BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO **January 21, 2015**

Meeting

Chairman Pro-tem 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: Michael McFarland, Carrie Arblaster, Steve Stefanidis, 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: Bob Grant, Barb Elrod, Mark Elrod, Paul Lee, and Steve Bruns.

Oath to Office

Kimberly Patterson, Notary, administered the Oath of Office to Steve Stefanidis, Carrie Arblaster, and Isaac Buehler.

Election of Officers

Ms. Arblaster **moved to open the floor for nominations**, seconded by Mr. Buehler and unanimously approved. **Motion carried.**

Ms. Arblaster **moved to nominate Mr. McFarland as Chairman of the Board of Zoning Appeals,** seconded by Mr. Buehler and unanimously approved. There were no other nominations. **Motion carried.** Mr. McFarland abstained from the vote.

Chairman McFarland **moved to nominate Ms. Arblaster as Vice-Chairman of the Board of Zoning Appeals,** seconded by Mr. Buehler and unanimously approved. There were no other nominations. **Motion carried.** Ms. Arblaster abstained from the vote.

Mr. Buehler **moved to close the floor for nominations**, seconded by Chairman McFarland and unanimously approved. **Motion carried.**

Board Minutes 12-17-2014

Chairman McFarland asked for discussion. There being none, Chairman McFarland **moved to approve the December 17, 2014 meeting minutes as written,** seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, and Arblaster. Nays: None. Mr. Stefanidis abstained from the vote.

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. 01-15
Steve Bruns
Variance

Case No. 01-15: Steve Bruns – Industry Park Court - Lot: Inlot 3090 – The applicant requested a variance to allow for the construction of a gravel surface parking lot prior to a site being under construction.
Zoning District: LI – Light Industrial Zoning District
Code Section(s): 154.06(B)(4)(d)(i)

Mr. Spring stated that in association with the proposed future construction of a new industrial building for Repacorp at the vacant lot located at Inlot 3090 on Industry Park Court. The applicant requested a variance to Code §154.06(B)(4)(d)(i) to allow for the construction of a gravel surface parking lot prior to a site being under construction. The applicant had indicated that Repacorp was currently in the pre-development phase for a new building at Inlot 3090, which was located proximate to the current Repacorp location; 1 lot separating the 2 locations. However, a site plan for this new building has not been approved, and is thus not currently under construction.

Mr. Spring also stated that the applicant had indicated that additional parking was urgently needed for the existing Repacorp facility located at the nearby 31 Industry Park Court. Accordingly, the applicant proposed the construction of a temporary gravel surface parking lot to accommodate the existing parking need. However, Code §154.06(B)(4)(d)(i) only allows gravel surface parking lots as follows:

> *A gravel surface parking lot may be permitted while a site is under construction but shall only be permitted in areas for parking as established in the approved site plan.*

Accordingly, the applicant sought a variance to Code §154.06(B)(4)(d)(i) to allow for the construction of a gravel surface parking lot prior to a site being under construction.

Mr. spring noted that the proposed gravel lot would contain 16 temporary off-street parking spaces, which would be removed in its entirety and returned to grass, no later than July 31, 2015 if the proposed new building was not under construction by this date.

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.

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

Steve Bruns, 3050 Tipp Cowlesville Road, approached the dais. Mr. Bruns stated that there was an emergency situation and that parking was happening on the street and on the grass and intended to alleviate that problem temporarily with the gravel parking lot and follow up with a

design for a new facility. Mr. Bruns also stated that the temporary gravel parking lot would most likely become a permanent parking lot in asphalt. Mr. Bruns noted that initially he had requested a July 31, 2015 timeline but was afraid that might not be enough and requested to amend the application to extend the time to October 31, 2015.

Chairman McFarland confirmed with Mr. Bruns that if by October 31, 2015 that no construction was started the gravel would be removed and put back to its original state and returned to grass.

Chairman McFarland asked if there were further questions for the applicant.

Mr. Stefanidis inquired what caused the parking situation to begin with. Mr. Bruns stated that there were a lot more employees utilizing the space and the options were to add on to the existing parking lot which only solved the problem short term due to needing more space internally as well.

Ms. Arblaster said that there were cars parking on the street and inquired if those cars were causing any safety issues. Mr. Bruns noted that he would not refer the situation as a safety issues but the area was congested and cars were also parking on the grass.

