

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

August 19, 2015

Meeting	Chairman McFarland called this meeting of the Tipp City Board of Zoning Appeals to order at 7:34 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, Steve Stefanidis, 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: Paul Ernst.
Board Minutes 07-17-2015	Chairman McFarland asked for discussion. There being none, Mr. Buehler moved to approve the July 15, 2015 meeting minutes as written , seconded by Chairman McFarland. Motion carried. Ayes: Buehler, McFarland, Stefanidis, and Arblaster. 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. 10-15 Paul Ernst Two Variance Requests Fence	Case No. 10-15: Paul Ernst, 700 Pinehurst Drive - Lot: IL 2818 - The applicant requested the following: 1. A variance of 30" to Code 154.06(A)(4)(i)(vi)(B) to the maximum allowable height of 42" for fences with a rear yard setback of less than 50' in the rear yard of a double frontage lot. 2. A variance of 30" to Code 154.06(A)(4)(i)(vi)(B) to the maximum allowable height of 42" for fences in a front yard (street side yard). Zoning District: R-1C – Urban Residential Zoning District Zoning Code Section(s): 154.06(A)(4)(i)(vi)(B) Mr. Spring stated that in association with the proposed construction of ± 215 linear feet of 6' privacy fencing, the applicant requested two variance for the single-family home located at 700 Pinehurst Drive. The property in question was a triple-frontage lot, with frontages on Pinehurst

(north), Chevington Chase (east), and W. Kessler-Cowlesville (south). The variances requested were:

1. (For the southern front setback) A variance of 30" to the maximum allowable height of 42" for fences with a rear yard setback of less than 50' of a double frontage lot.
2. (For the eastern front setback) A variance of 30" to the maximum allowable height of 42" for fences in a front yard.

Variance 1

Mr. Spring noted that in association with the proposed construction of ± 78 linear feet of 6' privacy fencing within the southern front yard setback, the applicant requested a variance to Code §154.06(A)(4)(i)(vi)(B) which states:

Fences, walls, and hedges shall not exceed 42 inches 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 also noted that the proposed privacy fencing was outside the minimum 50' setback (± 42') and was 72" tall. Therefore a variance of 30" was required (72 – 42 = 30).

Variance 2

Mr. Spring noted that in association with the proposed construction of ± 133 linear feet of 6' privacy fencing within the eastern front yard setback, the applicant requested a variance to Code §154.04(H)(1)(d)(iii) which states:

Fences, walls, and hedges shall not exceed 42 inches 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 also noted that the proposed privacy fencing was located within the eastern "front" yard; street side yard and was 72" tall. Therefore a variance of 30" was required (72 – 42 = 30).

Mr. Spring pointed out the Board 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 was currently trying to sell the home. The variances requested were in anticipation of a future buyers need for a fence, rather than proposed construction.
- If the requested variances were granted, the applicant or current owner must obtain an approved Zoning Permit prior to placement of the fence.
- There was a 25' x 25' sign easement area at the southeast corner of the property. The Windmere Subdivision Section 4 Drainage Restrictions prohibit fences within this easement.

- The applicant was granted a similar variance on 1/16/2002. However, the variance expired without any fence permit being issued.

Chairman McFarland asked if there were any further questions for Staff. Mr. Buehler asked if the fence was proposed in the sign easement area. Mr. Spring stated the placement was of the original request but found the easement while researching the plat map. Mr. Ernst stated that he was not aware of the easement and would modify the plan to avoid the easement.

Chairman McFarland asked if there were any neighbor's comments. Mr. Spring stated that there were none received. Mr. Ernst stated that he had spoken to a few of the neighboring home owners and they did not have a problem with the request.

Mr. Paul Ernst, 700 Pinehurst Drive, Tipp City, approached the dais. Mr. Ernst stated that he was trying to sell his property and a great number of people looking at the home inquire about the possibility of a fence. Mr. Ernst's solution was to obtain the variance which would be transferrable to the buyers.

Board members found the following: The previously granted variance request for fence placement was not utilized by the applicant due to seasonal timing and then found wasn't necessary and implemented an underground wire fence for the pets; applicant was completely on board with modifying the request to avoid the easement area; there had been offers on the home fall through since there was not a fence on property; there were no site issues with line of site with ingress egress of intersection.

Variance 1

Chairman McFarland asked for further discussion. There being none, Mr. Buehler **move to grant a variance of 30" to Code 154.06(A)(4)(i)(vi)(B) to the maximum allowable height of 42" for fences with a rear yard setback of less than 50' in the rear yard of a double frontage lot for the property located at 700 Pinehurst Drive**, seconded by Mr. Stefanidis. **Motion carried.** Ayes: Buehler, Stefanidis, Arblaster, and McFarland. Nays: None.

Variance 2

Chairman McFarland asked for further discussion. There being none, Ms. Arblaster **move to grant a variance of 30" to Code 154.06(A)(4)(i)(vi)(B) to the maximum allowable height of 42" for fences in a front yard (street side yard) for the property located at 700 Pinehurst Drive.**

Mr. Buehler **amended the motion to specifically note the proposed fence was not to encroach the existing sign easement shown in attachment**

"B", seconded by Mr. Stefanidis. **Motion carried.** Ayes: Buehler, Stefanidis, Arblaster, and McFarland. Nays: None.

Old Business

There was none.

Miscellaneous

There was none.

Adjournment

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



Board Chairman, Michael McFarland

Attest: Kelly R. Rowlands
Mrs. ~~Kimberly Patterson~~, Board Secretary
Kelly Rowlands

