just to be here. The Board's final determination is not whether or not someone is aggrieved, but somebody has to be an aggrieved party to have the Board make this interpretation.

Mr. Stimac said that Mr. Courtney had made a statement at a previous meeting that if the Board had the power to make this determination, he would like to go back and change other buildings in the City. Mr. Courtney would have to show in what way these other buildings made him an aggrieved party. The party that files the application has to show how they have been aggrieved by Mr. Stimac's decision. The parties that are adjacent to this property have been aggrieved by this decision, but that only gets them to be able to appear before this Board. They would have to show how the building impacts them.

Mr. Stimac said that unfortunately there are things that happen, which are totally compliant with the Zoning Ordinance that have an impact on surrounding property. Re-zoning a piece of property, a road construction, a freeway exit certainly has the ability to impact adjacent property owners. This does not mean that it is wrong or that there was an error, this is the result of a decision that was made through the application of the Ordinance. If the property next door to Mr. Reed or Mr. Krent were deemed to be appropriate to be re-zoned to industrial, this would have an adverse effect on their property values, but it does not mean that the property owner shouldn't be able to develop that property to the full extent that would be permitted in that Zoning Classification.

Mr. Wright said that he was looking at a memo written by the City Assessor and in his memo states that this structure is not in compliance with any other home in the area and poses the greatest threat to property values in this area. This memo went on to say that he thought this structure could impact property values by as much as 10% or possibly more. Mr. Wright went on to say that he thought the decision was going to come down to the use of this structure. Mr. Wright stated that based on Section 4.20.71 Home Occupation is to be *carried on within the walls of the dwelling, having no employees who are not themselves residents. Said occupations shall not be visible or noticeable in any manner or form from outside the walls of the dwelling and accessory structures.* Once you look at the building you can see that it is a warehouse and not a garage. Mr. Wright had stated that there were enforcement violations regarding employees on the property and the equipment they were using. Residents had complained that there were eight (8) vehicles parked in the yard and the enforcement officer had determined that these were employees of Mr. Piscopo's. Mr. Piscopo has other vehicles that belong to employees. In Mr. Wright's opinion this is not a Home Occupation.

Mr. Hutson stated that he has been practicing laws for thirty-seven (37) years and has learned to analyze each situation especially when it comes to interpreting law. Everyday he is called upon to interpret the law in helping people make decisions as to how their lives are going to be run. When Mr. Hutson heard this case in February, he

ITEM #2 – con't.

applied his training to look and try to analyze this situation. He read Mr. Kingsepp's presentation and examined the Zoning Ordinance section by section, both from Mr. Kingsepp's client's viewpoint and also from the viewpoint of the City. Mr. Hutson then read minutes from the Planning Commission, excerpts from the City Council, correspondence from the City Attorney, from Mr. Piscopo, the Building Director's report and the fog cleared. Mr. Hutson believes that this Board is confusing two issues before them, one of which was the proper permit issued or did Mr. Stimac make an error in issuing this permit. The other question is what use is this building being put to. If you analyze that you are going to find that there are minimal requirements for a garage and there are no caps, although there is a violation. Codes are written and published so that society and the people in the City of Troy know what the regulations are and be guided accordingly. Mr. Hutson states that he is a firm believer in this case, that as distasteful as the end product is, this building meets all the building code requirements and the Building Permit was issued properly.

Mr. Hutson said regarding the use of the building: whether it is constructed of steel girders or plywood has no bearing on whether this is a garage or not. If in fact that is used as a commercial building for plumbing, it is proper procedure for the City to take care of that that would be a zoning violation a criminal matter and the City could shut them down. Mr. Motzny, advised this Board that it can be used as a garage. Mr. Hutson also said that until there is a demonstration that it is a commercial structure, he does not see any impediment in issuing a final certificate of occupancy if it meets the code, and Mr. Hutson feels that they have to separate their thinking regarding this structure.

Mr. Courtney stated that he agrees with Mr. Hutson, even though he does not like the building and would like it not be there, and he feels it is a warehouse, but they are being asked to vote on whether the Ordinance was followed and he does believe that Section 40.57.02 was followed. That section means he can build that gigantic thing and if in fact there is no question about the legality of building it, which is why the Planning Commission and City Council are in the process of changing the Ordinance in order to prevent a structure like this in the future. It is obvious that it can be done at the present time.

Motion by Courtney
Supported by Gies

MOVED, that the Building Department issued the Building Permit under the Ordinance and it was a proper permit.

Mr. Kovacs said that there was a motion and support that Mr. Stimac did interpret the Code correctly and the structure should stay standing.

ITEM #2 – con't.

Mr. Maxwell stated that he agreed with Mr. Piscopo's attorney that it is an accessory building and disagrees with the interpretation. Mr. Maxwell believes that 40.57.02 is not a statement that supercedes the other language regarding accessory buildings, but is a clarification to that. A stricter standard should be applied to a structure that is attached to a main building. Mr. Maxwell said this is the reason that he disagrees with the interpretation and believes that accessory buildings should be subordinate to the main buildings. Mr. Maxwell went on to say that he does not think this a good thing because of the impact on surrounding property values.