Chairman McFarland inquired if there were any neighbor comments received. Mr. Spring stated that on Tuesday, January 13, 2015 a phone call was received from Keith Kingrey with SK Mold and Tool and he had no objections with the gravel parking lot.

Mr. Buehler inquired if there would be an addition. Mr. Bruns stated that there would be an entirely new facility on a recently purchased lot.

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 discussion.

Chairman McFarland inquired if October 31, 2015 came and the gravel was not removed and restored back to sod what would the City do. Mr. Spring stated that would be an enforcement issue for the City if there were no further communications with Mr. Bruns or Repacorp and no construction then enforcing the order of the Board of Zoning Appeals. Board members found that if an extension of the date was needed the applicant would have to come before the Board of Zoning Appeals

again. Board Members concurred to the proposed date change of October 31, 2015.

Mr. Buehler **moved to grant a variance to Code §154.06(B)(4)(d)(i) to allow for the construction of a temporary gravel surface parking lot as delineated in this staff report prior to a site being under construction, with said lot to be removed in its entirety (returned to grass) no later than October 31, 2015 if a new building was not under construction by this date,** seconded by Mr. Stefanidis. **Motion carried.** Ayes: Buehler, Stefanidis, Arblaster, and McFarland. Nays: None.

Case No. 02-15 Pike Legal for Verizon ZA Appeal

Case No. 02-15: Robert Grant – Pike Legal for Verizon Wireless – The applicant was appealing a 12/8/14 letter from the Zoning Administrator, which requested an application in accordance with Code Chapter 156 (Wireless Telecommunication Facilities) pursuant to a proposed modification to a cellular tower.
Zoning District: LI – Light Industrial Zoning District
Code Section(s): Chapter 156

Mr. Spring stated that the applicant was appealing a 12/8/14 letter from the Zoning Administrator, which requested an application in accordance with Code 156, Wireless Telecommunication Facilities, pursuant to a proposed modification to a cellular tower. The applicant was seeking approval of the proposed modification under Chapter 154 by filing an "Application for Zoning Permit".

Basis for the Zoning Administrator's Decision
Mr. Spring stated that the Zoning Administrator's letter was based on the following requirements of Code: §156.006(A):
No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this chapter without having first obtained a special use permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those noncommercial exceptions noted in § 156.007.

§156.008(A)
All applicants for a special use permit for wireless telecommunications facilities or any modification of such facility shall comply with the requirements set forth in this chapter. The Planning Board is the officially designated agency or body of the city to whom applications for a special use permit for wireless telecommunications facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking special use permits for wireless telecommunications facilities. The city may, at its discretion, delegate or designate other official agencies or officials of the city to accept, review, analyze, evaluate and make

recommendations to the Planning Board with respect to the granting or not granting or revoking special use permits for wireless telecommunications facilities.

Federal Law

Mr. Spring also stated that the applicant was asserting that Federal Law, Telecommunication Act of 1996, the Spectrum Act, and FCC Report and Order 14-153, preempts Tipp City Code in this particular application. Staff noted that it was not within the roles and powers of the Board of Zoning Appeals to interpret the ramifications of Federal Law; however it was important to note that the City of Tipp City was intent on timely compliance with all requirements of Federal Law upon review of the applicant's submission of an application and fee in accordance with Tipp City Chapter 156. These basic requirements were consistent with Paragraphs 211 & 221 of FCC Report and Order 14-153, which state:

Discussion. As an initial matter, we find, consistent with the Commission's proposal that State or local governments may require parties asserting that proposed facilities modifications are covered under Section 6409(a) to file applications, and that these governments may review the applications to determine whether they constitute covered requests. As the Bureau observed in the Section 6409(a) PN, the statutory provision requiring a State or local government to approve an "eligible facilities request" implies that the relevant government entity may require an applicant to file a request for approval. Further, nothing in the provision indicates that States or local governments must approve requests merely because applicants claim they are covered. Rather, under Section 6409(a), only requests that do in fact meet the provision's requirements are entitled to mandatory approval. Therefore, States and local governments must have an opportunity to review applications to determine whether they are covered by Section 6409(a), and if not, whether they should in any case be granted.

