Oakwood, Dayton, Ohio
February 14, 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. Kip Bohachek, presided and the Assistant City Manager, Mr. Jay Weiskircher, recorded.

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

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

The following officer of the city was present:

Mr. Jay A. Weiskircher, Assistant City Manager

The following visitor registered:

Barb Cerny, 201 Maysfield Road

It was moved by Mr. Curry and seconded by Mr. Faulkner that the minutes of the meeting held January 10, 2008 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.

Tabled 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.

Chairman Bohachek noted that the applicants sent an e-mail to the city approximately a week ago withdrawing the variance request for the hot tub. He asked Mrs. Cerny whether the fence variance had also been withdrawn. Mrs. Cerny commented that the structure she purchased is a trellis and not a fence, and that she intends to leave the trellis in place for privacy purposes. Chairman Bohachek also noted that the tabled variance request for the storage shed is still before the BZA.

Mrs. Cerny noted that Burns Landscaping prepared a master landscaping plan for the property and in researching the Oakwood Zoning Code by way of the city's website she did not see where a permit was needed for a shed. As part of the landscape plan, a patio was constructed in the side yard and again, even though she reviewed the Zoning Code, she was unaware a permit was necessary. She commented that the placement of the hot tub is consistent with the side yard location of the pool at 205 Haver Road. Nevertheless, after hearing of the neighbor's objections at the last meeting, she and her husband have withdrawn their variance request for the hot tub. Mrs. Cerny commented that she plans to use the hot tub as a planter.

In regard to the shed, Mrs. Cerny noted that there are limited rear yard options and they chose this particular model since it will fit nicely next to the garage. Mrs. Cerny confirmed that the shed will be used exclusively for garden tools and equipment and will not be used to store flammable liquids. Mr. Faulkner inquired about the color of the shed. Mrs. Cerny responded that it will be eggshell to match the brick as closely as possible.

Discussion ensued regarding the trellis/fence. In response to a question posed by Mr. Curry, Mr. Weiskircher noted that unless the BZA grants a height variance or the fence is removed, the city will take enforcement action. Mrs. Killworth commented that in her opinion, this is a trellis being used as a fence. Mr. Bohachek concurred and expressed his concern that the trellis is currently leaning and may not be capable of adequately supporting the weight of any vegetation that may be planted in the future. Mrs. Cerny explained that the primary purpose of the trellis is to provide a "green" screen.

Mr. Curry moved for approval of the variance for the fence with the condition that vegetation be installed consistent with the landscape plan.

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:

- Shed: There are no shape, topographic or physical conditions which necessitate that the shed be located in an area which violates the 3' setback requirement.
- Fence: There are no shape, topographic or physical conditions which necessitate the encroachment of the 5' fence into the front yard.

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:

- Shed: Even though the applicant has a small rear yard there is more than ample space available to locate a storage shed in an area which meets the 3' setback requirement.
- Fence: The conditions in this application are not unique and are being driven primarily by the applicant's desire to locate a hot tub in the side yard and to screen that area using the fence to support clematis vines.

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:

- Shed: Likewise, the location of the shed is for the convenience of the applicant and is not associated with a desire to make more money out of the property.
- Fence: The location of the fence is directly related to the desire of the property owner to screen this area for privacy purposes 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:

- Shed: Again, while none of the existing conditions on the site have been created by the applicants, the proposed shed location violates the 3' setback requirement provided for in the Zoning Code.
- Fence: The alleged difficulty or hardship regarding the fence has been created by the applicant's desire to locate a hot tub in the side yard thereby creating a need to screen the area for privacy purposes.

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:

- Shed: Similarly, the property can yield a reasonable return if the applicant is required to abide by the 3' setback requirement for accessory structures.
- Fence: The property can certainly yield a reasonable return if the applicant is required to abide by the zoning requirement which limits front fences to 42" in height.

