

BOARD OF ZONING APPEALS MEETING

TIPP CITY, MIAMI COUNTY, OHIO

June 17, 2020

Meeting

Due to the COVID-19 outbreak and Ohio's stay-at-home order, the Board of Zoning Appeals held its June 17, 2020 Meeting using Zoom Meetings a remote meeting platform. Mark Hartman, Jerrold Dodd, and Allen Worthen all dialed in using the GoToMeetings meeting system.

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

Absence

Mr. Hartman **moved to excuse Mr. Cook from the meeting**, seconded by Mr. Worthen and unanimously approved. Motion carried.

Others participants who dialed into this meeting include: Teresa Morgan, Tim McKinney, Christina McKinney and Rue Eskridge.

Vice-Chairman Hartman called this meeting of the Tipp City Board of Zoning Appeals to order at 7:40 p.m.

**Board Minutes
5-20-2020**

Vice-Chairman Hartman asked for discussion. There being none, Mr. Hartman **moved to approve the May 20, 2020 meeting minutes as written**, seconded by Mr. Worthen. **Motion carried.** Ayes: Hartman, Worthen and Dodd. Nays: None.

**Citizens
Comments**

There were none.

**Administration of
Oath**

Mrs. Gross swore in citizens and Mr. Carville.

**Chairman's
Introduction**

Vice-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. 04-20
Rue Eskridge – 770
Pinehurst Drive –
Fence Height
variance**

Case No. 04-20: Rue Eskridge – 770 Pinehurst Drive – Lot: IL 2814 – The applicant is requesting a variance of 30" to Code 154.06(A)(4)(i)(vi)(B) to the maximum allowable height of 42" for fences with a rear yard setback of less than 50' in the rear yard of a double frontage lot.

Zoning District: R-1C – Urban Residential

Zoning Code Section(s): § 154.06(A)(4)(i)(vi)(B)

Applicant was not present. Mr. Dodd **moved to table Case 04-20**, seconded by Mr. Worthen. **Motion carried.** Ayes: Dodd, Worthen, Hartman. Nays: None.

**Case No. 05-20
Tim & Christina
McKinney – 345
Krystal Ellen Drive
– rear and side
yard setback
variances**

Case No. 05-20: Tim & Christina Mckinney – 345 Krystal Ellen Drive – Lot: IL 3832 – The applicant is requesting the following two variaces: 1. A variance of 11' to the required rear yard setback of 15' noted in §154.06(A)(4)(u)(ii) and 2. A variance of 11' to the required side yard setback of 15' noted in §154.06(A)(4)(u)(ii).

Zoning District: PD – Planned Development

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

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 an above ground swimming pool located at the single family residence at 345 Krystal Ellen Dr. The variance is as follows:

- A variance of 11' 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 4' from the eastern (rear) property line. Thus a variance of 11' to the required (rear yard) setback of 15' ($15' - 4' = 11'$) is needed.

2) 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 an above ground swimming pool located at the single family residence at 345 Krystal Ellen Dr. The variance is as follows:

- A variance of 11' to the required (side 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 4' from the northern (side) property line. Thus a variance of 11' to the required (rear yard) setback of 15' ($15' - 4' = 11'$) 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 encroach on both the rear and side easement.
- Because easements are encroached, the applicant must pursue an easement vacation, which is done completely on their own and must be completed prior to the zoning administrator issuing a Zoning Compliance Permit.
- 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.
- Applicant does have approval from the HOA.

Mr. Dodd stated, "As we have mentioned one other time, Ordinances override the HOA."

Mr. Carville said, "That is correct, the HOA is required on our end before we issue approval, anything that they mention we do not enforce."

Mr. Dodd asked "I noticed that the property doesn't really have anything behind it. Mr. Carville, is there any change that the area in the back might be developed in the future?"

Mr. Carville responded, "No, that is owned by the HOA, it is a green space for the subdivision."

Mr. Dodd asked the applicants, "What will you do about fencing around the pool?"

Mr. Dodd asked, "What are the requirements for an above-ground pool vs an in-ground pool?"

