

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

December 17, 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: David Berrett, Mark Browning, Michael McFarland, 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: Julian Arblaster, Ann Harker, Linda Bennett, Rhiannon Lewis, Kyle Lewis, Ken Brightman, Keith Lavy, S. Neumeiser, Mark Starcher, Joe Rothstein, Dan Grover, Larry Riesser, and Ralph Brown.
Board Minutes 11-19-2014	Chairman McFarland asked for discussion. There being none, Chairman McFarland moved to approve the November 19, 2014 meeting minutes as written , seconded by Mr. Berrett. Motion carried. Ayes: Berrett, Buehler, 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 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. 17-14 Kyle Lewis Variance	Case No. 17-14: Kyle Lewis - 831 Hampton Street, Tipp City - Lot: Inlot 2952 – The applicant requested a variance to Zoning Code Section 154.06(A)(4)(g)(i) for the placement of a shed. Zoning District: R-1B – Neighborhood Residential Zoning District Zoning Code Section(s): 154.06(A)(4)(g)(i) Mr. Spring stated that the applicant requested a variance to Code §154.06(A)(4)(g)(i) in order to place a ± 8' x 8' (64 sq. ft.) shed/accessory structure in a side yard rather than a rear yard, at the single-family residential home located at 831 Hampton Street. Code §154.06(A)(4)(g)(i) states:

Detached Storage/Utility Sheds, Gazebos, and Other Similar Structures

(i) Detached storage/utility sheds, gazebos, and other similar structures are permitted as an accessory structure but shall only be permitted in the rear yard.

Mr. Spring also stated that the applicant proposed placing the shed in the side (south) yard (as defined in Code §154.14). Thus, the applicant required a variance to Code §154.06(A)(4)(g)(i), which requires sheds to be placed in the rear yard.

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 proposed shed had already been placed, but not as depicted on the site plan. The shed was currently encroaching within a 5' utility easement along the side property line. The shed would need to be moved out of the easement regardless of the outcome of this variance request.
- If the requested variance was granted, the applicant would be required to obtain an approved Zoning Compliance Permit and pay the corresponding permit fee.

Mr. Berrett inquired if there were any neighbors comments received.

Mr. Spring stated that there were two comments received as follows:

Mr. William Hunter, 843 Hampton stated that he opposed of the request. Reasoning was would lower his property value and was directly outside his kitchen window and was an old shed that had just been moved. Mr. Hunter also noted that there were no sheds allowed in his plat per the covenants and restrictions.

Mr. Spring stated that regarding Mr. Hunter's comment that no sheds allowed in his plat, that comment was correct and that there was a section in the covenants and restrictions for Hampton Woods Section 1 specifically states that no lot shall be used except for residential purposed, outbuildings shall not be permitted. Mr. Spring stated that the City did not enforce covenants deeds and restrictions because they were a civil matter between the individual property owners and this was not a planned residential subdivision. Mr. Spring also stated that theoretically the shed was permissible with the variance if granted by the Board and that the civil issues that would arise from failure to comply with the covenants and restrictions was a matter for the court to decide if a neighbor would so choose to go that way.

Mrs. Christine Kennedy, 819 Hampton stated that she was disappointed that the shed was placed because the covenants do not allow it, but she was fine with it because she did not have to look at it. She would rather it be there on the side than in the rear.

Chairman McFarland asked if there were any further questions for Staff. There was none.

Kyle Lewis, 831 Hampton Street approached the dais. Mr. Lewis referred to photographs that showed where the shed was currently placed. Mr. Lewis stated that the shed was currently placed on the side of the house, but he referred that area to the back yard which was currently fenced in. Mr. Lewis noted that he did not consider that area to be part of the side yard due to the backyard being fenced in. The placement of the shed, when he first purchased the home which was a foreclosure and pointed out the amount of money that had been invested to bring the home up to standard with the other homes in the neighborhood. Mr. Lewis noted that he had a wife and four kids with a dog; the back yard was very small and had spent substantial amount of money regarding the backyard to create as much usable flat yard space for the kids and dog. The shed was additional storage for toys to get out of the garage. Mr. Lewis also noted that the shed was not new and was obtained from a friend, Mr. Lewis painted the shed to match the house and also intended to do additional roof work to also match the roof of the house, which was recently replaced June of 2014. Mr. Lewis noted that the condition of the shed after being painted to match the house he did not feel that it lowered the property value of his house or any surrounding houses and that the placement of the shed best utilizes the rest of the yard. Mr. Lewis also mentioned that the size of the lot was small especially when looking at the surrounding houses and was asking for the variance for one reason and that he did not know that he needed a permit to move the shed and that the neighborhood did not allow sheds. Mr. Lewis thought it was ironic how the same day his wife called the City to ask about a permit for a fence that the neighbor reported his shed and found that there was a permit required. Mr. Lewis stated that this was a learning experience for himself but was ultimately looking to increase the value of his property and also make the most effective use of the yard and property that he has for his family and felt that if the shed was relocated in another position in the yard it would significantly take away from the money that he had invested in regarding the backyard for usable yard space.

