

Oakwood, Dayton, Ohio

January 10, 2008

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, Dayton, Ohio-45419. The Chair, Mr. Jim Faulkner, presided and the Recording Secretary, Ms. Cathy Blum, recorded.

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

MR. JIM FAULKNER.....PRESENT
MR. ROBERT CURRY.....PRESENT
MR. KIP BOHACHEK.....PRESENT
MRS. SHARON KILLWORTH....ABSENT

The following officers of the city were present:

Mr. Jay A. Weiskircher, Assistant City Manager
Mr. Dave Bunting, City Inspector

The following visitors were in attendance:

Charles Cerny, 201 Maysfield Road
Marty Beyer, 9 Dellwood Avenue
Bob Corrado, 33 Dellwood Avenue
Jeff Miller, Greater Dayton Builders

It was moved by Mr. Curry and seconded by Mr. Bohachek that the absence of Mrs. Killworth be excused. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Faulkner indicated an election of officers needs to be undertaken. Discussion ensued that Mrs. Butler was recently appointed to the Planning Commission. Messers Curry and Faulkner indicated they will need to leave in the near future as Mr. Curry is cutting back on his outside activities and Mr. Faulkner has a home under construction out the city limits which should be completed in May.

Therefore, it was moved by Mr. Curry and seconded by Mr. Faulkner that Mr. Bohachek be appointed Chair and Mrs. Killworth as Vice Chair. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

It was moved by Mr. Faulkner and seconded by Mr. Curry that the minutes of the meeting held September 13, 2007 be approved as submitted and the reading thereof be dispensed with at this hearing. Upon a viva voce vote on the question of the motion, the same passed unanimously and it was so ordered.

At this time, Mr. Bohachek assumed the duties of Chairman and opened the public hearing portion of the meeting. He reviewed the meeting procedure with the applicants and explained since only three members are present; a unanimous vote is required for an application to be adopted. He went on to add that the applicants have the option to postpone presentation of their application if they so desire. Both applicants indicated their desire to proceed.

Application #08-1, the request by Robert Corrado to vary the side and rear yard setbacks for an attached garage and addition at 33 Dellwood was reviewed. Mr. Miller, contractor, explained the variance request is for a project which includes a new two car garage, enlarged family room and covered porch, and involves both a side and rear yard variance. The project will improve the functionality and appearance of the property. Mr. Curry questioned why the 5' side yard setback cannot be met. Mr. Miller explained due to the existing family room and 16' wide door for the two-car garage, they need area/clearance for access. Mr. Faulkner indicated he has a similar situation at his home. Mr. Weiskircher questioned the 2' overhang on the garage. Mr. Miller indicated it is a 1' overhang and will be pulled in on the west elevation.

Mr. Bohachek asked for comments. Mr. Beyer, 9 Dellwood, believed this is a very worthwhile project that will benefit the Corrados, neighbors and community since it has no negative impact to either neighbor and behind them is the High School property. He noted there is no garage at present, so the proposal will assist them during inclement weather. Mr. Beyer believes this will also help relieve the parking congestion since that block is only permitted parking on one side of the street. Overall, a worthwhile project with no negative impact. There being no further comments, the hearing was closed.

Mr. Faulkner expressed concern with the maintenance in that 3' side yard setback and the overall lot coverage, however, pointed out the property is unique since it abuts the school. Mr. Curry understands the 3' concern but believes the overall improvement to the property is of a greater degree than the setback, an opportunity to take parking off the street, and welcomed a \$100,000 renovation. Mr. Faulkner pointed out changing the carport to a garage is a great improvement. Mr. Bohachek noted the 3' setback complies with the minimum building code requirements. Discussion ensued in regard to staff's concern with the condition of the driveway which is in need of repair. Mr. Bohachek asked if that was on the property maintenance list. Mr. Weiskircher indicated it wasn't last year but in its present condition it will be added to this year's list.

STANDARDS FOR VARIANCES

- A. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: There are no shape or topographical conditions which create a particular hardship or necessitate the variance request.
- Side Yard Variance: Likewise, there are no shape or topographical conditions on the west side of the property which create a hardship for the property owner.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

- B. The conditions upon which a petition for a Variance is based are unique to the property for which the Variance is sought and are not applicable, generally, to other property within the same zoning classification.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: The rear yard condition in this application is not unique to properties in the R-5 Zoning District.
- Side Yard Variance: Similarly, there are no side yard conditions in this application unique to the R-5 Zoning District.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

- C. The purpose of the Variance is not based primarily upon a desire to make more money out of the property.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: The rear yard variance request is associated with a desire by the property owner to expand the footprint and convert the existing carport into a covered porch and construct a new two car garage. While these improvements will certainly enhance the value of the property, their primary purpose is to better meet the lifestyle needs of the occupant rather than to make more money out of the property.
- Side Yard Variance: The applicant is proposing to construct a new two car garage which will encroach approximately 2' into the required side yard setback. The proposed garage is being built for the convenience of the property owner and is not based upon a desire to make more money out of the property.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

- D. The alleged difficulty or hardship is caused by this Ordinance and has not been created by any person presently having an interest in the property.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: The rear yard is already non-conforming at 28.5' where 35' is required. The applicant is proposing to further reduce the rear yard setback to

20' with the expansion of the existing footprint of the carport to the north and construction of a new two car attached garage.