> *221. Beyond the guidance provided in this Report and Order, we decline to adopt the other proposals put forth by commenters regarding procedures for the review of applications under Section 6409(a) or the collection of fees. We conclude that our clarification and implementation of this statutory provision strikes the appropriate balance of ensuring the timely processing of these applications and preserving flexibility for State and local governments to exercise their rights and responsibilities. Given the limited record of problems implementing the provision, further action to specify procedures would be premature.*

Procedural Requirements
Mr. Spring stated that the Board of Zoning Appeals had jurisdiction to hear the appeal as noted above per the following:

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 appeal period as required by Section §154.03(M)(4): Zoning Administrator's letter dated – 12/8/14 – Notice of Appeal Received - 12/12/14.

Review Criteria for Appeals
Staff noted that in this appeal, the only duty of the Board of Zoning Appeals was to determine if the Zoning Administrator's decision fails to comply with the 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 Zoning Administrator complied with the Code requirements in his 12/8/14 letter, it is incumbent upon the BZA to uphold (sustain) the requirements of that letter.**

- **If the Zoning Administrator failed to comply with the Code requirements in his 12/8/14 letter, it is incumbent upon the BZA to reverse (overrule) that decision and specifically delineate said failure in its motion and verdict.**

Findings of Fact
Staff suggested that the BZA adopt the following findings of fact:
1. 300 Tower Drive is within the corporate limits of the City of Tipp City, Ohio.
2. 300 Tower Drive contains a Wireless Telecommunication Facility (cell tower).
3. Verizon Wireless "the applicant" desires to replace antennas on said cell tower.
4. The replacement antennas are not identical to the existing antennas.
5. Modification and/or replacement of antennas is a "modification" to a cell tower as defined in Chapter 156 of the Tipp City Code "Wireless Telecommunication Facilities".

6. Chapter 156 requires that applicants for all modifications to cell towers submit an application for approval and associated fees.
7. Verizon and/or its agent has submitted the required $8,500 escrow fee in accordance with §156.016(B) on 3/6/14 for modification to this tower.
8. Verizon and/or its agent has had a site visit regarding the proposed modification in accordance with §156.008(V) on March 14, 2014.
9. Verizon and/or its agent have held a pre-application conference call on March 20, 2014 in regarding modifications.
10. The applicant has not submitted an application for approval or associated fees in accordance with Chapter 156.
11. The Zoning Administrator's letter of 12/8/14 was correct in requiring an application for approval in accordance with Chapter 156.

Mr. Spring also noted that there was an addendum presented from the applicant which was a findings of fact letter.

Mr. Bob Grant, Pike Legal attorney for Verizon Wireless, 300 Tower Drive, Tipp City, Ohio approached the dais. Mr. Grant thanked Mr. Spring for his Staff Report and the professional job that he had done as well as the other folks at the City.

Mr. Grant noted the following regarding the case: Verizon has had a long standing relationship with the City of Tipp City; the cell tower was located on City owned property and was leased since 1995; Verizon wireless requested to remove 6 antennas and replace them with 6 new antennas of the same size and weight and the only difference was that the new antennas were 4G new technology; in 2005 the City of Tipp City partnered with the Center of Municipal Solutions, the company reviews cell tower applications and what was required from the applicant was a submission of an $8500 escrow fee for the service of review of the application; in addition to the $8500 fee, the applicant then paid $2500 fee to the City; In essence the City was asking Verizon Wireless to pay an $11000 application fee to replace six antennas and the application was very extensive; under federal law, the City must approve the application and stated that the City had in turn sent a letter which requested an application in accordance with Code 156 (Wireless Telecommunication Facilities) and Mr. Grant expressed that Verizon was in compliance with federal law and chapter 156 contained items that were inconsistent with federal law and Mr. Grant noted that he was appealing from the requirement that if they submit an application for a discretionary special use application that City regulations say could be approved or denied, which Congress said the City had to approve it;
The application that was submitted to the City outlined the laws and enclosed the findings of fact.

Mr. Grant urged the Board to approve the application so that Verizon Wireless could get to the business of improving service in the community and if the Board voted no the project would be delayed substantially longer.

Chairman McFarland stated that he understood federal law and that the Board was not present to discuss federal law and that the Board was appointed by the City and have to abide by the City Codes. Code 156 wireless telecommunication facilities years ago was pulled out of Code 154 because of the complexity of the issue. Chairman McFarland also stated that by Mr. Grant's filing of the proposed modification under Code 154 had no bearing and the application should have been submitted under code 156 and it was his opinion that Mr. Spring had done nothing wrong with the letter that was sent.

