

**BOARD OF ZONING APPEALS MEETING**

**TIPP CITY, MIAMI COUNTY, OHIO**

**March 18, 2020**

<b>Meeting</b>	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.
<b>Roll Call</b>	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.
<b>Citizens Signing the Registrar</b>	Citizens attending the meeting: Dean McClurg and Jeff Storrer.
<b>Board Minutes 2-19-2020</b>	Chairman Cook asked for discussion. There being none, Mr. Dodd <b>moved to approve the February 19, 2020 meeting minutes as written</b> , seconded by Mr. Hartman. <b>Motion carried.</b> Ayes: Dodd, Hartman, Worthen and Cook. Nays: None.
<b>Citizens Comments</b>	There were none.
<b>Administration of Oath</b>	Mrs. Gross swore in citizens and Mr. Carville.
<b>Chairman's Introduction</b>	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.
<b>New Business</b>	There was none.
<b>Old Business Case No. 01-20 Jeffrey &amp; Yen Storrer – 359 N Third Street – Off-street parking variance</b>	<b>Case No. 01-20: Jeffrey &amp; Yen Storrer – 359 N. Third Street – Lot: IL 682 –</b> 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 §154.1-1 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. <b>Zoning District:</b> R-2 – Two-Family Residential Zoning District <b>Zoning Code Section(s):</b> 154.10-1

Mr. Carville presented the following report:

The applicant requests the following variance:

1. 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 St.

**History:**

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 19<sup>th</sup> meeting. At the February 19<sup>th</sup> meeting, the board voted on the case and was split 2-2. Therefore, it was required to be tabled until the March 18<sup>th</sup> 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
<b>Residential Uses</b>	
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.
- City Planner Carville spoke to the Assistant Fire-Chief David Stockler who confirmed that the fire department and Miami County are not required to do inspections for firewalls.
- Approximately four, full-size cars can fit parallel parked in front of the residence at 359 N. Third and Miami Valley Conservancy land frontage. No parking across the street is required.
- The alley that extends off Park Avenue is not complete and does not extend to the property line of 359 N. Third. Tipp City has no plans to extend the alleyway.
- Parking spaces cannot be connected to an unpaved alleyway and the applicant would not be allowed to pave city property.

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

Mr. Cook stated, "I take exception to the statement you made saying that the two individuals from the City has inspected it and that they do not inspect firewalls, because if a permit was gotten from Miami County who does Tipp City's inspections, they should have made those inspections along with granting a building permit."

Mr. Carville responded, "I am not well versed in Fire Code, that is not my specialty, but that is what was given to me by the Assistant Fire Chief."

Mr. Cook added, "Evidently the Fire Chief isn't familiar with what the County does with the building inspections. He should brush up on that."

Mr. Dodd asked, "Are you saying a fire wall is required or the inspection is required?"

Mr. Cook responded, "For a 2 family dwelling, there is a 1 hour fire rated wall required between the 2 residences for safety reasons. If a permit was applied for the County would have inspected that wall and they would not have approved a 2 family dwelling unless it met their inspection."

Mr. Worthen added, "From my understanding the house was already like that when they bought it?"

Mr. Storrer responded, "Yes sir that is correct."

Mr. Cook asked, "Was it permitted for a 2 family dwelling?"

Mr. Dean McClurg; 1730 Raymond Drive, Tipp City, Ohio.

Mr. McClurg began, "I am a realtor. I am also Jeff's uncle. I purchased the property originally before Jeff did in 2003-2004. It had been through foreclosure and I bought it from the bank. At the time it was essentially the same structure that it is now. The only thing that has been done since then is a new roof, new siding and new windows. We do not know when the extension was built or if there was a permit pulled. There is no fire wall because the lower structure includes the old part of the house, and the second apartment is directly above that. Any house, I would guess that became a 2 unit from a 1 unit with an upstairs/downstairs couldn't possibly have a fire wall in between. I don't know what they do about things like that. The house was a piece of junk in a lot of ways. The new section was ok, the older section was in horrible condition. I sold it to Jeff because he wanted to invest, he did a lot of work. He and his dad replaced the roof all the way down, they even took the rafters out because they were bowed. They tore off a porch that was in bad condition. It looks good, but we don't know anything about the permit, we do know that it was zoned 2 family residential at the time that I bought it."

Mr. Cook stated, "I said fire wall and I guess the term wall was maybe not proper. It should be a fire separation of 1 hour between the two dwelling units. If they were one above the other, you put a 1 hour fire separation between the upper and the lower."

