

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

September 16, 2015

Meeting Chairman McFarland called this meeting of the Tipp City Board of Zoning Appeals to order at 7:29 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 Kelly Rowlands/Board Secretary Protem.

Citizens signing the registrar Citizens attending the meeting: Mike Flora, Carole Dresden, Gail Strickland, Kevin Mader, Ben Denlinger, and Andrew Thornbury.

Board Minutes 08-19-2015 Chairman McFarland asked for discussion. There being none, Chairman McFarland **moved to approve the August 19, 2015 meeting minutes as written**, seconded by Mr. Stefanidis. **Motion carried.** Ayes: McFarland, Stefanidis, Buehler and Arblaster. Nays: None.

Citizens Comments There was none.

Administration of Oath Mrs. Rowlands 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. 11-15 Mark Hartman Solar Panels Variance Request **11-15: Mark Hartman, 715 Chaucer Lane, Tipp City, OH - IL 2880** – The applicant requests a variance to Code § 154.06(A)(4)(t)(iv)(A) to allow for the non-flush-mounted installation of 6 photovoltaics (solar panels) on the single-family residence located at 715 Chaucer Lane.

Zoning District: R-1C – Urban Residential Zoning District
Zoning Code Section(s): 154.06(A)(4)(t)(iv)(A)

Mr. Spring stated that a variance to Code § 154.06(A)(4)(t)(iv)(A) to allow for the non-flush-mounted installation of 6 photovoltaics (solar panels) on the roof of the single-family residence located at 715 Chaucer Lane.

Variance
Code § 154.06(A)(4)(t)(iv)(A) states:

Roof-mounted solar panels that are integrated with the surface layer of the roof structure or are mounted flush with the roof structure may be permitted on any roof surface of a principal building or accessory building.

Mr. Spring stated that the applicant proposed the installation of the photovoltaics (solar panels) ± 2-4" above and parallel to the roof rather than integrated with or flush to the roof surface. Therefore a variance to Code § 154.06(A)(4)(t)(iv)(A) was needed.

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 area of each photovoltaic (solar panel) is ± 6.6 square feet ($\pm 40'' \times 60''$), thus the total area of the photovoltaics (solar panel) array would be ± 40 square feet of roof area.
- On September 8, 2015 the Planning Board will conduct a Public Hearing regarding an amendment to Code §154.06(A)(4)(t)(iv)(A) to allow for this type of installation without a variance.

Chairman McFarland asked if there were any further questions for Staff. Mr. Buehler asked if the proposed new code dictated location of the solar panels on the front or rear of roof. Mr. Spring stated that the current code section nor the proposed code had any stipulations on placement.

Chairman McFarland asked if there were any neighbor's comments. Mr. Spring stated that comments were received as follows:

725 Chaucer Lane, Carol Dresden: "I am writing in response to the notice of public hearing that I received regarding the above variance request. I am unable to attend the meeting but my husband is not because I am completely deaf in one ear and I have a hearing aid in the other and I prefer to put my concerns in writing to you. Any environment involving large groups and an amplified audio system are among the most difficult for me. After speaking with Matthew Spring I understand that this variance request is to allow for the installation of non-flush mounted solar panels as opposed to flush mounted solar panels. I also understand these panels although will not be flush mounted will be installed within a distance of 2" to 5" from the roof panel and would be parallel to the roof. I also understand that there is currently a revision to Tipp City code in the process to allow for this type of installation without a variance approval. I would like the Board to consider this request in approving the variance. It is fine to install non flush mounted solar panels but I would like to include the requirements that the solar panels to be used at 715 Chaucer Lane must be manufactured by a certified solar panel manufacturing company and installed by a licensed and a city registered contractor. Along with the zoning compliance permit application prior to installation the home owner shall submit documents

illustrating the proposed installation and naming the panel manufacturer and the registered contractor. The intended purpose is to ensure that the esthetic appearance of these panels would comply the standards and charms of Tipp City and not hurt the property values of the neighborhood. Thank you for your time and consideration."

725 Chaucer Lane, Kyle Dresden: Mr. Spring stated that during a phone conversation Mr. Dresden had a view questions for him but had no issues with the parallel to roof installation.

Mr. Mike Flora, representing Mark Hartman, 715 Chaucer Lane, Tipp City, approached the dais. Mr. Flora stated that his business address was 5126 S. Co. Rd. 25A, Tipp City. Mr. Flora stated that solar panels were typically installed on the south end of the home. Mr. Buehler stated that he was more interested in the esthetics and the way it looked.

Board members found the following: Solar panels typically installed on the south side of a roof; panels have to be 2" above the roof due to sensitive to heat and need to be ventilated; Mr. Flora would submit electrical drawings that would suffice Mrs. Dresden's concerns.

Chairman McFarland asked for further discussion. There being none, Ms. Arblaster **move to grant a variance to Code §154.06(A)(4)(f)(iv)(A) to allow for the non-flush-mounted installation of 6 photovoltaics (solar panels) on the roof of the single-family residence located at 715 Chaucer Lane**, seconded by Mr. Stefanidis. **Motion carried.** Ayes: Arblaster, Stefanidis, Buehler, and McFarland. Nays: None.

**Case No. 12-15
Ben Denlinger
Front Yard
Setback
Variance Request**

12-15: Ben Denlinger – Denlinger & Sons Builders for Alex Waibel – owner - 1200 Thornapple Way - Lot: IL 3913 – The applicant requested a variance of 19.7' to the required front yard setback of 25' noted in Ordinance 09-04 for the Rosewood Creek Planned Residential Subdivision.

