

**BOARD OF ZONING APPEALS MEETING**

**TIPP CITY, MIAMI COUNTY, OHIO**

**June 15, 2016**

<b>Meeting</b>	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.
<b>Roll Call</b>	Roll call showed the following Board Members present: Michael McFarland, Steve Stefanidis, Isaac Buehler, and Mark Hartman. Others in attendance: City Planner/Zoning Administrator Matthew Spring and Board Secretary Dawn Gross.
<b>Citizens Signing the Registrar</b>	Citizens attending the meeting: Carolyn DeFibaugh, Hank Betts, Barbara DeAngelis, Marion DeAngelis, Jason Morris, Jody Johnson, Wanda Rollins, Richard Rollins, Steve Meyer, Rich Baker, and Craig Vaughan.
<b>Board Minutes 05-18-2016</b>	Mr. McFarland asked for discussion. There being none, Mr. McFarland <b>moved to approve the May 18, 2016 meeting minutes as written</b> , seconded by Mr. Stefanidis. <b>Motion carried.</b> Ayes: McFarland, Stefanidis, Hartman and Buehler. Nays: None.
<b>Citizens Comments</b>	There were no citizen comments.
<b>Administration of Oath</b>	Mrs. Gross swore in citizens and Mr. Spring.
<b>Chairman's Introduction</b>	Mr. 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.
<b>New Business Case No. 07-16 Scott and Judith Tomb for Talismanic Properties, LLC</b>	Mr. McFarland <b>moved to put Case C in front of Cases A and B</b> seconded by Mr. Stefanidis. <b>Motion carried.</b> Ayes: McFarland, Stefanidis, Buehler and Hartman. Nays: None  <b>Case No. 07-16: Judith Tomb for Talismanic Properties, LLC – Cedar Grove Drive – Cedar Grove Subdivision, Phase 1 – Lot: IL 4159-4202 –</b> The applicant is appealing an administrative decision regarding the Preliminary Punch List for the Cedar Grove Project, where it is alleged there is an error in an administrative order, requirement, decision, or determination made by the City Engineer.

**Zoning District:** PD – Planned Development Zoning District.  
**Zoning Code Sections(s):** 155.02(C)(1)

Mr. McFarland has received notification, at the request of the City Director of Law, Caldwell and Attorney Jeremy Tomb, legal counsel for Judy Tomb, Applicant wishing to table this action.

Mr. McFarland **moves to table Case No. 07-16: Judith Tomb for Talismanic Properties, LLC until such a time is requested to be removed from the table by the Applicant** seconded by Mr. Buehler. Ayes: McFarland, Buehler, Stefanidis, Hartman. Nays: None.

**Case No. 06-16  
Joe Locke –  
Buschers Home  
Improvement for  
Robert Spiller –  
772 S. Willow Glen  
Drive  
Variance request**

**Case No. 06-16: Joe Locke – Buschers Home Improvement for Robert Spiller – 772 S. Willow Glen Drive – Lot: IL 2089** – The applicant requests a variance of 8' to Code Table 154.04-7 to the minimum rear yard setback of 35' for the single-family home located at 772 S. Willow Glen Drive.

**Zoning District:** R-1C – Urban Residential Zoning District  
**Zoning Code Section(s):** Table 154.04-7

Mr. Spring provided the following report:

In conjunction with the proposed construction of a ± 21' x 15' covered patio addition, the applicant requests a variance of 8' to Code Table 154.04-7 to the minimum rear yard setback of 35' for the single-family home located at 772 S. Willow Glen Drive.

Variance 1

Code Table 154.04-7 indicates that a 35' minimum rear yard setback is required within the R-1C – Urban Residential Zoning District. The proposed covered patio addition will be 27' from the rear property line, therefore a variance of 8' is required (35 – 27 = 8).

**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.

Going further, Mr. Spring noted additional points related to this case:

There is a 5' utility easement along the rear property line. The proposed covered patio addition would not encroach into this easement.

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

Mr. Stefanidis asked if we had received any neighbor comments. Mr. Spring replied, "No."

Mr. McFarland asked the applicant to step forward and state his name and address for the record.

