

**BOARD OF ZONING APPEALS MEETING**

**TIPP CITY, MIAMI COUNTY, OHIO**

**November 16, 2016**

**Meeting** Chairman McFarland called this meeting of the Tipp City Board of Zoning Appeals to order at 7:30 p.m. which was held at the Tipp City Government Center, 260 S. Garber Drive, Tipp City, Ohio.

**Roll Call** Roll call showed the following Board Members present: Michael McFarland, Steve Stefanidis, Isaac Buehler, and Mark Hartman. Others in attendance: City Planner/Zoning Administrator Matthew Spring and Board Secretary Dawn Gross.

**Citizens Signing the Registrar** Citizens attending the meeting: Lisa and Scott Courter, Dave Spitzer, and Joe Minneman.

**Board Minutes 10-19-2016** Mr. McFarland asked for discussion. Mr. McFarland indicated on page 10 of 13 the middle of the page "Mr. Hartman moves to grant a variance of 6.9' to Code Table 154.04-7 to the minimum side yard setback of 15' for the single-family home located at 820 Oak Lea Drive seconded by Mr. Buehler. Motion to be carried over to next meeting". Motion to be carried over to next meeting should be struck. Mr. McFarland **moved to approve the amended minutes of the October 19, 2016 meeting**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Stefanidis and Mr. Hartman. Nays: None.

**Citizens Comments** There were no citizen comments.

**Administration of Oath** Mrs. Gross swore in citizens and Mr. Spring.

**Chairman's Introduction** 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.

**New Business** There is no New Business.

**Old Business Case No. 13-16 Dave Spitzer, All Season Remodeling for** **Case No. 13-16: Dave Spitzer, All Season Remodeling for Scott and Lisa Courter, Owners – 820 Oak Lea Drive - Lot: IL 3030 –** The applicant seeks a variance of 6.9' to Code Table 154.04-7 to the minimum side yard setback of 15' for the single-family home located at 820 Oak Lea Drive. **Zoning District:** R-1A – Suburban Residential Zoning District **Zoning Code Section(s):** Table 154.04-7

**Scott and Lisa  
Courter, Owners**

**Variance for side  
yard setback**

Mr. Spring provided the following report:

In conjunction with the proposed construction of a ± 13' x 29' 8" attached garage addition, the applicant requests a variance of 6.9' to Code Table 154.04-7 to the minimum side yard setback of 15' for the single-family home located at 820 Oak Lea Drive.

History

Staff notes that this case was reviewed by the Board of Zoning Appeals on October 19, 2016. The variance request noted above ended in a tie vote (2-2). Per Code §36.019(B)

*... Any motion which results in a tie vote shall become automatically an agenda item for the next regular business meeting or, if so required by ordinance, at a specially called meeting.*

Case Review

Code Table 154.04-7 indicates that a 15' minimum side yard setback is required within the R-1A – Suburban Residential Zoning District. The proposed covered garage addition will be 8.1' from the side property line, therefore a variance of 6.9' is required (15 – 8.1 = 6.9).

**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.

#### **Additional Notes**

- A pre-existing 10' utility and drainage easement along the side (north) property line is in the process of being vacated in conjunction with this request.
- There are additional 10' utility and drainage easements along the east and south property lines, and a 5' utility and drainage easement along the west property line. The proposed garage addition would not encroach into these easements.

Mr. McFarland asked for any questions of staff? There were none. Mr. McFarland asked Staff if they received any opposition. Mr. Spring replied, we did receive an email from neighbor, Mr. Minneman, and it reads as follows:

"I was told by Lisa Courter that they were no longer pursuing the case and they had retracted their down payment from the builder. I am very hopeful our comments were done in good faith as I would have planned on attending, but because of her comments I allowed my work to schedule me with a client dinner this evening. If they are still pursuing please let the board know my circumstance and it is our opinion of the project remains the same as the letter I indicated at the last board meeting. I am hopeful our position is not jeopardized relying on the information I was given."

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

Mr. Dave Spitzer, owner of All Season Remodeling, 4761 Old Salem Road, Englewood, Ohio. He has been a contractor for 45 years.

What they tried to show with their demonstration last month was they are trying to conform to neighborhood standards and use of their property by utilizing a 3 or 4 car garage. The Courters are proposing a 3 car garage. Many of the other neighborhood homes have 3-5 car garages. They would like to modernize the house that was built several years ago. It was not the intention of the original owners to cause problems however, the house was moved over because of ash trees that were in the area, those trees are no longer there anymore due to removal. If the home could be moved over to better utilize the lot they would, however, this is not an option.

The new garage addition will blend in with the structure of the house. Roof, bricks, siding and gutters will all match what is currently in place. There will be no change in the impervious surface that is already there. None of the water drainage will change, he intends to connect up to the existing drains that have already been established in the back yard.

Mr. McFarland asked the audience if there was anyone who wished to speak that was in favor of this action? There were none.

Mr. McFarland asked the audience if there was anyone who wished to speak that was in opposition of this action?

Mr. Joe Minneman; 774 Oak Lea Drive, Tipp City, Ohio.

Mr. Minneman received an email today from Mr. Spring in reference to this evenings meeting moving forward. Mr. Minneman sent a letter to the previous board meeting stating he was unable to attend due to his wife's surgery. His primary concern is not the façade or the appearance of the project, it is reducing the space of the homes by 50%, when you go into the easement that far. When you look at it, it creates a crowding circumstance that is not indicative to the neighborhood. As you go down Oak Lea Drive most homes have an "Executive Lot Appearance". He feels that the addition proposed by the Courters will take away some of the architectural attributes of his home. He has shared his concern with Mr. and Mrs. Courter, this is not a bad neighbor issue it is strictly a project specific issue.

Mr. McFarland asked for Board Member discussion.

Mr. Stefanidis said he agrees with the neighbor. From his view he understands the neighbor's concern of making it look different than all the other homes in the neighborhood.

Mr. Stefanidis asked Mr. Buehler if he drove by to look at it? He responded "yes, I did and I am still on the fence honestly". He understands Mr. and Mrs. Courter's hardship of the house being located further to one side and the other houses in the neighborhood having 3 or more car garages. He also understands the neighbor's hardship of the look of a crowding aspect.

Mr. Stefanidis wondered why the house was put on the lot in an unusual manner?

Lisa Courter, 820 Oak Lea Drive, Tipp City, Ohio.

The street used to be a cul-de-sac and this particular house was the last house in the cul-de-sac hence the reason for the off positioning.

Mr. McFarland asked, "Would any Board Member like to make a motion for or against"?

Mr. Hartman **moves to deny a variance of 6.9' to Code Table 154.04-7 to the minimum side yard setback of 15' for the single-family home located at 820 Oak Lea Drive** seconded by Mr. Stefanidis. **Motion carried.** Ayes: Hartman, Stefanidis, McFarland and Buehler. Nays: None.


Mr. McFarland informed the applicants if they wish to appeal the motion, they will need to take it to the Miami County Court of Common Pleas.

#### Miscellaneous

There was none.

#### Adjournment

There being no further business, Mr. McFarland **moved to adjourn the meeting**, seconded by Mr. Stefanidis and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 7:45 p.m.

  
Michael McFarland, Board Chairman

Attest:   
Mrs. Dawn Gross, Board Secretary