Mr. Maxwell further addressed the issue of intent, the spirit of the law, the purposes, the reasons we have them and the letter of the law. Mr. Maxwell feels that whenever the letter of the law is followed only, and the intent is not, even though it fulfills all the regulations and sections of the Ordinance and if you know that the end product is not what we want in the City, it is not what we intended in the City, and you know something is wrong, that should be the time when interpretation takes over. When he looks at this structure, it is plain to him that this is a commercial building attached to a house. Mr. Maxwell said that he may not be able to define it but he knows it when he sees it and firmly believes that this is a commercial building attached to a house. Mr. Maxwell stated that is not a garage and violates the intent of residential use. Mr. Maxwell said that he represents other citizens of Troy and many of the people he had spoken too also believe this is a commercial building on a residential street. Mr. Maxwell pointed out that he is not making any aspersions that it is presently being used as a commercial building, but this is the appearance of the building. Mr. Maxwell said that the overall intent of the Ordinance was not followed and going strictly by the letter of the law has led them up to this point without considering the intent. Mr. Maxwell said that his interpretation is that this is an accessory building, and should be subordinate to the main building, and Section 40.57.02 also sees this as a statement that adds to and does not supercede the definition of accessory buildings.

Mr. Kovacs stated that in his opinion this is an accessory building and Mr. Piscopo's attorney has also stated that this is an accessory building and he understands that Mr. Stimac disagrees. According to Section 40.55.02 – *accessory buildings and structures by their definition and nature shall be secondary and clearly incidental to the principle building on a parcel of land.* This language according to Mr. Kovacs clearly states that you can't have a garage without a house, and the garage should be secondary and clearly incidental to the main structure, this should not be a garage with an attached house, and therefore, he believes the language is very clear. Mr. Kovacs also said that he had been going over the Zoning Ordinance and in Section 40.30.00, Parking Structure Development Standards, it states that a parking structure should enhance the overall development and not have a negative effect to surround property. It is further intended that the provision of such facility shall not negatively impact the safety and security of the public. Mr. Kovacs states that this section also refers to garages. There is also language in 40.30.02, 40.30.04, 05 and 40.30.06 and he believes this refers to a commercial parking structure. Section 40.30.03 refers to the outside appearance of the

ITEM #2 – con't.

outside of a structure that it would be substantially the same as the main building and in his opinion this building is in violation of Sections 40.55.02, 40.30.00 and 40.30.03 and his conclusion is that Mr. Stimac did make a mistake in interpreting the Ordinance.

Mr. Stimac stated that Section 40.30.00 was not brought up in the petitioner's application and explained that this Section was drafted to deal with commercial parking structures and he has never applied those standards to an attached garage, or a detached garage on a single-family site. Many of the sub sections in Section 40.30.00 in effect make no sense when you try to make that application, such as mandatory landscape requirements, guards, sprinkler systems, etc. Mr. Stimac said that these standards cannot be applied to a single-family garage. Mr. Kovacs said that the reason he brought that up was because they had spoken regarding intent, and even though this section refers to a parking structure, in his opinion a garage is a parking structure and therefore Section 40.30.00 should apply. The language is 40.30.03 is very clear and this structure does not comply with that language. Mr. Kovacs stated that he still holds firm that this garage is in violation of Section 40.55.02 and this is the cornerstone of his objection to the interpretation.

Mr. Courtney asked if he had read Section 40.57.02, which states clearly that once they are attached they take on the same requirements as the main building. Mr. Kovacs said that as he reads 40.57.02 he still thinks this structure has to satisfy 40.55.02. In his opinion this structure does satisfy 40.57.02, but he does not agree that it meets 40.55.02. The words that keep coming back to him is that this building would be secondary and clearly incidental to the main building. Mr. Kovacs said that he thinks this is a garage with an attached house.

Mr. Kovacs called for a vote on Mr. Courtney's motion.

Yeas: 3 – Gies, Hutson, Courtney
Nays: 4 – Kovacs, Maxwell, Wright, Fejes

MOTION THAT MR. STIMAC'S INTERPRETATION WAS CORRECT FAILS

Mr. Kovacs stated that because of this vote, he felt that it was up to the Board to determine exactly which language suits the description. Mr. Kovacs also said that he does not believe this does not meet the requirement of Section 40.55.02 because both the language and intent are clear. He was not going to include Section 40.30.00 and 40.30.02 because he does feel Mr. Stimac was correct in stating these Sections apply to commercial parking structures. Mr. Kovacs said that he does believe Section 40.55.02 is the cornerstone of this matter.

Mr. Kovacs also said that everyone who voted no, owes it to this Board, the petitioner and to the Circuit Court to define exactly under which Sections they feel Mr. Stimac erred. Mr. Maxwell stated that he felt he was quite clear when he stated that this is an

ITEM #2 – con't.

accessory building, 40.57.02 does not supercede other language, and an accessory building should be subordinate to the main structure. Mr. Maxwell also said that under Section 10.10.00, this structure is not designed as appealing to the widest spectrum of the population. This structure does not meet the intent of the Ordinance regarding single-family residential district.

Mr. Courtney said that he feels since this was a request for an interpretation, the Board should interpret the sections one by one. Mr. Maxwell said that he is not going to say much regarding any of the other sections besides the ones he mentioned. Mr. Courtney said that the petitioner had listed the Sections that they wanted an interpretation of and he feels that this is what they should give him. Mr. Maxwell said that he does not have anything to say regarding the other sections.

Mr. Kovacs said that he agrees with Mr. Maxwell's statement and he finds the objection with Section 40.55.02 and the intent. Mr. Courtney asked if the Board had a list of the Sections the petitioner was asking the Board to interpret. Mr. Stimac said that they did and Mr. Courtney said he felt the Board should go through each section.