Mr. McClurg responded, "I apologize, I shouldn't have brought that up because I don't know anything about that."

Mr. Dodd added, "That's drywall."

Mr. Storrer said, "Yeah, basically its joists and its drywall, like any house."

Mr. Cook said, "No, it is not like any house. There are certain specifications for establishing a one-hour separation between the two and that would take a product called a fire code drywall maybe and depending on the joists spacing that is evaluated at the time that you get the permit for a 2 family dwelling. Miami County has been inspection Tipp City's one, two, and three family dwelling code since 1986. They should have inspected it if it was changed to a 2 family dwelling."

Mr. McClurg added, "It may have happened before 1986."

Mr. Carville added, "Mr. Cook also I think for the firewall that would be more of a question for the Planning Board when they hear the next phase of this process. We are just here for the waiver of the parking spaces."

Mr. Cook asked, "Mr. Storrer do you have anything else that you would like to add?"

Mr. Storrer said, "When I bought the house my intent was to try to make it nice. Tipp City is a good community and that is one of the reasons I bought the house. I can't speak for anything that anyone has done before. If the house was zoned as a double when I bought it, I had no control over that."

Mr. Dodd asked, "Do you have any idea when the house was built originally?"

Mr. Storrer responded, "It is very old. It has wood beams and pins, so that means it has to be well over 100 years old. It also has remnants of knob and tube."

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

Mr. Cook added, "I too have looked at the area and I think that the pictures that show where the parking is available directly across the street at the corner of Parkwood Drive and Third Street is owned by the individual in the house next to that lot. There is no parking on Parkwood Drive so any overflow from that house would have to go on Third Street. Also that lot that is marked in yellow, it is about 75 feet wide and 160 feet deep and it is a buildable lot, probably a pretty desirable lot and it is also within the 1 and 2 family dwelling district. It could be that lot could be developed by the owner that lives there or be sold off for somebody else to develop that lot. With no parking on Parkwood Drive it would seem that they would have a right to some parking spaces along there also."

Mr. Dodd added, "Don't forget the Conservancy District owns part of what goes down through there."

Mr. Cook said, "The Conservancy District starts at the South end of that property. The lot across the street covers the entire front of the subject property that we are discussing right now."

Mr. Worthen asked, "How does that help the situation now for the applicant?"

Mr. Cook responded, "I don't know that it helps it out. I think it makes the situation worse and I also think that it takes away. The applicant proposes to put all 4 parking spaces in that area."

Mr. Storrer added, "Excuse me Sir. Mr. Carville if I understood right, we were saying it was not the property across the street that we were trying to base the 4 parking spots off, it was directly in front of my property and the Conservancy part that is on this side not across the street."

Mr. Carville, "Yeah, on the left side of the street if you are looking at your image where the house is located. The area between the white and yellow cars is the area we are discussing."

Mr. Cook said, "You cannot get 4 cars in that space. There is 24 feet for the Conservancy and 37 feet for the subject property and it is going to take at least 20 feet per car along there for parallel parking. I know there was some dialog about telling the residents of the proposed 2 family dwelling that they could not park in front of other houses, but Third Street is a public right of way and anybody can park along there you cannot limit where people park on that street unless you designate it as handicapped parking."

Mr. Storrer asked, "Mr. Carville you had my picture, correct? I didn't have a long enough tape measure, but I tried to get a good picture. I know he is probably going off the lot dimensions."

Mr. Carville answered, "Yes, from his pictures and from what I could see 3-4 cars in that area would be doable."

Mr. Cook asked for further discussion, there was none.

**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 Street, seconded by Mr. Worthen. Motion passed 3-1. Ayes: Dodd, Worthen, Hartman. Nays: Cook.**

There was none.

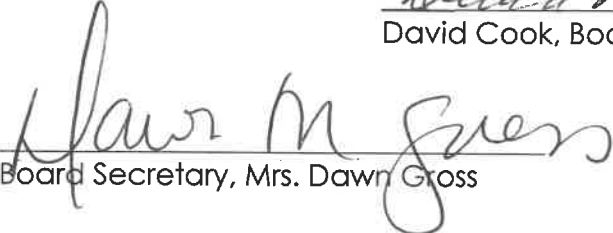
Miscellaneous

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 7:58 p.m.

  
\_\_\_\_\_  
David Cook, Board Chairman

Attest:

  
\_\_\_\_\_  
Board Secretary, Mrs. Dawn Gross