

**BOARD OF ZONING APPEALS MEETING**

**TIPP CITY, MIAMI COUNTY, OHIO**

**January 19, 2022**

- Meeting** Chairman Hartman 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: Mark Hartman, Allen Worthen, Brad Andringa, and William Schindler. City Staff in attendance included City Planner, Colin Carville and Board Secretary Dawn Gross.
- Absence** Mr. Andringa **moved to excuse Mr. Bulgin from the meeting**, seconded by Mr. Worthen and unanimously approved. Motion carried.
- Other participants who were in attendance included: Troy Walker and Valerie Mosier.
- Election of Officers** Mr. Hartman opened the floor for nominations. Mr. Worthen **moved to nominate Mr. Hartman as Chairman of the Board of Zoning Appeals**, seconded by Mr. Andringa. **Mr. Hartman accepted. Motion carried.** Ayes: Worthen, Andringa, Hartman, and Schindler. Nays: None.
- Mr. Andringa **moved to nominate Mr. Worthen as Vice Chairman of the Board of Zoning Appeals**, seconded by Mr. Hartman. **Mr. Worthen accepted. Motion carried.** Ayes: Andringa, Hartman, Worthen, and Schindler. Nays: None.
- Board Minutes 10-20-2021** Chairman Hartman asked for discussion. There being none, Mr. Worthen **moved to approve the October 20, 2021 meeting minutes as written**, seconded by Mr. Andringa. **Motion carried.** Ayes: Worthen, Andringa, Schindler, and Hartman. Nays: None.
- Citizens Comments** There were none.
- Administration of Oath** Mrs. Gross swore in citizens and Mr. Carville.
- Chairman's Introduction** Chairman Hartman 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.

**New Business  
Case No. 01-22  
Troy Walker – 126  
W Franklin Street –  
Fence height and  
transparency  
variances**

**Case No. 01-22: Troy Walker – 126 W Franklin Street – Lot: IL 862** – The applicant is requesting the following 2 variances: 1. A variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in code 154.06(A)(4)(i)(vi)(B) and 154.06(A)(4)(i)(iii)(B) for the single-family home located at 126 W Franklin St. and 2. A variance to the requirement that fences placed in the front yard shall be a least 50% transparent as noted in § 154.06(A)(4)(i)(iii)(B).

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

**Zoning Code Section(s):** 154.06 (A)(4)(i)(vi)(B) and 154.06(A)(4)(i)(iii)(B)

Mr. Carville presented the following report:

The applicant requests the following:

1. A variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in Code § 154.06(A)(4)(i)(vi)(B) for the single-family home located at 126 W Franklin St.
2. A variance to the requirement that fences placed in the front yard shall be at least 50% transparent as noted in § 154.06(A)(4)(i)(iii)(B).

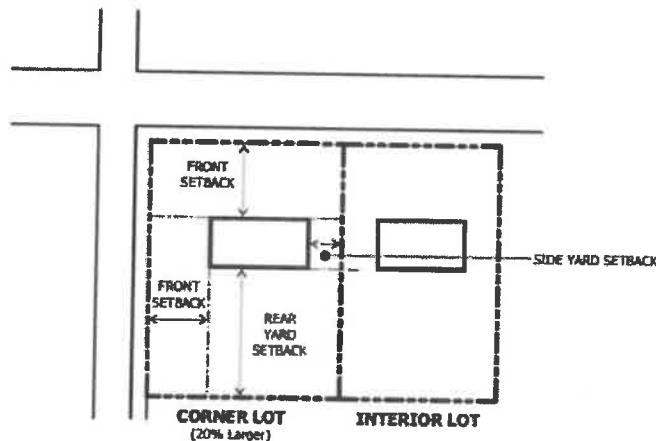
General

126 W Franklin St. is a 2-frontage corner lot, with frontages on W Franklin St. and N 5<sup>th</sup> St.

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.



Roughly +/- 116 linear feet of the fence extend into the front yard along 5<sup>th</sup> St. Due to the fact that the fence extends into the front street side yard, the code states that the fence must be 42".

**Variance 1**

A variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in Code § 154.06(A)(4)(i)(vi)(B) for the single-family home located at 126 W Franklin St.

Code § 154.06(A)(4)(i)(vi)(B) states:

(vi) *Location and Height Requirements in Residential Zoning Districts*

B. *Fences, walls, and hedges shall not exceed 42 inches in the front yard or along any lot line that is adjacent to a street.*

The privacy fence will stand 6' (i.e. 72") in height, thus a variance of 30" to Code § 154.06(A)(4)(i)(vi)(B) is required.

