

Oakwood, Dayton, Ohio

June 11, 2009

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 officers of the city were present:

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

The following visitors were in attendance:

Ed Muse, 256 Telford Avenue  
K. Sanford, 209 Forrer Boulevard  
J. Trame, Contractor for 209 Forrer Boulevard  
Jim Pancoast, 295 Hathaway Road

It was moved by Mrs. Killworth and seconded by Mr. Deitz 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.

It was moved by Mrs. Killworth and seconded by Mr. Stephens that the minutes of the meeting held April 9, 2009 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, same passed unanimously and it was so ordered.

Application #09-3, the request by Dr. Kathryn Sanford to vary the side yard setback for the installation of a condenser unit at 209 Forrer was reviewed. Dr. Sanford explained her variance request so as to install a new condenser unit on the east and remove the existing unit from the rear west side of the home. She noted the east yard is a 7' dead space area and the line/pipes to the existing unit run outside under the steps and are unsightly, and based on the aesthetics of the new rear deck and landscaping, she'd like the unit relocated. Dr. Sanford referenced a note from the neighbor to the east, Mr. Carmichael, who had no problem with the location and she asked him to let her know if there was concern with the noise. She believes the unit will not be visible from the street based on existing vegetation but is willing to install more screening.

Mr. Bohachek asked for the neighbor's note. Dr. Sanford also submitted photos of the existing unit and proposed location, and introduced her contractor from Southtown Heating & Cooling. Mr. Bohachek explained when he was at the site he questioned why the line was not in the crawl space and learned there is no crawl space access. Mr. Stephens asked if the unit will be located south of the gate. Dr. Sanford responded yes. Mr. Stephens questioned the new unit. The representative from Southtown Heating & Cooling explained it is 30" square and much quieter with a 74 decibel rating. Discussion ensued in regard to the very small amount of space between the foundation of the original home and addition. There being no comments from the audience, the public hearing was closed and the board reviewed the request.

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: There are no physical surroundings, shape or topographical conditions 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: The conditions existing at this property are fairly typical of the R-6 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: The purpose of the variance is to address the property owner's desire to locate the condenser unit away from an area which is frequently used for leisure activities and entertaining.

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: The existing condenser unit is conforming so the variance request is being initiated by the property owner's desire to place a new condenser unit on the east side of the property.

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: The property can yield a reasonable return under the existing regulations for the district.

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: With the information submitted by the applicant we are unable to determine whether the proposed east side yard location for the condenser unit will negatively impact the adjoining property.

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: There has been no information submitted by the applicant which addresses the potential noise impact from the condenser unit on the adjoining property to the east.

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: There are no shape, topographic or other conditions that make it difficult to comply with the regulations.

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: The applicant has failed to submit any information to show that placing a condenser unit in the east side yard will have no material impact upon the adjoining property.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mrs. Killworth and seconded by Mr. Stephens that application #09-3, the request by Dr. Kathryn Sanford to vary the side yard setback for the installation of a condenser unit at 209 Forrer Boulevard, and known as lot #742, be approved based on plans and information submitted, subject to the unit being screened from the street with landscaping or a fence, 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.

Dr. Sanford asked if evergreen bushes would comply. The board concurred.

Application #09-4, the request by Jim and Mary Pancoast to vary the setback for a driveway at 295 Hathaway was presented. Mr. Pancoast explained they are installing an addition to the rear of their home for a master bedroom suite. The garage is currently located under the house with a difficult driveway access. The proposed addition also includes a new three-car garage and they'd like the drive to extend up to the retaining wall; however, the regulations require that the drive be 5' to the property line and they would prefer not to have a 2' gap between the drive and the wall for easier access. Mr. Bunting explained there is 1 ½' abutting the retaining wall and 2 ½ - 3' at the angle. Mr. Pancoast reviewed the plans with the board and noted he met with the neighbor to the north who had no concerns since they can't see the area because of the existing vegetation. There being no comments from the audience, the public hearing was closed and the board reviewed the request.

#### 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: The topographical conditions on the north side of the property make it difficult for the applicants to comply with the five (5) foot driveway setback.

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: The conditions in this application are unique and are not typical of most properties in the R-3 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: The purpose of the variance is to be able to have convenient ingress and egress to the new garage openings being built as part of the master suite 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: The alleged difficulty in this application is created by the applicant's desire to extend the new drive area to within several feet of the north property line.

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: The property in question can yield a reasonable return if permitted to be used only under the regulations of the R-3 zoning district.

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: The granting of the variance will simply extend the retaining wall and driveway conditions that exist today.

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: The proposed variance will not diminish or impair property values within the neighborhood.

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: The topography of the north side on the property make it difficult to comply with the regulations applicable to the property.

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: As mentioned above, the variance request is simply an extension to the west of the conditions that exist today.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Stephens and seconded by Mr. Deitz that application #09-4, the request by Jim and Mary Pancoast to vary the setback for a driveway at 295 Hathaway Road, and known as pt lot #2571, be approved based on plans and information submitted 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.

Mr. Pancoast extended thanks to city staff who were great to work with throughout the process.

Application #09-5, the request by Edward Muse to vary the side yard setback for the installation of a condenser unit at 256 Telford was presented. Mr. Muse explained his condenser unit is at the rear south side and he is requesting a variance to the west side yard for installation within the area enclosed by the existing privacy fence. Mr. Stephens asked if it will be located behind the fence. Mr. Muse concurred and noted that the existing unit is being moved as part of a planned rear yard deck project. Mr. Stephens asked if he spoke with the neighbor. Mr. Muse responded yes, there were no objections. There being no comments from the audience, the public hearing was closed and the board reviewed the request.

#### 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: There are no shape or topographical conditions which cause a hardship to the owner if the strict letter of the zoning regulations are carried out.  
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: The applicant is requesting to place a new condenser unit into a side yard setback which is typical of many properties in the R-6 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: The purpose of the variance is to remove the existing condenser unit and place a new condenser unit around the corner of the house so that the rear yard space may be incorporated into a proposed deck project.  
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: The alleged hardship is caused by the applicant's desire to place a condenser unit in the west side yard.  
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: The property can yield a reasonable return under the side yard setback regulations for the R-6 zoning district.  
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: In addition to the fact there is an existing privacy fence that encloses the proposed west side yard location thus providing a solid screen of the unit from the adjoining neighbor and the street, the width of the neighbor's driveway also provides additional separation to further mitigate noise generated by the new condenser unit. For these reasons, staff does not believe that granting the variance will be detrimental to the adjacent neighbor or the neighborhood.  
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: As mentioned above, with the existing privacy fence and the distance between the proposed location of the condenser unit and the adjoining neighbor's home, staff does not believe that noise or aesthetics will impact 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: There are no shape, topography or other conditions that make it difficult to comply with the regulations.

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: City staff is not opposed to the west side yard location being proposed for the relocated condenser unit.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Deitz and seconded by Mr. Stephens that application #09-5, the request by Edward Muse to vary the side yard setback for the installation of a condenser unit at 256 Telford Avenue, and known as lot #1010, be approved based on plans and information submitted 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.

The Board of Zoning Appeals adjourned. The public meeting concluded at 4:54 p.m.

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CHAIR

ATTEST:

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RECORDING SECRETARY