Chair Townsend called the meeting to order at 7:00 p.m. Those members attending included Campbell, Hazelrigg, John, Townsend and Clithero. Also attending were the City Clerk, Sheela Amin, Building Regulations Supervisor, Phil Teeple, and Assistant City Counselor, Susan Crigler.

The minutes from the regular meeting of March 13, 2012 were approved as submitted on a motion by Mr. Campbell and a second by Ms. John.

The following case, properly advertised, was considered. All persons testifying were duly sworn by the City Clerk.

**Case Number 1838** was a request by Daniel Carroll and James and Marlene Carroll for a variance to the height requirement of a detached accessory building by allowing the detached garage to exceed the height of the primary structure on property located at 3610 Southland Drive.

Chair Townsend opened the public hearing.

Daniel Carroll, 3610 Southland Drive, explained the building was already constructed and he had been unaware of the height restriction until after a point at which all of his inspections had passed, to include the framing inspection. He noted it was brought to the City’s attention due to a complaint, and at that time, the inspectors disapproved the framing inspection. He commented that this was not done intentionally or maliciously and that the structure was now in place. He asked the Board to vary the height restriction.

Mr. Campbell asked Mr. Carroll when he was notified of the need for a variance to the height of the structure. Mr. Carroll replied November 8, 2011. Mr. Campbell asked how far along construction was at that time. Mr. Carroll replied they were sheetrocking and siding.

Ms. John asked Mr. Carroll for the planned use of the building. Mr. Carroll replied the building was currently being used as a home workshop. It was a detached garage, which had a storage facility upstairs. He pointed out the property was zoned R-2 and could potentially be turned into a dwelling in the future, but it was currently being used for his hobby woodworking and a small home office with a potential future art and craft use in the loft area.

Mr. Campbell asked Mr. Carroll if a bathroom, kitchen and other facilities had been installed. Mr. Carroll replied there was a bathroom on the first floor, two bathrooms on the second floor and a kitchenette. He stated he was unaware of any ordinance prohibiting bathrooms or kitchen accessories in a detached garage. Mr. Campbell asked if the necessary fireproof drywall had been installed between the garage and the rest of the unit. Mr. Carroll replied no since it was not a dwelling. Mr. Campbell asked what would be done if he were to make it into a dwelling. Mr. Carroll replied 5/8 inch sheetrock would be installed between the first and second floors.

Ms. John asked Mr. Carroll about his long term plans for the house. Mr. Carroll replied his plan was to add a second story to the house, which would then bring the secondary structure into
compliance, but he was not sure when he would have the time and money to construct that addition.

Mr. Campbell asked for the physical distance between the two structures. Mr. Carroll replied the distance between the primary dwelling and the secondary structure was 32 feet, and provided photos for the Board to review.

Craig Haas, 3609 Southland Drive, stated his property was across the street from Mr. Carroll and noted the subject property was zoned R-2, which meant Mr. Carroll could build up to 4 duplexes on his property without approval as long as he met City guidelines. He understood Mr. Carroll had abided by the rules in terms of pulling permits and having inspections done, and that all of the inspections had passed until this violation had been brought to his knowledge. He wondered if this variance would be required if the structure had been labeled a duplex instead of a garage or if a breezeway was constructed connecting the structure. He noted the accessory structure might be taller than the primary structure, but it was not taller than the neighboring house.

Aaro Froese, 3606 Southland Drive, stated he had lived at this address since 1972 and the structure Mr. Carroll built was over the maximum height allowed and only 6 feet from his property line. He understood that if Mr. Carroll altered the primary structure to make the secondary structure compliant, the required side yard would be 15 feet if more than 10 feet of height was added. He believed there was a good reason for that requirement as it would not allow someone to build a two story house six feet from the property line where there was previously only a one story house. He explained he had been in favor of Mr. Carroll building a garage and helped with a party to celebrate the fact he was going to have a garage. It was not until Saturday, August 27, 2011 that he voiced his concern to Mr. Carroll, and that was when he was awakened by chain saws and three concrete trucks. He had to contact the Police Department, and at that time, only asked the police to alert Mr. Carroll to the hours construction was allowed. Since then he had called the police no less than 10 times for noise violations. On September 10, 2011, Mr. Carroll installed trusses for a second floor, and at that time, he notified Mr. Carroll that the property was not zoned for this and that if he planned to build a second floor, he should expect opposition. On September 17, 2011, Mr. Carroll had a party until 3:00 a.m., and when he called, Mr. Carroll was verbally unkind to him. A week ago last Friday, Mr. Carroll was pounding paving stones with a hammer until 9:00 p.m. at night, so he called the police, and Mr. Carroll was issued a citation, but was back at it this past Sunday. Mr. Froese stated he could no longer approach Mr. Carroll regarding his concerns. Although there had been changes at the City staff and departmental level, he noted he had contacted Mr. Kenney on September 10, 2011 regarding the height issue, and Mr. Kenney suggested he report the business use of the property. He had told Mr. Kenney he might do that, but explained he was more concerned about Mr. Carroll constructing a second floor. He reiterated that if Mr. Carroll had constructed a second floor on the primary residence first, he would have been alerted to the fact he had to maintain a 15 foot side yard, and they would not likely be having this conversation. He submitted photos to the Board of the accessory buildings in the neighborhood in comparison to Mr. Carroll’s accessory building. He pointed out if this had been constructed further away than six feet from the property line, he might have turned a blind eye. He had three windows in the bedroom on the second floor of his childhood home and showed the Board the view he now had from those windows. He noted Mr. Carroll had constructed the second floor on the garage knowing he did not like it. Mr. Froese explained Mr. Carroll had also trimmed one tree without permission and another tree with permission, but had not patched it, so both trees were dying.
Patricia Gulmez, 3616 Southland Drive, stated her property was to the west of the subject property and explained she was concerned with the use of the structure as a small home office and a place to do artwork as Mr. Carroll had been operating a construction business, which he considered a landscaping business, from this address. She commented that it was much more than a small home office and was in violation of many City codes. She stated it was almost impossible to live next door to him with the noise, pollution, the coming and going of large equipment, etc. Just outside of the garage were two large covered trailers, one large open trailer, two large dump trucks, a van and several bobcat-type machinery items. In addition, a crew of people worked out of his home office every day. She explained she was concerned about the expansion of this business due to the noise, etc. She noted his business had not been registered with the City until she had contacted the City, but it was still not in compliance with regulations.