Mr. Berrett asked Mr. Lewis if he was aware that the shed was on an easement and would have to move the shed regardless. Mr. Lewis stated that Mr. Spring had informed him of that and that the dimension from the edge of the house to the property line was 14' 8" so there was plenty of room to shift the shed toward the house to get out of that utility easement but his preference would be to keep it.

Mr. Berrett asked how much backyard he had. Mr. Spring noted that information was on attachment B of the staff report. Mr. Lewis stated that he thought it was approximately 37' from the patio with 25' of flat yard

space. Mr. Lewis stated that there would be a retaining wall placed in the rear of his lot about 40" tall with trees that separate the houses.

Mr. Lewis stated that prior to moving the shed he did attempt to contact the neighbor but thought that they were in Florida for the winter and had not heard anything from them until Mr. Spring had informed him of the complaint.

Mr. Browning confirmed the size of the shed to be an 8' x 8' shed and inquired why the shed could not be placed in the very back corner of the property. Mr. Spring noted a 15' easement. Mr. Lewis stated that the 15' utility easement came to 2' from the elevation change and that change was not square and sloped down the sides toward the neighbor's yards and stated there was not a corner to place the shed.

Chairman McFarland asked if there were further questions for the applicant. There were none.

Chairman McFarland asked if there was anyone present who wished to speak in favor.

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

Chairman McFarland asked for further discussion. Mr. Buehler recused himself, he knew the applicant.

Board members noted the following: shed must be moved out of easement area regardless; there was enough room that the shed could be moved to a location that would still maximize the backyard and not need a variance; any action taken by the Board was not being taken based on covenants and restrictions.

Mr. Berrett **moved to or deny a variance to Code §154.06(A)(4)(g)(i), which requires that detached storage/utility sheds be constructed in the rear yard for the single-family residential home located at 831 Hampton Street**, seconded by Mr. Browning. **Motion carried.** Ayes: Berrett, Browning, McFarland, Arblaster. Nays: None. Mr. Buehler abstained from the vote.

**Case No. 16-14
United Methodist
Church
RAB Appeal**

Case 16-14: Ken Brightman – Brightman & Mitchel Architects for Tipp City United Methodist Church - 8 W. Main Street Tipp City - Inlots 35, 36, 115, 116 & 117 and portions of vacated alleys. The applicant appealed the 10/28/14 decision of the Restoration and Architectural Board of Review regarding an amendment to a requested Certificate of Appropriateness for the replacement of an existing slate roof on two existing bell towers with asphalt shingles.

Zoning Code Section(s): §154.04(M)

Zoning District: CC/RA- Community Center/Old Tippecanoe City Restoration and Historic District

Mr. Spring stated that the applicant was appealing the 10/28/14 decision of the Restoration and Architectural Board of Review regarding an amended Certificate of Appropriateness for the Tipp City United Methodist Church located at 8 W. Main Street. The church's original request included the following:

- Removal and replacement of the flat roof membrane on the existing centrally located flat-roofed portion of the building.
- Removal and replacement of the existing asphalt shingles on the primary sanctuary building and the removal of the existing slate roof on the bell towers to be replaced with asphalt shingles.

The Restoration Board approved all of the above request with an amendment to the Certificate of Appropriateness that required that the slate roofs of the two bell towers be repaired/replaced with slate rather than asphalt shingles.

