

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

February 19, 2020

Meeting	Chairman Cook 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: David Cook, Mark Hartman, Jerrold Dodd and Allen Worthen. Others in attendance: City Planner/Zoning Administrator Colin Carville, and Board Secretary Dawn Gross.
Citizens Signing the Registrar	Citizens attending the meeting: Ellen Worthen, Dan Davis, Maria Davis, Councilman Mike Jackson, Yen Storrer, and Jeff Storrer.
Oath of Office	Mrs. Gross administered the Oath of Office to New Board Member, Allen Worthen.
Board Minutes 1-15-2020	Chairman Cook asked for discussion. There being none, Mr. Dodd moved to approve the January 15, 2020 meeting minutes as written , seconded by Mr. Hartman. Motion carried. Ayes: Dodd, Hartman, Cook and Worthen. Nays: None.
Citizens Comments	There were none.
Administration of Oath	Mrs. Gross swore in citizens and Mr. Carville.
Chairman's Introduction	Chairman Cook 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. 02-20 Dan & Maria Davis – 650 N Third Street – Swimming Pool Fence Variance	Case No. 02-20: Dan & Maria Davis – 650 N. Third Street – Lot: IL 1778 – The applicant is requesting a waiver of the required 6' fence surrounding swimming pools with a depth of 2 feet or more as noted in Code §154.06(A)(4)(u)(iv). Zoning District: CD – Conservation District Zoning Code Section(s): 154.06(A)(4)(u)(iv) Mr. Carville presented the following report:

In conjunction with the proposed construction of a new 33' x 16' (± 528 sq. ft.) in-ground swimming pool, the applicant requests the following waiver:

1. A waiver of the required 6' fence surrounding swimming pools with a depth of 2 feet or more as noted in Code §154.06(A)(4)(u)(iv).

Variance 1

Code §154.06(A)(4)(u)(iv) states:

Swimming Pools, Hot Tubs, and Spas

Any swimming pool, hot tub, or spa that has water with a depth of 2 feet or more shall be subject to the standards of this subsection including pools that are designed to be temporary in nature.

(iv) The swimming pool, hot tub, spa, or the entire property on which it is located, shall be walled or fenced to prevent uncontrolled access by children from the street or from adjacent properties. Said fence or wall shall not be less than six feet in height and maintained in good condition with a gate and lock.

The applicant has a large, secluded property that is partially enclosed with fences. The north and west side of the property has a 42" metal fence. The west side of the property is nearest to the road. On the south side of the property, which borders a neighborhood, there is a 6' privacy fence. The east side of the property has no fence but is lined with trees and the old canal. Since the pool is not fully surrounded by a 6' fence, a waiver of the fence requirement is required according to §154.06(A)(4)(u)(iv).

Locking Swimming Pool Cover

In order to provide security and safety for the proposed swimming pool, and as an alternative to the required fencing (as noted in the above waiver request), the applicant proposes the use of an automatic retractable lockable safety cover for their new pool. Staff notes that current code has no provisions for the use of this type of cover.

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 proposed swimming pool meets all other requirements of Code, and is not subject to any variance requests.
- The property is 9.02 acres.
- Applicant does not live in a neighborhood with the closest neighbor over 300 ft. away.
- The entire south side of the property (where the neighborhood is located) is lined with a 6ft tall chain-link fence, preventing uncontrolled access to the property.

- There are no sidewalks to get to the applicant's home.
- The locking swimming pool cover has both key and keypad security.
- Coverstar safety covers are built strong enough to support the weight of several adults in the event they need to retrieve a child who has wandered onto the cover.

Mr. Cook asked if there were any questions for Staff, there were none.

Mr. Cook asked the application to come forward and state his name and address for the record.

Dan & Maria Davis; 650 N Third Street.

Mr. Davis began, "We feel the pool cover will be a safer option for not only our neighbors but for our children. We have four kids and we want to be able to lock the pool when we are not there to watch them."

Mr. Dodd asked, "The buiding that is on the other side of the creek, is that a residence?"

