

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

January 18, 2017

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, Isaac Buehler, Steve Stefanidis 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: Tyler Edwards, Chris Davis, Nancy Williams, Andrew White, Susan Mosier, Dale Mosier, Ben Mosier, Matt Quillen, Susan Garretson and Don Garretson.

Oath to Office Ms. Gross administered the Oath of Office to re-appointed Board Member, Michael McFarland.

Election of Officers Mr. McFarland opened the floor for nominations. Mr. Stefanidis **moved to nominate Mr. McFarland as Chairman of the Board of Zoning Appeals**, seconded by Mr. Buehler. **Motion carried.** Ayes: Stefanidis, Hartman, Buehler. Abstain: McFarland. Nays: None.

Mr. Stefanidis **moved to nominate Mr. Buehler as Vice Chairman of the Board of Zoning Appeals**, seconded by Mr. McFarland. **Motion carried.** Ayes: Stefanidis, McFarland, Hartman. Abstain: Buehler. Nays: None.

Board Minutes 12-21-2016 Chairman McFarland asked for discussion. There being none, Chairman McFarland **moved to approve the December 21, 2016 meeting minutes as written**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Hartman, Stefanidis. Nays: None.

Citizens Comments There were none.

Chairman's Introduction Chairman McFarland explained the guidelines and procedures for the meeting and public hearings. He advised the applicant(s) 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.

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

New Business

**Case No. 01-17
Tyler Edwards –
Menards
Setback Variance
Request**

Case No. 01-17: Tyler Edwards, Menards – 75 Weller Drive – Lot: IL 4053
– The applicant requests the following variances:

1. A variance of 40' to the required setback of 50' noted in Code table 154.04-9 (N. Kinna Drive).
2. A variance of 39' to the required setback of 50' noted in Code table 154.04-9 (Harmony Drive).

Zoning District: HB – Highway Business Zoning District

Zoning Code Section(s): 154.04-9

Mr. Spring provided the following report:

In association with a proposed ± 21,559 sq. ft. expansion of the covered storage warehouse area at the west (rear) of the property, the applicant the following variances:

1. A variance of 40' to the required setback of 50' noted in Code table 154.04-9 (N. Kinna Drive).
2. A variance of 39' to the required setback of 50' noted in Code table 154.04-9 (Harmony Drive).

Staff notes that the Menards property (75 Weller Drive – Inlot 4053) is a three-frontage lot, with corresponding “front-yard” setbacks on Weller Drive (east), Harmony Drive (south) and N. Kinna Drive (west).

A front yard is defined in Code §154.14 as:

A yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the front lot line and the main building or the extension thereof, not including the usual steps and entryway.

Variance 1

Code Table 154.04-9 indicates that a 50' minimum front yard setback is required within the HB – Highway Business Zoning District. At its closest point, the proposed covered storage warehouse addition will be 10' from the front property line (N. Kinna), therefore a variance of 40' is required (50 – 10 = 40).

Variance 2

Code Table 154.04-9 indicates that a 50' minimum front yard setback is required within the HB – Highway Business Zoning District. At its closest point, the proposed covered storage warehouse addition will be 11' from the front property line (Harmony), therefore a variance of 39' is required (50 – 11 = 39).

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

- There is an existing 10' utility easement along the western and southern property lines. The proposed warehouse expansion would abut, but not encroach into these easements.
- If the requested variances are granted, the applicant will be required to obtain an approved Zoning Compliance Permit and associated building permits thru Miami County.
- A similar variance was granted on 4/18/07 in association with the construction of the original existing warehouse structure.

Mr. McFarland asked if there were questions of staff. There were none.

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

Mr. Tyler Edwards, Real Estate Representative for Menards; 5101 Menard Drive, Eau Claire, WI.

Mr. Edwards stated, they are in the process of expanding all of their stores by ± 20,000 sq ft. This will allow product that is stored out in the elements to be stored under roof and allows more product to be kept on site. This request for a variance is an expansion of the existing warehouse. It is only going to be an extension, it will reflect all the same materials and design of the current building. This will stay inside the confines of the existing fence.

Mr. Stefanidis asked, "Could you reduce the size of the structure that is going to abut Harmony Drive?" The problem foreseen is that if you go all the way to the 10' you will be obstructing the view of people that will be trying to turn left.