- Side Yard Variance: The side yard variance request is driven by the desire of the applicant to build a two car garage only 3' from the west property line where 5' is required.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

E The property in question cannot yield a reasonable return if permitted to be used only under the regulations of district in which it is located.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: The property can yield a reasonable return without expanding the footprint of the existing carport for use as a covered porch. And, while an enclosed two car garage is highly desirable, the property can yield a reasonable return without the requested variance.
- Side Yard Variance: Although the proposed garage still requires a rear yard variance, there appears to be adequate space along the west side of the property so as to eliminate the need for the side yard variance request.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

F The granting of the Variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: Since the property abuts Oakwood Junior/Senior High School to the north, and there are already detached garages throughout this neighborhood which extend well into the rear yard, it does not appear that granting the rear yard variance for the covered porch and garage addition will be detrimental to other properties in the area.
- Side Yard Variance: The proposed garage will be 3' from the west lot line with a 2' overhang. Locating the garage this close to the side lot line does not appear to be necessary as there is adequate space available simply by moving the garage several feet to the east, thereby eliminating the need for the side yard variance request.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

G. The proposed Variance will not impair an adequate supply of light and air to adjacent property or substantially increase the congestion of the public streets, the danger of fire, or danger to persons or property, nor will it create unreasonable noise, create a substantially adverse aesthetic appearance or substantially diminish or impair property values within the neighborhood.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: The proposed expansion of the existing carport footprint for use as a covered porch along with the new garage should not impact the supply of light and air to adjacent properties nor will it create an adverse aesthetic appearance or impact property values.
- Side Yard Variance: While the proposed location of the garage near the west property line will not impair an adequate amount of light to the adjacent property nor create an adverse aesthetic impact, there has been no information submitted to justify the side yard variance request.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

H. The shape, topography, or other conditions of the land is such that it is extremely difficult to comply with the regulations generally applicable to the property.

PRELIMINARY STAFF FINDINGS:

- Rear Yard Variance: There are no shape or topography issues which drive the rear yard variance request.
- Side Yard Variance: Likewise, there are no shape or topography issues which directly impact the side yard variance request.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

I. The applicant must show that the Variance requested will not be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or

improvements permitted in the vicinity; will not materially impair an adequate supply of light and air to properties and improvements in the vicinity; will not substantially increase congestion in the public streets due to traffic or parking or increase the danger of flood or fire; will not unduly tax public utilities and facilities in the area; or will not endanger the public health, safety or welfare.

No yard, setback, or lot area or width Variance may be granted unless any structure subsequently placed on the lot, and the result of any changes in existing structures, must be of such appearance, size and location that it will not have an adverse impact upon the value of other residences in the immediate vicinity and on approximately the same size lots and, while recognizing the diversity of Oakwood housing, is reasonably compatible with the appearance, size and location of such other residences on such lots.

Plans for any structure to be placed upon, or improved or expanded upon, a lot granted such a Variance must be submitted in advance for approval by the BZA, and no structure may be erected except in accordance with plans approved by the BZA on the basis of meeting these conditions and the other standards required for Variances. In considering the plans, the BZA must give notice and hold a public hearing in the same manner as described above in this Section.

PRELIMINARY STAFF FINDINGS:

- **Rear Yard Variance:** It does not appear that the rear yard variance request, either for the expansion of the carport footprint or the new garage, will have a detrimental impact on properties within the area.
- **Side Yard Variance:** There has been no information provided by the applicant to justify the need for the west side yard variance. There appears to be adequate space available to move the garage two feet to the east and thereby eliminate the need for the side yard variance.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Faulkner and seconded by Mr. Curry that application #08-1, the request by Robert Corrado to vary the side and rear yard setbacks for an attached garage and addition at 33 Dellwood Avenue, and known as lot #1607, be approved based on plans and information submitted, subject to the driveway being repaired, and in accordance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Application #08-2, the request by Barbara and Charles Cerny to vary the zoning requirements for the purpose of: 1) installing a hot tub in the side yard; 2) constructing a shed closer than three feet to the principal structure; and 3) installing a 5 foot high fence in the front yard at 201 Maysfield was reviewed. Mr. Cerny explained improvement projects they have undertaken including a landscaping plan to the south for a brick patio (for which they obtained a permit) that was to be divided by landscaping to the east with a trellis and climbing greenery to screen a hot tub. He presented a drawing from the landscaper plus pictures that describe the placement. He indicated this corner property has no true rear yard so they felt this was the best isolated place for the hot tub albeit it will be seen from the street but the neighbor and landscaper suggested a trellis with permanent greenery to assist in screening. Mr. Cerny indicated the neighbor to the north also suggested another trellis for additional screening. They also propose a storage shed to abut the garage, thus the variance request.

