

**BOARD OF ZONING APPEALS MEETING**

**TIPP CITY, MIAMI COUNTY, OHIO**

**October 15, 2014**

- Meeting** Vice Chairman Berrett 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: David Berrett, Mark Browning, Isaac Buehler, and Carrie Arblaster. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Kimberly Patterson.
- Absence** Vice Chairman ~~McFarland~~<sup>BERRETT</sup> moved to excuse Mr. Michael McFarland from the meeting, seconded by Mr. Browning and unanimously approved. **Motion carried.**
- Citizens signing the registrar** Citizens attending the meeting: Randy Hopkins, Julie Hopkins, Clint Hopkins, Cheryl Shaneyfelt, Jon Shaneyfelt, Joe Bagi, Mark Vondenhuevel, Rodney Alder, Jennifer Alder, and Julian Arblaster.
- Board Minutes 08-20-2014** Vice Chairman Berrett asked for discussion. There being none, Ms. Arblaster moved to approve the August 20, 2014 meeting minutes as written, seconded by Vice Chairman Berrett. **Motion carried.** Ayes: Arblaster, 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** Vice Chairman Berrett explained the guidelines and procedures for the meeting and public hearings. He advised the applicant that 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. 14-14 Meijer Distribution Parking** **Case No. 14-14: Jesse Lewter – Wolverine Engineering for Meijer Distribution Center - 4200 S. CR 25A, Tipp City - Lot: Inlot 3214 and Pt. IL 2392** – The applicant requested variance to Zoning Code Section(s): §154.078(H) for 21.8% reduction in the off-street parking requirements. **Zoning District:** LI – Light Industrial Zoning District
- Vice Chairman Berrett stated that Staff had received an email from the applicant requesting that the case be tabled at this time.

**Case No. 15-14  
Alder  
Three variance  
Requests**

Mr. Browning moved to table Case No. 14-14 per the applicant's request to the next regularly scheduled meeting, seconded by Vice Chairman Berrett. Motion carried. Ayes: Browning, Berrett, Buehler, and Arblaster. Nays: None.

**Case 15-15: Jennifer Alder, 303 N. Second Street, Tipp City - Lot: Inlot 522 & Pt. IL 523** – The applicant requested three variances to Zoning Code Section(s): §154.06(A)(4)(i)(vi)(A), §154.06(A)(4)(i)(vi)(B), and §154.06(A)(4)(i)(iii)(E) for placement of a fence.  
**Zoning District:** R-2 – Two-Family Residential Zoning District

Mr. Spring stated that the applicant sought the following variances:

1. A variance of 3' 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)
2. 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)
3. A variance to the requirement that fences must be constructed of wood, vinyl, ornamental wrought iron, steel or aluminum formed and colored and in such a style as to be substantially similar to such wrought iron. Exceptions to this requirement include vinyl-coated chain link fences in a side or rear yard or other fences as may be approved as part of a special use permit request as noted in Code §154.06(A)(4)(i)(iii)(E).

Mr. Spring also stated that in association with the installation of ± 165 linear feet of 4' tall vinyl-coated chain-link fence, the applicant requested the following variances for the single-family residential home located at 303 N. Second Street, which was located on a corner lot; N. Second Street & Franklin Street.

Variance 1

Mr. Spring stated that the applicant requested a variance 3' 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). The applicant proposed the installation of ± 110 linear feet of 4' tall vinyl-coated chain-link fence within the front (south) yard, with a setback of 0' from the front (north) 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 also stated that the applicant proposed fencing 0' from the front property line (0' setback), therefore a variance of 3' was required ( $3 - 0 = 3$ ).

#### Variance 2

Mr. Spring stated that the applicant requested 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 ± 110 linear feet of 4' tall vinyl-coated chain-link fence within the front (south) 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.

The applicant proposes a fence 4 feet in height, therefore a variance of 0.5 feet is required ( $4 - 3.5 = 0.5$ ).

#### Variance 3

Mr. Spring stated that the applicant requested a variance to the requirement that fences must be constructed of wood, vinyl, ornamental wrought iron, steel or aluminum formed and colored and in such a style as to be substantially similar to such wrought iron; and the requirement that vinyl-coated chain link fences must be installed in a side or rear yard. The applicant proposed the installation of ± 110 linear feet of 4' tall vinyl-coated chain-link fence within the front (south) yard.

