

Oakwood, Dayton, Ohio

November 17, 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 Recording Secretary, Mrs. Cathy Gibson, 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. ROB STEPHENS.....PRESENT
MR. DAN DEITZ.....PRESENT
MRS. JANE G. VOISARD.....ABSENT

The following officer of the city was present:

Mr. Jay A. Weiskircher, Assistant City Manager

The following visitors were in attendance:

Steve Flelry, Centerville
Tom Wild, 126 W. Dixon Avenue

The minutes of the previous meeting were dispensed with.

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

The tabled application #08-7, request by Tom and Maura Wild to vary the front yard setback for a roof extension over the patio; vary the side yard setback for a cantilevered second floor addition and overhang; and vary the side yard for the installation of a condenser unit at 126 W. Dixon was placed back on the table for review. Mr. Bohachek asked for the revised plans. Mr. Flelry presented drawings and explained the framing plan depicts too many windows; the correct version is the elevation drawing. He indicated on the first floor, a door was removed in the kitchen and replaced with a window, the existing dining room window will remain (that was the window not shown on the original plan last week) and on sheet three, the location of the third floor windows have been dictated by furniture placement. He referenced sheet 7 which shows that the roof was raised 8" for the headers and his preference for the 2/12 rather than suggested 4/12 pitch roof, which he believes is too steep. Mr. Flelry noted these revised plans meet the cost needs of the owner and include a shingle roof.

Mr. Bohachek asked about the siding material. Mr. Flelry submitted a sample of the vinyl siding and indicated he asked for a cost comparison on the fiber cement siding and was told that material would be a 10% increase in cost. If the latter material is used, he plans to have it stained in the spring so the house would not be finished until then; however, the use of vinyl would allow the project to be completed yet this winter. Mr. Bohachek indicated there is some fiber cement material that is pre-stained and asked the owner if he has made a comparison of the materials. Mr. Wild indicated he has spoken with his neighbor and they have no problem with the use of vinyl and referenced vinyl siding on neighboring homes and The Little Exchange. Mr. Deitz referenced the elevation drawings and the three windows. Mr. Flelry indicated one of those windows exists and wasn't shown on the original plan. Mr. Stephens asked if all the windows will match. Mr. Flelry agreed. There being no one in the audience, Mr. Bohachek closed the public hearing.

Mrs. Killworth was pleased that the added windows serve to break up the east elevation. Mr. Stephens is pleased to see the greater pitched roof and had no problem with vinyl siding, would prefer a siding that doesn't require ongoing maintenance. Mr. Deitz expressed his personal preference for siding other than vinyl. Mr. Flelry explained the need to find the right color to make this project work and believes they are looking at earth tone colors. Mr. Bohachek expressed concern with all the siding and agreed the right

color will make a difference since very little roof is visible. He was also pleased with the additional windows that help break up the east elevation and noted once the vinyl siding color is chosen, they are stuck with that. Mr. Bohachek recommended that the additional 10% cost for the other siding be considered. Mr. Flelry indicated the 10% is only material cost, including labor, etc.; the cost will be closer to an additional 30%.

A motion was made by Mr. Stephens to approve application #08-7, the request by Tom and Maura Wild to vary the front yard setback for a roof extension over the patio; vary the side yard setback for a cantilevered second floor addition and overhang; and vary the side yard for the installation of a condenser unit at 126 W. Dixon Avenue and known as pt lot 94, based on amended plans and information and the use of the premium Arlington Collection Style Crest vinyl siding as submitted and reviewed at the meeting. The motion was not passed due to the lack of a second.

It was moved by Mrs. Killworth and seconded by Mr. Stephens that application #08-7, the request by Tom and Maura Wild to vary the front yard setback for a roof extension over the patio; vary the side yard setback for a cantilevered second floor addition and overhang; and vary the side yard for the installation of a condenser unit at 126 W. Dixon Avenue and known as pt lot 94, be approved based on amended plans and information submitted and subject to the board's review of siding material and color. Upon a viva voce vote on the question of the motion, said motion was not passed due to a two (2) yea votes (Mrs. Killworth and Mr. Stephens) to two (2) nay votes (Mr. Bohachek and Mr. Deitz).

Mr. Bohachek expressed concern with the vinyl siding. Mr. Flelry explained he is trying to serve his client from a financial aspect and has no problem with vinyl due to its longevity. Mr. Weiskircher asked for an estimate on the additional cost to use the hardy planked siding. Mr. Flelry estimated \$8,000-\$9,000. Mr. Wild asked if he were to replace the vinyl due to the storm damage, and then if he came in with the proposed addition would he be required to re-side the vinyl. Mr. Weiskircher doubted if they would require all new siding. The board discussed the proposed improvement to the property, aesthetics, budgetary constraints, longevity of the material, etc.

Mr. Flelry reiterated they are trying to improve the property within budgetary needs. Mrs. Killworth indicated the board is at an impasse. Mr. Stephens doesn't believe modern vinyl is bad and his personal preference is to approve it, particularly since many homes in Oakwood have vinyl siding. He also doesn't want to require a siding that needs ongoing maintenance. He indicated this house currently doesn't look good and he doesn't believe they should hold up the project based on personal preference of vinyl versus plank siding.