Mr. Edwards said, "It will not be obstructed any worse than how it is today, because there is already a 14' fence that runs along the exact edge of where the new warehouse is proposed to be."

Mr. Buehler asked, "Did you say this was going to be taller?" Mr. Edwards replied, "Than the existing fence, the existing fence is 14' tall, the back of the warehouse will be 20' tall."

Mr. McFarland asked, What is the reasoning for this variance? Mr. Edwards responded "Yes, we are expanding all of our stores. A lot of internet driven sales require more product to be on hand at a given time when people pre-order. This will fulfill the need to have product on hand, instead of the one week waiting period to get orders to the store."

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

Mr. McFarland asked if anyone in the audience would like to speak against this variance. There was none.

Mr. McFarland asked if there were any neighbor complaints. Ms. Gross replied, "Paul Lee, he owns commercially zoned vacant property directly west of Menards site, he stated, he is OK with the warehouse expansion, however he would like to see the fence maintained better." Mr. McFarland said, maintaining the fence is not an issue for the BZA, but I'm sure Mr. Edwards will duly note the comment.

Mr. McFarland **moved to grant a variance of 40' to the required setback of 50' noted in Code Table 154.04-9 (N. Kinna Drive) for the commercial business (Menards) located at 75 Weller Drive**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Hartman, Stefanidis. Nays: None.

Mr. Hartman **moved to grant a variance of 39' to the required setback of 50' noted in Code Table 154.04-9 (Harmony Drive) for the commercial business (Menards) located at 75 Weller Drive**, seconded by Mr. Stefanidis. **Motion carried.** Ayes: Hartman, Stefanidis, Buehler, McFarland. Nays: None.

**Case No. 02-17
Ben Mosier dba
True North Group,
Ltd – Side yard
Setback Variance
Request**

Case No. 02-17: Ben Mosier dba True North Group, Ltd – 628 S. Third Street - Lot: IL 576 & 577 – The applicant requests the following variances:

1. A variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577).
2. A variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577).
3. A variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576).
4. A variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576).

Zoning District: R-2 – Two-Family Residential Zoning District

Zoning Code Section(s): 154.04-7

Mr. Spring provided the following report:

628 S. Third Street consists of two Inlots of Record being IL 576 & IL 577. The property was recently condemned and subsequently sold at auction to the applicant. The applicant proposes the demolition of the existing structures on the lots and the subsequent utilization of the property to construct two new single-family homes (one on each Inlot).

Staff notes that the two existing inlots are nonconforming, in that they do not meet the minimum lot area or minimum lot frontage. Regarding these specific nonconformities, Code § 154.12(E)(1)(b) states:

In any residential district, a single-family dwelling and its customary accessory uses may be erected on a vacant single lot of record after the effective of this code provided the structures comply with all other applicable standards of this code except for the minimum lot area and minimum frontage requirement. Any exception to this requirement must be sought through a variance or administrative waiver application.

Accordingly, the applicant seeks a variance from the BZA for each of the side yard setbacks, in order to appropriately plan for the upcoming new homes construction. Therefore, and in conjunction with the proposed construction of these two new homes, the applicant requests the following variances:

1. A variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577).
2. A variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577).
3. A variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576).
4. A variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576).

Variance 1

Code Table 154.04-7 indicates that a 10' minimum side yard setback is required within the R-2 – Multi-Family Residential Zoning District. The applicant seeks a variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577). The proposed new home will be 5' from the left (north) side property line, therefore a variance of 5' is required ($10 - 5 = 5$).

Variance 2

Code Table 154.04-7 indicates that a 10' minimum side yard setback is required within the R-2 – Multi-Family Residential Zoning District. The applicant seeks a variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577). The proposed new home will be 5' from the right (south) side property line, therefore a variance of 5' is required ($10 - 5 = 5$).

Variance 3

Code Table 154.04-7 indicates that a 10' minimum side yard setback is required within the R-2 – Multi-Family Residential Zoning District. The applicant seeks a variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576). The proposed new home will be 5' from the left (north) side property line, therefore a variance of 5' is required (10 – 5 = 5).

Variance 4

Code Table 154.04-7 indicates that a 10' minimum side yard setback is required within the R-2 – Multi-Family Residential Zoning District. The applicant seeks a variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576). The proposed new home will be 5' from the right (south) side property line, therefore a variance of 5' is required (10 – 5 = 5).

