

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

March 15, 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, Steve Stefanidis, Mark Hartman and David Cook. Others in attendance: City Planner/Zoning Administrator Matthew Spring, and Board Secretary Dawn Gross.

Absence Mr. McFarland **moved to excuse Mr. Buehler from the meeting**, seconded by Mr. Stefanidis and unanimously approved. Motion carried.

Citizens Signing the Registrar Citizens attending the meeting: John Berk, Anthony Scott, Gordon Pittenger, Sawaranjit Pannu, Walter Burton, Barbara DeAngelis, Ruth Reinhard, Don Garretson, Sue Garretson and Phil Hughes.

Board Minutes 02-15-2017 Mr. McFarland asked for discussion. Mr. McFarland asked for the "Oath of Office" to be moved up in the minutes before "Citizens Signing the Registrar." Mr. McFarland **moved to approve the amended minutes of the February 15, 2017 meeting**, seconded by Mr. Hartman. **Motion carried.** Ayes: McFarland, Hartman, Cook, and 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. 07-17 Nathan Gudorf for Keystone Homes in Troy – Rear Yard Setback **Case No. 07-17: Nathan Gudorf for Keystone Homes in Troy – 505 Burnside Drive, Tipp City, Ohio – Lot: IL 4001** – The applicant seeks a variance of 11.66' to Ordinance 01-05 to the minimum rear yard setback of 50' for the single-family home located at 505 Burnside Drive.
Zoning District: R-1A – Suburban Residential Zoning District

Zoning Code Section(s): Ordinance 01-05.

Mr. Spring provided the following report:

In conjunction with the proposed construction of a ± 3,085 square foot new home, the applicant requests a variance of 11.66' to Ordinance 01-05 to the minimum rear yard setback of 50' for the single-family home located at 505 Burnside Drive, which is within the Hunter's Ridge Subdivision, Section Two. The proposed construction includes a covered porch at the rear (east) of the home that projects into the rear setback.

Variance 1

Ordinance 01-05, which approved Section Two of the Hunter's Ridge Subdivision, indicates that a 50' minimum rear yard setback is required. The proposed new single-family home will be 38.34' from the rear property line, therefore a variance of 11.66' is required (50 – 38.34 = 11.66).

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 several easements on the property that significantly constrict the buildable area of the lot as follows:
 - There is a 5' utility and drainage easement along all side property lines.
 - There is a 10' utility and drainage easement along the front and rear property lines.
 - There is a large storm water detention easement over the northern third of the property.
 - There is a 100' electrical easement running thru the southern half of the property.

Mr. McFarland invited the applicant to step forward.

Mr. Anthony Scott for Keystone Homes in Troy; 1245 Fairway Drive, Troy, Ohio 45373.

Mr. Scott stated, it is very difficult to put a home on this lot and stay in the parameters of the covenants, restrictions and easements placed on this lot. He has received approval from the Home Owner's Association that meets all of their criteria, and the proposed covered porch will complete this build.

Mr. McFarland asked for further questions of the applicant, there were none.

Mr. McFarland asked for Board Member discussion.

Mr. Stefanidis asked were there any neighbor comments. Ms. Gross replied, Michael Carpenter of 515 Burnside Drive, called and stated he had no objection with the variance.

Mr. Stefanidis stated, he feels there is a hardship here due to the easements.

Mr. Hartman **moved to grant a variance of 11.66' to the minimum rear yard setback of 50' noted in Ordinance 01-05 for the single-family home located at 505 Burnside Drive**, seconded by Mr. Stefanidis.

Motion carried. Ayes: Hartman, Stefanidis, Cook, McFarland. Nays: None.

**Case No. 08-17
Walter Burton for
Tipp Seniors –
ACI variance and
Shrub variance**

Case No. 08-17: Walter Burton for Tipp Seniors – 855 N. Hyatt Street, Tipp City, Ohio – Lot: IL 1774 – The applicant seeks the following two variances: 1. A variance of 16.75 Aggregate Caliper Inches (ACI) to the required buffer of 70 ACI for the required landscaping buffer along the western boundary of the property. 2. A variance of 62 screening shrubs to the required 117 screening shrubs for the required landscaping buffer along the western boundary of the property.

Zoning District: LI- Light Industrial Zoning District

Zoning Code Section(s): Code Table 154.09-3

Mr. Spring provided the following report:

In conjunction with the proposed construction of the new Tipp Senior Center at 855 N. Hyatt Street, the applicant requests the following two variances to the required landscaping buffer along the western boundary of the property.

