

**BOARD OF ZONING APPEALS MEETING**

**TIPP CITY, MIAMI COUNTY, OHIO**

**May 20, 2020**

**Meeting**

Due to the COVID-19 outbreak and Ohio's stay-at-home order, the Board of Zoning Appeals held its May 20, 2020 Meeting using GoToMeetings a remote meeting platform. David Cook, Allen Worthen and Jerrold Dodd all dialed in using the GoToMeetings meeting system.

City Staff in attendance included City Planner, Colin Carville and Board Secretary Dawn Gross.

Others participants who dialed into this meeting include: Stephen Mayer and Barbara Mayer.

Chairman Cook called this meeting of the Tipp City Board of Zoning Appeals to order at 7:36 p.m.

**Board Minutes  
3-18-2020**

Chairman Cook asked for discussion. There being none, Mr. Worthen **moved to approve the March 18, 2020 meeting minutes as written**, seconded by Mr. Dodd. **Motion carried.** Ayes: Worthen and Dodd. Abstain: Cook. 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. 03-20  
Stephen &  
Barbara Mayer –  
957 Cedar Grove  
Drive –  
Rear yard setback  
variance and  
fence height  
variance**

**Case No. 03-20: Stephen & Barbara Mayer – 957 Cedar Grove Drive – Lot: IL 4201** – The applicants are requesting the following two variances: 1. A variance of 5' to the required rear yard setback of 15' noted in Code § 154.06(A)(4)(u)(ii) and 2. A variance of 12" to the 6' fence height requirement noted in Code § 154.06(A)(4)(u)(iv).

**Zoning District:** PD – Planned Development

**Zoning Code Section(s):** § 154.06(A)(4)(u)(ii) & § 154.06(A)(4)(u)(iv)

Mr. Carville presented the following report:

- 1) The applicant requests a variance to the required setback of 15' noted in Code § 154.06(A)(4)(u)(ii) in conjunction with the proposed

installation of a swimming pool located at the single family residence at 957 Cedar Grove. The variance is as follows:

- A variance of 5' to the required (rear yard) setback of 15' noted in §154.06(A)(4)(u)(ii)

Code §154.06(A)(4)(u)(ii) states:

*The swimming pool, hot tub, or spa shall be set back a minimum of 15 feet from all lot lines as measured from the edge of the water.*

The proposed swimming pool will be located 10' from the western (rear) property line. Thus a variance of 5' to the required (rear yard) setback of 15' ( $15' - 10' = 5'$ ) is needed.

2) The applicant requests a variance of 12" to the required fence height of 6' noted in Code §154.06(A)(4)(u)(iv) in conjunction with the proposed swimming pool located at the single family residence at 957 Cedar Grove. The variance is as follows:

- A variance of 12" to the 6' fence height requirement noted in §154.06(A)(4)(u)(iv)

Code §154.06(A)(4)(u)(iv) states:

*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 6 feet in height and maintained in good condition with a gate and lock.*

The proposed fence is 5', thus a variance of 12" to the 6' fence height requirement 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**

- There are 5' utility easements along the side property lines. There is also a 10' utility easement on the rear property line. The proposed swimming pool with the variance will be very close to the rear easement.
- If the requested variance is granted and prior to the commencement of construction, the applicant will be required to obtain the required Zoning Compliance Permit and pay the associated fee. In addition, the applicant will need to obtain all other building permits (building, HVAC, electrical, etc.) from the Miami County Building Regulations Department.
- The swimming pool, or the entire rear yard of the property on which it is located, shall be walled or fenced to prevent uncontrolled access by children from the street or from adjacent properties.

Mr. Dodd asked, "They are putting a pool in their backyard and they want a variance of 5 feet at the rear of the property? Did I also hear you say that there is a 5' Utility easement?"

Mr. Carville responded, "Yes. On the sides of the property there is a 5' utility and a 10' utility easement at the rear of their property line."

Mr. Dodd, asked, "Would the 10' utility easement run into the pool?"

Mr. Carville, answered, "So the pool itself wouldn't encroach on the easement, however if there was an apron on the back portion, for walking then it would encroach on the easement."

Mr. Dodd said, "It sounds like it does encroach on the pool itself. The fence they are asking for 12", what would the height of the fence be?"

