Oakwood, Dayton, Ohio
June 9, 2005

The Zoning Board of Appeals met in session this date at 4:47 o'clock p.m., in the council chambers of the City of Oakwood, 30 Park Avenue, Dayton, Ohio-45419. The Vice 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. ROBERT CURRY……..ABSENT
MR. JIM FAULKNER……PRESENT
MR. KIP BOHACHEK..……..…PRESENT
MRS. SHARON KILLWORTH….PRESENT
MR. WILLIAM J. ROESS…..…..…ABSENT

The following officer of the city was present:

Mr. Jay A. Weiskircher, Deputy City Manager

The following visitors were in attendance:

Weston & Kate Lorenz, 126 Greenmount
Linda and Pat Meyer, 322 Monteray
Chuck Balaj, 126 E. Thruston
Roland, Fullmer's Landscaping

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

In regard to the April 14, 2005 meeting minutes, Mr. Faulkner pointed out that the last motion should be four (4) yea votes, not "year" votes as noted. Therefore, it was moved by Mrs. Killworth and seconded by Mr. Bohachek that the minutes of the meeting held April 14, 2005 be approved as amended 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.

Mr. Faulkner reviewed the meeting procedure and explained that since only three of the five members are at the meeting, a unanimous vote is required to pass any variance. If any applicant so chooses, they may table the request until another meeting.

Application #05-3, the request by Mr. and Mrs. Weston Lorenz to vary the side yard setback for an existing condenser unit at 126 Greenmount was reviewed. Mr. Lorenz explained the unit was installed across from the neighbor's condenser so noise is not a problem. Mrs. Lorenz submitted photos of the property and condenser, and referenced a letter from the abutting neighbor stating their support for the current condenser location. Mr. Lorenz indicated they have landscaped around the unit. Mr. Bohachek wondered how long the unit has been in place. Mrs. Lorenz responded about a year. Mr. Bohachek asked if they replaced an existing unit. Mrs. Lorenz responded no, everything was new. Mr. Faulkner wondered if a permit was issued. Mr. Lorenz responded yes. There being no comments, Mr. Faulkner closed the public hearing.

Mrs. Killworth commented that the east side yard is the logical location. Mr. Faulkner believes it could have been installed in the rear yard and is concerned with the number of requests coming in after the fact. Mrs. Killworth indicated the owners have plans to install a rear deck which is why the east side yard location was chosen. Mr. Bohachek agreed this it the correct location given the owner's upcoming deck plan. Mrs. Killworth noted the condenser isn't visible from the street. The board reviewed the photos of the condenser and screening. Mr. Bohachek wondered when they plan to build the deck. Mr. Lorenz indicated as soon as possible, when they met with Mr. Bunting a few weeks ago about the proposed deck and required setbacks, they learned the condenser was in violation, so once the condenser location is approved, they plan to move forward with the deck permit. Discussion ensued in regard to the required 6' side yard setback and that the deck will not require a variance.

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 to the property owner if the strict letter of the regulations were applied.

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 typical of many properties in the R-4 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 permit an existing condenser unit to remain in its current location rather than 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 alleged difficulty in this application was created by the contractor who placed the unit within the required six (6) foot side yard setback.

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 if the unit were to be moved to either a conforming rear or west side yard location.

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 should not be detrimental to the public welfare nor injurious to other property since the unit is screened from the street by vegetation and is located immediately opposite a condenser unit at the adjoining property to the east.

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: Even though the unit is opposite an existing condenser and will add to the noise level, the impact should be minimal. Since the unit is screened by existing vegetation, aesthetics should not be an issue.

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 or topography conditions that it make 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: It does not appear that the location of the existing unit will have an adverse impact on the adjoining property to the east.

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 Mrs. Killworth and seconded by Mr. Bohachek that application #05-3, the request by Mr. and Mrs. Weston Lorenz to vary the side yard setback for an existing condenser unit at 126 Greenmount Boulevard, and known as lot #2299, be approved based on plans and information submitted and in accordance with all applicable city rules and regulations.

Upon call of the roll on the question of the motion, the following vote was recorded:

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

There being three (3) yea votes and no (0) nay votes thereon, said motion was declared duly passed and it was so ordered.