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

- There are no easements of record for these parcels.
- A separate demolition permit is required prior to the razing of the structures.
- A new address (624 S. Third Street) will be assigned to IL 576.
- Separate zoning and building permits would be required for each new home.

Mr. McFarland asked if there were any neighbor comments. Ms. Gross responded, "No."

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

Ben Mosier; 5246 S. CR 25, Tipp City, Ohio.

Mr. Mosier said, he is requesting a 5' variance on either side of his lots to construct 2 new homes. The existing house on the lots is in bad condition and he plans to demolish it. The goal being to construct and sell 2 new homes once the existing home is demolished. The variances are needed because without them the houses will be too narrow.

Mr. Stefanidis asked, "As the lots are now, without the variances, how wide would the homes be?" Mr. Mosier said, "They are 42' lots, so the homes would be 32' wide, possibly 6" less to have some extra room."

Mr. McFarland stated, the houses would be long and skinny. Mr. Mosier added, I have plenty of distance and length, but I need a little bit of width.

Mr. Buehler asked, "Do you have any plans that you have already created?" Mr. Mosier said, "No, I am waiting to go through this process because I did not want to invest \$1,000.00 in plans if I could not get a variance. Once I know what size I can build, I can move forward with getting the plans drawn up."

Mr. Buehler asked, "Do you plan on the garage going in the back of the home?" Mr. Mosier said, "Yes, there will be access by the alley way."

Mr. McFarland asked if anyone in the audience would like to speak against this variance.

Mr. Christopher Davis; 621 South Third Street, Tipp City, Ohio.

Mr. Davis spoke, He wanted to know about the homes on the end, do you want to tear one of them down and build 2 new homes, so you will then have 3 homes total? Mr. Mosier replied, "Correct." Mr. Davis said, "I am really not in favor of it, we are really crowded down there and I think it would cause a problem to put a third home in there." Mr. Mosier addressed Mr. Davis and said, "You do realize there is a vacant lot in between the houses?" Mr. Davis said, "I am very aware."

Ms. Nancy Williams; 620 S. Third, Tipp City. Ms. Williams owns a "tiny home" neighboring the lots in this case.

Ms. Williams said, "She would like to know exactly how close it will be when she looks out her window and she sees the other home. It's not that I am against it, and it's not that I am for it, I just want to know." Her impression was that both of the existing homes were going to be tore down and 2 homes were going to be built there. Now it is her understanding that one of the houses is going to remain and 2 more houses will be squeezed in where one is currently.

Mr. Mosier approached Ms. Williams and showed her a current drawing of her home in comparison to what is there now. Ms. Davis' main concern is that she is spending a lot of money to renovate a small home and she does not want to look out her window and see brick.

Mr. McFarland asked for Board Member discussion.

Mr. Buehler understands Mr. Mosier asking for this variance, however, with his building knowledge you can build a home to fit on this lot.

Mr. McFarland asked Mr. Buehler if he could see the hardship, and Mr. Buehler said he does not see the hardship. He agrees it is easier to design the home with the variance rather than without, but, it can be done, it's a challenge, but you can make them look really nice.

Chairman McFarland asked for further discussion. There being none, Chairman McFarland **moved to grant a variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577)**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Stefanidis, Hartman. Nays: None.

Chairman McFarland **moved to deny a variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at 628 S. Third Street (IL 577)**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Hartman, Stefanidis. Nays: None.

Chairman McFarland **moved to deny a variance of 5' to Code Table 154.04-7 to the minimum left (north) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576)**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Stefanidis, Hartman. Nays: None.

Chairman McFarland **moved to grant a variance of 5' to Code Table 154.04-7 to the minimum right (south) side yard setback of 10' for the construction of a new single-family home located at S. Third Street (IL 576)**, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Hartman, Stefanidis. Nays: None.

**Case No. 03-17
Matthew and
Nicole Carpenter
(owners) –
nonconforming
residential use**

Mr. Spring addressed Chairman McFarland, and informed him that he was in receipt of a withdrawal for Case #03-17, therefore we do not need to proceed. Mr. McFarland thanked Mr. Spring for the report.