Mr. Stimac said that he bows to the authority of the Board to grant the interpretation, but he wished to caution the Board. Regarding Mr. Maxwell's statement that in addition to Section 40.57.02, that the other provisions regarding accessory buildings would apply, which would mean that the height limit would be 14' or one-story, the area is going to be 600 square feet of ½ the ground floor area of the house. Mr. Stimac also said that this would stop a lot of work in the City as there are a lot of attached garages in the City that exceed the 14' height limit as well as exceed the 600 square foot limit. Once the Board grants this interpretation, this becomes the rule until the Ordinance has been amended, or some court of competent jurisdiction overturns that. Mr. Stimac suggested that the Board use caution because after this meeting that is the rule that we will live by.

Mr. Courtney asked what happens to all the other attached garages in the City. Mr. Stimac said that garages under construction would be subject to this ruling.

Mr. Maxwell said that there should be swift action to amend the Ordinance if there was disagreement or displeasure with going to this format. Mr. Courtney said that the Planning Commission and Council have been going through this matter for a very long time and have not come to a conclusion. Mr. Maxwell said that he himself can live with this because the alternative is not what he wants to see. Mr. Maxwell said that this has a detrimental effect to property values or attracting new citizens here and is not a good deal for the general welfare of this town. It may benefit a few, but will hurt the majority of the citizens. Mr. Courtney stated that he agrees but the Council and Planning Commission are in the process of reviewing the Ordinances and making amendments so this can't be repeated but they actually have to do it. Mr. Maxwell said that he is just giving his opinion as to how he interpreted the Ordinances, like it or not.

ITEM #2 – con't.

Mr. Wright said that the Planning Commission got this in October of last year and had proposed text amendment to Council in early December but there was disagreement between the Planning Commission and City Management regarding the height of garage doors. The Planning Commission still does not agree with Administration as they feel that a residential garage should have a maximum 8' height of a garage door, and Administration does not feel that there should be any restrictions on the height of a garage door, which allows for a 14' high industrial garage door. There was a joint meeting between City Council and the Planning Commission on March 28th, and he cannot say any of the Council members moved to their position or not, but they are still looking at footprint sheet. The Planning Commission is always concerned that if they went to a 50% or a 75% limit of the ground floor footprint, how many non-conformities they would create throughout the City. At one of the recent meetings he had suggested that they look at 75% of the ground floor footprint, or 50% of the total square footage of the home and see how many non-conformities that would create. Mr. Wright has not seen that information come back from the City Assessor's office yet, but personally he feels that this would be reasonable. Mr. Wright has a 3-½-car garage and it is not 50% of the ground floor area of his home.

Mr. Kovacs asked if they find that this garage is in violation of 40.55.02, which states that accessory buildings should be secondary and clearly incidental, and if they define that as being smaller than the footprint of the house, would that then revert back to everything having to be 600 square feet? Mr. Kovacs said that his vote is that this structure being 6,000 square feet and the footprint of the house being 2,000 square feet, clearly violates Section 40.55.02. It is not his interpretation that an attached garage that is maybe 800 square feet with a 1,000 square foot house would be in violation. It is his interpretation and secondary and clearly incidental means that it is smaller than the house. Mr. Stimac said that if it his interpretation or the Board's interpretation of Section 40.55.02 that secondary and clearly incidental means that it cannot exceed the ground floor area, that is different than what Mr. Maxwell had stated. Mr. Kovacs asked for clarification regarding 40.57.04. Mr. Stimac said that they would still apply that interpretation throughout, but did not know how many structures that would impact and he would agree with Mr. Courtney's statement that you cannot put an attached garage in a rear yard. This could cause a lot of havoc with new houses under construction with attached garages. The interpretation that "secondary or clearly incidental" means less than the ground floor area would certainly have less of an impact.

Mr. Maxwell said that he could certainly live with the interpretation that the accessory structure is less than the footprint of the main structure and would be totally acceptable to him.

Mr. Kovacs asked if anyone wished to make a motion. Mr. Maxwell asked what kind of motion Mr. Kovacs wanted and Mr. Kovacs said that they have agreed that the interpretation was incorrect.

ITEM #2 – con't.

Motion by Courtney

Moved, to take the application of George Reed, Betty Reed and Thomas Krent, 3129 Alpine, for an interpretation regarding the issuance of a Building Permit section by section and give their interpretation of each section as requested.

Motion failed for lack of a second

Mr. Motzny said that in his opinion it was not necessary to go through each Section. Apparently, the Board made a decision that the Building Official issued a permit in error, but this Board needs to make a motion indicating what structure would comply with the Ordinance. Mr. Stimac has to send a letter to the property owner telling him what he has to do to comply with the Ordinance. It is not necessary to go through each section of the Ordinance to do that, but someone implied that any accessory building must be smaller than the footprint of the main building, and if that is how you want to interpret the Ordinance you should specify again as part of the motion your reason for that finding, because if they don't do that and it does go to Circuit Court, the Court will send it back and tell them to give reasons for your findings. Whatever motion is made needs to be specific enough to direct our Building Official to contact the property owner to advise him specifically what needs to be done so that he can comply with the Ordinance.