Code §154.06(A)(4)(i)(iii)(E) states:

A variance to the requirement that fences must be constructed of wood, vinyl, ornamental wrought iron, steel or aluminum formed and colored and in such a style as to be substantially similar to such wrought iron. Exceptions to this requirement include vinyl-coated chain link fences in a side or rear yard or other fences as may be approved as part of a special use permit request as noted in Code §154.06(A)(4)(i)(iii)(E).

The applicant proposed the installation of ± 110 linear feet of 4' tall vinyl-coated chain-link fence within the front (south) yard, therefore requiring a variance to this section.

#### **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 added the following:

- If the requested variances were granted, the applicant would be required to obtain an approved Zoning Compliance Permit.

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

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

Mrs. Jennifer Alder, 303 N. Second Street, approached the dais. Mrs. Alder stated that this was a rental property and intended to fence in the yard to help residents to keep kids or animals contained or kids or animals out. Mrs. Alder also stated that the lot was very narrow which was why she was asking for the variance to be placed a foot behind the sidewalk. Mrs. Alder noted that she had cleaned up the entire property and this was the last step in finishing the project.

Vice Chairman Berrett inquired if there was any specific reason as to why she could not conform to the zoning code and why does the fence have to be the specific fence requested. Mrs. Alder stated that chain link fence would be easier to take care of being she would not be residing there at all times; vinyl coated chain link was the other thing she could go to which was a little bit more inexpensive for her to put up and would be lifetime easier to take care of rather than a wood or vinyl fence which being next to the roadway rocks flicking up on the fence and breaking the fence would only become an eyesore that way and this way the fence would last a lot longer. Mrs. Alder noted that neighbors in the area also have chain link fence.

Mr. Browning stated that he did notice across from the property on Franklin there was a chain link fence but the fence was setback quite a ways back from the sidewalk. Mrs. Alder stated the fence was still on City property and that that lot was skinnier and the fence was pushed out onto City property. Mr. Browning stated the fence appeared to be a bit further back than what she was requesting. Mrs. Alder stated that was because the road was cut and moved toward her side when Franklin was reconstructed plus the addition of a sidewalk that was not there prior.

Vice Chairman Berrett inquired why the specific height request. Mrs. Alder stated that she was told by three different fence companies that it was best to go with a four foot fence if she decided to have an animal in the yard the animals would be more likely not to be able to jump a four foot fence verses a three and a half foot fence; and also for the kids. Vice Chairman Berrett stated that it was a contingency idea if the renters had animals. Mrs. Alder stated that she did not have renters right now but they would be moving in and yes they had a dog.

Vice Chairman Berrett asked if there were any further questions for Mrs. Alder. There was none.

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

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

Vice Chairman Berrett asked for further Board Member comments.

Mr. Browning stated that he didn't know what kind of criteria the Board was looking at for justification and understood the narrow lot. Board Members concurred that the narrow lot was beyond the property owner's control.

Ms. Arblaster was not sure of the material and not being able to conform to code. Mr. Buehler asked Mr. Spring if the nearby chain link was based on a variance. Mr. Spring did not have that information. Vice Chairman Berrett stated that fence did not look that new and appeared to have been there for a while.

Mr. Browning asked if the height recommendation was from the fence company. Mrs. Alder stated that it was a recommendation but she would rather have four foot than three and a half foot just in case because she did not know what the future would bring and that she could jump a three and a half foot fence better than she could a four foot fence. Mrs. Alder also stated the four foot fence was for safety reasons. Mr. Browning stated that he understood that and didn't understand why the code was limiting to the purpose of the three and half foot height requirements and asked Mr. Spring. Mr. Spring stated that he could not address the issue perfectly but it was his interpretation that was put in place for aesthetic reasons and the fence code was revised in 2009 but believed the height requirement did not change.

Mr. Buehler stated that the height didn't bother him as much as the aesthetics. Vice Chairman Berrett did not see a problem with the setback request, but a slight problem with the height but did have a problem with the material. Mr. Buehler agreed with the safety in the area.

Mr. Browning asked if the dog was a big dog or a small dog. Mrs. Alder stated that the dog was a medium sized dog but did not know how many years these renters would be living there. Mr. Browning stated he didn't know how to base his decision on what's going to be and the dog could be a Chihuahua and then a Great Dane; and looking at rationalizing to meet the criteria to approve or disapprove did not fit.

Mrs. Alder stated that if the new renters had a swing set and kids that she preferred a taller fence to distract from people from climbing over into the yard.