**Case No. 04-17
Andrew White
(owner) – front
yard setback
variances**

Case No. 04-17: Andrew White – 127 N. Third Street – Lot: Pt. IL 215 -

The applicant requests the following variances:

1. A variance of 12" to the minimum front-yard setback of 36" (N. Third St.) for fences located in front yards and corner side yards within residential zoning districts noted in Code §154.06(A)(4)(i)(vi)(A)
2. A variance of 6" to the minimum front-yard setback of 36" (W. Plum St.) for fences located in front yards and corner side yards within residential zoning districts noted in Code §154.06(A)(4)(i)(vi)(A)

Zoning District: R-2 – Two-Family Residential Zoning District

Zoning Code Section(s): 154.06(A)(4)(i)(vi)(A)

Mr. Spring provided the following report:

127 N. Third Street is a corner lot located at the southwest corner of N. Third Street and W. Plum Street. Per Code 154.04(H)(1)(d)(vi)(A):
Lots that have street frontage on two intersecting streets shall be considered a corner lot, subject to the following:

- A. 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. See Figure 154.04-E.

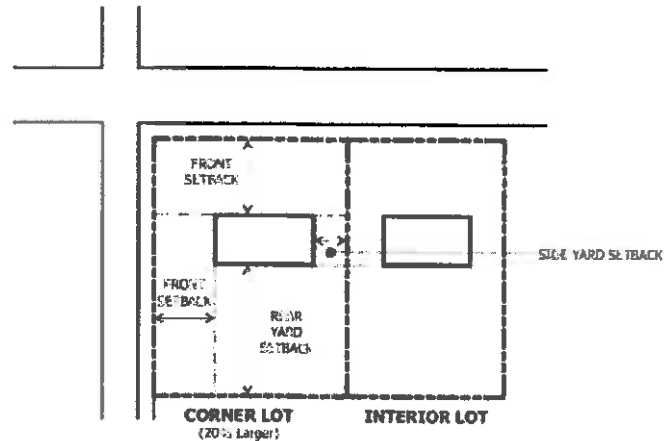


Figure 154.04-E: Typical yard locations for a corner lot.

In association with the installation of fencing around the northeast section (front yards) of the lot, the applicant seeks the following variances to the minimum front yard setback of 3' for fences located in front yards and corner side yards within residential zoning districts noted in Code §154.06(A)(4)(i)(vi)(A). The applicant proposes the installation of ± 94 linear feet of 3' tall wood picket fencing within the front yard and corner side yard as follows.

Variance 1

Code §154.06(A)(4)(i)(vi)(A) states:

The following shall apply to fencing, walls, and hedges in residential zoning districts and the CD District:

- A. All fences, walls, and hedges shall be set back a minimum of three feet from any front lot line.

The applicant proposes the installation of ± 27 linear feet of 3' tall wood picket fence with a front-yard setback of 24" (along N. Third Street), therefore a variance of 12" is required ($36 - 24 = 12$).

Variance 2

Code §154.06(A)(4)(i)(vi)(A) states:

The following shall apply to fencing, walls, and hedges in residential zoning districts and the CD District:

- A. All fences, walls, and hedges shall be set back a minimum of three feet from any front lot line.

The applicant proposes the installation of ± 48 linear feet of 3' tall wood picket fence with a front-yard setback of 30" (along W. Plum Street), therefore a variance of 6" is required (36 – 30 = 6).

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:

Additional Notes

- On November 4, 2016, the applicant obtained an approved Zoning Permit for the fencing that delineated the correct minimum setbacks for fencing in front yards.
- Subsequently, the applicant inadvertently installed the fencing too close to the property lines.
- Staff noted the proximity of the fencing on a routine drive-by inspection and contacted the applicant.
- If the requested variances are granted, the existing Zoning Compliance Permit would be amended accordingly.

Mr. McFarland asked if there were any neighbor comments. Mrs. Gross replied, "No".

Mr. McFarland asked for Board Member discussion. There was none.

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

Mr. Andrew White; 127 N. Third Street, Tipp City, Ohio.

Mr. White said he and his wife installed the fence over a weekend and it was not intentional that they did not apply for a permit. If it would please the board it can be moved. Aesthetically it does not look like it is crammed up against the sidewalk, nor does it affect visibility due to the fact that it is a one-way street.

Mr. Stefanidis asked, "Did you do this fence yourself?" Mr. White responded, "Yes, me and my wife did."

Mr. McFarland asked if there was anyone opposed to this variance. There was not.