Background

855 N. Hyatt Street is zoned LI – Light Industrial Zoning District. The properties directly west of 855 N. Hyatt Street are zoned R-1C – Urban Residential (St. Leonards Lane). Code Table 154.09-4 requires that a "Type A" buffer is required between any use in the LI or LD Zoning District and any lot in a CD, R-1A, R-1B, R-1C, or R-2 Zoning District. Thus, a "Type A" buffer is required between the new Tipp Senior Center (LI use) and the residential homes on St. Leonards Lane (R-1C use).

Code Table 154.09-3 indicates that 2 options are available to accomplish the required "Type A" buffer. The applicant has chosen Option 1, which requires 24 Aggregate Caliper Inches (ACI) of canopy and /or understory trees, plus 40 shrubs, plus 8 evergreens per 100 linear feet of boundary.

The western boundary of 855 N. Hyatt Street has a length of $\pm 368.1'$. There is a previously existing cellular tower at the NW corner of the property which impedes the establishment of 75' of the required buffer at the NW corner of the property. Thus, the required "Type A" buffer has a length of ± 293.1 linear feet. Therefore the following is required along the western boundary of the property in order to establish the required "Type A" buffer.

1. 70 ACI of canopy and /or understory trees ($293.1 \div 100 = 2.931 \times 24 = 70.344 \approx 70$).
2. 117 Shrubs ($293.1 \div 100 = 2.931 \times 40 = 117.2 \approx 117$).
3. 23 Evergreens ($293.1 \div 100 = 2.931 \times 8 = 23.448 \approx 23$).

Variance 1

As delineated above, Code Table 154.09-3 indicates that 70 ACI of canopy and /or understory trees are required as a landscaping buffer along the western boundary of the property. The applicant proposes the placement of 53.25 ACI of canopy and /or understory trees in the boundary area. Thus variance of 16.75 ACI is required ($70 - 53.25 = 16.75$).

Variance 2

As delineated above, Code Table 154.09-3 indicates that 117 shrubs are required as a landscaping buffer along the western boundary of the property. The applicant proposes the placement of 55 shrubs in the boundary area. Thus variance of 62 shrubs is required ($117 - 55 = 62$).

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 evergreen buffering requirement (8 evergreens/100 linear feet) was met by the applicant.

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.

Mr. Walter Burton; 637 Primrose Lane, Tipp City, Ohio.

Mr. Burton is here to represent the Tipp City Seniors. "The proposed landscape plan was designed to meet the zoning codes intent which is to establish a visual barrier and create a strong impression of total separation between the Senior Center property and the adjacent residential neighborhood. The design approach was to create a very informal natural landscape versus rows of uniform size trees and shrubs. This informal planting is in keeping with the rural character of the site

and the surrounding properties. Some key elements of this design approach are as follows: The Code required buffer yard is to be a minimum of 35' wide however, with the cell tower gravel drive within that 35' the buffer yard was widened to 70'. Tipp City requires all new trees to be 2.5" minimum caliper when planted. We propose to use a wide range of sizes in keeping with the natural vs. manmade landscape image. For the various understory which includes native ornamental trees the 2.5" caliper size is almost a mature size and not readily available from landscape nurseries. Included in the plan is a wide variety of Ohio native tree species reflecting the informal park like design approach. The buffer yard code requires the shrub size to be 24" high when planted. We show Ohio Native shrubs to be at an installed height of 48" in staggered informal groupings to provide the required visual barrier. If we use the larger sizes it creates the visual barrier with fewer shrubs."

Mr. Stefanidis asked "Do you have a landscape plan?" Mr. Burton replied, "Yes."

Mr. McFarland asked a question of staff, "Why has there not been a landscape buffer for the cell tower that has been there for over 20 years?" Mr. Spring replied, the landscaping buffer was incorporated in the 2014 Code Revision.

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

Mr. McFarland asked for Board Member discussion.

Mr. Stefanidis said, he understands that this Code is for minimum requirements for this region, even though they strictly don't meet some of the minimum parameters, looking at what they are proposing, it will be very nice. It may not meet the letter of the code but it is going above and beyond the spirit of the intent of the code.

Mr. McFarland added he could see the reasoning if there was an actual industrial facility going in there, but when you look across the street, that industrial facility was grandfathered in before the code changes and it has no buffer separating.