Mr. Carville answered, "If the pool is above a certain height the entrance to the pool will need to have a gate around it. A 6' fence is not required for an above ground pool. Once we get to the approval process administratively we will make sure that all of the requirements are met in that regard."

Mr. Dodd asked the applicants, "How tall is this above ground pool?"

Mr. McKinney responded, "It is 54" tall."

Mr. Worthen asked the applicants, "I notice you have quite a bit of width going across the property, is there a reason why you are putting it so close to the side?"

Mr. McKinney stated there was a large tree on the left side of the yard that would interfere with the pool.

Mr. Worthen asked Mr. Carville if he was aware of any planned development beyond their house since they are at the end of a dead end street.

Mr. Carville answered, "No sir, there isn't development within the Tipp City limits. Outside the border it is outside of the Tipp City limits. The subdivision won't go any further."

Mr. Dodd asked the applicants, "Is there any fencing around your property at all?"

Mr. McKinney responded, "There is a 4' picket fence currently."

Variance #1: Mr. Hartman moved to grant a variance of 11' to the required (rear yard) setback of 15' noted in §154.06(A)(4)(u)(ii) in conjunction with the construction of a swimming pool at the single family dwelling located at 345 Krystal Ellen Drive, seconded by Mr. Dodd. **Motion carried.** Ayes: Hartman, Dodd, Worthen. Nays: None.

Variance #2: Mr. Harman moved to grant a variance of 11' to the required (side yard) setback of 15' noted in §154.06(A)(4)(u)(ii) in conjunction with the construction of a swimming pool at the single family dwelling located at 345 Krystal Ellen Drive, seconded by Mr. Dodd. **Motion carried.** Ayes: Hartman, Dodd, Worthen. Nays: None.

**Case No 06-20
Teresa Morgan –
214 Rolling Acres
Drive – shed
variance**

Case No. 06-20: Teresa Morgan – 214 Rolling Acres Drive – Lot: IL 2182 –
The applicant is requesting a variance for a shed to be placed in a side yard rather than the required rear yard according to § 154.06(A)(4)(g)(i).

Zoning District: R-2 – Two-Family Residential

Zoning Code Section(s): § 154.06(A)(4)(g)(i)

Mr. Carville presented the following report:

The applicant requests a variance to the required rear yard placement of a detached storage/utility sheds, gazebos and other similar structures noted in Code § 154.06(A)(4)(g)(i) in conjunction with the proposed installation of a shed located at 214 Rolling Acres Dr. The variance is as follows:

- A variance for a shed to be placed in their side yard rather than the required rear yard according to § 154.06(A)(4)(g)(i).

Code § 154.06(A)(4)(g)(i) states:

Detached storage/utility sheds, gazebos, and other similar structures are permitted as an accessory structure but shall only be permitted in the rear yard.

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 shed will not encroach on any easements.
- The applicant has a 6 ft. privacy fence surrounding the rear and side yard. The proposed shed would be placed within the fence. Based on Attachment F, it appears that only the roof would show above the fence.
- The rear yard contains a patio, trees, gate between properties and a steep slope that limits the area where a shed can be placed.
- 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.

Mr. Dodd indicated that it looked as though there was already an existing shed in the back yard. The applicant stated she lives in a double and the shed Mr. Dodd is referring to belongs to the other side of the double.

Mr. Dodd asked if there was a fence separating the properties in the back yard.

Ms. Morgan said the privacy fence splits the properties in the back.

Mr. Dodd asked Mr. Carville "Does the applicant have a double front yard?"

Mr. Carville explained, "No, it is a standard one frontage lot."

Mr. Worthen asked, "Does the slope of the back yard go the entire length of the property?"

Ms. Morgan answered, "It does for the most part. It is a little more level where you see the tree on the drawing." Ms. Morgan also explained if the shed was placed on the interior of her yard, it would interfere with the gate on the fence and block access to the other side.

