

**BOARD OF ZONING APPEALS MEETING**

**TIPP CITY, MIAMI COUNTY, OHIO**

**July 16, 2014**

- Meeting** Chairman McFarland 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, Mark Browning, Carrie Arblaster, and Isaac Buehler. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
- Citizens signing the registrar** Citizens attending the meeting: Jim Clevenger, Eric Houk, Lauren Mullins, and Nick Mullins.
- Oath of Office Carrie Arblaster** Mayor Hale administered the Oath of Office for Ms. Carrie Arblaster.
- Board Minutes 05-21-2013** Chairman McFarland asked for discussion. There being none, Mr. Berrett **moved to approve the May 21, 2014 meeting minutes as written**, seconded by Chairman McFarland. **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.~~ any person or entity claiming to be injured or aggrieved by any final action of the BZA shall have the right to appeal the decision to the court of common pleas as provided in ORC Chapters 2505 and 2506.
- New Business Case No. 08-14 Houk Two Variance Requests** **Case No. 08-14: Eric Houk - 404 S. Third Street - Lot: Inlot 282** – The applicant proposed minor subdivision (lot split) of Inlot 282 and requested two variances to following code sections for lot split:  
**Zoning Code Section(s):** 154.04(H)(1)(d)(vi)(D), Table 154.04-7  
**Zoning District:** R-2 Two-Family Residential Zoning District
- Mr. Spring stated that in association with a proposed minor subdivision (lot split) of Inlot 282, the applicant requested the following variances:

AMENDED

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**Meeting**

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**Roll Call**

Roll call showed the following Board Members present: Mike McFarland, David Berrett, Mark Browning, Carrie Arblaster, and Isaac Buehler. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.

**Citizens signing the registrar**

Citizens attending the meeting: Jim Clevenger, Eric Houk, Lauren Mullins, and Nick Mullins.

**Oath of Office Carrie Arblaster**

Mayor Hale administered the Oath of Office for Ms. Carrie Arblaster.

**Board Minutes 05-21-2013**

Chairman McFarland asked for discussion. There being none, Mr. Berrett **moved to approve the May 21, 2014 meeting minutes as written**, seconded by Chairman McFarland. **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.~~ *Right*

**New Business Case No. 08-14 Houk Two Variance Requests**

**Case No. 08-14: Eric Houk - 404 S. Third Street - Lot: Inlot 282** – The applicant proposed minor subdivision (lot split) of Inlot 282 and requested two variances to following code sections for lot split:  
**Zoning Code Section(s):** 154.04(H)(1)(d)(vi)(D), Table 154.04-7  
**Zoning District:** R-2 Two-Family Residential Zoning District

Mr. Spring stated that in association with a proposed minor subdivision (lot split) of Inlot 282, the applicant requested the following variances: (for purposes of clarity the proposed western Inlot will be referred to as "Lot 1" and the proposed eastern Inlot will be referred to as "Lot 2".)

*SEE AMENDED PAGE*

- A variance of 5,790 square feet to the minimum lot area for Lot 1 as noted in Table 154.04-7 and Code § 154.04(H)(1)(d)(vi)(D) for corner lots within the R-2 Zoning District.
- A variance of 5,350 square feet to the minimum lot area for Lot 2 as noted in Table 154.04-7 for lots within the R-2 Zoning District.

Variance 1 (Lot 1)

Mr. Spring stated that table 154.04-7 indicates that the minimum lot area for single-family homes, Other Principal Use Types, within the R-2 Zoning District is 8,500 square feet. Lot 1 is a corner lot (S. Third St. & German St.). Accordingly, Code § 154.04(H)(1)(d)(vi)(D) further indicates:

*Lots that have street frontage on two intersecting streets shall be considered a corner lot, subject to the following:*

*D. The minimum lot area of a corner lot shall be 20 percent larger than the minimum area required for an interior lot.*

Thus, the minimum required lot area for Lot 1 is 10,200 sq. ft. (8500 x 1.2 = 10200). The applicant had proposed an Inlot with an area of 4,410 sq. ft. (88.2 x 50 = 4410). Therefore a variance of 5,790 square feet was needed (10200 – 4410 = 5790).

Variance 2 (Lot 2)

Table 154.04-7 indicates that the minimum lot area for single-family homes (Other Principal Use Types) within the R-2 Zoning District is 8,500 square feet. The applicant has proposed an Inlot (Lot 2) with an area of 3,150 sq. ft. (63 x 50 = 3150). Therefore a variance of 5,350 square feet is needed (8500 – 3150 = 5350).

Review Criteria § 154.03(K)(4)

(4) Review Criteria

Decisions on variance applications shall be based on consideration of the following criteria:

**(a)** Where an applicant seeks a variance, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as further defined below.