Mr. Joe D. Johnson, 7843 Irvington Avenue. Mr. Johnson represents Robert Spiller.

Mr. Johnson stated his clients are requesting a variance to add a simple patio cover to their back yard due to medical issues that keep his clients from being in the direct sunlight. Mr. Johnson surveyed the area and there are several patio covers in the neighborhood.

Mr. McFarland asked if the cover would extend beyond the current concrete patio. Mr. Johnson responded, "No, sir, it will be 5' short".

Mr. McFarland asked Mr. Spring if there was a variance given for the concrete patio. Mr. Spring said there was not one required.

Mr. McFarland asked for any other questions of the applicant. There were none.

Mr. Stefanidis **moved to grant a variance of 8' to Code Table 154.04-7 to the minimum rear yard setback of 35' for the single-family home located at 772 S. Willow Glen Drive** seconded by Mr. Hartman. **Motion carried.** Ayes: Stefanidis, Hartman, Buehler and McFarland. Nays: None.

**Case No.08-16  
Hank Betts – 916  
Brookmere  
Avenue  
Variance request  
front and rear  
yard setback**

**Case No. 08-16: Hank Betts – 916 Brookmere Avenue – Lot: IL 3363** The applicant requests a variance of 6.4' to Code Table 154.04-7 to the minimum front yard setback of 35' for the single-family home located at 916 Brookmere Avenue.; a variance of 8.81' to Code Table 154.04-7 to the minimum rear yard setback of 40' for the single-family home located at 916 Brookmere Avenue.

**Zoning District:** R-1B – Neighborhood Residential Zoning District  
**Zoning Code Section(s):** Table 154.04-7

Mr. Spring provided the following report:

In conjunction with the proposed construction of a ± 18' x 36' addition, the applicant requests the following two variances:

1. A variance of 6.4' to Code Table 154.04-7 to the minimum front yard setback of 35' for the single-family home located at 916 Brookmere Avenue.
2. A variance of 8.81' to Code Table 154.04-7 to the minimum rear yard setback of 40' for the single-family home located at 916 Brookmere Avenue.

The subject property is a corner lot (Brookmere Avenue & Cypress Place). The proposed addition will project westerly (towards the street

side yard) and southerly (towards the rear lot line). Regarding front yards of corner lots, Code §154.04(H)(1)(d)(vi)(A) states:

*The required minimum front yard setback shall be provided from each street right-of-way or, where a right-of-way is not identified, the lot line adjacent to the street.*

Regarding rear yards of corner lots, Code §154.04(H)(1)(d)(vi)(A) states:

*The lot line that runs parallel with the lot line along the narrowest street frontage shall be the rear lot line and the minimum rear yard setback shall be applied from such lot line.*

Staff notes that the northern frontage (abutting Brookmere Avenue) is the narrowest street frontage. Thus the southern frontage is the rear lot line.

#### Variance 1

Code Table 154.04-7 indicates that a 35' minimum front yard setback is required within the R-1B – Urban Residential Zoning District. The proposed addition to the home will be 28.6' from the front property line (street right-of-way – Cypress Place), therefore a variance of 6.4' is required ( $35 - 28.6 = 6.4$ ).

#### Variance 2

Code Table 154.04-7 indicates that a 40' minimum rear yard setback is required within the R-1B – Urban Residential Zoning District. The proposed addition to the home will be 31.19' from the rear property line, therefore a variance of 8.81' is required ( $40 - 31.19 = 8.81$ ).

### **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 also noted additional points related to this case:

- There is a 5' utility easement along the southern and eastern property lines and a 10' utility easement along the northern and western property lines. The proposed addition would not encroach into any of these easements.
- The applicant is considering purchase of the home with the requested addition. The applicant has stated that he will not purchase the home without the variance.
- If approved the evergreen trees in the western front yard area would need to be removed to make way for the proposed addition.

Mr. Spring added:

He received a telephone call from Mr. Craig Vaughan of 918 Cypress who is against this variance, reason being it would block the front view from his home as his wife would like to be able to watch their children at the bus stop. This addition would block that view.

