

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

January 15, 2014

- Meeting** Chairman McFarland protem called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m. which was held at the Tipp City Government Center, 260 S. Garber Drive, Tipp City, Ohio.
- Roll Call** Roll call showed the following Board Members present: Mike McFarland, David Berrett, Isaac Buehler, Mark Browning, and Matt Crawford. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
- Citizens signing the registrar** Citizens attending the meeting: Dana Shoup, Marti Newsome, Red Newsome, Bud Schroeder, and Dean Bowman.
- Oath to Office** Mayor Pate Hale administered the Oath of Office to David Berrett and Mike McFarland.
- Election of Officers** Mr. Berrett **moved to nominate Mr. McFarland as Chairman of the Board of Zoning Appeals**, seconded by Mr. Browning and unanimously approved. There were no other nominations and nominations were closed. **Motion carried.** Mr. McFarland abstained from the vote.
- Mr. Browning **moved to nominate Mr. Berrett as Vice-Chairman of the Board of Zoning Appeals**, seconded by Mr. Buehler and unanimously approved. There were no other nominations and nominations were closed. **Motion carried.** Mr. Berrett abstained from the vote.
- Board Minutes 11-20-2013** Chairman McFarland asked for discussion. There being none, Chairman McFarland **moved to approve the November 20, 2013 meeting minutes as written**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Berrett, Crawford, and Browning. Nays: None.
- Citizens Comments** There was none.
- Administration of Oath** Mrs. Patterson swore in citizens and Mr. Spring.
- Chairman's Introduction** Chairman McFarland explained the guidelines and procedures for the meeting and public hearings. He advised the applicant that a decision of the Board could be appealed to City Council within 10 days. If the Board granted the applicant's request, the applicant may file the appropriate permits after the 10-day waiting period has expired.

**New Business
Case No. 01-14
Newsome
Two Variance
Requests**

Case 17-13: Marti Newsome - 121 W. Main Street and 118 W. Walnut Street Inlot: 3422 – The applicant requested two variances as follows:

- A variance of 920.56 square feet to Code §154.044(C)(1)(a) for 118 W. Walnut Street to permit a lot split/replat, where the area of the lot would contain 7579.44 square feet rather than the minimum required 8,500 square feet.
- A variance of 2.21' to Code §154.059(D)(6) to the required 3' setback for detached accessory buildings (garage) located at 121 W. Main Street.

Zoning Districts: 121 W Main St. – CC/RA- Community Center/ Restoration and Historic District & 118 W. Walnut St. – R-2/LD – Urban Residential/Legacy District

Zoning Code Section(s): 154.044(C)(1)(a), §154.051(C)(2), and §154.059(D)(3)

Mr. Spring stated that the applicant requested two separate variances in conjunction with a requested lot split/replat of the tract located at 121 W. Main Street and 118 W. Walnut Street. The tract in question was originally two (2) Inlots being Inlot 137 and Inlot 148 respectively, with each Inlot containing a single-family dwelling and associated accessory structures (detached garages). In 1998, the two (2) Inlots were replatted into a single Inlot of record, being Inlot 3422. Despite the 1998 replat, the underlying zoning remained the same. Thus, 121 W. Main Street was zoned CC/RA- Community Center/Old Tippecanoe City Restoration and Historic District and 118 W. Walnut Street was zoned R-2 – Urban Residential Zoning District/Legacy District.

Mr. Spring also stated that the applicant now requested a lot split in order to replat the existing tract into two (2) Inlots of record. The proposed Inlots would be identical to the original Inlots 137 and 148 noted above. However, the original nonconforming status of the original Inlots was lost at the time of the 1998 replat. Therefore, two variances were needed to accomplish the requested lot split. It is important to note that all of the requested variances must be approved in order for the applicant to accomplish the requested lot split.

Additionally, the Zoning Administrator had determined that variances shall only be required for zoning parameters and dimensions that are directly impacted by the requested replat/lot split. For example, a variance would not be required for the existing non-conforming front yard setback at 118 W. Walnut Street, since the proposed replat/lot split would not change/modify this zoning requirement.