Synopsis of November 19, 2014 Meeting

- The appeal noted above ended in a 2-2 tie vote. 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.*

Basis for the Restoration Board's Decision

The Restoration Board's decision was based on the following Design Manual requirements:

Standards and Guidelines for Roofs, Gutters, and Downspouts

- 1) ***The original roofing materials, shape, overhang style, roof structure, gutters, and downspouts shall be maintained and preserved to the maximum extent feasible.***
- 2) ***If the roof or roof material is to be replaced, restoration to the original roof style, material, shape, and color is preferred.*** Metal roofs, if replaced, should be replaced with standing-seam metal roofing.
- 9) ***To the maximum extent feasible, the original roof materials should be retained. In cases where new roofing is required, the materials should match the old in composition, size, shape, color, and texture.*** Preserve or replace, where necessary, all architectural features that give the roof its essential character such as dormer windows, cupolas, cornices, brackets, chimneys, cresting, and weather vanes.

Procedural Requirements

The Board of Zoning Appeals had jurisdiction to hear the appeal as noted above per the following:

Code §36.041(B)

Appeals from decisions made by the Restoration Board shall be made to the Board of Appeals in accordance with the standards of § 154.03(M) of the Tipp City Zoning Code.

Code §154.02(E)(3)(a)

Roles and Powers of the BZA

The BZA shall have the following roles and powers to:

Hear, review, and decide on appeals of any administrative decision where it is alleged there is an error in any administrative order, requirement, decision, or determination made by the Zoning Administrator, Planning Board, or Restoration Board.

Staff noted the appeal was received within the required 10 day appeal period as required by Section §154.03(M)(4)(a)(i): Meeting Date – October 28, 2014 Appeal Received - October 29, 2014.

Review Criteria for Appeals

Mr. Spring noted that in this appeal, the only duty of the Board of Zoning Appeals was to determine if the Restoration Board's decision fails to comply with the Zoning Code per §154.03(M)(5): *A decision or determination shall not be reversed or modified unless there is competent, material, and substantial evidence in the record that the decision or determination fails to comply with either the procedural or substantive requirements of this code.*

- **If the Restoration Board complied with the Zoning Code and Design Manual in its 10/28/14 decision, it is incumbent upon the BZA to uphold (sustain) that decision.**
- **If the Restoration Board failed to comply with the Zoning Code and Design Manual in its 10/28/14 decision, it is incumbent upon the BZA to reverse (overrule) that decision and specifically delineate said failure in its motion and verdict.**

Mr. Spring stated that there were no neighbors comments received regarding this request.

Chairman McFarland inquired if the majority of the roof material was asphalt. Mr. Spring stated no that a significant area of the sanctuary was asphalt but there was also a flat rubber membrane roof.

Chairman McFarland also inquired if the existing asphalt shingles were installed before the latest regulations from the Restoration Board or after.

Mr. Spring stated that since the regulations had only come out of April of 2014 that the shingles had been installed beforehand.

Mr. Ken Brightman with Brightman & Mitchel Architects, 35 Southmoore, NE Circle, Kettering Ohio, representing Tipp City United Methodist Church, approached the dais. Mr. Brightman stated that at the last meeting questions regarding the slate shingles were answered by the observations of the design team had done and the church had done from ground level. Mr. Brightman stated that since the last meeting that they had been up on the roof taking a look at what was there and hired Stephen Neumeiser with Enterprise Roofing and Sheet Metal of Dayton.

Stephen Neumeiser, with Enterprise Roofing, 1021 Irving Avenue, Dayton Ohio 45419, approached the dais. Mr. Neumeiser stated that he was to speak about the current condition of the slate roof and also a case study and why an asphalt shingle roof would be appropriate in this situation.

Board member found the following from Mr. Neumeiser: he observed the slate roof on the two bell towers; slate was determined to be the original and has a life cycle of approximately 60 to 100 years; when looking at slate you are looking for signs of flaking and cracking; if been taken out of the earth where there are ore deposits signs of rust will show; the more rust you see the older the slate and would be harder to repair; the thinner the slate the harder to repair and also harder to match; slate roofs were installed with a different style of nails and today a galvanized nail is used; if slate is at the end of its life repairing would not be an option or a very ineffective option for the church; presented the Board with a story from a roofing magazine about asphalt shingles replacing an older slate roof; there are 30 to 40 different types of asphalt shingles on the market and the technology had come a long way and can mimic certain styles such as slate or wood shake; precision technology to match color of slate.

Mr. Buehler asked Mr. Neumeiser in his opinion if he would recommend an artificial slate. Mr. Neumeiser stated that no he would not because artificial slate has a history of failure of the last 25 years. If you take any five companies of artificial slate none of them go back more than five years in their history due to failures.