Mr. Davis answered, "No, that is the old concession stand for the old baseball fields."

Mr. Dodd also asked, "Do you have children living to the south of you?"

Mr. Davis responded, "I'm sure there is, but that's where the 6 foot chainlink fence is located."

Mr. Dodd discussed some concerns with pool covers in the past.

Mrs. Davis said, "The pool cover will be controlled from inside the house."

Mr. Carville asked if there were futher questions for the applicant or staff, there were none.

Mr. Cook asked for neighbor comments, there were none.

Mr. Cook asked for Board Member discussion, there was none.

Mr. Dodd **moved to grant a waiver to the required 6' fence surrounding swimming pools as noted in Code §154.06(A)(4)(u)(iv) in association with the proposed installation of an in-ground swimming pool at the residential property located 650 N. Third Street**, seconded by Mr. Worthen. **Motion carried.** Ayes: Dodd, Worthen, Cook. Nays: Hartman.

Old Business

Mr. Dodd **moved to remove the case from the table**, seconded by Mr. Hartman. Motion carried. Ayes: Dodd, Hartman, Worthen, Cook. Nays: None.

**Case No. 01-20
Jeffrey & Yen
Storrer – 359 N
Third Street –
Off-street parking
variance**

Case No. 01-20: Jeffrey & Yen Storrer – 359 N. Third Street – Lot: IL 682 –
The applicant is requesting a variance of 4 off-street parking spaces to the minimum requirement of 2 off-street parking spaces per dwelling unit (2 units * 2 spaces per unit = 4 spaces) as noted in Code Table §154.10-1 in association with the conversion of a single-family dwelling unit (home) into a two-family dwelling unit (home) at the residential property (lot) located at 359 N. Third Street.

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

Zoning Code Section(s): 154.10-1

Mr. Carville presented the following report:

This case was originally set for discussion on January 15, 2020. However, because the applicant was not in attendance, the board moved to table the discussion until the February 19th meeting.

Staff Comments:

The property located at 359 N. Third St. is currently being utilized as a two-family dwelling unit rather than its intended use of a single-family dwelling unit. It is staff's understanding that the property has been operating as a two-family dwelling unit for several years now. The owners of 359 N. Third St. are beginning the official process of obtaining the required Special Use Permit to convert the single-family dwelling unit into a two-family dwelling unit. In order for the Special Use to be reviewed by Tipp City Planning Board, the off-street parking requirements must be met. Accordingly, the applicant seeks a variance of 4 parking spaces (2 per unit).

In conjunction with the proposed conversion of a single-family dwelling unit into a two-family dwelling unit located at 359 N. Third St., the applicant requests the following variance:

1. A variance of 4 off-street parking spaces to the minimum requirement of 4 off-street parking spaces required for a two-family dwelling unit noted in Code Table §154.10-1 in at the residential property (lot) located at 359 N. Third St.

Variance 1

Code Table §154.10-1 states:

TABLE 154.0-1: NUMBER OF OFF-STREET PARKING SPACE REQUIREMENTS	
Use	Parking Space Requirements
Residential Uses	
All Use Types within the Group Living Use Category	One space per two beds
Single-Family , Two-Family, and Multi-Family Dwellings	Two spaces per dwelling unit

The proposed conversion will be from a single-family dwelling unit into a two-family dwelling unit and does not include a garage or driveway (i.e. zero off-street parking spaces). Therefore, a variance of 4 off-street parking spaces to the minimum requirement of 4 off-street parking spaces is needed.

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 home was converted to a two-family dwelling unit in 2010 without Planning Board approval (Special Use Permit).
- The applicant was informed of the requirement for Planning Board approval on July 22, 2010.
- Staff was made aware of the existence of the 2-family dwelling unit in late 2019, which initiated these proceedings.
- Ample amount of legal street parking around the residence.
- Owners and renters will not park in front of the neighbor houses.
- The house is on a small and narrow lot (0.11 acre), with adjoining neighbors in close proximity to the home. Constructing a driveway or garage would be nearly impossible without having to completely demolish the home.