Variance 1

Mr. Spring stated that a variance of 920.56 square feet to Code §154.044(C)(1)(a) for 118 W. Walnut Street to permit a lot split/replat, where the area of the lot would contain 7579.44 square feet rather than the minimum required 8,500 square feet.

Code § 154.044(C)(1)(a) states:

Lot requirements

(a) Minimum lot area 8,500 sq. ft.

The proposed Inlot would contain 7,579.44 sq. ft. Therefore, a variance of 920.56 sq. ft. was needed ($8,500 - 7,579.44 = 920.56$).

Variance 2

Mr. Spring stated that a variance of 2.21' to Code § 154.059(D)(6) to the required 3' setback for the detached accessory building (garage) located at 121 W. Main Street.

Code § 154.059(D)(6) states:

A detached accessory building shall be at least 3 feet from all lot lines.

The existing detached garage at 121 W. Main Street would be 0.79' from the proposed new rear lot line. Therefore a variance of 2.21' was needed ($3 - 0.79 = 2.21$).

Mr. Spring stated that the Board of Zoning Appeals had jurisdiction in this case to grant Variance 1 per Code § 154.175(E)(2):

1. *The Board may grant variances only in the following instances and no others:*
2. *To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but in no event shall the respective area and width of the lot or lots be less than 80% of the required area and width;*

Mr. Spring also stated that per Code § 154.044(C)(1)(a) the minimum required area for Inlots within the R-2 – Urban Residential Zoning District was 8,500 sq. ft. Therefore, the maximum variance that the Board can grant was 1,700 square feet ($[8,500 \times 80\% = 6,800]$ & $[8,500 - 6,800 = 1,700]$). Thus, the BZA does have jurisdiction to grant the variance being $\pm 89\%$ of the required area for Inlots in this zoning district.

Mr. Spring also noted that the Board of Zoning Appeals had jurisdiction in this case to grant both variances as noted above per Code § 154.175(E)(1):

- E. *"The Board may grant variances only in the following instances and no others:*
 1. *To permit any yard or setback less than a yard or setback required by the applicable regulations.*

Staff noted the following procedural requirements that must be met regarding the granting of variances as noted in Zoning Code Section(s) §154.175(C):

"The Board shall make written findings of fact, based on the particular evidence presented to it, that each and every one of the following standards for a variance are met by the application:

- (1) The particular physical surroundings, shape, or topographical condition of the specific property would cause particular and extraordinary hardship to the owner if the literal provisions of the zoning code were followed;*
- (2) The alleged hardship has not been created by the applicant for the variance after the adoption of the zoning code;*
- (3) The granting of a variance will not be materially detrimental to the public health, safety, convenience, or general welfare or injurious to other property or improvements in the vicinity;*
- (4) The granting of a variance will not constitute a grant of a special privilege, denied by this chapter to other property in the same zoning district, or permit a use not expressly allowed by this chapter, or permit a use prohibited expressly or by implication to other property in the same district. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance."*

Also the requirement of Zoning Code Section(s) §154.175(D), which states:

"The Board shall further make a written finding that the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum variance that will make possible the reasonable use of the property. When a variance is denied, a written statement shall set forth the reason(s) therefore.

Mr. Spring noted the following:

- If the variances were approved, the applicant would be required to seek Planning Board approval for the proposed lot split through the minor subdivision process delineated in Code §155.055 – §155.058.

Chairman McFarland asked if there were any further questions for Mr. Spring. There were none.

Mr. Berrett inquired if there were any neighbor's comments received. There were none.

Mrs. Marti Newsome, 118 W. Walnut Street and 121 W. Main Street, approached the dais. Mrs. Newsome noted the following: currently resided in West Milton and intended to relocate, add on to and renovate 118 W. Walnut Street; lot line would be put back to its original position before being replatted in 1998; was unable to add on to existing structure without the variance.

Board Members found that the request would not be an unusual request as far as the area.