The City received a telephone call from Wanda Rawlins of 917 Brookmere she had several concerns. First, being that the addition would become a "double" or 2 family residence. Second, the addition would have a separate entrance from the garage which would be a separate living space. Third, the "double" would allow another family or family member to reside at the home and Finally the "double" would add traffic to the area and make the corner and street more dangerous.

Staff notes, several specific concerns related to this particular statement. A "double" or 2 family residential dwelling unit is defined in code as a building or portion thereof designed for or exclusively for residential purposes by two families or housekeeping units. A "double" or 2 family residential dwelling unit is not permitted in this particular zoning district. The proposed addition would not have a separate exterior entrance. Tipp City Code does allow for Mother-in-law Suites, they are defined as accessory dwelling units within this particular zoning district.

Additional consultation with the Applicant and the current owner indicates the following: The addition would be used for housing an infirmed parent. There is an existing kitchenette on the premises. There is an existing door from the Mother-in-law Suite to the garage. There is a separate heating and cooling unit for the Mother-in-law Suite although there is only one utility bill.

In regards to the Motion, if you will be moving for approval of this particular variance, Staff would suggest 3 specific conditions would be added to the approval as noted. Condition 1, the structure at 916 Brookmere Avenue shall not become a "double" or 2 family residential unit. Condition 2, additional addresses will not be added to the structure. Condition 3, additional utility billing account shall not be added to the structure.

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

Mr. McFarland asked the applicant to step forward and state his name and address for the record.

Hank Betts, 1322 Claycrest Road, Vandalia, Ohio.

Mr. Betts is looking to seek a variance on the property to provide an In-law Suite for his father, who currently has MS. Mentally he is all there, physically he is deteriorating. He gets along well with a cane now, however, he has gotten to the point where he cannot maintain his current house. Mr. Betts' mother lives and works out of the state a majority of the time. She comes to Ohio every couple of weeks for a

day or two, however, his son Hank, is his only relative in this area. The addition is to extend the In-law Suite to provide living space for him as well as an ADA accessible restroom. One additional comment Mr. Betts would like to make is in reference to a door to the separate area, if possible they would like to have a door for that so as to provide for an Ada ramp. This request for an addition is not intended to be a duplex or double. Mr. Spring added, that would be allowable by Code.

Mr. Hartman questioned if the air conditioning unit and or gas meter were located in the zone in question. He asked where they might be relocated. Mr. Betts said they would be moved to the west side of the home.

Mr. McFarland re-iterated that this was a proposed In-law Suite for a family member. Mr. Betts replied, "That is correct".

Mr. Buehler added, it seems there is some opposition for this addition. "Were there any other options to put this other than the setbacks?" Mr. Betts replied, the front yard setback because of the irregular lot shape and the rear setback of this lot is actually in line with the existing structure in the original plot plan it appears the rear was to the east and the side yard was to the south. We are only extending the line of the existing building to the south.

Mr. Stefanidis asked, "Have you purchased this property yet?" Mr. Betts replied, "No, sir, I have not." In order for this property to work for his family and his father, the addition would be required.

Mr. Buehler asked if Mr. Betts has had difficulty in finding a property to suit the needs of his family. Mr. Betts said they have been looking for the last 2 to 3 years now and everything they consider would require his father to live with them.

Mr. Stefanidis, appreciates the situation, however, Mr. Betts does not own the property and there are two neighbors that object to this request. Have you considered cutting back the size of the structure so that a variance would not be required? Mr. Betts replied, "I have, however, on the front northwest corner it cuts off more so that it would be down to 11' and would not give us the space we are needing."

Mr. Buehler questioned "Is the existing home already in the setback?"

Mr. Spring, "Yes, it was approved that way." In Mr. Spring's opinion as the Zoning Administrator they interpreted the rear yard incorrectly. Therefore the eastern setback in this particular case was deemed as the rear and the southern was the side.

Mr. McFarland posed the question "If this was approved and the deal falls through for the purchase of the home then the variances are already in place for whomever were to purchase it?" Mr. Spring, "That is correct, variances run with the home."

