

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

May 21, 2014

Meeting	Chairman McFarland called this meeting of the Tipp City Board of Zoning Appeals to order at 7:32 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, Mark Browning, and Isaac Buehler. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
Absence	Newly appointed Board Member Carrie Arblaster was unable to attend the meeting. Staff was notified. Chairman McFarland moved to excuse the absence of Mrs. Arblaster , seconded by Mr. Berrett and unanimously approved.
Citizens signing the registrar	Citizens attending the meeting: Larry Welti and Sandy Welti.
Board Minutes 03-19-2013	Chairman McFarland asked for discussion. There being none, Chairman McFarland moved to approve the April 16, 2014 meeting minutes as written , seconded by Mr. Berrett. Motion carried. Ayes: McFarland, Berrett, Browning, and Buehler. 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. 05-14 Welti Six Variance Requests	Case No. 05-14: Lawrence and Sandra Welti, 25 N. Fourth Street, Inlot 4034- The applicant requested the following: <ol style="list-style-type: none">1. A variance of 0.5' to the maximum height of 3.5' for fences, walls, and hedges in any front or corner side yard as noted in Code §154.059(D)(13)(e)(1).2. A variance of 2' to the minimum setback of 3' for fences, walls, and hedges in any front or corner side yard as noted in Code §154.059(D)(13)(f)(1).3. A variance to Code §154.059(D)(9) to allow for the placement of a patio (courtyard) in a front yard rather than a side or rear yard.

4. A variance to Code §154.059(D)(9) to allow for the placement of a patio (courtyard) closer than 3 feet to an adjacent property line.
5. A variance of 1.5' to Code §154.059(D)(9) to the minimum screening height of 4' to allow for the placement of a courtyard/patio area that is closer than 8 feet to an adjacent property line, that would be screened by an evergreen hedge or fence 2.5' in height.
6. A variance to Code §154.059(D)(13)(f)(5) to allow for the placement of a fence, wall, or hedge in a front yard that is 100% opaque rather than 50% opaque when viewing the primary face of the fence or wall, and shall be constructed so as to provide a ratio of solid portion to open portion not to exceed 1 to 1.

Zoning District: R-2/LD - Urban Residential/Legacy Overlay Zoning District
Zoning Code Section(s): §154.059(D)(9), §154.059(D)(13)

History

Staff notes that this case was reviewed by the Board of Zoning Appeals on April 16, 2014. Variance Requests 1, 2 and 6 as noted above were each approved (3-1) and require no further action this evening. Variance Requests 3, 4 and 5 noted above each ended in a tie vote (2-2). Per Code §36.019(B)

... Any motion which results in a tie vote shall become automatically an agenda item for the next regular business meeting or, if so required by ordinance, at a specially called meeting.

Accordingly, the applicant requests the following 3 variances in association with the proposed construction of a courtyard/patio area in the front yard (N. Fourth Street) of the corner lot located at 25 N. Fourth Street (N Fourth St. & W. Walnut St.). The proposed ± 800 sq. ft. paved (brick pavers) courtyard/patio area will be enclosed by a ± 2.5' brick wall and include paved steps from the home to the courtyard/patio area, and steps from the courtyard/patio area to the public sidewalk (N. Fourth St.).

Variance 3

The applicant seeks a variance to allow for the placement of a patio (courtyard) in a front yard rather than a side or rear yard for the property located at 25 N. Fourth Street, as noted in Code §154.059(D)(9) which states:

*...Patis, open porches and car ports **may be located in side and rear yards** provided they are not closer than 3 feet to any adjacent property line. If located closer than 8 feet, they shall be screened by an evergreen hedge or fence not less than 4 feet in height and maintained in good condition. In case of a corner lot, no patios or porches shall be closer to the side street lot line than the least depth required for such side yard.*

The proposed courtyard/patio area will be located in the front yard (N. Fourth Street) of the property located at 25 N. Fourth Street. Therefore a variance to Code § 154.059(D)(9) is required.

Variance 4

The applicant seeks a variance of 2' to the minimum setback of 3' from any adjacent property line for patios, open porches and car ports as noted in Code in Code § 154.059(D)(9) which states:

*...Patios, open porches and car ports may be located in side and rear yards **provided they are not closer than 3 feet to any adjacent property line.** If located closer than 8 feet, they shall be screened by an evergreen hedge or fence not less than 4 feet in height and maintained in good condition. In case of a corner lot, no patios or porches shall be closer to the side street lot line than the least depth required for such side yard.*

The proposed courtyard/patio area will be located 1 foot from the front property line. Therefore a variance of 2' is required ($3 - 1 = 2$).

Variance 5

The applicant seeks a variance of 1.5' to the minimum screening height of 4' to allow for the placement of a courtyard/patio area that is closer than 8 feet to an adjacent property line, that would be screened by an evergreen hedge or fence 2.5' in height as noted in Code § 154.059(D)(9) which states:

*...Patios, open porches and car ports may be located in side and rear yards provided they are not closer than 3 feet to any adjacent property line. **If located closer than 8 feet, they shall be screened by an evergreen hedge or fence not less than 4 feet** in height and maintained in good condition. In case of a corner lot, no patios or porches shall be closer to the side street lot line than the least depth required for such side yard.*

The proposed screening fence (wall) will be located 1' from the front (N. Fourth Street) property line and be 2.5' tall. Therefore a variance of 1.5' is required ($4 - 2.5 = 1.5$).