Mr. Courtney said that since we have not voted that the Building Director issued a permit in error, we have just denied a motion that he did not. Mr. Courtney stated that he believes the Board has an obligation to give the petitioner an interpretation of the sections that they have requested and not add sections. Mr. Courtney believes that they should go through the application and give the petitioner the interpretation they are asking for. Mr. Kovacs said that he did not know if they had to vote on this. He disagrees with this, because if the Board can come to a conclusion and determine where the error has been made this is the direction the Board needs to go. Mr. Kovacs thinks it would be ridiculous to go through section by section. Mr. Courtney stated that he had made a motion and he felt that they should vote on it.

Mr. Stimac said that Section 40.55.02 is not part of the applicant's request so this is something that should be considered if there is a second to Mr. Courtney's motion.

Mr. Kovacs said that Section 40.57.02 is a part of the request and believes that other sections are directly related, and even though the petitioner directly mentioned it, Mr. Kovacs does feel that the Board should rule on it. Mr. Stimac said that he was not trying to say whether the Board should or should not rule on other Sections, he was just pointing out that Section 40.55.02 was not part of the applicant's request. Mr. Kovacs said that he agrees but he feels that this is a section that needs to be examined because he does not feel this structure meets the requirements of 40.55.02.

ITEM #2 – con't.

Mr. Fejes asked if it is up to this Board tonight to make a determination regarding the size of an accessory structure. Mr. Fejes said he thought all they were doing was making a determination that the interpretation of the Ordinance was incorrect in allowing this structure to be built. Mr. Fejes said that they have cited Section 40.55.02 and the Intent of the Ordinance was not followed. Mr. Fejes asked why this Board had to come up with the dimensions tonight, as he feels this is the job of the Planning Commission and City Council. The extent of this Board's decision should be to determine whether or not this Building Permit was issued in error. If the Board makes an incorrect decision tonight, other people would come before this Board. Mr. Fejes said that he thought it would be up to someone else to come up with the allowable footprint.

Mr. Stimac said that the Planning Commission and City Council are empowered to amend the Ordinance and to change the language of the Ordinance. This Board is being asked to interpret the current language. If they change the language it will not do any good in this situation. If this Board is saying that the building is too big, Mr. Stimac needs clarification of "how too big" this building is. If the building is too tall, what is the height limit. Mr. Stimac has to tell this applicant and whoever comes to the Building Department tomorrow exactly what the limits are. Mr. Fejes said that he needs to tell people that the decision is pending and when that decision is made, he will inform them. Mr. Fejes said he does not feel this Board is the right Board to make that determination. Mr. Stimac said that this Board is the correct body, as the question before the Board is that the Ordinance is unclear as to what the maximum size of the garage is, the petitioners have asked this Board to tell them if this building is in compliance or not. Mr. Fejes asked if it would be sufficient if he tells them it has to be secondary to the main building. Mr. Stimac said that this would not help at all because he is asking this Board to tell him exactly what secondary means. Mr. Fejes said that in his opinion it means that it is smaller than the main building.

Mr. Maxwell said that he would like to see the rules pertaining to accessory buildings apply, and anything other than that, they can apply for a variance. Mr. Fejes said that this a problem because this is not an accessory building.

Ms. Gies asked how many Building Permits have been issued for attached garages within the last three (3) years. Mr. Stimac said that we issue approximately 300 plus new house permits each year and 95% or greater have attached garages that are not in the rear yard. Ms. Gies said that they have one person that took it to the extreme because of the lot size. Ms. Gies also said that most people do not ask for a 6,000 square foot garage. Ms. Gies stated that she believes this permit was issued correctly.

Mr. Kovacs said that the question is that at this point they said that there was an error. Mr. Courtney and Ms. Gies disagreed with this interpretation. Mr. Kovacs said that he wanted an exact legal description as to what was passed. Mr. Courtney said that there was a motion to say that what was done was proper, and was not passed. It does not

ITEM #2 – con't.

mean it was improper and now a resolution is needed to say that what was done was not proper.

Mr. Motzny said that Mr. Courtney is correct, and a motion was made to affirm the Building Officials decision and that motion failed. Now this Board has to make a decision interpreting what the proper guidelines are for the Building Official to follow in these type of situations as he now has to contact the property owner and specify what needs to occur in order for him to be in compliance. If this is not done, there will be a problem if this case goes to Circuit Court as they will not understand the basis of the Board's decision and the property owner does not have sufficient guidance as to what in compliance with the Ordinance. You failed to pass a motion affirming the Building Official's decision so now it is your job to say what the proper interpretation of the Ordinance is and to say what type of structure is allowed under our Ordinances.

Mr. Kovacs asked what happens if this Board cannot pass a resolution regarding how he misinterpreted the Ordinance. Mr. Courtney said that the Building Official will be exactly where he was earlier today and the warehouse stays with no problem.

Mr. Wright said that Mr. Kovacs previous explanation that the structure was not in compliance was very good and although he does not have all of them in front of him, he would like to suggest that the footprint of the garage being a foot smaller than the footprint of the house. If the Planning Commission and City Council went to 50% of the living area of the house, this is a colonial style house, then a garage that would be equal to or less than 1' foot smaller than the footprint of the house would meet that 50% requirement. The Planning Commission has also discussed, but has not reached a decision regarding the fact that there was not habitable living area above the garage that the garage roof height should probably max out at 14'.

Mr. Kovacs said that in his interpretation the Ordinance is not clear as to the maximum size or any height restriction whatsoever. In his opinion the Ordinance is extremely unclear and believes 40.57.02 should apply, but the roof height is not out of compliance. In his interpretation, Mr. Kovacs believes that this building does not comply with the wording of "secondary and clearly incidental".