**Variance 2**

A variance to the required 50% transparency for a fence placed in the front yard as noted in Code § 154.06(A)(4)(i)(iii)(B) in conjunction with the proposed construction of a fence located at 126 W Franklin St. The variance is as follows:

- A variance to the 50% transparency requirement for a fence placed in the front yard according to § 154.06(A)(4)(i)(iii)(B).

Code § 154.06(A)(4)(i)(iii)(B) states:

*Fencing in the front yard shall be at least 50% transparent as determined by viewing the primary face of the fence or wall. The ratio of solid fencing to open areas in the fence shall not exceed a 1-to-1 ratio.*

**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**

- 126 W Franklin St. has no utility easements.

Mr. Andringa asked, "Does the unpaved road intersect into another road?"

Mr. Carville answered, "It goes up to a private property in the legacy district. It doesn't connect to anything."

Mr. Worthen explained that when he drove by it looks like it goes up to the railroad.

Mr. Hartman asked if the applicant would like to be heard.

Ms. Valerie Mosier; 126 W Franklin Street, Tipp City, Ohio.

Ms. Mosier began, "We are trying to put a fence up for our dogs. The main street that we live on, West Franklin, actually does dead end into the railroad tracks. We also have a private drive that is gravel, it is technically an alley from my understanding. You drive in front of our house and you turn onto the gravel alley, you will see a chain-link fence and a storage locker facility behind the fence. Not only do we want the privacy from the storage locker and the neighbors that are close, we also want our dogs to be able to run loose. Our only other option would be an invisible fence, which I don't really like that idea because it lacks privacy, and I don't trust it all the time especially with the train tracks right there. Originally we were approved but the fence was going to come off the edge of the house instead of going out to the side. The issue with that is it makes our yard a lot smaller and there is a gravel parking pad that the previous owners put in. We are proposing the privacy fence to come out the side of the house, around trees and come along the edge of the parking pad. We also have a concrete slab from where they tore down an old garage, and there is no way to put concrete posts in that concrete slab."

Mr. Worthen asked, "You are going up to the edge of the parking pad?"

Ms. Mosier responded, "Yeah, where the parking pad is and we plan to go straight back."

Mr. Andringa asked, "What is your name again? Are you part owner of this house?"

Ms. Mosier answered, "My name is Valerie Mosier, and yes, I am an owner."

Mr. Hartman asked for discussion amongst Board Members.

Mr. Schindler asked, "Is this very similar if not identical to a Case we just had?"

Mr. Carville answered, "Yes, it is definitely similar, other than it not being a fully developed street."

Mr. Andringa clarified, "If I am understanding correctly there is a dead end if you go straight and there is a dead end if you turn down the gravel road, and it would be protecting their dogs?"

Mr. Carville responded, "Correct."

Mr. Worthen added, "The idea of the height of the fence and the transparency is to keep visibility at the corners when traffic is coming. I drove through that area the other day and there is no traffic issues that

I could see because there is no through traffic. I don't see any issues with visibility. "

Mr. Andringa asked, "Is there any information in opposition? Are there neighbor comments or anything?"

Ms. Gross responded, "No, no one sent anything in or responded in any way."

Variance #1: Mr. Andringa **moved to grant a variance of 30" to the maximum height of 42" for fences placed in the front yard or along any lot line that is adjacent to a street as noted in Code §156.06(A)(4)(i)(vi)(B) for the single family home located at 126 W Franklin Street**, seconded by Mr. Worthen. **Motion carried.** Ayes: Andringa, Worthen, Hartman, Schindler.

Variance #2: Mr. Worthen **moved to grant a variance to the 50% transparency requirement for a fence placed in the front yard according to §154.06(A)(4)(i)(iii)(B) for the single-family home located at 126 W Franklin Street**, seconded by Mr. Schindler. **Motion carried.** Ayes: Worthen, Schindler, Hartman, Andringa,

#### Old Business

There was none.

#### Miscellaneous

Mr. Carville added, "Moving forward, we have excused Mr. Bulgin a couple of times now, I would request moving forward that if he no-shows again it would be not excused."

Mr. Worthen asked, "He did not contact you ahead of time?"

Mr. Carville responded, "He actually told me he would be here tonight."

Mr. Andringa asked, "What is the rule if it is unexcused, how many unexcused does it take to remove?"

Mr. Carville answered, "It would be two."

Mr. Andringa asked, "Does he have any un-excused yet?"

Mr. Carville answered, "No, he does not."

#### Adjournment

There being no further business, Mr. Hartman **moved to adjourn the meeting**, seconded by Mr. Andringa and unanimously approved. **Motion carried.** Chairman Hartman declared the meeting adjourned at 7:47 p.m.

  
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Mark Hartman, Board Chairman

Attest:   
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Board Secretary, Mrs. Dawn Gross