Mr. Spring noted the Board of Zoning Appeals had jurisdiction in this case to grant variances #3-#5 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 stated 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 that the new Zoning Code became effective on April 17, 2014 (Ord. 5-14). However, the requested variances require review under the previous Code per §154.01(J)(4)(a)(i):

Any complete application that has been submitted or accepted for approval, but upon which no final action has been taken by the appropriate decision-making body prior to the effective date of this code, shall be reviewed in accordance with the provisions of the regulations in effect on the date the application was deemed complete by the city.

Mr. Spring also noted that if the requested variances were approved, the applicant would be required to obtain an approved zoning permit prior to the start of any proposed construction.

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

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

Mr. Lawrence and Mrs. Sandra Welti, 25 N. Fourth Street, approached the dais. Mr. and Mrs. Welti presented the Board with computer generated rendition of their proposed project to include their vision that showed the stone foundation to match existing to create a feel of being original and organic.

Board Members found the following regarding the request: soft scape with flooring to also match the stone of the church, plantings would be on the front and the side, Mrs. Welti will be planting/landscaping herself; grill was not being incorporated into the courtyard; lights will be on short posts to be at 6' to 7' from the sidewalk to mimic carriage lights; lights will be dimmed not to interfere with traffic; old industrial railing will be removed and stone steps installed.

The Welti's invited the Board Member Browning to their home and apologized that they did not get ahead of him prior to the meeting.

Mr. Buehler stated that the Welti's did contact him for a site visit of the property and he did go to see it.

Mrs. Welti stated that Ms. Arblaster had also come for a site visit the night before.

Chairman McFarland asked if there were any further questions for Mr. and Mrs. Welti. 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 were none.

Chairman McFarland asked for further Board Member comments. Mr. Browning stated that his only concern was with having the patio in the front and was internally wrestling with that issue and most of the items discussed the overwhelming majority of dealing with side and rear yard setbacks this case was the first front yard being dealt with. Mr. Browning

also stated that the project looked beautiful and the Welti's had done a wonderful job in laying it out and variances #4 and #5 he did not have a problem with but were irrelevant if variance #3 wasn't approved.

Mrs. Welti stated that they had drove around to quite a few places to find anything comparable and did not find anything, but did find places where the furniture and grill were just placed in the yard and looked tacky.

Mr. Brown's fear was that other people may not have as thoroughly thought out project as they had done.

Mr. Berrett stated that in his mind a courtyard was totally different than a patio even though referenced in same concept of Zoning Code.

Mr. Browning stated the project was definitely unique.

Variance 3

Mr. Berrett moved to grant a variance to Code §154.059(D)(9) to allow for the placement of a patio (courtyard) in a front yard rather than a side or rear yard for the property located at 25 N. Fourth Street, seconded by Mr. Buehler. **Motion carried.** Ayes: Berrett, Buehler, McFarland, and Browning. Nays: None.

Variance 4

Mr. Berrett moved to grant a variance to Code §154.059(D)(9) to allow for the placement of a patio (courtyard) closer than 3 feet to an adjacent property line for the property located at 25 N. Fourth Street, seconded by Mr. Buehler. **Motion carried.** Ayes: Berrett, Buehler, Browning, and McFarland. Nays: None.

Variance 5

Mr. Berrett moved to grant a variance of 1.5' to Code §154.059(D)(9) to the minimum screening height of 4' to allow for the placement of a courtyard/patio area that is closer than 8 feet to an adjacent property line, that would be screened by an evergreen hedge or fence 2.5' in height for the property located at 25 N. Fourth Street, seconded by Mr. Buehler. **Motion carried.** Ayes: Berrett, Buehler, Browning, and McFarland. Nays: None.

Old Business

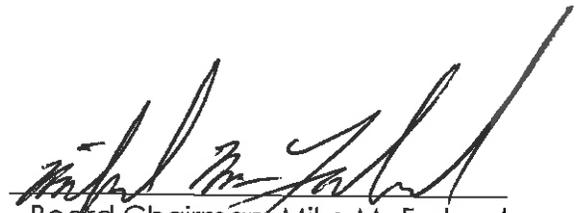
There was none.

Miscellaneous

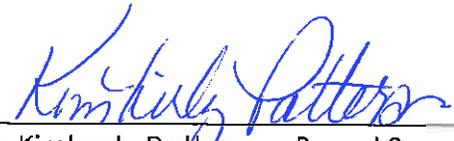
There was none.

Adjournment

There being no further business, Chairman McFarland moved to adjourn the meeting, seconded by Mr. Browning and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 7:48 p.m.



Board Chairman, Mike McFarland

Attest: 
Mrs. Kimberly Patterson, Board Secretary