Mr. Carville replied, "It would be 5 feet."

Mr. Dodd asked what type of fencing was being requested.

Mr. Stephen Mayer; 957 Cedar Grove Drive, Tipp City, Ohio.

Mr. Mayer responded, "The fence will be an aluminum fence. It will have self-closing and self-latching gates. In Cedar Grove, the HOA requires not a privacy fence, but an aluminum barred fence."

Mr. Dodd asked, "You said your HOA does not require a privacy fence."

Mr. Mayer added, "They do not allow privacy fences. They are supposed to be open air fencing."

Mr. Cook stated, "We are discussing the Tipp City Zoning Code and the HOA fence does not have any authority here. It would have to follow the City Zoning Ordinances."

Mr. Worthen asked, "Is the fence going all the way around the property?"

Mr. Mayer responded, "Yes, all the way around the back yard. It is a standard pool fence. It will follow every other guideline that the city requests other than we would like it to be 5 foot instead of 6 foot."

Mr. Cook said, "I have a later finding, an email from Mr. Carville that states the HOA may be miss-interpreted. Mr. Carville, can you explain that?"

Mr. Carville stated, "The HOA requires a minimum of 5 feet, you are allowed to have a 6 foot fence in Cedar Grove. You would not have to conform to the HOA if you were to get a 6 foot fence for your pool."

Mr. Mayer said, "That does clarify that a little bit. However, all of our neighbors will have a 5 foot fence back here, and we will have a 6 foot

fence, it will create a bit of an eye sore in a brand new neighborhood. We would like to stay congruent with everyone else."

Mr. Dodd asked, "Why do you believe it would cause an eye sore?"

Mr. Mayer said, "It just looks a little more penitentiary. The bars look a little taller. I think the neighbors will have 5' fences and ours will stick up an additional foot. I don't think it is a good look."

Mr. Worthen asked, "Do your neighbors currently have a 5 foot fence?"

Mr. Mayer responded, "They are going to put up the same time we are."

Mr. Cook asked, "Can you show us any reason why the 5' fence would be an equivalent in protection of a 6' fence?"

Mrs. Barbara Mayer: 957 Cedar Grove Drive, Tipp City, Ohio.

Mrs. Mayer stated, "I would like to clarify the fencing. It is a wrought iron fence that you will see around any neighborhood, we are doing an aluminum version of it. It will be gated and locked."

Mr. Cook interjected, "We are talking about the height of the fence. I don't care about the height of your neighbor's fence neither do I care about the aesthetic look, I am looking for protection. I would have a very hard time voting for anything less than a 6 foot fence around a pool area."

Mr. Mayer added, "I sent a separate email out this afternoon discussing what other communities in Miami County have established for pool safety, as far as the height of the fence. We are the only community that has a 6' regulation. Huber Heights has a 5' regulation and Troy has a 4' regulation that is deemed as a safe fence to keep children from getting in. Safety is a big concern with us as well. I even looked on line to see what the national recommendation was and they recommend 4, but 5 is preferred or obviously higher than that. It seems to be pretty standard across the area that 4-5 feet provides the safety that you are looking for and that we are looking for honestly."

Mr. Cook said, "Tipp City Council has said it will be 6 foot and that is the only thing that I can go by. I guess you are not living in Troy nor Huber Heights, you are living in Tipp City. Unless you can show us that it is just as safe as a 6' fence."

Mr. Mayer said, "I think I have shown you by providing information from the consumer board that states a 4 foot fence is good enough, and we are trying to be at 5."

Mr. Dodd added, "In order to get the Ordinance changed you would have to take that to the City Council and have them change the Ordinance to allow 5' fences. We have to follow the Ordinances."

Mr. Mayer asked, "Then what is the point of doing this variance meeting?"

Mr. Cook added, "There are other things that could be done. You could put a cover over the pool, which might be considered. "

Mr. Cook asked for further discussion about the fence variance?

Mr. Mayer added, "We will be getting a safety locking cover to put on the pool. It is not one of the automated covers, it will have a safety cover on top of the pool if that helps in the decision making process."

Mr. Cook said, "That is not in the application."

