

Oakwood, Dayton, Ohio

July 14, 2005

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. Robert Curry, 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. ROBERT CURRY .....PRESENT  
MR. JIM FAULKNER.....PRESENT  
MR. KIP BOHACHEK.....PRESENT  
MRS. SHARON KILLWORTH....ABSENT  
MR. WILLIAM J. ROESS.....PRESENT

The following officers of the city were present:

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

The following visitor was in attendance:

Joe Mueller, 1334 Devereux Drive

It was moved by Mr. Faulkner 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.

It was moved by Mr. Faulkner and seconded by Mr. Bohachek that the minutes of the meeting held June 9, 2005 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.

Mr. Curry reviewed the meeting procedure with the applicant.

Application #05-5, the request by Joe Mueller to vary the rear yard setback for the installation of an addition at 1334 Devereux was reviewed. Mr. Mueller referenced the information he submitted for a 14' x 20' sunroom that encroaches 6' into the 40' required rear yard. He had submitted two options, one with siding; or the second and preferred option of brick, if they can match the brick. He indicated there are taxus shrubs in the rear that will be removed and later in time they plan to add a paver or stamped concrete patio. Mr. Curry asked if they know whether the brick can be matched. Mr. Mueller believes they can. Mr. Roess noted brick is the applicant's preference. Mr. Faulkner asked if the addition is level with the house. Mr. Mueller responded yes, but a step down is planned to the patio. Mr. Weiskircher noted staff's preference is also the brick option.

There being no further comments, the public hearing was closed. Mr. Curry asked if they should make approval contingent on use of brick. Mr. Bohachek indicated if they are unable to match the brick, then the use of a different shade of brick will make the addition really stand out. Mr. Faulkner believes the brick can be matched. Mr. Roess noted the proposed siding matches the second floor. Mr. Faulkner noted other homes in the immediate area also have 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: There are no physical surroundings, shape or topographical conditions which cause a particular hardship on 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: Many homes in this area already have additions which encroach upon rear yard setback lines.

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 this variance is for a sunroom addition 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: The reason for the variance is the desire of the property owner to construct a sunroom 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: The property can yield a reasonable return without the granting of a variance.

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: Since there are already rear additions to both of the homes on the adjoining properties, there is no reason to believe that the granting of a variance in this case will be detrimental to the public welfare.

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 should not impact the adjoining property to the south nor should it create an adverse aesthetic appearance or diminish property values.

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: While there is insufficient rear yard space available to construct the proposed sunroom without encroaching into the rear yard setback, there are no shape, topography or other conditions that make it extremely 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: This proposal does not appear to be inconsistent with rear additions other property owners in this area have already undertaken. The exterior materials for the proposed sunroom addition will match the wood siding on the existing home.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Upon consideration of these representations by the applicant, the board made a finding that these standards for variances have been met.

Therefore, it was moved by Mr. Bohachek and seconded by Mr. Roess that application #05-5, the request by Joe Mueller to vary the rear yard setback for the installation of an addition at 1334 Devereux Drive, and known as lot #3341-pt 42, be approved based on plans and information submitted, subject to using brick if it can be matched, 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.

There being no further business to come before this session of the Board of Zoning Appeals, it was moved by Mr. Bohachek and seconded by Mr. Faulkner that this session of the Board of Zoning Appeals be now adjourned. Upon a viva voce vote on the question of the motion, the same passed unanimously and it was so ordered. Thereupon, the meeting of the Board of Zoning Appeals was adjourned at 4:43 p.m.

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CHAIR

ATTEST:

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RECORDING SECRETARY