Application #05-4, the request by Patrick and Linda Meyer to vary the side yard setback to maintain the existing condenser unit at 322 Monteray was reviewed. Mr. Meyer explained the condenser has been in for about a month. He went on to note that although the contractor filed for a permit he felt the side location behind the fence was the logical placement. Mr. Meyer indicated Mr. Bunting informed them there wasn't enough space on the side, but the contractor went ahead and installed the unit. Mrs. Meyer explained one other location would have been on the existing deck, but this is their useable space in the tight rear yard; another location would have been behind the breakfast nook but the contractor indicated that would have made installation too difficult given the concrete crawl space. Mr. Meyer indicated the east side yard is the best location, less obtrusive. Mrs. Meyer referenced photos of the unit and a letter of support from the abutting neighbor. Mr. Meyer noted the unit is not noisy. Mrs. Meyer indicated it's an overall improvement to the home since there was previously no air. There being no other comments, the hearing was closed.

Mrs. Killworth agreed the properties are so close together and this was the obvious location behind the fence since it's screened from the neighbor and the street. Mr. Faulkner agreed. Mr. Bohachek expressed concern with the condensers from both homes causing a lot of noise reverberation. Mr. Faulkner indicated he was there when the condenser was running and it was quiet.

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 to the property owner if the strict letter of the regulations were applied.

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 fairly typical of properties in 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: The purpose of the variance is to permit an existing condenser unit to remain in its current east side yard location rather than 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 alleged difficulty in this application was created by the contractor who placed the unit within the required five (5) foot side yard setback.

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 if the unit were to be moved to a rear yard location.

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 should not be detrimental to the public welfare or injurious to other property since the unit is screened from the street and the adjoining east neighbor by a privacy fence.

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 just mentioned, the unit is screened from the street and the adjoining property by a privacy fence, which should also help minimize the noise level.

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 or topography conditions which 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: Since the unit is already screened by a privacy fence it does not have an aesthetic impact on the adjoining neighbor or neighborhood, nor does it appear that the noise generated by the condenser unit will be injurious to the adjoining property to the east.

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 Mrs. Killworth and seconded by Mr. Bohachek that application #05-4, the request by Patrick and Linda Meyer to vary the side yard setback to maintain the existing condenser unit at 322 Monteray Avenue, and known as lot #1451, be approved based on plans and information submitted and in accordance with all applicable city rules and regulations.

Upon call of the roll on the question of the motion, the following vote was recorded:

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

There being three (3) yea votes and no (0) nay votes thereon, said motion was declared duly passed and it was so ordered.

Mr. Weiskircher referenced approved application ##05-1, the request by Charles & Rebecca Balaj to vary the side yard setback for an enlarged deck at 126 E. Thurston and the applicant's wish to relocate the spa from the upper deck to the lower deck. Mr. Balaj explained they discovered the spa took up too much space on the upper deck by the fireplace, so they'd like to relocate it to the lower deck and have it sunken. He reviewed photos of the deck and pointed out how the bulk of the spa will be concealed behind the trees, nothing will be visible from the street. Mr. Faulkner questioned the 9" cover area. Mr. Balaj indicated that is the area to store the cover. Mr. Faulkner indicated based on his spa that probably isn't enough space. Mrs. Killworth asked if the spa is required to be covered. Mr. Balaj explained it will be covered and locked since he has small children and added there is no entry from the ground to the deck. Mrs. Killworth questioned how close the deck is to the neighboring property line. Mr. Fullmer responded 8'. Mr. Balaj explained the 8' abuts the neighbor's drive and garage, not living space; and felt the relocation of the spa will lessen any noise impact. Mr. Balaj added the neighbor's garage is probably at least 30 feet away from the proposed spa location. Mr. Faulkner asked if they are required to approve the modified plan. Mr. Weiskircher concurred. Mr. Bohachek asked if there are regulations relating to hot tub location. Mr. Weiskircher responded no and he wanted the board's review of the change in plans. Discussion ensued in regard to the number of gallons of water the spa will hold, the additional footers, cross sections of the deck, concern with weight when the tub is full, etc. Mr. Weiskircher indicated the amended plan needs to be submitted to Kettering. Mr. Faulkner reiterated his concern that the structural members of the deck be sufficient to support the weight of the spa when it's full.

Therefore, it was moved by Mr. Bohachek and seconded by Mrs. Killworth that in regard to approved application ##05-1, the request by Charles & Rebecca Balaj to vary the side yard setback for an enlarged deck at 126 E. Thurston Boulevard, and known as lot #3837, be amended based on the new location of spa subject to Kettering issuing a revised building and structural permit. 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 Mrs. Killworth 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 5:24 p.m.

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VICE CHAIR

ATTEST:

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RECORDING SECRETARY