Motion by Kovacs
Supported by Wright

MOVED, that there is an error in judgment by the Building Official that this structure is in conflict with 40.55.02 and that "secondary and clearly incidental" means less than the footprint of the main structure.

Ms. Gies said that they are trying to do zoning on all future building focusing on what has been done with one building. Mr. Kovacs said that he is trying to define what "secondary and clearly incidental" means. Ms. Gies said that she feels the Board needs

ITEM #2 – con't.

to be careful. Mr. Kovacs said that regardless of what happens here it will go to Circuit Court and he is trying to make this as clear as possible that this is his interpretation.

Mr. Kovacs said that he did not mean to stifle Ms. Gies comments and asked if she wished to add anything else. Ms. Gies said that they are focusing on this one garage and you are trying to make restrictions to future building without looking. Ms. Gies said that she knows that he does not want this type of garage again, no one does. That is why the City is trying to reduce it. All this Board was supposed to do was interpret this Ordinance by sections and feels that you have to set limits. Mr. Maxwell said that there are limits if this is an accessory building.

Mr. Hutson said that the Planning Commission and City Council have been working on this for six (6) months and have not been able to come up with a solution. Right now this will throw a monkey wrench into any construction that is going on. Mr. Hutson also said that we have a man now who has relied on the inactivity of this City, and conversely the affirmative action of the Building Department and he has expended $88,000 and fifteen months has passed and now there is a dilemma. Mr. Hutson said that the Board members have not thought this thing through. Mr. Stimac is asking what he needs to do now. This Board is not the legislative body but that is exactly the problem that this Board is facing now.

Mr. Kovacs asked if Mr. Hutson thinks Section 40.55.02 applies to this structure. Mr. Hutson stated that he feels Mr. Stimac's interpretation is correct. Mr. Stimac and Ms. Bankey reached the same goal using two different paths and in Mr. Hutson's opinion it was done correctly.

Mr. Maxwell asked if there was a motion on the table.

Mr. Kovacs stated that his motion was that this structure is in violation of 40.55.02 and part of his motion is that this is an accessory building. Mr. Kovacs is trying to clarify that. Mr. Maxwell asked if he would be interested in adding anything regarding intent to his motion. Mr. Kovacs said that this building does violate intent, 10.10.00.

- Structure is an accessory building.
- Structure violates the intent of residential zoning.

The second still holds by Mr. Wright.

Yeas: 4 – Kovacs, Maxwell, Wright, Fejes
Nays: 3 – Hutson, Courtney, Gies

MOTION THAT THIS STRUCTURE IS IN VIOLATION OF 40.55.02 AND SECTION 10.10.00 CARRIED

ITEM #2 – con't.

Mr. Stimac stated that he understands the motion that was passed by the Board, and asked if there were any other sections that the Board did not feel were in compliance with the Ordinance.

Mr. Courtney said that Section 40.55.02 was not on the application and feels that the Board is ignoring the application. Mr. Kovacs said that the petitioner's application clearly states that they feel this is an accessory building and Section 40.55.02 clearly applies to this. Mr. Kovacs said that in their presentation they had only used one section, but they are all intertwined and feel they deserve an interpretation of all of them.

Motion by Courtney

Moved, to interpret the Ordinance Section by Section as they appear on the application in case other Board members disagree with the interpretations.

Motion dies due to lack of support.

Mr. Stimac stated that included in the petitioner's application was a request for an interpretation of Section 04.20.01, which is the definition of an accessory building. Mr. Stimac suggested that the language *subordinate building, the use of which is clearly incidental to that of the main building* is very similar to the language in Section 40.55.02. This may be a way to resolve the issue.

Mr. Stimac suggested that what the Board may want to do is to make a motion that in the interpretation of Section 04.20.01 the Board finds that an accessory building in order to be subordinate, needs to be less than the footprint area of the main building.

Mr. Kovacs said that he thought this was covered when they discussed Section 40.55.02. Mr. Stimac stated that the petitioner had asked for an interpretation of Section 04.20.01 and not 40.55.02.

Mr. Motzny concurred with Mr. Stimac and stated that perhaps someone would make a motion to amend and refer to Section 04.20.01 and not 40.55.02. Proper procedure would be to make a motion to reconsider and substitute the section that Mr. Stimac pointed out.

Mr. Kovacs asked if he could withdraw his original motion, but Mr. Motzny said that it already had been approved.

Mr. Kovacs said that they still need some help in making this motion. Mr. Stimac said that the language in Section 40.55.02 states that the building shall be "secondary and clearly incidental" and the language is 04.20.01 states that it has to be "subordinate".

ITEM #2 – con't.

Mr. Stimac said that in one case you have the word subordinate and the other states that it has to be "secondary and clearly incidental".

Motion by Kovacs
Supported by Wright

MOVED, to reconsider the motion made by Mr. Kovacs regarding Section 40.55.02.

Yeas: All – 7

MOTION TO RECONSIDER MOTION CARRIED

Motion by Kovacs
Supported by Wright

MOVED, to substitute the following for the original motion.

- Building is in violation of Section 04.20.01 and is not subordinate to the main building.
- An accessory structure in order to be subordinate to the main building, must be smaller that the ground floor area of the main building.
- Structure is in violation of Section 10.10.00

Yeas: 4 – Maxwell, Wright, Fejes, Kovacs
Nays: 3 – Courtney, Gies, Hutson

MOTION STATING BUILDING IS IN VIOLATION OF SECTION 04.20.01 AND SECTION 10.10.00 CARRIED

Mr. Kovacs said that the other issue that came up was Home Occupation and since the building has not been completed at this time did not feel this issue was something the Board could deal with. Mr. Kovacs said at this time Section 4.20.71 did not apply.