Mr. Worthen asked Mr. Carville, "Have there been any other applications for variances on the neighbor's fences like Mr. Mayer is suggesting that they are putting in?"

Mr. Carville responded, "Not to my knowledge. They would be permitted to have a 5' fence if they don't have a pool in their backyard. Normally all pools would have a 6' fence unless you had the previous cases where you allowed a variance for a pool cover. There are not cases in Cedar Grove that have a pool with a 5' fence."

Mr. Dodd asked, "Would the applicant have to re-write the request to add the pool cover?"

Mr. Carville answered, "The Board could entertain a motion here tonight to make that a requirement in the approval process if that is something the Board would want to entertain."

Mr. Cook added, "I would have to have some sort of specification for the pool cover."

Mr. Dodd **moved to deny a variance of 12" to the 6' fence height requirement noted in §154.06(A)(4)(u)(iv) in conjunction with the construction of a swimming pool at the single family dwelling located at 957 Cedar Grove Drive**, seconded by Mr. Worthen. **Motion denied 3-0.**  
Ayes: None. Nays: Dodd, Worthen, Cook.

Mr. Cook instructed the discussion of the 15' setback.

Mr. Cook asked, "If you have a 10' setback to the water's edge, that means that the thickness of the pool, the wall around the pool, does

infringe into the easement. If there is a supply or return plumbing line for the pool that extends outside of that wall, it would also be in the easement and there is no deck or apron shown on the pool drawing and that too would stick out into the easement. How wide of an apron or a deck would you be putting around the pool?"

Mr. Mayer answered, "It will be a 3' concrete deck that will infringe on that easement if you approve this. There is nothing back there. There are no houses, there are no power lines everything runs from the street."

Mr. Cook stated, "I don't care what kind of utilities lines were in there existing, but within your property there is a 10' easement required for whatever utilities would want to go in there. The wall and any plumbing and the deck would infringe into the easement. I don't see how we can grant this variance."

Mr. Carville added, "Mr. Cook if I could interject, if you were to hypothetically approve the setback variance, the applicant could pursue vacating the easement which would require him to get signatures from utility companies. Before I would grant the permit he would have to have the easement vacated. You could entertain the setback, but this would be another obstacle that Mr. and Mrs. Mayer would have to overcome before getting it approved."

Mr. Mayer added, "We would be happy to do that as well, if that makes a difference. Our yard is not that big and the reason we are asking for this variance is because the pool would be that much closer to the house without the 5 feet. Whatever we have to do to make this one happened. The fence we can tolerate, this one just really messes up the whole plan and design of the pool. Whatever needs to be done to get this approved, we are willing to do."

Mr. Cook said, "You could make the pool narrower, which you probably don't want to do. If you change the easement that is on the plat, which means you would also have to replat the lot."

Mr. Carville added, "You would be correct with that Mr. Cook."

Mr. Cook added, "That process might take quite a while. You would have to get an Engineer in there to replat the lot, draw it up with a different easement and then go through whatever it takes."

Mr. Mayer asked, "Can we all look at attachment C, I want to make sure we are all on the same page here. If you are looking at attachment C where we have the pool on there, let's just say we will shorten the backside of the pool, the western side of the pool and we only put a 2 foot skirting around that. Then we could easily go back 30 feet, or we

can take the edge of the exterior of the pool, the skirting right to the utility easement. We won't encroach, we will just be on it."

Mr. Cook said, "What is before us is a 10' setback from the property line."

Mr. Mayer said, "Correct, and that will be the edge of the decking around the pool."

Mr. Cook stated, "You testified before that you were going to put a 3 foot apron around the pool."

Mr. Mayer added, "We did, but I am trying to be adaptable because it sounds like we are splitting hairs here."

Mr. Cook stated, "Mr. Mayer, we are not a negotiating board."

Mr. Mayer said, "I am not trying to negotiate, I am just trying to comply to find something that can work for you and for us. I am staying out of the utility easement. The pool nor the decking will be in the utility easement. I am just asking to go up to the utility easement."

Mr. Cook asked, "Then what will you do with the fence, will you stick it in the skirt?"

Mr. Mayer said, "It will be on the property line."

Mr. Carville added, "Fences can be in the easement Mr. Cook."