Michelle Froese, 3606 Southland Drive, commented that she was tired of the turmoil between the neighbors as they all now dreaded coming home. She understood there was likely not much that could be done about a building that was already erected even though it was two stories and six feet from her property line, but she was concerned about the precedent this would set. She wondered if she could operate a business from her home and build a four story accessory building. She wondered if the ordinances were only suggestions or guidelines. She did not like the building being so close to her home and noted they were told it would be a one story workshop, which they believed until the trusses were erected.

There being no further comment, Chair Townsend closed the public hearing.

Mr. Teeple pointed out the ceiling of the garage would need to be drywalled prior to final acceptance as staff had not conducted a final inspection due to the failure of the framing inspection. He explained if the main structure exceeded the 35 foot height limit, a 15 foot setback would be in effect, but he did not believe the issue tonight dealt with setback. The issue tonight involved the building height.

Mr. Campbell asked for a timeline in terms of when the application was made and when Mr. Carroll was first notified of the problem with the height of the building. Mr. Teeple replied the first inspection notifying Mr. Carroll the building was too high was on November 8, 2011. He explained he sent his first letter to Mr. Carroll on January 19, 2012 and sent a follow up letter on March 13, 2012. Mr. Campbell asked when the first application for a building permit was made and if plans had been provided with the application. Mr. Teeple replied the City did not require plans for residential structures or accessory structures, and the building permit was dated August 8, 2011. He pointed out the building permit did not list floor joists. If floor joists had been indicated, it might have alerted staff of the fact this would be a larger structure.

Mr. Campbell asked how the City became aware of the height variation. Mr. Teeple replied he had received a phone call from Mr. Froese. Mr. Townsend asked when the City would have learned of the height issue if it had not been for the phone call. Mr. Teeple replied he began working in his current position in January of 2012, but the failure of the inspection had occurred in November of 2011. It would have come to his attention again when a final inspection was requested. Mr. Townsend asked if the second story had been constructed at the time of the failed inspection. Mr. Teeple replied yes. He explained the City did not conduct framing inspections until the electrical, mechanical and plumbing was installed. Mr. Hazelrigg understood Mr. Carroll continued to work even after the failure of the inspection notice. Mr. Teeple replied yes. He explained Mr. Carroll had been issued a correction notice in November of 2011. Mr. Townsend understood Mr. Carroll
was notified in November of 2011 that the building was not in compliance, but continued construction. Mr. Teeple stated that was correct.

Mr. Townsend asked for the definition of an accessory structure. Mr. Teeple replied an accessory structure was a detached subordinate building having a use customarily incident to and located on the lot occupied by the main building or a use customarily incident to the main use of the property. Mr. Townsend asked for the definition of subordinate as he wondered if it was based on square footage or usage. Mr. Teeple replied it was based on general usage.

Mr. Clithero asked if the subject building could be the primary structure and the other building could be the accessory structure. Ms. John replied the subject building was not the residence. Mr. Clithero wondered if it could be.

Ms. Crigler explained the noise issue was being taken care of in the City Prosecutor’s Office. The issue before the Board was the height of the accessory structure.

Mr. Campbell explained this application bothered him because the Board was being asked to approve a fully built building. He understood the Board’s responsibility was to review this height variance request based on City ordinances, and as a result, he could not support it. He believed the violation had been pointed out to the builder at a time when changes could have been made.

Mr. Townsend asked if that accurately reflected the situation. Mr. Teeple replied the City often failed inspections and issued correction notices. Many of those were minor and could be easily corrected. When the framing inspection was done, the electrical, plumbing and mechanical work would have been completed, so substantial work would have been done. The builders understood work done after receipt of the correction notice was being done at their own risk. Mr. Townsend understood the correction notice was provided in November of 2011, and asked if the roof was on at that point. Mr. Teeple replied he thought Mr. Carroll had indicated the roof had been installed. Mr. Townsend understood a variance should have been applied for at that point or the situation should have been remedied.

Ms. John made a motion to approve the variance as requested. The motion was seconded by Mr. Clithero.

CASE NO. 1838 VOTE RECORDED AS FOLLOWS: VOTING YES: JOHN, CLITHERO. VOTING NO: CAMPBELL, HAZELRIGG, TOWNSEND. The variance was denied.

There being no further business, the meeting adjourned at 7:36 p.m.

Respectfully Submitted,

Sheela Amin
City Clerk