Chairman McFarland asked if there were any further Board Member comments. Mr. Stefanidis inquired how it took Mr. Grant two years to come before the Board this evening. Mr. Grant stated that any time an application has to be submitted that involves a community that has adopted the model ordinance it was proven that it slows the process down to a crawl, and also stated that the process was long and convoluted. Mr. Stefanidis mentioned that the delay was actually Verizon's choice. Mr. Grant stated no that the delay was due to the existence of the ordinance and the requirements were inconsistent with the FCC rules.

Mr. Buehler asked Mr. Spring why the City adopted the ordinance 156. Mr. Spring stated that the most compelling reasoning was because of the complexity of telecommunications in general. Mr. Spring also noted that the applicant referred to several different documents that had been submitted in regarding the tower structural integrity and frequencies that were far beyond a Zoning Administrators ability to interpret accurately. Mr. Spring stated that chapter 156 allowed the use of a consultant that actually understands and speaks the language of telecommunications. Mr. Buehler noted that the consultant also works for many other communities. Mr. Spring stated that was correct.

Ms. Arblaster inquired if the consultant was to be an expert in the field, was the consultant not told that the code needs to be updated to be compliant with federal law? Law Director Mr. Caldwell stated that the City was not stating that our code was not in compliance with federal law, Mr. Grant said our code was not in compliance with federal law. Mr. Caldwell stated that this was a brand new law.

Ms. Arblaster stated that she was reading some of the case law that Mr. Grant had presented with some other cases around the country and could clearly see that it was modeled from legislation that was very similar to ours and asked that if the Board vote to sustain the decision

made by the City and we go to court and pay how much money to defend something that ultimately could be defeated in court because we are seen as to not be compliant with federal law. Mr. Caldwell stated that if he had a crystal ball he would be doing personal injury law and could not tell her how much it would cost. Ms. Arblaster stated that was what would happen and enter into litigation with Verizon Wireless and essentially be part of a court battle. Mr. Caldwell stated that the next step in this proceeding, not knowing how the Board was going to vote, should this go past the Board of Zoning Appeals the applicant would submit an administrative appeal to the Common Pleas court which would not cost the City a lot of money, but if the case went further the City could potentially endure some litigation costs.

Mr. Grant stated that Verizon Wireless because of the federal overlay this case would go to the Federal court not to the Common Pleas. As far as the consultant in the instance of a new construction of a tower most cities are overwhelmed by the technology involved and in those instances in some communities what the consultant provides makes sense, but makes no sense with what Verizon was doing. Taking down six antennas and replacing them with six antennas of the same size and weight that were just more advanced that will make your smart phones smarter and faster. Chairman McFarland said he did not deny those facts but if the applicant would have filed under case 156 we wouldn't be here discussing this.

Mr. Buehler stated that this request was beyond anything that the Board of Zoning Appeals understands as to antennas and what they do with their signals and frequencies and that is why the City has hired a consultant to understand all of that, but as far as code 156 he would stand by it. Mr. Buehler also stated that the costs was $11000 to Verizon Wireless which he has paid $11000 to Verizon Wireless in the past five years and yes the smart phone works really great but he pays a lot of money for it.

Mr. Stefanidis stated that it would be his understanding that it would cost less money to go through the court system than to go through the tremendous process and that the Board of Zoning Appeals didn't have a choice here.

Mr. Grant stated that Verizon Wireless was committed to this regulatory scheme to not having to comply in this community and other communities under these instances where all they were doing was replacing and adding equipment and the federal law and congress agrees with that the FCC agrees with that so all they were looking to do was to ensure that local government follows federal law and so the fact that they were having this debate was the reason why they were doing it because local government was reluctant to follow federal law so the only way to do that would be in the federal courts. Mr. Grant also stated

that by similar analogy would you say it's ok for you to not comply with the law because it was just too inconvenient to enforce it to someone else and would you say that to a drug pusher for example, of course not that would be absurd.

Mr. Stefanidis asked if Mr. Grant had been in to federal court and if he has won based on the federal law that he was referring to that was the correct thing here? Mr. Grant said that he had litigated a number of cases for Verizon Wireless and other wireless carriers in federal court and won every one of them. Mr. Stefanidis inquired if it was addressing this specific issue. Mr. Grant stated that this was a new law and was just passed, also the FCC rules were just passed and that our Legal Counsel was correct and was paving new ground but the discussion with the FCC involved a lot of carriers because this law went into effect in 2012 and it was very clear that local government was reluctant to comply with it. Mr. Grant noted that the FCC had enacted rules for local governments to comply with.