Variance 1: Mr. McFarland **moved to grant a variance of 16.75 Aggregate Caliper Inches (ACI) to the required buffer of 70 ACI for the required landscaping buffer along the western boundary of the property located at 855 N. Hyatt Street**, seconded by Mr. Stefanidis. **Motion carried.** Ayes: McFarland, Stefanidis, Cook, Hartman. Nays: None.

**Case No. 09-17
Sawaranjit Pannu,
Owner –
Front yard
setback variance**

Variance 2: Mr. McFarland moved to grant a variance of 62 screening shrubs to the required 117 screening shrubs for the required landscaping buffer along the western boundary of the property located at 855 N. Hyatt Street, seconded by Mr. Stefanidis. **Motion carried.**
Ayes: McFarland, Stefanidis, Hartman, Cook. Nays: None.

Case No. 09-17: Sawaranjit Pannu – Owner – 1015 W. Main Street, Tipp City, Ohio – Lot: Pt. OL 81 – The applicant seeks a variance of 28.9' to Code Table 154.04-9 to the minimum front yard setback of 50' for a commercial structure to be located at 1015 W. Main Street.

Zoning District: HB – Highway Business Zoning District

Zoning Code Section(s): Table 154.04-9

Mr. Spring provided the following report:

In conjunction with the proposed construction of a new ± 42' x 83' commercial structure (store), the applicant requests a variance of 28.9' to Code Table 154.04-9 to the minimum front yard setback of 50' for Shell gas station located at 1015 W. Main Street.

The subject property is a corner lot (W. Main Street & N. Garber Drive). 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.

The proposed structure will be located on the northern side of the property and will essentially replace the existing car wash (which will be demolished as a part of this project). The structure will meet the required setback of 50' on the Main Street side, but requires this variance on the N. Garber Drive side.

Variance 1

Code Table 154.04-9 indicates that a 50' minimum front yard setback is required within the HB – Highway Business Zoning District. The proposed commercial building will be 21.1 from the front property line (N. Garber Drive), therefore a variance of 28.9' is required (50 – 21.1 = 28.9).

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

- In 1979, a similar variance of 21' was granted for the setback of the overhead canopy during the initial construction of the gas station.
- The existing car wash (which will be replaced by the proposed construction) has an existing setback of ± 27'.

Mr. Stefanidis asked if there were any comments from neighbors, Ms. Gross responded, "No."

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

Sawaranjit Pannu; 1015 W. Main Street, Tipp City, Ohio 45371

Mr. Pannu says he would like to obtain a zoning permit for the building located at 1015 West Main Street.

Mr. McFarland asked, after the new building is built will you then demo the building that is between the pumps? Mr. Pannu responded, Yes sir, we are planning to take out the small island and add 2 more pumps.

Mr. McFarland asked for any questions of the applicant, there were none.

Mr. McFarland asked for Board Member discussion.

Mr. McFarland said there is already a variance there they just need a new variance because they will be building a new structure.

Mr. Stefanidis said it will be a more modern facility, with added property value, and more taxes he views all of this as a positive.

Mr. Hartman **moved to grant a variance of 28.9' to Code Table 154.04-9 to the minimum front yard setback of 50' for the commercial structure located at 1015 W. Main Street**, seconded by Mr. Stefanidis. **Motion carried.** Ayes: Hartman, Stefanidis, McFarland. Nays: Cook.

Old Business

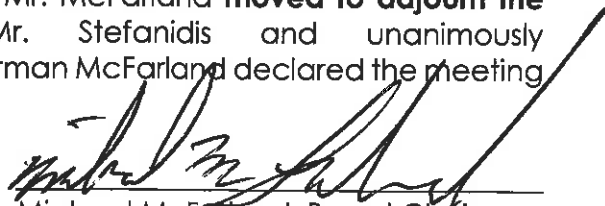
There was none.

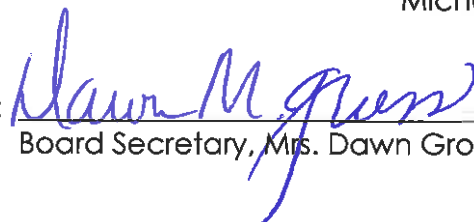
Miscellaneous

There was none.

Adjournment

There being no further business, Mr. McFarland **moved to adjourn the meeting**, seconded by Mr. Stefanidis and unanimously approved. **Motion carried.** Chairman McFarland declared the meeting adjourned at 7:50 p.m.


Michael McFarland, Board Chairman

Attest: 
Board Secretary, Mrs. Dawn Gross