Zoning District: PD – Planned Development

Zoning Code Section(s): Ordinance 09-04

Mr. Spring stated that in association with the proposed construction of a ± 15.8' x 24.67' residential addition, the applicant requested the following variance for the single-family home located at 1200 Thornapple Way:

1. A variance of 19.7' to the required front yard setback of 25' noted in Ordinance 09-04 for the Rosewood Creek Planned Residential Subdivision

Variance

1200 Thornapple Way was shown on Plat Book 20, Page 141C as building lot #17. Building lot #17 was noted in Plat Book 20, Page 141A as an "Executive Style" lot with a rear yard setback of 25'. The proposed addition would be located 5.3' from the rear property line, therefore a variance of 19.7' is needed (25 – 5.3 = 19.7).

Mr. Spring pointed out the Board Review Criteria §154.03(K)(4)

(4) Review Criteria

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(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 also owns the adjacent lot to the rear of the subject property, which was 1210 Thornapple Way; a separate vacant lot of record.
- There was a 5' utility easement running along the rear property line. The proposed addition would not encroach into this easement.
- If the requested variance was granted, the applicant would be required to obtain an approved Zoning Compliance Permit (Tipp City) and associated building permits (Miami County).

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

Chairman McFarland asked if there were any neighbor's comments. There were none.

Mr. Ben Denlinger, represented Joy and Alex Waibel, 1200 Thornapple Way, Troy, Ohio, approached the dais. Mr. Denlinger stated he was the home owner's contractor.

Board members found the following: the vacant lot was directly left of the proposed addition but could be sold at any time; property owners had no current plans to build upon the adjacent vacant lot but secured the lot to have a larger rear yard; only reason property owners refrained from rezoning the lots to create a larger lot was due to the existing utility easement; addition would match the home; the existing concrete patio was not able to be enjoyed due to windy conditions and no privacy; addition would be off of the back dining area and could not put on the side due to a basement well; proposed addition would require homeowner association approval.

Chairman McFarland expressed his concern with not proving a hardship. Mr. Denlinger inquired what the side yard setback was for Thornapple. Mr. Spring stated the distance was 10'. Mr. Denlinger noted that the lot being a corner lot essentially had two side yards which would not be able to be encroached upon. Mr. Spring added that being a corner lot having two front yards and the rear yard was determined by the shortest of the two frontages would be the opposite yard to the shortest frontage would be considered the rear yard and in this particular case the side yard had the 21.3' where the proposed building addition would be.

Chairman McFarland stated that he was struggling with the setback only being 5' off the property line.

Mr. Buehler stated that he understood the proposed location of the addition due to no other options.

Chairman McFarland also noted his concern of the size of the proposed addition and if the adjacent vacant lot was sold did not allow enough room if new structure would be built and if the applicant would decrease the size of the addition a little to allow for a larger buffer between the two lots he would be more inclined.

Mr. Buehler noted that the current size of the proposed addition was 375 sq. ft.

Mr. Denlinger inquired who the public notice was sent out to. Mr. Spring stated the notice was just sent to the adjacent neighbors of 360° and no neighbor comments were received.

Mr. Stefanidis inquired about the likelihood of re-platting the two lots. Mr. Spring noted that the concept was discussed with the applicants and the applicants actually made the addition smaller than originally proposed to take into consideration of the existing easement.

Board members inquired the process of combining the two lots. Mr. Spring stated that it could be done administratively and would take approximately 60 days and being recorded at Miami County.

Mr. Denlinger asked if the utility easement would have to be vacated. Mr. Spring stated the easement would have to be vacated because code does not allow any type of structure in an easement. If the addition was built then replatted the easement would not have to be vacated as long as the easement was not built into. Mr. Denlinger stated that attempting to vacate an easement was a nightmare to coordinate with all utilities.

Mr. Stefanidis stated that if the lot was up for sale the prospective buyers would see how close the home was and would make the lot undesirable to purchase. Mr. Spring stated that if a building was built on the vacant lot there would be 15' between the two buildings.

Chairman McFarland asked for further discussion. There being none, Mr. Stefanidis **move to grant a variance of 19.7' to the required rear yard setback of 25' noted in Ordinance 09-04 for the single-family residence located at 1200 Thornapple Way within the Rosewood Creek Planned Residential Subdivision**, seconded by Ms. Arblaster. **Motion carried.** Ayes: Stefanidis, Arblaster, and Buehler. Nays: McFarland.

Old Business

There was none.

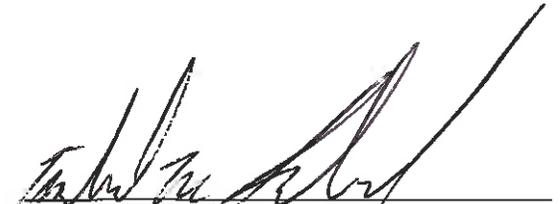
Miscellaneous

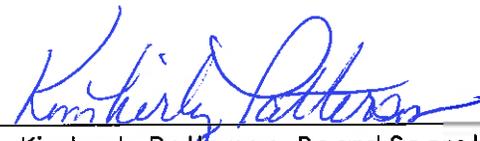
There was none.

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 8:01 p.m.


Board Chairman, Michael McFarland

Attest: 
Mrs. Kimberly Patterson, Board Secretary