

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

December 21, 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: Bart Denlinger of Denlinger and Sons Builders and Simon Patry.
Board Minutes 11-16-2016	Mr. McFarland asked for discussion. There being none, Mr. McFarland moved to approve the November 16, 2016 meeting minutes as written , seconded by Mr. Stefanidis. Motion carried. Ayes: McFarland, Stefanidis, Buehler, and 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. Mr. Spring interjected and suggested the Chairman switch the order of the Cases based on the attendance of the audience.
Amendment of Agenda	Mr. McFarland moved to put Case B in front of Case A , seconded by Mr. Stefanidis. Motion carried. Ayes: McFarland, Stefanidis, Hartman, and Buehler. Nays: None.
New Business Case No. 16-16 Bart Denlinger – Denlinger & Sons Builders	Case No. 16-16: Bart Denlinger – Denlinger & Sons Builders – Lot: IL 4086 – The applicant requests a variance of 1% to the maximum slope of 12% for residential driveways noted in Code §154.10(F)(4)(e)(iii) for the new home located at 995 Greenmantle Drive, Troy, Ohio.

Variance for driveway slope

Zoning District: PD – Planned Development Zoning District

Zoning Code Section(s): 154.10(F)(4)(e)(iii)

Mr. Spring provided the following report:

In conjunction with the current construction a new home located at 995 Greenmantle Drive, Troy, Ohio, (Rosewood Creek Subdivision) the applicant requests a variance of 1% to the maximum slope of 12% for upward sloping residential driveways noted in Code §154.10(F)(4)(e)(iii).

Variance 1

Code §154.10(F)(4)(e)(iii) states:

... In upward sloping driveways beyond the street right-of-way area, the change in grade shall not exceed 12% within 10 feet of distance.

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

- Although a requirement of the Zoning Code, the maximum allowable slope of residential driveways is not delineated in the permit paperwork approving new residential homes.
- Staff noted the apparent slope discrepancy on a routine drive-by inspection and requested the builder provide an engineered depiction of the as-built slope. Once the as-built drawing was submitted (Cozatt Engineering), the builder/applicant submitted the variance requested before the Board this evening.

Mr. Stefanidis asked, when he submitted paperwork for a building permit how did they approve this if he was in violation of Code? Mr. Spring replied, I approve a Zoning Permit, which is a site plan, which does not show a lot of grade. All Building Permits are issued by Miami County. Mr. Stefanidis then asked, this happened without him realizing he violated Code. Mr. Spring said, "I would say that is exactly right."

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

Mr. Bart Denliner, President of Denlinger and Sons Builders; 1291 Archer Drive, Troy, Ohio 45373.

Mr. Denlinger began with, "Mr. Stefanidis is correct." There are several subdivisions in numerous communities that we build in, can we keep up with every Code and Ordinance, no, we don't. We are at fault for that. This happens to be one that we were not aware of the slope requirement when we set our grades. We always try to get positive drainage away from our foundation.

Mr. McFarland asked, has there been any neighbor comments or complaints? Mrs. Gross responded, "No".

Mr. McFarland asked for any further questions of the applicant.

Mr. Buehler asked, "Is this a basement house"? Mr. Denlinger responded, "Correct". Mr. Buehler asked, Could you try to raise it out of the ground a little bit? Mr. Denlinger said, we pulled it up some, however there were some daylight windows we wanted to try to keep on the North side of the home to get some positive drainage away from those. There were already some peculiar slopes to begin with.

Mr. Buehler commented, I can definitely see how easily this mistake is to make, however, I also understand why the rule is in place. Mr. Denlinger said, "I can appreciate that as well."

Mr. Buehler added, he does not want to have the driveway tore out after it is already in place. Mr. Stefanidis, added, "And the front yard". Mr. Buehler asked, moving forward please keep this Code in mind. Mr. Denlinger replied, "Certainly".

Mr. McFarland said, in all his years on Boards, this is the first time there has ever been an issue with Denlinger & Sons Builders. Mr. Stefanidis added, it must have been a really sharp inspector to notice the 1% grade difference.

Mr. Stefanidis **moved to grant a variance of 1% to the maximum slope of 12% for upward sloping residential driveways noted in Code §154.10(F)(4)(e)(iii), for the new single-family home located at 995 Greenmantle Drive** seconded by Mr. McFarland. **Motion carried.** Ayes: Stefanidis, McFarland, Hartman and Buehler. Nays: None.

**Case No. 15-16
Lou Belknap –
Agile Sign &
Lighting for AT&T
Sign Variances**

Case No. 15-16: Lou Belknap – Agile Sign & Lighting for AT&T – 11 S. Tippecanoe Drive – Lot: IL 2023 – The applicant requests the following variances:

1. A variance of 49.45 square feet to the maximum area for wall signs noted in Code §154.11(l)(2)(f)(v) for the northern façade of the commercial business located at 11 S. Tippecanoe Drive.
2. A variance of 56.95 square feet to the maximum area for wall signs noted in Code §154.11(l)(2)(f)(v) for the eastern façade of the commercial business located at 11 S. Tippecanoe Drive.