Mr. McFarland then asked for Board Member discussion. There was none.

Mr. Hartman **moved to grant a variance of 12" to the minimum front-yard setback of 36" (N. Third St.) for fences located in front yards and corner side yards within residential zoning districts noted in Code §154.06(A)(4)(i)(vi)(A) for the single-family residential home located at 127 N. Third Street**, seconded by Mr. Stefanidis. **Motion carried.** Ayes: Hartman, Stefanidis, Buehler, McFarland. Nays: None.

Mr. Hartman moved to grant a variance of 6" to the minimum front-yard setback of 36" (W. Plum St.) for fences located in front yards and corner side yards within residential zoning districts noted in Code §154.06(A)(4)(i)(vi)(A) for the single-family residential home located at 127 N. Third Street, seconded by Mr. Buehler. Motion carried. Ayes: Hartman, Buehler, Stefanidis, McFarland. Nays: None.

**Case No. 05-17
Steve Risner –
detached garage
variances**

Case No. 05-17: Steve Risner – 491 Burnside Drive – Lot: IL 4003 - The applicant requests the following variances:

1. A variance of 3' to the maximum height of detached garages noted in Code §154.06(A)(2)(g)(ii)
2. A variance of 345 square feet to the aggregate square footage of accessory structures noted in Code §154.06(A)(2)(h)(ii)
3. A variance of 1,545 square feet to the maximum size of a detached garage noted in Code 154.06(A)(4)(f)(iii)

Zoning District: R-1A – Suburban Residential Zoning District

Zoning Code Section(s): 154.06(A)(2)(g)(ii), 154.06(A)(2)(h)(ii), 154.06(A)(4)(f)(iii)

Mr. Spring provided the following report:

The applicant recently purchased the vacant lot located at 491 Burnside Drive, which will be utilized for the construction of a ± 4,450 square foot single-family home. The applicant also proposes the construction of a ± 56' x 38' detached garage (accessory structure) on property. Accordingly, the applicant seeks the following three variances for the construction of the detached garage (accessory structure):

1. A variance of 3' to the maximum height of detached garages noted in Code §154.06(A)(2)(g)(ii)
2. A variance of 345 square feet to the aggregate square footage of accessory structures noted in Code §154.06(A)(2)(h)(ii)
3. A variance of 1,545 square feet to the maximum size of a detached garage noted in Code §154.06(A)(4)(f)(iii)

Variance 1

Code §154.06(A)(2)(g)(ii) states:

Detached garages shall not exceed 18 feet unless the structure includes an accessory dwelling unit above the garage in which case the garage structure shall not exceed 24 feet.

The proposed detached garage will contain an accessory dwelling unit and have a height of 27'. Thus a variance of 3' is required (27 – 24 = 3).

Variance 2

Code §154.06(A)(2)(h)(ii) states:

In no case shall the aggregate square footage of the accessory structures listed above exceed 2,000 square feet.

The proposed detached garage will be the only accessory structure on the property. Therefore, the aggregate square footage of all accessory structures at 491 Burnside will be 2,345 square feet. Thus a variance of 345 square feet is required ($2,345 - 2,000 = 345$).

Variance 3

Code §154.06(A)(4)(f)(iii) states:

The maximum size of a detached garage or carport in an R-1A, R-1B, R-1C, or CD District shall be 800 feet...

491 Burnside Drive is located in the R-1A Zoning District, and the proposed detached garage has an area of 2,345 square feet. Thus a variance of 1,545 square feet is required ($2,345 - 800 = 1,545$).

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

- 491 Burnside has an area of ± 1.71 acres.
- The BZA granted similar variances for this applicant on May 18, 2016 for 475 Burnside Drive (2 lots to the east). Unfortunately, the applicant was unable to purchase the lot due to issues with the title.
- The utilization of the detached garage as an accessory dwelling unit is a Special Use per Code Table 154.06-1 and requires separate approval of the Tipp City Planning Board.

Mr. McFarland asked if there were any neighbor comments. Ms. Gross responded, "No, there was not."

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

Steve Risner; 385 Citadel Drive, Vandalia, Ohio.

Mr. Risner stated he was before the board in May of 2016 for a similar variance at 475 Burnside Drive, however he was not able to close on the property due to liens. He has now purchased 491 Burnside Drive and he is requesting the same variance. The only difference between the two is, at 491 Burnside is a lot that drops off ±10 or 15 feet in the back, therefore I am requesting to put a basement in the back of the carriage house. The carriage will be used for storage of classic cars and a "man cave."