Mr. Dodd **moved to grant a variance for a shed to be placed in the side yard rather than the required rear yard according to §154.06(A)(4)(g)(i) at the residence of 214 Rolling Acres Drive,** seconded by Mr. Worthen. **Motion carried.** Ayes: Dodd, Worthen, Hartman. Nays: None.

**Case No 04-20
Rue Eskridge – 770
Pinehurst Drive –
Fence Height
Variance**

RUE ESKRIDGE JOINED THE ZOOM CALL LATE – BOARD AGREED TO HEAR CASE.

Mr. Hartman **moved to remove case 04-20 from the table**, seconded by Mr. Worthen. **Motion carried.** Ayes: Hartman, Worthen, Dodd.
Nays: None.

Case No. 04-20: Rue Eskridge – 770 Pinehurst Drive – Lot: IL 2814 – The applicant is requesting a variance of 30" to Code 154.06(A)(4)(i)(vi)(B) to the maximum allowable height of 42" for fences with a rear yard setback of less than 50' in the rear yard of a double frontage lot.

Zoning District: R-1C – Urban Residential

Zoning Code Section(s): §154.06(A)(4)(i)(vi)(B)

Mr. Carville presented the following report:

In association with the proposed construction of a 6' privacy fence, the applicant seeks a variance for the single-family home located at 770 Pinehurst Drive. The property in question is a double-frontage lot, with frontages on Pinehurst (north) and W. Kessler-Cowlesville (south). The variance requested is:

1. (For the southern front setback) A variance of 30" to the maximum allowable height of 42" for fences with a rear yard setback of less than 50' of a double frontage lot.

Variance 1

In association with the proposed construction of a 6' privacy fence within the southern front yard setback, the applicant seeks a variance to Code §154.06(A)(4)(i)(vi)(B) which states:

Fences, walls, and hedges shall not exceed 42 inches in the front yard or along any lot line that is adjacent to a street. For double frontage lots, fencing in the rear yard may exceed 42 inches if the fencing is set back a minimum of 50 feet from the right-of-way but in no case shall it exceed 6 feet in height.

The proposed privacy fencing is outside the minimum 50' setback and is 72" tall. Therefore a variance of 30" is required (72 – 42 = 30).

Review Criteria §154.03(K)(4)

(4) Review Criteria

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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 east and west side property lines. The southern front yard has a 10' utility easement.
- Many properties on Pinehurst have received similar variances in the past. The majority of homes in the subdivision that border W. Kessler-Cowlesville have a fence along the road.

- The applicant hopes the fence would create more protection for their children in an enclosed area.
- 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.

Mr. Dodd asked the applicant if he wanted 30" in the front.

Mr. Eskridge clarified, "I want 30" in the rear facing Kessler-Cowlesville. It will run from the back side of the house and come up to the back of the house. It will make a box."

Mr. Carville added, "Mr. Dodd because it is a double frontage that is why it is considered a front yard. Currently he is only allowed 42" back there, he needs 30" more to get to the 6' he is requesting."

Mr. Carville added, "Another thing of note, the property is inward enough that turning into the subdivision, it would not create any line of sight issues."

Mr. Hartman stated, "Chevington Chase and Stonehenge both have good clearance."

Mr. Harman added, "A few months ago we gave a variance to the corner lot at Pinehurst and Chevington Chase for a similar fence."

Mr. Dodd **moved to grant a variance of 30" to Code §154.06(A)(4)(i)(vi)(B) to the maximum allowable height of 42" for fences with a rear yard setback of less than 50' in the rear yard of a double frontage lot for the property located at 770 Pinehurst Drive,** seconded by Mr. Hartman. **Motion carried.** Ayes: Dodd, Hartman, Worthen. Nays: None.

Old Business

There was none.

Miscellaneous

There was none.

Adjournment

There being no further business, Mr. Worthen **moved to adjourn the meeting,** seconded by Mr. Hartman and unanimously approved. **Motion carried.** Vice Chairman Hartman declared the meeting adjourned at 8:14 p.m.


 Mark Hartman, Board Vice Chairman

Attest: 
 Board Secretary, Mrs. Dawn Gross