Chairman McFarland asked if there were any further questions for Mrs. Newsome. There were none.

Chairman McFarland asked if there was anyone present who wished to speak in favor. There were none.

Chairman McFarland asked if there was anyone present who wished to speak in opposition of the request. There was none.

Variance 1

Chairman McFarland asked for further discussion. There being no further discussion, Chairman McFarland **moved to grant a variance of 920.56 square feet to Code §154.044(C)(1)(a) for 118 W. Walnut Street to permit a lot split/replat, where the area of the lot would contain 7579.44 square feet rather than the minimum required 8,500 square feet**, seconded by Mr. Berrett. **Motion carried.** Ayes: McFarland, Berrett, Crawford, and Buehler. Nays: None.

Variance 2

Chairman McFarland asked for further discussion. There being no further discussion, Chairman McFarland **moved to grant a variance of 2.21' to Code §154.059(D)(6) to the required 3' setback for the detached accessory building (garage) located at 121 W. Main Street**, seconded by Mr. Berrett. **Motion carried.** Ayes: McFarland, Berrett, Buehler, Browning and Crawford. Nays: None.

Mr. Spring reminded the citizens and the applicant that there was a ten day period where any aggrieved party could appeal decisions to City Council and that the next step was to apply for Planning Board review.

**Case No. 01-14
Shoup
Two Variance
Requests**

Case No. 01-14: Dana Shoup – Bon Builders Schroeder Tennis Center – 1459 Harmony Drive Inlot: 3264 – The applicant requested two variances as follows:

- A variance of 47' to the required rear setback of 80' noted in Code §154.053(C)(2)(b)(2) for primary structures (Special Use) within the I-1 – Light Industrial Zoning District.
- A variance of 72.5' to the required side setback of 80' noted in Code §154.053(C)(2)(c)(2) for primary structures (Special Use) within the I-1 – Light Industrial Zoning District.

Zoning District: I-1 – Light Industrial Zoning District

Zoning Code Section(s): 154.053(C)(2)(b)(2) & 154.053(C)(2)(c)(2)

Mr. Spring stated that in association with a proposed expansion of the Schroeder Tennis Center located at 1459 Harmony Drive, the applicant requested the following two variances:

- A variance of 47' to the required rear setback of 80' noted in Code §154.053(C)(2)(b)(2) for primary structures (for Special Uses) within the I-1 – Light Industrial Zoning District.
- A variance of 72.5' to the required side setback of 80' noted in Code §154.053(C)(2)(c)(2) for primary structures (for Special Uses) within the I-1 – Light Industrial Zoning District.

Mr. Spring also stated that Schroeder Tennis Center was a Special Use within the I-1 – Light Industrial Zoning District per Code §154.053(B)(2)(o) – Indoor Recreational Facilities. The proposed expansion of this Special Use will consist of two additions:

- A 15' x 60' addition (± 900 sq. ft.) at the north (rear) of the property for seating/viewing
- A ± 120' x 106' addition (± 12,720 sq. ft.) at the east side of the primary structure which would enclose two existing exterior tennis courts at the northeast of the property, and eliminate the bubble over the two existing middle exterior tennis courts at the east of the property

Variance 1

Code §154.053(C)(2)(b)(2) states:

Yard requirements

Minimum rear yard depth:

2. Each side and rear yard for special uses shall be equal to two times the height of the principal building. If adjacent lots are industrially developed to the lot line, no side yard need be provided. Where a side or rear yard abuts onto a Residential District, said yard shall in no case be less than 100 feet and a landscaped screening as specified in § 154.061 shall be provided. An opaque fence may be substituted for such plantings if approved by the Planning Board. If the use is to be serviced from the rear, the yard shall be at least 50 feet deep.

The proposed ± 900 sq. ft. expansion would be 33' from the north rear property line; therefore a variance of 47' [2(40) – 33 = 47] was needed.