ITEM #3 – VARIANCE REQUEST. MARK NEWSOME, 114 LYONS, for relief of Zoning Ordinance to maintain a deck with a 0' side yard setback where a 5' setback is required by Section 30.10.05 and to maintain above ground pool with a 3' side yard setback where a 6' side yard setback is required by Section 40.57.05.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to maintain a deck and above ground pool that were constructed without first obtaining the required Building Permits. The site plan submitted indicates that the deck has been constructed abutting the side property line on the north and the above ground pool installed 3' from the same property line. Section 30.10.06 of the Ordinance requires a 5' minimum side

ITEM #3 – con't.

yard setback for the attached deck and Section 40.57.05 requires a 6' minimum side yard setback to the above ground pool.

Mark Newsome was present and stated that last spring they installed a pool and a deck. This was the only location they could put the pool because they have an ongoing problem with flooding. There are quite a number of yards in this area that flood. Mr. Newsome's property has a brick fence along the back yard of the property, the neighbor has an in ground pool in his backyard surrounded by concrete. This concrete is 4" higher that our yard. The property on the east side is 4" – 12" higher around the garage. Mr. Newsome has completed the yard and to offset the flooding they placed the pool on the north side of the yard, which is higher than the rest of the lot. The driveway is on the south side of the lot and they have increased drainage in this area. Mr. Newsome has also placed gravel around the edge of the yard to help increase drainage. 90% of their backyard activities occur on the patio, and the location of the pool on the side of yard increases the visibility of the children's play area. If the pool were moved to the center of the yard, they would not be able to see the children playing behind the pool. The pool is secured with locking gates. They were unaware of the flooding when they bought the home. In order to provide a useful back yard and maintain drainage this was the best location for the pool and deck.

Mr. Maxwell asked why Mr. Newsome's yard floods. Mr. Newsome said that there is only 4" to 5" of topsoil for most of the homes in this area. Most of the dirt is clay and other neighbors have also had a problem with flooding. Mr. Maxwell asked if Mr. Newsome had contacted the City and he stated that he had spoken to them approximately one year ago. When they were installing the pool, they had someone from the City come out because there was so much water in the hole they were digging. Mr. Maxwell asked who he called and what they told him to do. Mr. Newsome said he could not remember who he talked to, but the engineer told him that water lines were not located in the yard.

Mr. Maxwell asked if there was still a flooding problem since the pool was installed and Mr. Newsome stated that there was not. Mr. Maxwell then asked out large the pool was and Mr. Newsome said it was 15' x 25'.

The Chairman opened the Public Hearing.

Otto Bence, 48 Lyons was present and stated that he lives two houses south of this resident. Mr. Bence stated that this is a very nice, young family and they have done a great dealer to improve this home. Flooding is a big problem in this area, although Mr. Bence does not have a problem because he has an in ground pool. There is a floodplain on Fourteen and Stephenson and the run off from rain and/or snow goes into this area. Mr. Bence approves this request.

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

ITEM #3 – con't.

There are three (3) written approvals on file. There is one (1) objection.

Mr. Kovacs stated that he went to the petitioners home and stood on the deck and even though the neighbors feel that there privacy has been violated, he stood 5' back from the property line and if they had the petitioner move their deck 5' from the property line, it would do nothing to help the privacy of the neighbors. Mr. Kovacs said this a very small yard, and the petitioner did move the pool too close to the neighbor's property. If the petitioner had appeared before this Board, before construction Mr. Kovacs felt that he would have had a very good case because of the size of the yard and the flooding issue. Mr. Kovacs also asked if the Board could put stipulations on this variance that the 6' fence had to remain.

Mr. Motzny stated that the Board has the right to impose conditions on a variance as long as they are related to the land. Mr. Stimac said he is not sure whose fence this was. Mr. Wright said that according to the paper work, both neighbors paid for the fence. Mr. Stimac said that he didn't know if the petitioner had control over the fence. The Board does have the right to impose reasonable restrictions. Mr. Kovacs said that if this passes, they would like to restrict the petitioner to have a 6' high fence as part of the safety issue.

Mr. Courtney said that flooding has nothing to do with this request. Mr. Kovacs said that in his opinion this is a restriction imposed by the property.

Ms. Gies asked for clarification regarding fences around pools being mandatory. Ms. Stimac said that an in ground pool requires a fence, but it could actually be 4' high.

Motion by Maxwell
Supported by Courtney

MOVED, to grant Mark Newsome, 114 Lyons, relief of the Zoning Ordinance to maintain a deck with a 0' side yard setback where a 5' setback is required by Section 30.10.05 and to maintain an above ground pool with a 3' side yard setback where a 6' side yard setback is required by Section 40.57.05.

- 6' high privacy fence must be maintained.
- Variance applies only to the property in question.
- Deck height may not be increased.
- Size of pool cannot be increased.