Mr. McFarland asked Mr. Betts, "Is there a chance of you backing out on this property?" Mr. Betts replied, there is defiantly a chance, as the owner and I have not come to an agreement on the purchase.

Mr. Buehler asked, "How long has the house been on the market?" Mr. Betts replied, "He actually found out about the property from a neighbor who was friends with our realtor so we were able to look at the property before it was listed." "It has only been listed now for 2 weeks."

Mr. McFarland asked for opposition to this variance.

Mr. Spring asked again, for anyone who would like to speak on this particular issue who did not stand before, please rise to be sworn in or you will not be permitted to speak on this issue.

Mrs. Gross again administered the oath.

Mr. Buehler asked for the first person who would like to speak to step forward.

Mr. McFarland asked the concerned citizen to step forward and state his/her name and address for the record.

Wanda Rawlins, 917 Brookmere Avenue.

Ms. Rawlins called in to Mr. Spring, the way the house is built now, it is built for a Mother-in-law Suite. It has a kitchen, living room, bedroom and bathroom. According the resident now, it is made like a house trailer, everything is on one end of the house. She has her own backdoor and her own side garage door. Ms. Rawlins feels if this is added on, it is adding on a "double" to the neighborhood. That is not what Sycamore Woods was built for. Ms. Rawlins lives directly across the street from 918 Brookmere Avenue, right on the bend. The cars come awful fast around the corner and adding a "double" with another family to the street will make for even more congestion. This is Ms. Rawlins reason for objecting to the variance.

Steve Meyer, 933 Brookmere Avenue.

Mr. Meyer called in to Mr. Spring. Mr. Meyer feels sorry for Mr. Betts situation, however, his personal opinion on changing a piece of property before it is purchased should not be done.

Craig Vaughan, 918 Cypress Place.

Mr. Vaughan lives behind the subject property. He has a very distinct pie shaped property and because of the irregular shape the house sits at a strange angle. Presently he can look past the back corner of 918 Brookmere to watch his children get on and off the bus, this was one of the major reasons he purchased his home. He feels if this variance is granted it becomes a safety issue for his family not being able to monitor the children. Another issue he has with this variance, you would not be able to see the front of his home from Brookmere and in his opinion this is a safety risk because the police patrol Brookmere, they don't turn down Cypress to patrol because it is a small cul-de-sac of 3 homes and they can see it from Brookmere. If this variance is granted, they would no longer be able to check on his home or the other homes on Cypress.

Mr. McFarland asked for Board Member discussion.

Mr. Stefanidis says "No". Mr. Betts does not even own the property yet. Mr. Buehler added that he has an issue with the home already being in the rear setback. He feels like the board should approve the rear setback due to this matter. Mr. Stefanidis asked if it would work doing just one. Mr. Spring responded, No, not according to the current configuration.

Mr. Stefanidis **moves to deny a variance of 6.4' to Code Table 154.04-7 to the minimum front yard setback of 35' for the single-family home located at 916 Brookmere Avenue** seconded by Mr. McFarland. **Motion carried.** Ayes: Stefanidis, McFarland, Buehler, and Hartman. Nays: None.

Mr. McFarland **moves to deny a variance of 8.81' to Code Table 154.04-7 to the minimum rear yard setback of 40' for the single-family home located at 916 Brookmere Avenue** seconded by Mr. Hartman. **Motion carried.** Ayes: McFarland, Hartman, Buehler, and Stefanidis. Nays: None.

**Old Business**

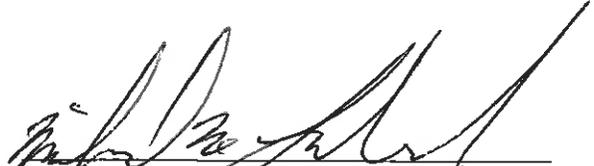
There was none.

**Miscellaneous**

There was none.

**Adjournment**

There being no further business, Mr. McFarland **moved to adjourn the meeting**, seconded by Mr. Buehler and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 8:04 p.m.



Michael McFarland, Board Chairman

Attest:   
Mrs. Dawn Gross, Board Secretary