Variance 2

Code §154.053(C)(2)(c)(2) states:

Yard requirements

Minimum side yard width on each side:

2. Each side and rear yard for special uses shall be equal to two times the height of the principal building. If adjacent lots are industrially developed to the lot line, no side yard need be provided. Where a side or rear yard abuts onto a Residential District, said yard shall in no case be less than 100 feet and a landscaped screening as specified in § 154.061 shall be provided. An opaque fence may be substituted for such plantings if approved by the Planning Board. If the use is to be serviced from the rear, the yard shall be at least 50 feet deep.

The proposed ± 12,720 sq. ft. expansion would be 7.5' from the east (side) property line, and the building had a height of 40' (existing peak) ; therefore a variance of 72.5' [2(40) – 7.5 = 72.5] was needed.

Staff noted the Board of Zoning Appeals had jurisdiction in this case to grant the variance request as noted per Code §154.175(E)(1):

E. *"The Board may grant variances only in the following instances and no others:*

1. *To permit any yard or setback less than a yard or setback required by the applicable regulations.*

Staff also noted the following procedural requirements that must be met regarding the granting of variances as noted in Zoning Code Section(s) §154.175(C):

"The Board shall make written findings of fact, based on the particular evidence presented to it, that each and every one of the following standards for a variance are met by the application:

1. *The particular physical surroundings, shape, or topographical condition of the specific property would cause particular and extraordinary hardship to the owner if the literal provisions of the zoning code were followed;*
2. *The alleged hardship has not been created by the applicant for the variance after the adoption of the zoning code;*
3. *The granting of a variance will not be materially detrimental to the public health, safety, convenience, or general welfare or injurious to other property or improvements in the vicinity;*
4. *The granting of a variance will not constitute a grant of a special privilege, denied by this chapter to other property in the same zoning district, or permit a use not expressly allowed by this*

chapter, or permit a use prohibited expressly or by implication to other property in the same district. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance."

Also the requirement of Zoning Code Section(s) §154.175(D), which states:

"The Board shall further make a written finding that the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum variance that will make possible the reasonable use of the property. When a variance is denied, a written statement shall set forth the reason(s) therefore.

Mr. Spring noted the following:

- The proposed ± 12,720 sq. ft. expansion would be 53' from the north (rear) property line, which theoretically required a variance to the rear yard setback; however this setback was superfluous as it was superseded by the 33' rear yard setback and requested variance of the ± 900 sq. ft. addition.
- The property includes the following easements:
 - A 30' utility easement on the north property line
 - A 10' utility easement on the north property line
 - A 7.5' utility easement on the east property line
 - A 68' utility easement on the west side property line
- The proposed addition would not encroach into any of these easements.
- The applicant would be required to seek Planning Board site plan approval and obtain approved zoning and building permits prior to the start of any proposed construction.

Mr. Berrett inquired if there were any neighbor's comments received. There were none.

Mr. Dana Shoup with Bon Builders and Bud Schroeder with Schroeder Tennis, approached the dais. Mr. Schroeder noted that currently used an air structure nine to ten months out of the year which was taken down during the summer months and is worn out; the air structure was used initially due to lack of funds to build the permanent structure; build steel building over two existing courts on the end utilizing the existing retaining wall with no encroachment to side property line; not increasing capacity; Style of building designed to match existing to include roof slope; would not create draining issues and would be utilizing current drainage system and would be further addressed at the Planning Board level.

Chairman McFarland asked if there were any further questions for Mr. Schroeder. There were none.

Chairman McFarland asked if there was anyone present who wished to speak in favor. There were none.

Chairman McFarland asked if there was anyone present who wished to speak in opposition of the request.

Variance 1

Chairman McFarland asked for further discussion. There being no further discussion, Mr. Berrett **moved to grant a variance of 47' to the required rear setback of 80' noted in Code §154.053(C)(2)(b)(2) for primary structures (Special Use) within the I-1 – Light Industrial Zoning District in conjunction with the expansion of Schroeder Tennis Center at 1459 Harmony Drive**, seconded by Mr. Browning. **Motion carried.** Ayes: Berrett, Browning, Buehler, Crawford, and McFarland. Nays: None.