Chairman McFarland noted that the matter that was before the Board Members was for them to make the determination of whether Mr. Spring was correct in his letter to Mr. Grant or was he not and that was all that the Board of Zoning Appeals could act upon. Mr. Grant said that if a law has been preempted by federal law chapter 156 is applied than it's not affective. Chairman McFarland stated that was up to someone else to decide other than the Board of Zoning Appeals. Mr. Grant said alright.

Chairman McFarland asked for further discussion.

Ms. Arblaster inquired if Tipp City Legal Counsel could give a rebuttal. Mr. Caldwell stated that he was there to advise the Board and that he could not advise Ms. Arblaster on how to interpret the law and represent the City. Ms. Arblaster asked if the City had an internal mechanism that helps the City comply with federal law. Mr. Caldwell stated just as Mr. Grant stated that this was a brand new law and there was no case law on this specific case so if you read the federal law that said that it was mandatory if there has been a substantial change that's becomes upon the applicant to prove that there has been a substantial change, but Code 156 gives the City the information as to whether there has been a substantial change so we are arguing is cart horse, horse cart. Mr. Caldwell also noted that they were saying it was not necessary not substantial and that you should just approve it because it's mandatory, we are saying we don't know because we don't speak the language and to complete our application.

Ms. Arblaster asked Mr. Grant if Verizon Wireless had submitted the $8500 into escrow. Mr. Grant did not know whether that was true or not. Ms. Arblaster noted that would imply an intent to go through with the process and makes her wonder why Verizon stopped and backed up to

come before the Board of Zoning Appeals. Mr. Grant said he was not involved in the project through that phase and that there might had been someone else involved. Mr. Vath, City Assistant City Manager, stated that the City received on March 6, 2014 a $8500 check which was the escrow amount on behalf of Verizon Wireless, PBM Wireless Services and as noted in Mr. Spring's staff report that there was a preconference call and several discussions with expenditures from the $8500 and the City was assuming that this was the same application, it was Verizon and the same tower. Mr. Vath said to answer the question, yes the City had received the $8500 escrow which had been deposited and was waiting for an application to be filed under chapter 156 as the escrow was paid under chapter 156. Ms. Arblaster asked at what point the City Staff became aware that this scenario was going to play out; they submitted under chapter 154 and a $150 check showed up. Mr. Vath stated when the next application from Pike Legal came though under chapter 154 and the application did not come under chapter 156. Ms. Arblaster asked if staff sought clarification. Mr. Vath stated yes they did and there was no response.

Ms. Arblaster stated that Mr. Grant could not speak on whether or not the initial application was the same application that he was speaking about today and if that was correct. Mr. Grant stated that he did not know anything about the $8500 check and that the only application that had been submitted on behalf of Verizon Wireless was submitted by them in November and he knew nothing of this $8500 other than what he had been told.

Ms. Arblaster asked Mr. Spring if he wanted to add any comments. Mr. Spring stated that everything that was stated was correct. Mr. Spring also stated that there was an $8500 check submitted and an initial pre-application conference and a pre-application site visit so things happened before the application was submitted and that was where that particular application process stopped and several months later an application was received under chapter 154 from Pike Legal. Ms. Arblaster asked if Mr. Spring tried to clarify that it was the same project. Mr. Spring stated that clarification was part of the letter that he had written asking for clarification and the response did not address it; based on what Mr. Grant said that there was not information that he had on it.

Chairman McFarland inquired if the $8500 check came from someone on behalf of Verizon. Mr. Vath read a letter dated March 4, 2014 from PBM Wireless; addressed to the City of Tipp City:
REDYTN033 Verizon Wireless intent of replacement and equipment update 300 Tower Drive Tipp City Ohio. Dear Mr. Vath, enclosed find a check of $8500 for Verizon Wireless to move forward with the zoning process to replace the antenna and update tower equipment at this existing wireless location. If you need anything further please contact.....signed Matt Meyers. Mr. Vath stated that in essence was the

start of the process for the City with that escrow account and Mr. Spring explained the other steps that had been taken and everything stopped at that point until Pike legal came forward with their new application under chapter 154.

Chairman McFarland **moved to sustain the Zoning Administrator's letter of 12/8/14 and adopt the Findings of Fact in this staff report,** seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Arblaster, and Stefanidis. Nays: None.