Mr. Buehler asked, "So it will be a garage with a basement underneath?" Mr. Risner said, "Yes, because the lot drops off."

Mr. Risner said, there is a similar building about 4 or 5 lots to the west, which is much bigger than what he is proposing to build.

Mr. McFarland asked if there was any further questions of the applicant. There were none.

Mr. McFarland asked if there was anyone opposed to this variance. There was not.

Mr. McFarland asked for Board Member discussion. There was none.

Mr. Stefanidis **moved to grant a variance of 3' to the maximum height of detached garages noted in Code §154.06(A)(2)(g)(ii) for the property located at 491 Burnside Drive**, seconded by Mr. Buehler. **Motion carried.** Ayes: Stefanidis, Buehler, McFarland, Mr. Hartman. Nays: None.

Mr. Buehler **moved to grant a variance of 345 square feet to the aggregate square footage of accessory structures noted in Code §154.06(A)(2)(h)(ii) for the property located at 491 Burnside Drive**, seconded by Mr. McFarland. **Motion carried.** Ayes: Buehler, McFarland, Stefanidis, Hartman. Nays: None.

Mr. Buehler **moved to grant a variance of 1,545 square feet to the maximum size of a detached garage noted in Code §154.06(A)(4)(f)(iii) for the property located at 491 Burnside Drive.** **Motion carried.** Ayes: Buehler, Stefanidis, Hartman, McFarland. Nays: None.

**Old Business
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: PD – Planned Development Zoning District

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

Mr. Spring provided the following report:

Staff notes that this case was tabled by the Board of Zoning Appeals on December 21, 2016 due to the lack of attendance by the applicant.

Case Review

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

Matthew Quillen, AT&T Prime Communications; 11 S. Tippecanoe Drive, Tipp City, Ohio.

Mr. Quillen said, they have invested several thousand dollars remodeling the store, and with the remodel came new signage. They are now asking for a smaller variance than what is asked for on the application. They do not need the authorized retailing any longer, so the signage will be smaller. The other thing is AT&T is rebranding, they are going from the "little" letters to the "bigger" letters.

Mr. Spring said "You can review it as an amendment to the request."

Mr. Stefanidis asked, "Do you have numbers and the percentages?"

Mr. Quillen answered, they are all on this paperwork.

Mr. Quillen added, years ago when the AT&T store was built, there was not a CVS in front of the building and the sign was easier to be seen from the main road.

Mr. McFarland added, you are at half the size of the variance you previously requested.

Mr. Spring calculated the new numbers and determined the variances being asked for are: Variance 1 will be 20.25 and Variance 2 will be 27.75.

Mr. Buehler asked if the AT&T was still the same height, Mr. Quillen answered, "Yes."

Mr. McFarland asked if there was anyone opposed to this variance. There was not.

Mr. McFarland then asked for Board Member discussion.

Mr. Stefanidis said he thought the other request was reasonable based on the size and that it is not fascia. Mr. Stefanidis' only concern is, is this setting a precedent for excess signage? If we grant this, what if Food Town or Speedway want a bigger sign?

Mr. Buehler responded, "They are behind CVS as he stated."

Mr. McFarland **moved to grant a variance of 20.25 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 11S.**

Tippecanoe Drive, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Hartman, Stefanidis. Nays: None.

Mr. McFarland **moved to grant a variance of 27.75 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, seconded by Mr. Buehler. **Motion carried.** Ayes: McFarland, Buehler, Stefanidis, Hartman. Nays: None.

Miscellaneous

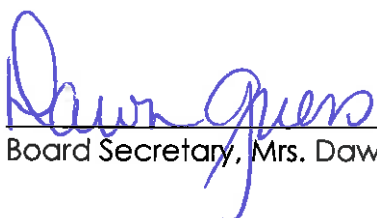
There was none.

Ms. Nancy Williams re-approached the dais to further discuss Case No. 02-17. The Board Members informed that the Board of Zoning Appeals only covers Zoning issues and the comments she was adding were not pertinent to the case.

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 8:35 p.m.


Michael McFarland, Board Chairman

Attest: 
Board Secretary, Mrs. Dawn Gross