**(b)** The following factors shall be considered and weighed by the BZA to determine practical difficulty:

**(i)** Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;

**(ii)** Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

**(iii)** Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;

**(iv)** Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

**(v)** Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;

**(vi)** Whether special conditions or circumstances exist as a result of actions of the owner;

**(vii)** Whether the property owner's predicament can feasibly be obviated through some method other than a variance;

**(viii)** Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or

**(ix)** Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

**(c)** No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Mr. Spring noted the following:

- The newly created rear yard setback for Lot 1 of 30.8 feet, meets the rear yard setback requirement of 30 feet as noted in Table 154.04-7 for lots within the R-2 Zoning District.
- The newly created side yard setback for Lot 2 of 28.2 feet, meets the side yard setback requirement of 10 feet as noted in Table 154.04-7 for lots within the R-2 Zoning District.
- All other setbacks are existing and not impacted by the proposed lot split, and therefore do not require variances.
- If the requested variances are granted, the applicant would be required to obtain an approved minor subdivision (lot split), which requires administrative review and approval of the Zoning Administrator and the City Engineer, and subsequent review/approval & recording with Miami County.

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. Eric Houk, 404 S. Third Street, approached the dais. Mr. Houk stated that the house at 404 S. Third was built in approximately 1890. Harve Lewis owned the home in the 1940's who built a structure on the back to serve as a grocery store which was also a license bureau. The structure in the back also known as 16 E. German Street (lot 2), was added on to and turned into a residence in 1960 which has been occupied as such ever since. Mr. Houk also stated that 16 E. German had its own metered utilities and the only consideration for the lot split was to run a new water line. Currently the water line to 16 E. German was being fed from 404 S. Third from the basement, water pressure fluctuate when both households were showering. Mr. Houk noted that he conducted his own amateur research of the area that indicated that there were similar nonconforming lot conditions throughout the older section of Tipp City as follows:

305 S. Third and 16 W South Street – 2 houses on one lot

403 S. Third and 13 E. Elm Street – 2 houses on one lot

236 S. Third and 15 E. South

103 E. Walnut and 14 N. Second

304 S. Third and 12 E. South Street – 2 houses and a garage in between.

18 E. German Street – a nonconforming lot in between two alleys.

Any changes on these nonconforming lots require a variance.

Mr. Houk's neighbor at 408 S. Third Street added onto his garage out to the property line and had to seek a variance with no issues.

Mr. Houk stated that he was not building anything new and not altering either house and was only seeking to alter the lot sizes and create a separate deed for 16 E. German Street (lot no. 2).

Mr. Houk noted that the lot split would add to the property tax base for the community and currently the value was only based on the 404 S. Third Street house.

Mr. Houk also noted that no **access** changes would occur for either property, only the legalities would change. Mr. Houk stated that he had owned the property since October 2000 and had always contemplated this change. Mr. Houk mentioned that he had lived in both homes at one time or another during his ownership.

Chairman McFarland asked if there was anyone present who wished to speak in favor. Mr. Larry Cook approached the dais and Mrs. Patterson administered the Oath for Mr. Cook.

Mr. Cook 11 German Street stated that he had built his home in 1966 and stated that there was no reason why the variances could not take place and in the old section of town the residents have to get a variance for everything because nothing conformed to any code. Mr. Cook noted that when he built his home in 1966 he had to acquire three variances

and four variances for the garage that he later built. Mr. Cook stated he was in favor of the approval.

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

Chairman McFarland asked if there were any further questions for Mr. Houk. Mr. Berrett inquired about off street parking for the E. German house. Mr. Houk stated there was a patch of gravel but he had no intentions of changing anything but the water line.

Chairman McFarland asked for further Board Member comments.

Variance 1

Mr. Berrett moved to grant a variance of 5,790 square feet to the minimum lot area for Lot 1 as noted in Table 154.04-7 and Code §154.04(H)(1)(d)(vi)(D) for corner lots within the R-2 Zoning District, seconded by Mr. Browning. Motion carried. Ayes: Berrett, Browning, Buehler, Arblaster, and McFarland. Nays: None.

Variance 2

Mr. Berrett moved to grant a variance of 5,350 square feet to the minimum lot area for Lot 2 as noted in Table 154.04-7 for lots within the R-2 Zoning District, seconded by Mr. Browning. Motion carried. Ayes: Berrett, Browning, Arblaster, Buehler, and McFarland. Nays: None.

Mr. Spring stated that Mr. Houk would need to have a certified professional engineer or surveyor put together an actual lot split diagram and legal description which would be reviewed by Staff. Once completed with any proposed changes the lot split could be taken to Miami County and recorded.

**Case No. 09-14  
Mullins  
Two Variance  
Requests**

**Case No. 09-14: Nicholas & Lauren Mullins (Bost), 705 Tyler Lane - Lot: Inlot 2745** – The applicant requested two variances to following code sections for placement of fence:  
**Zoning Code Section(s):** 154.06(A)(4)(i)(vi)(A) & 154.06(A)(4)(i)(vi)(B);  
**Zoning District:** R-1C - Urban Residential Zoning District

Mr. Spring stated that in association with a proposed installation of ± 305 linear feet of 4' tall aluminum picket fence, the applicant requested the following variances for the single-family residential home located at 705 Tyler Lane, which was located on a corner lot of Tyler Lane & S. Tippecanoe Drive.

