Oakwood, Dayton, Ohio
April 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….PRESENT
MR. WILLIAM J. ROESS…..….…PRESENT

The following officer of the city was present:

Mr. Jay A. Weiskircher, Deputy City Manager

The following visitors were in attendance:

Shari Hackman, 148 Telford Avenue
Jerry Charles, 219 Wisteria Drive

It was moved by Mrs. Killworth and seconded by Mr. Bohachek that the minutes of the meeting held March 10, 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, same passed unanimously and it was so ordered.

Mr. Curry reviewed the meeting procedure with the applicant.

Application #05-2, the request by Mr. and Mrs. Allen Hackman to vary the side yard setback for the existing condenser unit at 148 Telford was reviewed. Mrs. Hackman deferred to Mr. Charles for the presentation. Mr. Charles explained he was the previous owner when the addition and condenser were installed a couple years ago. He referenced the plot plan and the two noted proposed locations of the unit on the side of the house. However, the unit was sited in a location approximately 20 feet to the north of the southeast corner of the house in an area not depicted on the plot plan. He noted although a variance wouldn't be needed if the unit was in the rear, they'd prefer to leave it in the current location. He indicated Mrs. Hackman reviewed the matter with the neighbor and there were no problems. Mr. Curry wondered why it was installed in an incorrect location. Mr. Charles explained a variance should have been requested when the unit was installed but the request was not made.

Mr. Curry asked what part of the neighbor's home is adjacent to the unit. Mr. Charles indicated there is a garage and added there is approximately 18' between the two condenser units. Mr. Bohachek wondered if the mistake of not requesting a variance was by the heating contractor. Mr. Charles explained the addition is a 16' projection and the condenser is 19 ½'. Mr. Curry asked if the unit is immediately across from the garage where there are no windows. Mr. Charles indicated it's across from the edge of the garage by the rear entrance and reiterated the neighbor had no problem. Mr. Faulkner wondered where the furnace is located. Mr. Charles indicated in the original part of the home, not the addition. Mr. Roess wondered why they didn't use one of the alternate noted locations toward the rear which would not have required a variance. Mr. Charles explained they located it where it would have less visual impact for aesthetic purposes. Mr. Curry asked for other comments. There being none, the hearing was closed.

Mrs. Killworth felt the unit is in the logical place across from the neighbor's unit, there would probably be a problem locating it in the rear which is used for living space. Mr. Faulkner indicated there could be a problem if the neighbor relocated their unit and indicated in the past the board has required a fence to screen the unit. Mr. Curry concurred, but indicated they have also approved requests without the need for a fence and doesn't believe this would be noticeable. Mr. Roess asked if it's reasonable to request a written letter from the neighbor that there is no objection. Mr. Weiskircher explained the neighbor has

received the meeting legal notice and objections are usually expressed by calls or a note. Mr. Curry indicated the board doesn't place too much value in that; they look at the overall zoning and neighborhood issue. Mr. Bohachek indicated the two abutting units could generate a lot of noise and he would have preferred the proposed location toward the rear. He suggested they follow customary procedure and require a fence.

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 east side yard locations which meet the zoning setback requirements. Relocating the condenser unit to the rear yard will certainly have an impact on the existing patio area.

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 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 for the convenience of the property owner and is not based primarily 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 alleged difficulty in this application is created by the new owner's desire to maintain the unit in a location that is not permitted under the Zoning Code except by the granting of a variance.

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 certainly yield a reasonable return if the condenser unit has to be relocated to an area which complies with the setback requirements 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: The current location of the condenser unit is directly opposite what appears to be a window and door leading to the neighbor's kitchen. Even with the window and door closed, there is a noise impact on 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: Except for the issue of noise as just described, the condenser unit is screened from the street by existing vegetation and is also partially screened to the east by an existing picket fence.

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 land

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: It is the applicant's responsibility to show that the present location of the condenser unit is not detrimental to the adjoining property owner.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Bohachek and seconded by Mr. Roess that application #05-2, the request by Mr. and Mrs. Allen Hackman to vary the side yard setback for the existing condenser unit at 148 Telford Avenue, and known as lot #997, and pt. 998, be approved based on plans and information submitted, subject to a fence screening the north and east sides of the unit, said fence to be 6" taller than the unit and constructed from materials to match the existing privacy fence, and in accordance with all applicable city rules and regulations. Upon a viva voce vote on the question of the motion, same passed with four year votes and one nay (Mr. Faulkner) vote 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. Faulkner and seconded by Mr. Bohachek 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 4:50 p.m.

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CHAIR

ATTEST:

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RECORDING SECRETARY