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:

- Shed: Allowing the storage shed to be located directly next to the garage will not have a detrimental impact on the adjoining properties since the area is already enclosed by a privacy fence.
- Fence: Since the fence regulations were modified a number of years ago there has been a conscious effort to limit variances to those situations which are unique to a particular property. In the opinion of staff, the applicants have failed to make a compelling argument as to the need for a side yard hot tub and the 5' high front yard fence being used for screening purposes.

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:

- Shed: The proposed location of the shed does not create light or air issues nor does it create an adverse aesthetic appearance or impair property values.
- Fence: There are no light or air issues, or aesthetic appearance issues, associated with the fence height. Nonetheless, granting the height variance would certainly be a departure from past practice and ongoing efforts to protect the integrity of the fence height regulations.

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:

- Shed: There is certainly ample space in the rear yard to locate a storage shed in an area which complies with the setback requirements set forth in the Zoning Code.
- Fence: There are no conditions present which necessitate the encroachment of the fence into the front yard.

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:

- Shed: While staff is not strongly opposed to the proposed location of the shed, there are other viable options available which would not require the granting of a variance.

- Fence: The applicant has chosen to interpret the Zoning Code in such a way that the structure which has already been erected be considered a trellis rather than a fence. Under the Zoning Code, a trellis, up to 8' in height, is permitted in any yard, including the front yard.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Curry and seconded by Mr. Faulkner that a portion of tabled application #08-2, the request by Barbara and Charles Cerny to vary the zoning requirements for the purpose of installing a 5 foot high fence in the front yard at 201 Maysfield be approved based on plans and information submitted, subject to vegetation being installed consistent with the landscape plan furnished by the applicant and in accordance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed with three (3) yeas and one (1) nay vote from Mrs. Killworth.

In regard to the hot tub, Mrs. Cerny requested that it remain in its present location and be permitted to be used as a planter. Following a brief discussion, Mr. Bohachek advised the applicant that the hot tub must be removed from its present location within 60 days of the date of this hearing.

Mr. Curry and Mrs. Killworth both opined that the Cernys have limited options for placement of the storage shed and the garage location is probably the best option available. Mr. Faulkner objected to the appearance of the shed and noted that the structure should be somewhat compatible with the house and that this proposed model is not. Mr. Bohachek questioned Mrs. Cerny about this particular design. She noted that this is a tight spot and the proposed structure is the best option available. Mr. Curry commented that he views this in the context of the overall improvements to the property and the garage location is the best possible solution. Mr. Faulkner mentioned that perhaps the variance should be contingent upon completion of the landscape plan. Mrs. Cerny reminded the BZA that the landscape plan will be phased in over a three year period beginning in 2008.

Therefore, it was moved by Mr. Curry and seconded by Mrs. Killworth that a portion of tabled application #08-2, the request by Barbara and Charles Cerny to vary the zoning requirements for the purpose of: constructing a shed closer than three feet to the principal structure at 201 Maysfield be approved based on plans and information submitted, subject to completion of the rear yard portion of the landscape plan in 2008 and in accordance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same failed with two (2) yea and two (2) nay votes from Mr. Faulkner and Mr. Bohachek.

Mr. Bohachek commented that he was also concerned about the appearance of the shed. Mrs. Cerny offered to paint the shed to more closely match the color of the brick. Mr. Bohachek made a motion to approve the storage shed variance subject to it being painted a color that closely matches the color of the garage brick, and that the rear yard portion of the landscape plan be completed in 2008. The motion was seconded by Mr. Curry. Upon a viva voce vote on the question of the motion, same passed with three (3) yeas and one (1) nay vote from Mr. Faulkner.

Mr. Weiskircher noted that Mr. Curry has served the community on the BZA since 1993 and thanked him for his many years of service. City council has already appointed Dan Deitz and Rob Stephens to the BZA and they will begin their terms immediately. Jane Voisard has also been appointed to replace Mr. Faulkner when he resigns later this spring.

The Board of Zoning Appeals adjourned. The public meeting concluded at 5:15 p.m.

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CHAIR

ATTEST:

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(ACTING) RECORDING SECRETARY