Yeas: All – 7

MOTION TO GRANT VARIANCE REQUEST CARRIED

ITEM #4 – VARIANCE REQUEST. GFA DEVELOPMENT, 1064 ARTHUR, EXISTING ADDRESS, 1060 & 1072 ARTHUR (PROPOSED ADDRESSES), for relief of the Zoning Ordinance to split an existing parcel of property into two single family home sites that will be 7200 square feet each where Section 30.10.05 requires a minimum of 7,500 square feet for each lot.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split a parcel of property that will result in two (2) lots that are each 7,200 square feet in size. The original parcel consists of three lots that were platted with 40' of width and a depth of 120'. The petitioner proposes to split these into two single-family home sites that would be 60' x 120'. Although this property is in the R-2 (Two-Family Residential) Zoning District, Section 13.20.01 of the Zoning Ordinance allows for the development of the property in accordance with the provisions of the R-1E Zoning Classification. Section 30.10.05 of the Zoning Ordinance requires a minimum of 7,500 square feet for each lot in the R-1E Zoning District.

Mr. Stimac clarified that this request is actually for a split in an existing parcel of property that would result in 7,440 square feet in size rather than 7,200 square feet as published in the Public Hearing notice. The lots in question are actually 124' in depth rather than 120'. Due to the fact that the variance request would actually be less than what was published, Mr. Stimac stated that there was no reason to re-publish this matter.

Mr. Stimac also said that Item #5 was very similar to this request and asked that the Board consider both items together, although a separate vote would be required for each item. The same petitioner is presenting both items. Item #4 would result in a lot area of 7,440 square feet and Item #5 would result in a lot area of 7,200 square feet.

ITEM #5 – VARIANCE REQUEST. GFA DEVELOPMENT, 1045 VERMONT, EXISTING ADDRESS, 1055 & 1071 VERMONT (PROPOSED ADDRESSES), for relief of the Zoning Ordinance to combine three (3) platted lots and split them into two (2) single family home sites that are 7,200 square feet each. Section 30.10.05 requires a minimum 7,500 square foot for each lot.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to split a parcel of property that will result in two (2) lots that are each 7,200 square feet in size. The original parcel consists of three lots that were platted with 40' of width and a depth of 120'. The petitioner proposes to split these into two single-family home sites that would be 60' x 120'. Although this property is in the R-2 (Two-Family Residential) Zoning District, Section 13.20.01 of the Zoning Ordinance allows for the development of the property in accordance with the provisions of the R-1E Zoning Classification. Section 30.10.05 of the Zoning Ordinance requires a minimum of 7,500 square feet for each lot in the R-1E Zoning District.

Mr. Hutson asked if a duplex could be constructed if these lot splits were denied. Mr. Stimac stated that this area is zoned R-2 and would allow for the construction of a

ITEM #4 & #5 – con't.

duplex. Mr. Hutson asked how many families usually occupy a duplex and Mr. Stimac stated two. Mr. Stimac also said that a single-family home requires more lot area. Mr. Stimac also said that there are three (3) lots on Arthur and another three (3) lots on Vermont. The same conditions regarding a duplex apply on both Arthur and Vermont.

Mike Johnson, representing GFA Development was present and stated that he had spent a great deal of time with the neighbors, and everyone that he talked too would rather see single family homes than a duplex. Mr. Johnson said that right next to the property on Arthur there are four (4) duplexes and this is a very high traffic area. Mr. Johnson said that he grew up in this area has lived on Birchwood for eleven years. This is home to Mr. Johnson. When the opportunity came up to do something for this area, he jumped at the chance to increase the value in this area. Mr. Johnson also said that he believes these single-family homes would add value to the area. Mr. Johnson also said that if they put in single -family homes, they would be the owners of the property and would not be rental property.

Mr. Johnson contacted Mrs. Clifford whose property backs up to the property on Arthur and brought in a written approval from her regarding this new construction. Ms. Clifford indicated that she has been a resident of Troy for sixty- (60) years. Her attached garage goes to the back of the property and is 13' from the property line. In Mr. Johnson's opinion, this property would be non-conforming and therefore he would not be able to purchase any additional property from here. On the west side there is a duplex with a garage and the driveway runs right next to the property line.

The property to the east has a garage that is 3-1/2' from the property line and their driveway runs right along side the property line. Mr. Johnson said that he does not want to put duplexes in this area, he really would like to put in single-family housing. Mr. Johnson said the reason they want to put these homes in is to provide affordable housing for people wanting to live in Troy, and wants to keep the price range right around $280,000.00. These homes would help people that have moderate incomes. These new homes would increase the property values in this area.

The Chairman opened the Public Hearing.

Gary Laura, 1086 Arthur was present and stated that they have lived there for eight (8) years. There are a lot of houses that are between 1000 and 1200 square feet and these new houses, worth more than $200,000.00 will overshadow the existing homes. The current house on this property has recently been remodeled and fits in very well with this area. These neighbors are concerned because they feel the surrounding property will lose value and will actually hurt their property values. Mrs. Clifford's house is up for sale, and Mr. Laura does think she would really care if they build on this property or not. Mr. Laura says that he is not familiar with all the Ordinances, but if these lots were split they would be non-conforming lots. Mr. Courtney asked if Mr. Laura would rather see a duplex or single family homes in this area. Mr. Laura said that

ITEM #4 & #5 – con't.

two houses of $280,000.00 would help the area. Mr. Courtney asked again if he would rather see a duplex and Mr. Laura said that he would rather see the house remain the way it is or would prefer a duplex.