Variance 2

Chairman McFarland asked for further discussion. There being no further discussion, Mr. Buehler **moved to grant a variance a variance of 72.5' to the required side setback of 80' noted in Code §154.053(C)(2)(c)(2) for primary structures (Special Use) within the I-1 – Light Industrial Zoning District in conjunction with the expansion of Schroeder Tennis Center at 1459 Harmony Drive**, seconded by Mr. Berrett. **Motion carried.** Ayes: Buehler, Berrett, Crawford, McFarland, and Browning. Nays: None.

Mr. Spring reminded the citizens and the applicant that there was a ten day period where any aggrieved party could appeal decisions to City Council and that there was a ten day waiting period for the applicant to take out any permits.

Case No. 16-13 Fisher Two Variance Requests

Case 16-13: Jerry Fisher - 140 Hartman Avenue, Tipp City - Inlot 1375 –
The applicant requested two variances:

1. A variance of 88 sq. ft. to the maximum area for accessory structure storage as noted per Code §154.059(A)(2) within a residential zoning district.
2. A variance of 2' 8" to the minimum setback of 6' for access drives (driveways) as noted in Code §154.061 (I) within a residential zoning district.

Zoning District: R-1C - Urban Residential Zoning District

Zoning Code Section(s): §154.059(A)(2) & §154.061 (I)

Mr. Spring noted that this case was reviewed and tabled by the Board of Zoning Appeals on November 20, 2013, to allow for the applicant to seek a more detailed survey of the property.

On November 22, 2013, representatives from Cozatt Engineering located both of the western side property pins, which allowed a string line to be pulled between the two western side property corners, and additional measurements to be taken by the zoning administrator and the applicant. Based on a revised site plan at the closest point, the existing home was 17' 2" from the western property line. Thus, the proposed 11' wide driveway, placed abutting the home would be 6' 2" from the western side property at the closest point, which eliminated the requirement for variance #2 as previously discussed. Accordingly, the applicant had formally withdrawn his request for the variance to Code §154.061(I), and now requested approval of variance #1 as originally proposed.

Revised Variance Request

Mr. Spring stated that the applicant requested a variance of 88 sq. ft. to the maximum area for accessory structure storage within a residential zoning district for the property located at 140 Hartman Avenue as noted in Code § 154.059(A)(2).

(A) Permitted accessory uses (Residential Districts).

(2) A structure for storage incidental to a permitted use, provided no such structure that is accessory to a residential building, shall exceed 200 square feet in gross floor area.

Mr. Spring also stated that the applicant proposed the construction of a new detached garage at the rear of the existing home located at 140 Hartman Avenue. The proposed garage would include 416 sq. ft. of "garage" space and 208 sq. ft. of "storage" space. Also, there was an existing 8' x 10' accessory structure (shed) that provided an additional 80 sq. ft. of "storage" space for a total of 288 sq. ft. of accessory structure storage (208 + 80 = 288). Thus, a variance of 88 sq. ft. was needed [(208 + 88 = 288) – 200 = 88].

Staff noted the Board of Zoning Appeals had jurisdiction in this case to grant Variance 1 per Code 154.175(E)(9) as follows:

E. "The Board may grant variances only in the following instances and no others:

9. To vary the design standards for principal and accessory residential uses, other than those applying to lot area per dwelling unit, and minimum lot area or width. Accessory residential uses include, but are not limited to: private garages, carports, storage sheds, swimming pools, patios, open porches, tennis courts, and fences.