Zoning District: PR – Planned Decelopment Zoning District

Zoning Code Section(s): 154.11(l)(2)(f)(v)

In association with the proposed placement of two wall signs on the commercial property located at 11 S. Tippecanoe Drive, the applicant seeks the following variances:

1. A variance of 49.45 square feet to the maximum area for wall signs noted in Code § 154.11(l)(2)(f)(v) for the northern façade of the commercial business located at 11 S. Tippecanoe Drive.
2. A variance of 56.95 square feet to the maximum area for wall signs noted in Code § 154.11(l)(2)(f)(v) for the eastern façade of the commercial business located at 11 S. Tippecanoe Drive.

Staff notes that 11 S. Tippecanoe Drive is the location of AT&T (cellular retailer) and is located within the Tipp City Plaza multi-tenant shopping center. It is the opinion of the Zoning Administrator that this location has two frontages, with facades facing S. Tippecanoe Drive and W. Main Street.

Variance 1 – northern facade

Code § 154.11(l)(2)(f)(v) states:

Buildings with Multiple Tenant Spaces. *The maximum wall sign area permitted, per tenant space, shall be equal to one and one-half (1.5) square feet for every lineal foot of building width assigned to the individual tenant space. Additional wall signs are permitted for each additional façade that faces directly onto a public street. The maximum sign area for the additional wall signs shall be equal to one and one-half (1.5) square feet for every lineal foot of building width of the façade to which it will be attached.*

The northern façade of 11 S. Tippecanoe Drive contains 35.5 lineal feet of frontage. The proposed wall sign will have an area of 102.7 square feet. Thus a variance of 49.45 square feet is required ($102.7 - [35.5 \times 1.5 = 53.25] = 49.45$).

Variance 2 – eastern facade

Code § 154.11(l)(2)(f)(v) states:

Buildings with Multiple Tenant Spaces. *The maximum wall sign area permitted, per tenant space, shall be equal to one and one-half (1.5) square feet for every lineal foot of building width assigned to the individual tenant space. Additional wall signs are permitted for each additional façade that faces directly onto a public street. The maximum sign area for the additional wall signs shall be equal to one and one-half (1.5) square feet for every lineal foot of building width of the façade to which it will be attached.*

The eastern façade of 11 S. Tippecanoe Drive contains 30.5 lineal feet of frontage. The proposed wall sign will have an area of 102.7 square feet. Thus a variance of 56.95 square feet is required ($102.7 - [30.5 \times 1.5 = 45.75] = 56.95$).

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

- The existing wall signs would be removed as a part of the proposed new sign placement.
- If the requested variances are approved, a separate sign permit for each sign is required (application received).

Mr. Spring added, he did not hear from the Applicant and does not know why he is not present at this Board Meeting.

Mr. McFarland asked, why do they want to increase the size of their signage? Mr. Spring did not know.

Mr. Stefanidis asked what percentage was allowable. Mr. Spring responded, they are allowed 1.5 square feet for each linear foot of frontage. Mr. Stefanidis then asked, "We are roughly at 50% above what the Code allows?" Mr. Spring responded, "Correct".

Mr. Spring added, if he had to provide a small amount of justification, when reviewing the pictures on Attachment "G" of the Staff Report, you can see the upper façade of the structure is quite a bit larger than the actual store front. They have a covered walkway on both the northern and eastern sides and it tends to make the existing sign look very small. His guess is the proposed signs would actually look fairly proportional based on the existing façade.

Mr. McFarland asked, "If we approve it, will we be setting a precedent for this large of a variance for these signs?"

Mr. Spring added, on attachment "B" they did provide a narrative addressing why they feel they need a larger sign.

Mr. Buehler asked, could we table this case and ask the Applicant to attend the next meeting? Mr. Spring responded, "Absolutely".

Mr. Stefanidis thinks setting a precedent allowing a sign 50% bigger than Code is a dangerous road to travel. Mr. McFarland agreed.

Mr. Stefanidis feels it is disrespectful that they did not let us know that they would not be attending. Mr. Buehler agreed.

Mr. Buehler **moved to table Case 15-16 until the next BZA meeting**, seconded by Mr. Hartman. **Motion carried.** Ayes: Buehler, Hartman, Stefanidis and McFarland. Nays: None.

Old Business

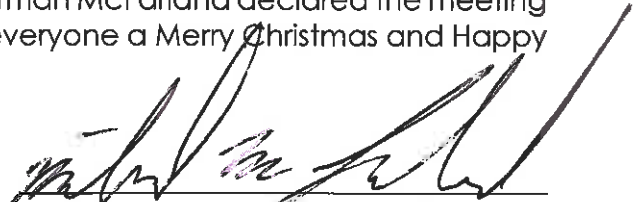
There was none.

Miscellaneous

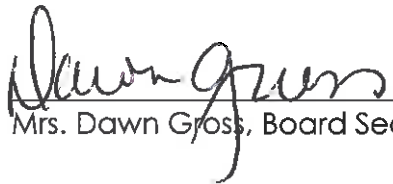
There was none.

Adjournment

There being no further business, Mr. Buehler **moved to adjourn the meeting**, seconded by Mr. Hartman and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 7:46 p.m., wishing everyone a Merry Christmas and Happy New Year!



Michael McFarland, Board Chairman

Attest:  _____
Mrs. Dawn Gross, Board Secretary