Variance 1

Mr. Spring stated that the applicant sought a variance of 2' to the required setback of 3' for fences located in front yards and corner side yards within residential zoning districts noted in Code

§ 154.06(A)(4)(i)(vi)(A). The applicant proposed the installation of ± 36 linear feet of 4' tall aluminum picket fencing within the front east yard, with a setback of 1' from the front eastern property line.

Code § 154.059(D)(13)(f)(1) states:

The following shall apply to fencing, walls, and hedges in residential zoning districts and the CD District:

A. All fences, walls, and hedges shall be set back a minimum of three feet from any front lot line.

Mr. Spring noted that the applicant proposed fencing 1' from the front property line (1' setback), therefore a variance of 2' was required (3 – 1 = 2).

#### Variance 2

Mr. Spring stated that the applicant sought a variance of 0.5' to the maximum height of 3.5' for fences located in front yards and corner side yards within residential zoning districts noted in Code § 154.06(A)(4)(i)(vi)(B). The applicant proposed the installation of ± 36 linear feet of 4' tall aluminum picket fencing within the front east yard.

Code § 154.06(A)(4)(i)(vi)(B) states:

The following shall apply to fencing, walls, and hedges in residential zoning districts and the CD District:

B. Fences, walls, and hedges shall not exceed 42 inches (3.5') in the front yard or along any lot line that is adjacent to a street. For double frontage lots, fencing in the rear yard may exceed 42 inches if the fencing is set back a minimum of 50 feet from the right-of-way but in no case shall it exceed six feet in height.

Mr. Spring noted that the applicant proposed a fence 4 feet in height, therefore a variance of 0.5 feet was required (4 – 3.5 = 0.5).

#### **Review Criteria §154.03(K)(4)**

##### **(4) Review Criteria**

Decisions on variance applications shall be based on consideration of the following criteria:

**(a)** Where an applicant seeks a variance, said applicant shall be required to supply evidence that demonstrates that the literal enforcement of this code will result in practical difficulty for an area/dimensional variance as further defined below.

**(b)** The following factors shall be considered and weighed by the BZA to determine practical difficulty:

**(i)** Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such

special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions;

**(ii)** Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

**(iii)** Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;

**(iv)** Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance;

**(v)** Whether the variance would adversely affect the delivery of governmental services such as water, sewer, electric, refuse pickup, or other vital services;

**(vi)** Whether special conditions or circumstances exist as a result of actions of the owner;

**(vii)** Whether the property owner's predicament can feasibly be obviated through some method other than a variance;

**(viii)** Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance; and/or

**(ix)** Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

**(c)** No single factor listed above may control, and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Mr. Spring noted the following:

- The applicant would be required to obtain an approved Zoning Compliance Permit prior to the installation of the fence.

Chairman McFarland asked if there were any site line issues with the proposed fence. Mr. Spring stated there were none.

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

Mr. Nick Mullins and Mrs. Lauren Mullins, 705 Tyler lane, approached the dais. Mrs. Mullins stated that the fence was 4' and was asking for the other half because of her younger children and pets. Tippecanoe and Tyler intersection was extremely busy. Mrs. Mullins also stated that this



was their first home and have put a lot into the property and love the area and want to make it their home and be cozy.

Mr. Berrett asked what the reason was for not doing the 3' setback. Mrs. Mullins stated that they wanted more room. Mr. Mullins stated that there was a very large 2 ½' base tree in the path of the 3' setback and wanted to put the fence on the outside of the tree, they did not want to remove the tree.

Mr. Buehler asked for clarification of location of fence needing the variance. Mr. Spring stated that everything was to the south for the height and the sidewalk was 2' on the corner side yard.

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

Chairman McFarland asked if there was anyone present who wished to speak in favor. James Clevenger, 3836 Twin Township Road, Lewisburg, Ohio approached the dais. Mr. Clevenger, owner of Eagle Fence and Construction Company, stated that visibility with hedges was zero and visibility with the proposed fence was .7 which allows 93% visibility. Mr. Clevenger also stated that the layout was the best fit for the property and won't start before 90' to the intersection and would not be seen from the street.

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. There were none.

#### Variance 1

Ms. Arblaster moved to grant a variance of 2' to the required setback of 3' for fences located in front yards and corner side yards within residential zoning districts noted on Code §154.06(A)(4)(i)(vi)(A) for the single-family residential home located at 705 Tyler Lane, seconded by Mr. Berrett. **Motion carried.** Ayes: Arblaster, Berrett, Buehler, McFarland, and Browning. Nays: None.

#### Variance 2

Mr. Browning moved to grant a variance of 0.5' to the maximum height of 3.5' for fences located in front yards and corner side yards within residential zoning districts noted in Code §154.06(A)(4)(i)(vi)(B) for the single-family residential home located at 705 Tyler Lane, seconded by Mr. Buehler. **Motion carried.** Ayes: Berrett, Buehler, Arblaster, Browning, and McFarland. Nays: None.

There was none.

### Old Business

**Miscellaneous**

There was none.

**Adjournment**

There being no further business, Mr. Berrett **moved to adjourn the meeting**, seconded by Chairman McFarland and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 8:08 p.m.

  
Board Chairman, Mike McFarland

Attest:   
Mrs. Kimberly Patterson, Board Secretary