Mr. Bohachek referenced a letter the city received from the neighbor at 215 Maysfield and suggested they review each variance separately. Mr. Curry believes the trellis/hot tub should be combined and expressed concern that the hot tub is visible from the street. Mr. Cerny referenced a similar situation at 205 Haver, a corner lot, which has an in-ground pool screened by a brick and wrought iron fence and is visible from the street. Mr. Curry reviewed a hot tub that is in the side yard on W. Thruston but it is surrounded by heavy screening and agreed you can see the pool at 205 Haver; however, is concerned that this fence and foliage doesn't seem like enough screening. Mr. Cerny indicated the landscaper believes there is enough screening and added if it were in the rear, it could also be visible from the street. Mr. Weiskircher explained if the hot tub was located to the rear, then a special use would be needed for violation of the

50% green space – all of which had been communicated to the applicant. Mr. Curry questioned the functionality of the proposed location and doesn't believe hot tub users would want to walk to the front of the house which is visible to the neighbor on the south. Mr. Cerny referenced the letter from the neighbor to the south who only requested additional screening which they plan to do. Mr. Faulkner asked if they ever considered locating the hot tub in the rear yard adjacent to the garage. Mr. Cerny believes that is still visible from the street. Mr. Faulkner asked about the area near the carport, which could be seen from Schantz, but if screened properly with a fence, would be easier access, etc. Mr. Cerny indicated that isn't feasible since they have a drive-thru garage. Mr. Faulkner suggested in or in front of the carport with a permitted 5' fence, less objectionable than the front which as the neighbor's expressed might impact properly values.

Mr. Curry indicated this property is unique with the drive, but believes the screening needs to be greatly enhanced for the proposed location. Mr. Faulkner questioned the location of the cistern and concurred with the uniqueness of the property but doesn't feel the location would be successful. Mr. Bohachek appreciates concerns that this is a private use and the front is not a comfortable setting but believes by the carport could impact the drive. Mr. Curry referenced the shed and is concerned how that protrudes into the yard and wondered why it can't be closer to the building, what the rationale is for the city's required setback. Mr. Cerny believes for safety to which Mr. Weiskircher concurred. Mr. Bohachek indicated there are nice garden sheds which enhance properties and believes this minimally sized shed is a good fit. Mr. Cerny explained the garage has some storage, but the shed is needed for additional storage space. Discussion ensued in regard to potential locations, that no foundation is needed for a shed of that size, etc.

Mr. Curry had no problem with the shed per se, but is concerned with the proposed location of the hot tub in the front. He suggested they table the hot tub and that the applicant look at other potential locations. Mr. Weiskircher asked that a time stipulation be required. Mr. Bohachek suggested next month's meeting. Mr. Cerny asked if they plan to proceed with the shed or get the application bundled. He also questioned whether it is a fence or trellis. Mr. Bohachek asked about the fence height requirements and where the side yard commences. Mr. Weiskircher indicated a 5' fence is permitted in the side, but some of the proposed fence encroaches into the front which is based on the setback of the neighboring property. Mr. Bunting indicated 10-15' extends into the front where only a 3 ½' fence is permitted. Mr. Cerny asked about permits. Mr. Weiskircher explained once the board approves the request, then a permit may be obtained. There being no other comments, Mr. Bohachek closed the public hearing.

Mr. Faulkner agreed this be tabled to see if the applicant can present a couple different rear yard options and that the three variance requests be bundled together. Mr. Curry indicated he would have a hard time to approve the hot tub location. Mr. Weiskircher indicated if relocated to the rear it may not longer be within the board's purview.

Therefore, it was moved by Mr. Curry and seconded by Mr. Faulkner that application #08-2, the request by Barbara and Charles Cerny to vary the zoning requirements for the purpose of: 1) installing a hot tub in the side yard; 2) constructing a shed closer than three feet to the principal structure; and 3) installing a 5 foot high fence in the front yard at 201 Maysfield Road, and known as lot #406, be tabled. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

The Board of Zoning Appeals adjourned. The public meeting concluded at 5:25 p.m.

CHAIR

ATTEST:

RECORDING SECRETARY