

Oakwood, Ohio  
August 13, 2015

The Zoning Board of Appeals met in session this date at 4:30 o'clock p.m., in the council chambers of the City of Oakwood, 30 Park Avenue, Oakwood, Ohio 45419. The Chair, Mr. Kip Bohachek, presided and the Recording Secretary, Ms. Lori Stacel recorded.

Upon call of the roll, the following members of the Board responded to their names:

MR. KIP BOHACHEK .....	PRESENT
MR. DAN DEITZ.....	ABSENT
MR. GREG LAUTERBACH .....	PRESENT
MR. KEVIN HILL .....	PRESENT
MRS. LINDA WEPRIN .....	PRESENT

The following officers of the city were present:

Mr. Jay A. Weiskircher, Assistant City Manager  
Mr. Robert F. Jacques, City Attorney  
Mr. Ethan M. Kroger, Code Enforcement Officer  
Ms. Lori Stacel, Clerk of Council

The following visitors registered:

Trisha Duff, 313 E. Thruston Blvd.

Mr. Bohachek moved to excuse the absence of Mr. Deitz. The motion was seconded by Mr. Lauterbach.

Mr. Bohachek asked the members of the Board if any discussion was warranted regarding the minutes from the July 9, 2015 meeting which was slated for approval. Mr. Bohachek inquired about the notes stating that the 55 foot variance was calculated for the front yard setback using the alternative calculation methods. He said that he thought the actual setback was 50 feet. Mr. Jacques responded that he was correct. The minutes are a reflection of the transcripts that were taken and during the meeting 55 feet was stated as the average of the 50 foot north setback and the 60 foot south setback line, but 50 feet is the accurate calculation. Mr. Bohachek also inquired about the date listed on the heading of the draft minutes that were sent out. Ms. Stacel responded that the heading date was an error and the date was corrected on the final minutes provided at the meeting. There being no further discussion, Mr. Lauterbach moved that the minutes from the July 9, 2015 meeting be approved. Mr. Hill seconded the motion and it was so ordered.

Mr. Bohachek reviewed the meeting procedure with all in attendance.

Application #15-3, a request by Randy and Trisha Duff to vary the rear yard setbacks for a multi-level deck at 313 E. Thruston Blvd., was introduced.

Mr. Bohachek opened the public hearing.

Mrs. Trisha Duff, property owner at 313 E. Thruston Blvd., shared that a certified plot survey and elevations were requested from the July 9 meeting, which she provided.

Mr. Weiskircher asked Mrs. Duff if the deck has already been built.

Mrs. Duff responded that the deck was already built, but they do have future plans to include steps.

Mr. Weiskircher shared with the Board that if this request is approved, they should place a condition on the approval that all building permits and required inspections must be obtained from Oakwood and Kettering.

Mr. Lauterbach asked if there was reason why the work on the deck was started early.

Mrs. Duff responded that DP&L evaluated some low hanging power lines around where the deck was going to be built and indicated that it would help them if the deck was completed sooner rather than later so they could fix the power lines. She also shared that they wanted to get the deck built for personal reasons as well. The deck is placed between the house and garage so it does not encroach on any property lines.

There being no further public testimony offered, the public hearing was closed and the Board of Zoning Appeals began its deliberations.

Mr. Bohachek asked for clarification on why the variance request is needed.

Mr. Weiskircher explained that the deck encroaches 8 feet into the rear yard setback.

Mr. Bohachek shared that with the existing rear door at the east end of the deck, there are not a lot of options to stay within the setback.

Mr. Lauterbach said that if the deck was made any larger with the existing power lines, it would get close to or possibly be under the power lines which would not be a good situation.

Mr. Bohachek shared that the deck doesn't appear to be an issue for the neighbors.

Mr. Lauterbach agreed and said that he is okay with the position of the deck on the lot. The only concern he had was with it being built without following the standard process and securing the proper permit and inspections prior to building.

Mr. Bohachek explained that he spoke with Mr. Duff. Mr. Duff has photos of the construction, which he will need to review in order to determine what types of inspections are needed from a building standpoint.

Mr. Weiskircher asked Mrs. Duff if she had all of the completed permit paperwork.

Mrs. Duff responded that she did have the completed paperwork, but would need to prepare an updated check for payment.

Mr. Weiskircher asked that Mrs. Duff get all of the paperwork and payments to Code Enforcement Officer Ethan Kroger.

Therefore, it was moved by Mr. Bohachek and seconded by Mr. Hill that application #15-3, the request to vary the rear yard setback for a multi-level deck at 313 E. Thruston Blvd., be approved pending submission of the completed permit applications and obtaining the required inspections. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

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Application #15-2, a request by Brad and Whitney Gibson to review and approve findings of fact at 1140 Ridgeway Road, was introduced.

Mr. Jacques shared that part of the motion from the July 9 meeting requested to have counsel prepare written Findings of Fact and Conclusions of law consistent with the Board's deliberations. He asked if the Board had any questions about the prepared document.

Mr. Bohachek inquired about the information listed in the Findings of Fact regarding excluding the Deering property to calculate the front yard setbacks. He asked if that was actually decided on during the July 9 meeting.

Mr. Jacques shared that he reached that conclusion after reading back through the transcripts. He said that there was discussion about the Deering property facing Harman so the calculations for the Deering property was actually for the side yard setback versus a front yard setback. The Board's discussion alluded to the need to exclude the Deering property from the calculations of front yard setbacks along Ridgeway.

Mr. Lauterbach asked if the corner property on Raleigh Rd. should have been excluded from the calculations.

Mr. Weiskircher shared that even though the property is on a corner lot, the front yard faces Ridgeway.

Mr. Jacques asked the Board if they would prefer him to reword the Findings of Fact document to clarify that the Deering property doesn't have a front yard setback on Ridgeway.

Mr. Bohachek and the Board felt that this update should be made in the Findings of Fact document.

Mr. Hill asked if Mr. Jacques could explain the reference of the Duncan case from the July 9 meeting.

Mr. Jacques shared that it was an Ohio Supreme Court case in the mid 1980's. The Duncan factors state that no one factor can control a decision, but all factors must be weighed and balanced appropriately. If the case is appealed, the importance is how the Board weighed items to support the decision.

Mr. Hill asked what the next steps are and if the appeal would go to the county.

Mr. Jacques shared that he would represent the city on behalf of the BZA. He explained that an appeal was already filed, but was withdrawn because the written decision had not yet been approved by the BZA.

Mr. Lauterbach asked if the appeal would stop the property owners from building.

Mr. Jacques explained that if the court grants a stay it would stop the homeowners from building.

Therefore, it was moved by Mr. Bohachek and seconded by Mr. Lauterbach that application #15-2, to review and approve the Findings of Fact for a proposed new home at 1140 Ridgeway Road, be approved. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Lauterbach asked if there is any recourse when someone builds without the appropriate permits or inspections.

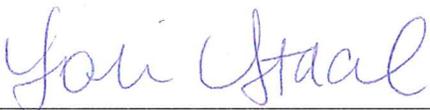
Mr. Weiskircher shared that typically the permit costs are doubled.

Mr. Bohachek added that technically the structure could be removed, but that usually doesn't serve the right purpose.

There being no further business, the meeting concluded at 5:02 p.m.

  
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CHAIR

ATTEST:

  
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RECORDING SECRETARY