Case No. 03-15 Bob Golden Two Variance Requests

Case No. 03-15: Bob Golden – Construction Drafting Services for Mark & Barbara Elrod - Owners – The applicant requested the following:
1. A variance of 143.25 square feet to the maximum aggregate square footage for accessory structures.
2. A variance of 5 feet to the minimum east setback of 10 feet.

Zoning District: R-2 – Two-Family Residential Zoning District
Code Section(s): 154.06(A)(2)(h)(i)(A); 154.06(A)(4)(f)(v)

Mr. spring stated that in association with the proposed construction of a 29' x 20' (580 sq. ft.) detached garage, the applicant requests the following variances:

1. A variance of 123.25 square feet to the maximum aggregate square footage for accessory structures on a lot noted in Code 154.06(A)(2)(h)(i)(A).
2. A variance of 5 feet to the minimum east setback of 10 feet noted in Code 154.06(A)(4)(f)(v).

Variance #1
Code 154.06(A)(2)(h)(i)(A) indicates:

For residential districts, the aggregate square footage of the following accessory buildings and structures shall not exceed more than seven percent of the total lot area on which they are located:

A. Detached garages and carports

Mr. Spring stated that the lot in question (Pt. IL 211) had an area of ± 6,525 square feet. Thus, the maximum allowable aggregate area for all accessory buildings and structures is 456.75 square feet (6525 x 7% = 456.75). The applicant sought a garage with an area of 580 square feet, and staff noted that there were no other accessory building and structures on the lot; therefore a variance of 123.25 square feet was needed (580 – 456.75 = 123.25).

Variance #2
Code 154.06(A)(4)(f)(v) indicates:

Detached garages and carport shall be set back a minimum of 10 feet from all lot lines.

Mr. Spring also stated that the eastern setback of the proposed detached garage was 5 feet. Therefore a variance of 5 was needed (10 – 5 = 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 proposed detached garage would be ± 20' x 29' (± 580 sq. ft.) and ± 16' tall.
- The garage would have ingress/egress via N. Fourth Street. City Engineer Rusen has approved the proposed curb cut onto N. Fourth.
- If the proposed variance was granted, the existing detached garage/car port would be demolished and a separate demolition permit was required.
- Any proposed additional future accessory structures (shed, deck, pool, etc.) would also require a variance to Code §154.06(A)(2)(h)(i)(A).
- The applicant would be required to obtain approved zoning and building permits prior to the start of any proposed construction.

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

Mr. John Foy, 4127 Shellave, Dayton, Ohio 45414, contractor for applicant, approached the dais. Mr. Foy stated the following: the existing garage was 18 x 20 and two cars do not fit and was not usable; recently had a house fire and rebuilt home and now garage does not match the new house; required the 29' depth due to having a full size truck that was 20' long and include the block foundation which was equivalent to approximately 18" only 2.5' in front and back of truck when parked inside; no other room on the lot for a storage building and incorporating storage in with new garage;

Board member found the following: There was a setback of 10' on all lot lines and the only one that was not in compliance was the eastern setback; the existing building would be demolished; the new garage had a larger footprint than the existing garage; 24' depth which would keep out of 10' setback was not enough depth to accommodate for the truck; there were no easements in this particular part of town; there was an existing 6' privacy fence; lot was long and skinny and could not make garage any wider due to the odd shape of the lot;

Barb Elrod approached the dais. Mrs. Patterson stated that Mrs. Elrod was not sworn in. Mrs. Patterson administered the Oath. Mrs. Elrod stated that the east side neighbor had an existing structure that was 3' in onto their property. Mrs. Elrod also stated that they would not be crossing over the property line and that there was still 5' between where the property line ends and starts and even though they were asking for a variance she was also allowing that neighbor to maintain their shed on her property and they did not have a problem with the variance request.

Mr. Buehler inquired if any neighbor comments were received. Mr. Spring stated that there were none.

Chairman McFarland asked the applicant if it would be possible to go with a 24' depth so only a 2' variance would be needed. Mr. Foy said if you go 26' and take 1.5' off for the block foundation it would be pretty tight on the truck.

Mr. Buehler inquired what Mr. Spring knew about the existing shed in the yard. Mr. Spring stated that he did not know any details about the shed and that the shed was preexisting and nonconforming and he had no knowledge of the shed being permitted. Mr. Foy stated that the applicants discovered the shed on their property after they had their lot surveyed after the fire.