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:

- Front .entry roof structure – The front yard is already non-confirming at 37' where 70' is required. The proposed roof structure extends an additional 6' into the front yard resulting in a setback of approximately 31'.
- Second story addition – The east side yard is already non-confirming at 13' where 20' is required. A cantilevered portion of the proposed addition encroaches an additional 2.5' into the east side yard leaving a setback of approximately 10.5'.
- Condenser unit – The placement of the condenser unit is being driven by the location of the new furnace that will serve the proposed addition.

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:

- Front entry roof structure – The conditions in this application are fairly typical of many properties in this immediate area.
- Second story addition – The side yard conditions in this application are also fairly typical of many properties in this immediate area.
- Condenser unit – The east side yard is already non-conforming so any further encroachment or structure requires a variance.

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:

- Front entry roof structure – The purpose of the variance is to create a more defined front entry to the home and is not based upon a desire to make more money out of the property.
- Second story addition – The Wilds are expecting their third child so the purpose of the variance is to meet space needs of the residents and is not based upon a desire to make more money out of the property.
- Condenser unit – The purpose of the variance is to locate the condenser unit in close proximity to the new furnace that will serve the proposed addition.

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:

- Front entry roof structure – As already mentioned, the front yard is non-conforming at 37' where 70' is required. The proposed addition encroaches an additional 6' into the front yard setback.
- Second story addition – Similarly, the side yard is already non-conforming at 13' where 20' is required. A cantilevered portion of the proposed second story addition encroaches an additional 2.5' into the east side yard setback.
- Condenser unit – The alleged difficulty in this application is a function of the location of the new furnace being installed to serve the new addition.

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:

- Front entry roof structure – The property can certainly yield a reasonable return if the proposed front yard variance is not granted.
- Second story addition – Likewise, the property can yield a reasonable return if the proposed side yard variance is not granted.
- Condenser unit – The property can yield a reasonable relocation if the variance is not granted. Although the applicant could move the condenser unit to the rear yard, the added distance from the furnace will reduce the efficiency of the unit.

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:

- Front entry roof structure – The proposed roof structure will have no impact on adjacent properties nor will be injurious to the neighborhood.
- Second story addition – With the existing elevation difference, the proposed second story addition should not impact the closest neighbor to the southeast. And, since the addition is on the east side of the existing home, it should have no impact whatsoever on the adjacent property owner to the west.
- Condenser unit – The proposed location of the condenser unit will not impact the adjoining property owner to the southeast.

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:

- Front entry roof structure – The roof structure is designed to create a more formal entrance to the home and it should not have an adverse aesthetic appearance nor diminish property values in the area.
- Second story addition – Increasing the square footage by adding another story results in a structure more in keeping with the scale of other homes in the immediate area. Therefore, the addition should not create an adverse aesthetic appearance nor diminish property values within the neighborhood.
- Condenser unit – Given the elevation difference and the presence of a fairly tall retaining wall, the condenser unit should not create a noise problem for the adjoining neighbor.

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:

- Front entry roof structure – As previously noted the front yard is already non-conforming so any proposed improvement that extends beyond the existing footprint requires a variance.
- Second story addition – Like the front yard, both side yards are non-conforming so any proposed extensions require variances.
- Condenser unit – The variance request is being driven by the location of the furnace rather than any shape or topography conditions.

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:

- Front entry roof structure – The proposed roof structure creates a more formal entry into the home and appears to be a significant aesthetic improvement over the existing condition.
- Second story addition – Given the location of the proposed second story addition on the east side of the home and the fact that this home sits at a significantly lower elevation than the adjoining property to the southeast, it does not appear that the addition will have an adverse impact on the neighborhood.

- Condenser unit – Ideally, we would like to see the second condenser unit located next to the existing unit on the west side of the house, but given the location of the new furnace, and the fact that the adjoining property owner to the southeast will not be impacted by the noise generated by the unit, staff does not see the east side yard location as a particular problem.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Bohachek and seconded by Mrs. Killworth that application #08-7, the request by Tom and Maura Wild to vary the front yard setback for a roof extension over the patio; vary the side yard setback for a cantilevered second floor addition and overhang; and vary the side yard for the installation of a condenser unit at 126 W. Dixon Avenue and known as pt lot 94, be approved based on amended plans and information submitted, subject to vinyl siding of a premium .048” grade, the siding color to be approved by the board, the owner to make an effort to view and strongly consider the use of fiber cement materials, and in accordance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed unanimously with three (3) yea votes and one (1) nay vote (Mr. Deitz) and it was so ordered.

Mr. Fleury asked if they could start the project as soon as possible. Mr. Bohachek concurred, upon submission and approval of the required plans.

The Board of Zoning Appeals adjourned. The public meeting concluded at 5:20 p.m.

CHAIR

ATTEST:

RECORDING SECRETARY