Mr. Cook asked for any further discussion.

Mr. Dodd asked for further clarification of what is being voted on.

Mr. Carville stated, "The owner is proposing to maintain the 10' setback, however, that would include the apron, walls, and plumbing. Nothing would encroach the easement."

Mr. Dodd, "Did I hear something about narrowing the pool?"

Mr. Carville answered, "Essentially whatever the applicant can do to reach the 10' setback while staying outside of the easement is what he is willing to do."

Mr. Cook stated, "So he is negotiating. The proposal before us is a 10' setback to the water's edge."

Mr. Dodd addressed Mr. Carville, "I think the homeowner's need to go back and re-write this thing so they include everything that we need to look at instead of negotiating here."



Ms. Mayer added, "There is nothing on our proposal that has anything about this skirting. It is talking about water's edge has to be the 15 feet but we have not decided what is going to go around the pool yet, so we are not negotiating that information, we are just trying to say that we are willing to change that, but it hasn't even been set nor is that in our drawings on attachment C."

Mr. Cook added, "Excuse me, Mrs. Mayer, attachment C on the drawing that I have before me goes 10' from the back property line to the water's edge and that is the proposal that is before us."

Mrs. Mayer added, "That is all that we are asking for. We could do no skirting around it. The skirting around the pool is not in our proposal at all."

Mr. Cook clarified, "It is written in the proposal that the water's edge will be 10' from the property line. That puts the exterior wall out into the easement and you would put a cap on that wall and it would be in the easement."

Mr. Cook asked if there was any further discussion or if someone would like to make a motion.

Mr. Cook **moved to deny a variance of 5' to the required (rear yard) setback of 15' not in §154.06(A)(4)(u)(iv) in conjunction with the construction of a swimming pool at the single family dwelling located at 957 Cedar Grove Drive**, seconded by Mr. Dodd. **Motion denied.** Ayes: Cook, Dodd, Worthen. Nays: None.

#### Old Business

Mr. Cook asked Mr. Carville "What is the status of the Case 01-20, where we were the first step in getting the lot approved as a 2 family dwelling, where is that in the process?"

Mr. Carville answered, "Yes sir, they have to go before Planning Board still. With the COVID pandemic we have not heard from them. The Planning Board for June deadline passed on Monday and I will make sure this next month to follow up with them so that they can pursue the Special Use Permit as required. Hopefully that will take place in July."

#### Miscellaneous

Mr. Cook stated "I spoke with Mr. Spring after our last meeting, he suggested another training session similar to the one we had about a year ago. We now have 2 Board Members that have not attended and neither did Mr. Carville. I was wondering, Mr. Carville have you heard any comments about how that is progressing?"

Mr. Carville responded, "I definitely think Mr. Spring is pursuing that, obviously with the pandemic they are very wary about scheduling in

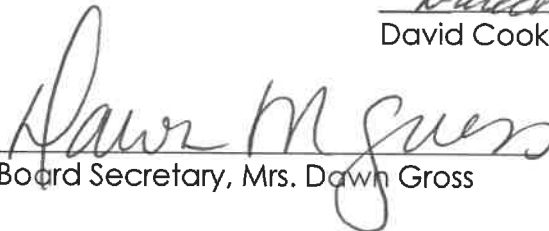
person meetings and I am not certain if the person that would be run the meeting is entertaining that option currently, but it is definitely on Mr. Spring's radar. I think it would be good for all of our Board to participate in that."

Mr. Cook added, "I have been on the Board for a little over 2 years and I think probably over 50% of the cases that we have heard we have been short a member. I know Mr. McFarland was Chairman of the Board before and he said that he most always was short a member. It is Council's responsibility to appoint somebody and I am not so sure where they are. I am considering myself going to Council and reminding them that we need somebody. I don't know what the problem is, unless it is that there aren't any citizens in town who want to be on this Board. I guess that is Council's problem to figure out."

**Adjournment**

There being no further business, Mr. Dodd **moved to adjourn the meeting**, seconded by Mr. Worthen and unanimously approved. **Motion carried**. Chairman Cook declared the meeting adjourned at 8:29 p.m.

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

Attest:   
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Board Secretary, Mrs. Dawn Gross