Chairman McFarland stated that looking at the photograph the old garage was an eye sore compared to the new home. Mr. Foy stated that the new garage would match the house exactly with the fish scales up top and would look really nice.

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. Paul Lee, 152 W. Franklin Street, approached the dais. Mr. Lee stated that he was not saying that he was against the request and stated that he owned the property to the north and noted that the garage was being turned from its currently position and would have to cut the curb on Fourth Street which would in essence lose on street parking spots due to the driveway cut. Mr. Lee also stated that there was an alley there that the applicants use for ingress/egress to existing garage. Chairman McFarland stated that the Board was only looking at the setback variance and thought it was to be looked at by the Planning Board. Mr. Lee stated that he was not aware of the Planning Board hearing. Mr. Spring stated that there was not a Planning Board hearing and that the curb cut was approved by the City Engineer as stated in his staff report.

Mr. Spring also stated that 26' was approximately as long as one parallel parking spot. Mr. Lee noted that a parking spot was typically 10' x 20' and mentioned that if he had no say on the parking spot other than that he was the north property owner and it would have been nice that the garage was turned the other direction so an on street parking spot would not have been lost.

Mr. Lee inquired if there was any reason why the garage was not positioned the same. Mr. Spring stated that the applicant proposed the project and the City Engineer approved it.

Mr. Buehler asked if the applicant considered the same positioning. Mrs. Elrod stated that in order to pull into the garage the area was very tight in the alley way and the property that Mr. Lee was speaking about was an apartment property with three apartments and Mrs. Elrod noted that she owned the corner lot all the way from the front to the back where here garage was and technically the renters at the apartment should have to park in front of that property. Mrs. Elrod stated that she was not saying that they own the street but was saying that parking should have been taken into consideration when Mr. Lee turned the property into an apartment building and all that she was doing was making it easier for herself to get into her garage. Mr. Lee noted for the record that he did not turn the property into a three unit apartment building and that it was an apartment building when he purchased it and that he did have three tenants and there was off street parking with adequate space in front of the building for two tenants to park as well.

Chairman McFarland asked for any further comments. Mrs. Elrod stated that with the ability to have both of their cars inside the garage would open up two more spaces of parking on the street.

Ms. Arblaster inquired if there was a fire at the house and asked if the house was brand new. Mrs. Elrod stated that was correct and the house was built exactly the same size because of the lot being so small.

Variance #1

Chairman McFarland **moved to grant a variance of 123.25 square feet to the maximum aggregate square footage for accessory structures on a lot noted in Code 154.06(A)(2)(h)(i)(A) for the single-family residence located at 31 W. Walnut Street,** seconded by Mr. Stefanidis. **Motion carried.** Ayes: McFarland, Stefanidis, Arblaster, and Buehler. Nays: None.

Variance #2

Chairman McFarland **moved to grant a variance of 5 feet to the minimum east setback of 10 feet noted in Code 154.06(A)(4)(f)(v) for the detached garage/accessory structure located at 31 W. Walnut Street,** seconded by Mr. Stefanidis. **Motion carried.** Ayes: McFarland, Stefanidis, Arblaster, and Buehler. Nays: None.

Case No. 14-14 Meijer Distribution Center Variance Request

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

Mr. Spring stated that notification had been received on January 12, 2015 from Nathan Moore, CME withdrawing the application. Mr. Spring suggested a motion to withdraw the case from the table and remove from the agenda.

Chairman McFarland **moved to remove the case from being tabled and to withdraw the application from the agenda,** seconded by Ms. Arblaster. **Motion carried.** Ayes: McFarland, Arblaster, Buehler, and Stefanidis. Nays: None.

Old Business

There was none.

Miscellaneous

Mr. Spring stated that he was attempting to schedule a training season for the Board of Zoning Appeals which would be approximately 90 minutes and inquired if the Board would entertain having the training session even if there were no agenda items.

Chairman McFarland welcomed Mr. Stefanidis to the Board.

Adjournment

There being no further business, Chairman McFarland **moved to adjourn the meeting**, seconded by Ms. Arblaster and unanimously approved. **Motion carried**. Chairman McFarland declared the meeting adjourned at 8:50 p.m.

Board Chairman, Mike McFarland

Attest: _____
Mrs. Kimberly Patterson, Board Secretary