Mr. Cook asked for questions of Staff, there were none.

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

Mr. Jeffrey Storrer; 686 Evans Lane, Dayton, Ohio 45459.

Mr. Storrer began, "I own the property at 359 N Third Street. I have had the property about 15 years. Initially it was my primary residence but it is a rental property now."

Mr. Dodd asked, "Who converted it to a 2-Family Residence?"

Mr. Storrer answered, "When I purchased the house it was a foreclosure and it was in pretty bad condition. It already had the upstairs and downstairs separated. I did not change the property."

Mr. Dodd asked, "Is the only thing you did to the property was update it for living?"

Mr. Storrer answered, "Yes, It was not in a livable condition so we worked very hard to get it to not be an eye sore for the community. I really pride myself in trying to make it look nice. "

Mr. Dodd asked, "In the upstairs unit, it is an actual apartment? Does it have a kitchen and bathroom?"

Mr. Storrer responded, "It is about 500 sq. ft. It is one bedroom, one bathroom and a livingroom/kitchen. It is very small. It best accommodates one person. It is a good efficiency starter place."

Mr. Dodd asked about the off-street parking.

Mr. Storrer added, "The Miami Valley Conservancy has the land right next to me. That is where you would normally have a driveway and a garage, but I did not have that option. There is a grass lane in the back. You can easily fit 2 parallel parked cars in front of the property. You can also fit another car in front of the Conservancy property."

Mr. Cook asked, "When it was constructed, did you get an approval?"

Mr. Storrer answered, "The house is very old. It was added to at some point. None of the conversions that have been done to the property were done by me. When purchased it was already a 2-family house."

Mr. Cook said, "I understand that the addition was done in 1995."

Mr. Storrer said, "You would have better information on it than I would, sir."

Mr. Cook asked, "I'm wondering if a permit was granted at that time. If so, was it granted for a single family or a 2 family?"

Mr. Storrer responded, "I bought the house in 2005 or 2006, it has been about 15 years. It was a foreclosed house and it was in poor condition. The upstairs was already built when I purchased it."

Mr. Cook stated, "When you think about some of our past appeals, such as the football stadium, a lot of the neighbors had complaints about the overflow of parking. As I recall when the American Legion has a lot of people or the Mum Festival it tends to have a parking overflow."

Mr. Storrer said, "I did live there for a couple of years, and when football season is on parking is tight. There is a lane in the back, it is a grass lane, but I have used it in a pinch, especially during the Mum Festival. I have made that available to my tenants, although I have told them it can only be used in a pinch."

Mr. Carville added, "These are very rare occasions, seasonal football and the Mum Festival. As far as parking is concerned we are looking at the entire picture."

Mr. Cook said, "Here It appears that with some improvement you could get a couple parking spaces off of the back alley."

Mr. Storrer added, "I think that is a shared alley."

Mr. Dodd added, "There really is no alley behind the house."

Mr. Carville said, "I don't think that would be possible. You cannot park in an alley"

Mr. Cook added, "I'm not talking about parking. I am talking about access to the back and enough space back there to put a couple of parking spaces."

Mr. Cook said, "In reading from the Tipp City News Letter, it states: Tipp City Residents are reminded of the following guidelines regarding snow and ice removal, the Street Department asks residents to use the following guidelines for a safe winter season. If the City experiences a snow or ice storm, citizens should remove all vehicles from the Street to allow for more efficient snow plowing."

Mr. Storrer added, "The time I have been there I have never had a problem with that, but maybe we didn't get a tremendous amount of snow either."

Mr. Dodd added, "Well, but now you are going to have 4 cars out there instead of 1."

Mr. Storrer responded, "Potentially."

Mr. Dodd said, "Is there room in that grassy area to put 4 cars, in case of a snow emergency?"

Mr. Storrer said, "Yeah, you would have to line them all together, but yeah, you could do it."

Mr. Cook asked, "If you can park them there in an emergency, then why can't you park them there to satisfy the requirement?"