Staff noted the Board of Zoning Appeals had jurisdiction in this case to grant variance 2 as noted per Code §154.175(E)(1):

E. *"The Board may grant variances only in the following instances and no others:*

1. *To permit any yard or setback less than a yard or setback required by the applicable regulations.*

Staff noted the following procedural requirements that must be met regarding the granting of variances as noted in Zoning Code Section(s) §154.175(C):

"The Board shall make written findings of fact, based on the particular evidence presented to it, that each and every one of the following standards for a variance are met by the application:

1. *The particular physical surroundings, shape, or topographical condition of the specific property would cause particular and extraordinary hardship to the owner if the literal provisions of the zoning code were followed;*
2. *The alleged hardship has not been created by the applicant for the variance after the adoption of the zoning code;*
3. *The granting of a variance will not be materially detrimental to the public health, safety, convenience, or general welfare or injurious to other property or improvements in the vicinity;*
4. *The granting of a variance will not constitute a grant of a special privilege, denied by this chapter to other property in the same zoning district, or permit a use not expressly allowed by this chapter, or permit a use prohibited expressly or by implication to other property in the same district. No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or non-conforming use of lands, structures, or buildings in other districts shall be considered grounds for the granting of a variance."*

Also the requirement of Zoning Code Section(s) §154.175(D), which states:

"The Board shall further make a written finding that the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum variance that will make possible the reasonable use of the property. When a variance is denied, a written statement shall set forth the reason(s) therefore.

Mr. Spring noted the following:

- If approved, the applicant would be required to obtain an approved Zoning Compliance Permit (Tipp City) and associated building permits (Miami County) for this construction.

Mr. Berrett inquired if there were any neighbor's comments received. There were none. Mr. Spring mentioned that he had contacted Mrs. Rebecca Baker directly, property owner of 146 Hartman, and informed

her of the lot measurements and personally attempted to inform her of what had been completed. Mr. Spring stated that he felt the best thing for her and Mr. Fisher to meet and discuss directly. Mr. Spring did note that the surveyor did not specifically flag front pin but flagged the rear pin, Mr. Spring noted that was due to the front pin already being located by Mr. Fisher.

Mr. Jerry Fisher, 835 Hickory Hill Drive, approached the dais. Mr. Fisher stated he was representing his son who resides at 140 Hartman and that his car will not fit in the existing garage. Mr. Fisher stated that he had met with Mrs. Baker and she expressed not particularly in favor of having another building behind the lot but expressed that Mr. Fisher should have the opportunity to build in the rear lot.

Mr. Berrett inquired the necessity of having so much storage space. Mr. Spring noted that per the current Zoning Code the calculation of "garage space" which only accounts for the width of the door to the length of the building and did not take into consideration the space needed to open and shut a car door thus is considered "storage space" which was for functionality. Mr. Spring stated that this particular section of code was being updated.

Chairman McFarland asked if there were any further questions for Mr. Fisher. There were none.

Chairman McFarland asked if there was anyone present who wished to speak in favor. There were none.

Chairman McFarland asked if there was anyone else present who wished to speak in opposition of the request. There were none.

Chairman McFarland asked for further discussion. There being no further discussion, Mr. Browning **moved to grant a variance of) a variance of 88 sq. ft. to the maximum area for accessory structure storage within a residential zoning district for the property located at 140 Hartman Avenue**, seconded by Mr. Buehler. **Motion carried.** Ayes: Browning, Buehler, Berrett, and McFarland. Nays: None. Mr. Crawford abstained from the vote.

Mr. Spring reminded the citizens and the applicant that there was a ten day period where any aggrieved party could appeal decisions to City Council and that there was a ten day waiting period for the applicant to take out any permits.

Old Business

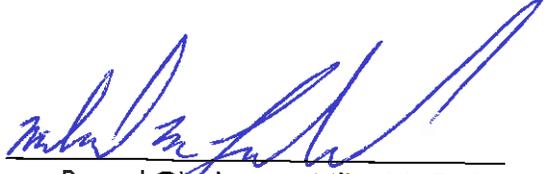
There was none.

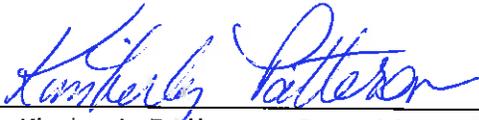
Miscellaneous

There was none.

Adjournment

There being no further business, Mr. Berrett **moved to adjourn the meeting**, seconded by Mr. Browning and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 8:20 p.m.


Board Chairman, Mike McFarland

Attest: 
Mrs. Kimberly Patterson, Board Secretary