Ken Brightman approached the dais. Mr. Brightman stated that the one thing that they were trying to achieve was to make the project look historically correct from the curb appeal standpoint. If they were being asked to put in a shingle roof type a certain color tone would be implemented on the main roof. If they were being asked to put the slate back on the towers which do not match and would be a disconnect visually from the curb appeal. He was trying to find the same material on both. Mr. Brightman stated it was the church's intention to implement the same material on both sections of roof and to keep with all of the

architectural trim that was there and from a curb appeal to make it look right aesthetically.

Chairman McFarland asked if there were further questions for the applicant. 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. Mr. Ralph Brown, Vice Chairman of the Restoration and Architectural Board, 300 W. Main Street, Tipp City approached the dais. Mr. Brown stated that he did not like being directed as being opposed to the request because that makes it an arbitral thing and it was not. Mr. Brown stated that the Restoration Board was charged with using the same book that the Board of Zoning Appeals Members had a copy of and was followed the way they were supposed to. Mr. Brown noted that the roof had been on there for about 100 years. Mr. Brown appreciates that the slate roof had been there for 100 years and has had very little to no maintenance done and the estimates that were provided to the Restoration Board were based strictly on removing and replacing the slate and nothing was looked at as far as an estimate to repair it. Mr. Brown questioned Mr. Neumeiser on his way out if he had physically inspected the towers and he answered no he did not but looked at it from a ladder. Mr. Brown also noted that from the last meeting Mr. Spring had noted that the Board of Zoning Appeals was not a board of compassion, but rather did the Restoration Board do it right or not. Mr. Brown stated that the Restoration Board Members take their job very seriously and he felt that as a Board they did what they were supposed to do and he hated the word oppose because they are not against the church from making repairs to the church and would love for the main roof to be replaced and be taken care of, but the slate roof to remain in place. Mr. Brown also stated that the other modifications that need to be done are updates to the roof on the main sanctuary that were done in the 1950's which were not done properly and the Restoration Board agreed to every one of the proposed modifications needed because they should be done and these two towers and the original roofs need to be taken care of.

Chairman McFarland asked for any further comments. There being none

Mr. Brightman approached the dais and presented a guideline that was downloaded from the website and used at the beginning of their project two years ago. Mr. Brightman stated that he found out a month ago that the guidelines that he had was no longer valid but was still on the Tipp City website today and was roughly the same wording but the important part was noted as follows: "in case of extreme financial hardship it may be necessary to consider alternatives such as asphalt

shingles". Mr. Spring stated that particular section no longer exists in the current guidelines.

Ms. Arblaster apologized to Mr. Brightman that the website was not updated. Mr. Spring stated that he had updated the guidelines in four different places and would look for the fifth one where Mr. Brightman found his.

Chairman McFarland **moved to sustain the amended Certificate of Appropriateness of the Restoration Board as rendered October 28, 2014 for 8 W. Main Street, and thus require the slate roofing on the existing bell towers to be repaired or replaced**, seconded by Ms. Arblaster. **Motion carried.** Ayes: McFarland, Arblaster, Browning, and Buehler. Nays: Berrett.

**Case No. 14-14
Meijer Distribution
Center
Variance Request**

Case No. 14-14: Jesse Lewler – 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

Chairman McFarland stated that Case No. 14-14 would remained tabled per the applicant's request.

Old Business

There was none.

Miscellaneous

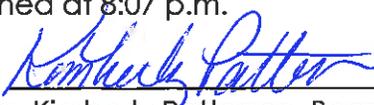
Mr. Spring stated that Mr. Berrett had tendered his resignation from the Board and this evening was his last meeting; Mr. Berrett was moving out of the jurisdiction of Tipp City and would not be eligible to maintain his position of the Board and Mr. Spring thanked him for his service for the past nine years.

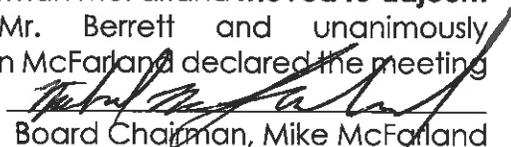
Mr. Browning stated that his term had ended and he would not be reapplying and this would also be his last meeting; Mr. Spring thanked him for his service.

Chairman McFarland thanked Mr. Berrett and Mr. Browning for their help that they had given to him and the service to the Board and was very much appreciated.

Adjournment

There being no further business, Chairman McFarland **moved to adjourn the meeting**, seconded by Mr. Berrett and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 8:07 p.m.

Attest: 
Mrs. Kimberly Patterson, Board Secretary


Board Chairman, Mike McFarland