Mr. Storrer said, "It is grass sir, and I think that it is outside of my property line of ownership."

Mr. Carville added, "You would get into trouble with blocking and being in the way."

Mr. Dodd added, "Plus you are in the back of the neighbors to the north of you, you are in their area."

Mr. Storrer added, "That is true, it is a shared access."

Mr. Cook said, "No, that is a legal alley through there. It is a 12 foot wide alley that goes the whole distance of the property that we are talking about."

Mr. Storrer said, "I don't know the exact dimensions, but I have a full size truck and when I park it back there, there is not a lot of room on the other side."

Mr. Dodd said, "There really is no alley there. There is an open culvert there, just to the South of this house."

Mr. Cook pointed out the dedicated alley on the recorded plat map.

Mr. Dodd said, "It says alley, but it stops right at his house."

Mr. Storrer said, "The Miami Valley Conservancy Land is very close to my house."

Mr. Cook said, "The dedication of the alley goes the full width of the subject property."

Mr. Carville said, "There is that alley that they can access to but as far as on his land there is very little space to park. That is why the variance is needed."

Mr. Cook asked, "How wide is his property at the rear? It looks like it's 24 feet."

Mr. Cook asked if there were any neighbor comments, there were none.

Mr. Cook asked for Board Member discussion.

Mr. Worthen asked, "These houses were build back when there was no off-street parking requirement, right?"

Mr. Carville responded, "Yes."

Mr. Worthen said, "There are a lot of houses in town that are like this."

Mr. Dodd added, "There are a lot of shared driveways too around their area and downtown."

Mr. Worthen added, "I know Mr. Cook brought up the point in the News Letter about the snow emergencies, but there are a lot of houses that don't have any places to park and I am one of them. We don't have any driveway or parking available off street. It is nothing different from a lot of people in the City."

Mr. Cook said, "My position is, it was originally built as a single-family, and then there was an addition put on it. I believe that at that time the zoning required four parking spaces in order to convert it to a two-family."

Mr. Dodd **moved to grant a variance of 4 off-street parking spaces to the minimum requirement of 4 off-street parking spaces for a two-family dwelling unit noted in Code Table §154.10-1 for the home located at 359 N. Third St.**, seconded by Mr. Worthen. **Motion tied.** Ayes: Dodd, Worthen. Nays: Cook, Hartman. Case is automatically tabled to next meeting because of 2-2 tie.

Miscellaneous

Mr. Cook said, "A thought hit me with the pool cover issue. This is the 2nd issue that we have had with an applicant choosing to put a pool cover in and then we have had a couple others where they have put in fences. Our ordinances do not cover putting a pool cover on. I guess my thoughts are, if they are going to put the pool in, our ordinance says a 6 foot fence, and there is a substantial amount of money that you put into that and then maintaining. I think we should refer the issue to Council to include a pool cover as an alternate. When I think about it now maybe you have to rely on the applicant to close it when it's necessary, but a 6 foot fence is not that difficult to get over."

Mr. Hartman asked if this was something that could be addressed.

Mr. Carville responded, "I planned to bring this as a discussion point to Planning Board to see if they are open to doing an ordinance or code change."

Mr. Cook added, "Assuming that the owner is diligent in closing the cover at the right time and everything, the cover is probably more secure than the fence. Do you need a motion to take to Planning Board?"

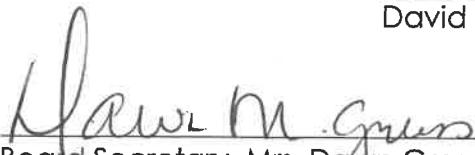
Mr. Carville indicated no motion would be needed.

Adjournment

There being no further business, Mr. Hartman **moved to adjourn the meeting**, seconded by Mr. Dodd and unanimously approved. **Motion carried.** Chairman Cook declared the meeting adjourned at 8:16 p.m.



David Cook, Board Chairman

Attest: 

Board Secretary, Mrs. Dawn Gross