Mr. Kovacs asked Mr. Laura if he thought their property values would be increased if a duplex was constructed more than two single-family homes. Mr. Laura said that he would prefer to see the house remain the same. Mr. Kovacs said that is not one of the choices available. The point is that this property is going to be sold and the developer has the option to put a duplex on that property, or could obtain a lot split and put in two single-family homes. The proposal for the two homes would meet setback requirements if this Board granted a variance. Mr. Stimac said that all provisions of the Ordinance would be met other than the square footage of the lot. Mr. Laura said that he thinks the duplex would not be as outrageous as two new homes, and he believes the duplex would fit in better. Mr. Kovacs disagreed and stated that a new home would add to the value of their homes.

Ms. Gies said that this new construction would bring the value up of the surrounding property. Mr. Laura said that he did not want to see them tear down a perfectly good house to put in new houses. Ms. Gies said that you never want to be the high end in a subdivision, but if you are at the lower end, you will get the maximum value for your home. Mr. Kovacs said that he was just trying to clarifying his objections. Mr. Laura said that with the larger houses you get more than one family living there. Mr. Kovacs said that that is against the code and if there is a problem Mr. Laura should contact the City. Mr. Laura also said that he does not believe the lots are big enough to support homes of this size.

Mr. Stimac said that he believes the speaker's preference to see one home on the site, his second choice would be to see a duplex and his third choice would be to see two single-family homes on the site.

Ms. Lombardo, 1047 Arthur was present and stated that she has lived there for thirty-(30) years. This is the second time she has appeared before this Board and objected to the request of splitting this lot. Ms. Lombardo feels that they are too small and the homes are too close together. If her home is only worth $100,000.00 and the new homes are over $200,000.00 no one will want to buy her house. There are a number of homes for sale in this area and they are not selling very quickly. People cannot afford to come in, but Ms. Lombardo says that if she had a choice, she would rather see a duplex.

Alexander Bennett of 1065 Arthur was present and stated that he has lived there for 24 years. This is a quiet street and the construction will affect the tranquility of the street and he is against this construction. Mr. Bennett believes this is one of the most beautiful streets in the City.

ITEM #4 – con't.

Mr. Johnson came up and said that he has built 25 homes in Troy and as far as he knows there have not been any complaints against this construction. Mr. Johnson went on to say that whether they build a duplex there or two single-family homes, he will make his personal phone number available to all residents and will take care of any problems that may come up.

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

There are seven (7) written objections for Item #4, 1064 Arthur. There are no written approvals.

There are two (2) written objections for Item #5, 1045 Vermont. There are three (3) written approvals.

Mr. Kovacs stated that he finds this very interesting because these residents would rather have a duplex than a single-family home. Mr. Kovacs believes that property values would increase with the construction of the new homes.

Mr. Courtney stated that he is asking for a 60 square foot variance that he feels is minimal. Mr. Kovacs said the number of neighbors that have objected to this request surprised him. This would constitute less than a 1% variance and the proposed homes would add value to the area.

Mr. Courtney said if you look at some of the objections they do not want anything constructed on the lots and this is something that would not happen. Mr. Kovacs said one of the objections stated that they did not want any more renters on the street and a single-family home would be more beneficial.

Motion by Maxwell
Supported by Wright

MOVED, to grant the request of GFA Development, 1064 Arthur, existing address, 1060 & 1072 Arthur (proposed addresses), for relief of the Zoning Ordinance to split an existing parcel of property into two single family home sites that will be 7,440 square foot each where Section 30.10.05 requires a minimum of 7,500 square feet for each lot.

- Variance request is minimal.
- Variance would not be contrary to public interest.
- Literal enforcement of the Ordinance would be unnecessarily burdensome.

Yeas: 5 – Courtney, Fejes, Gies, Maxwell, Wright
Nays: 2 – Hutson, Kovacs

MOTION TO GRANT VARIANCE CARRIED

ITEM #4 – con't.

Mr. Hutson explained that he voted no because he feels that a duplex would fit in with the character of the homes on Arthur rather than a large home. Mr. Kovacs stated that he was voting no because of the objections by the neighbors and feels that it is contrary to public interest.

ITEM #5 – VARIANCE REQUEST. GFA DEVELOPMENT, 1045 VERMONT, EXISTING ADDRESS, 1055 & 1071 VERMONT (PROPOSED ADDRESSES), for relief of the Zoning Ordinance to combine three (3) platted lots and split them into two (2) single family home sites that are 7,200 square feet each. Section 30.10.05 requires a minimum 7,500 square foot for each lot.

Mr. Kovacs said that in his opinion the structure at 1045 Vermont is in a much larger state of disrepair.

Mr. Fejes asked if there was a Public Hearing on this item. Mr. Kovacs stated that Items #4 and Items #5 were combined and asked if everyone in the audience had understood that. At this time the Public Hearing was closed.

Motion by Fejes
Supported by Wright

Moved, to grant the request of GFA Development, 1045 Vermont, existing address, 1055 & 1071 Vermont (proposed addresses), for relief of the Zoning Ordinance to combine three (3) platted lots and split them into two (2) single family home sites that are 7,200 square feet each. Section 30.10.05 requires a minimum 7,500 square foot for each lot.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Demolition of the old barn will improve the appearance of this street.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

At this time Mr. Kovacs asked if there was anything else the Board wished to discuss.

Mr. Stimac stated that Mr. Kovacs and Mr. Maxwell were reappointed to this Board by City Council at their meeting on April 18, 2005.

Mr. Kovacs said he thought this meeting was very civil and thanked everyone for the discussion.

The meeting adjourned at 12:10 A.M.

Matthew Kovacs, Chairman

Pamela Pasternak, Recording Secretary