Mrs. Patterson swore in Rodney Alder, 4100 Ross Road, Tipp City, Ohio. Mr. Alder stated that another reason they wished for the higher fence was that they were so close to the park and with the mum festival there was a lot of foot traffic and wanted to do everything they could do to protect themselves better. Mr. Browning stated that they had done a very nice job improving the place but the Board has to rationalize as to why there could not be compliance with the code and could see the justification for a little extra height and wanting that but was based on what may or may not happen. Mr. Alder stated that it was better to be overkill than under kill and be more prepared than not prepared enough. Mr. Browning understood but the codes were put in place for a reason and the Board has to review.

Vice Chairman Berrett stated that the Board has to meet certain criteria and understood the situation that was out of your control like the adding of the sidewalk which made the lot even narrower; but the other two the Board was having a problem finding justification that was beyond the property owners control for approving them.

Mr. Alder stated that with everything that they have done to the home to make it way up and beyond. The Board Members commended him on that and was not the issue.

Mrs. Alder stated that it would cost her another three thousand dollars to install the fence and was doing this to protect Tipp City and renters and the community by installing the fence and taking care of what she had done.

Ms. Arblaster asked if Mrs. Alder had any price comparisons of chain link verses what was being asked of her in the code. Ms. Alder stated that the neighbor had a chain link and she weighed the options of what was going to last the longest and would be the easiest to take care of and still look good to be able to see in the yard. If she put up a picket fence how many years would that last before she would have to tear it down and do it all over again; wood warps over time and would not last like a chain link. Ms. Alder said the chain link across the road still looked good and hers would be vinyl coated.

Ms. Arblaster asked Mrs. Alder if she was amenable to using chain link on the side and complying with the code in the front and if that was an option that she had considered. Mrs. Alder stated that was the problem that the front yard was her side yard and where would she put the other fencing besides on the side yard and that chain link could go on the back alley way but that would look funny to have wood fencing

between two neighbors and another kind of fencing on the other side and was trying to keep as uniformed as she could.

Vice Chairman Berrett asked for further discussion.

Variance 1

Vice Chairman Berrett **moved to grant a variance of 3' 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 303 N. Second Street**, seconded by Mr. Browning. **Motion carried.** Ayes: Berrett, Browning, Buehler, and Arblaster. Nays: None.

Variance 2

Vice Chairman Berrett **moved to deny 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 303 N. Second Street**, seconded by Mr. Buehler. **Motion ended in a tie vote; automatically tabled to next scheduled meeting of November 19, 2014.** Ayes: Berrett and Buehler. Nays: Browning and Arblaster.

Variance 3

Vice Chairman Berrett **moved to deny a variance to Code §154.06(A)(4)(i)(iii)(E) to allow for the installation of ± 110 linear feet of 4' tall vinyl-coated chain-link fence within the front (south) yard**, seconded by Ms. Arblaster. **Motion carried.** Ayes: Berrett, Arblaster, Buehler and Browning. Nays: None.

Vice Chairman Berrett explained to the applicants that since variance request number two ended in a tie vote that the request was automatically put on the next month's agenda. Mrs. Alder stated that made it very difficult with winter approaching to install a fence. Mr. Spring stated per the action by the Board on the requests that the applicants could install a fence on the property line that complied with code; 3.5' tall wood, vinyl, ornamental wrought iron, steel or aluminum formed and colored and in such a style as to be substantially similar to wrought iron. Mr. Spring also stated that the fence must be have a 50% to 50% opaque ratio.

Mrs. Alder said that some people could have chain link and some people can't. Mr. Spring stated that if there was an existing chain link the property owner either got a variance or prior to the existing code or was non-conforming. Mrs. Alder stated her existing fence was taken down and part was still standing. Mr. Spring stated that any type of new fence installation required a permit and to be in compliance with the current zoning code.

Mr. Browning inquired if the pvc like vinyl fence would be something the applicants could have. Mr. Spring stated yes.



Mrs. Alders stated that if a car goes down the road and a rock flips up and breaks the fence and that would look horrible as you are driving down the road because that is what happens to those fences when they get cold in the winter they break just like siding does.

Mr. Spring stated that it would be inappropriate for Staff or Board Members to spar or argue with the applicants after a vote. Mrs. Alders stated she understood but it was aggravating.

**Old Business** There was none.

**Miscellaneous** There was none.

**Adjournment** There being no further business, Vice chairman Berrett **moved to adjourn the meeting**, seconded by Mr. Buehler and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 8:00 p.m.

  
Board Chairman, ~~Mike McFarland~~  
DAVID BERRETT

Attest:   
Mrs. Kimberly Patterson, Board Secretary

