

Oakwood, Dayton, Ohio

August 9, 2012

The Zoning Board of Appeals met in session this date at 4:35 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
- MR. DAN DEITZ .....PRESENT
- MRS. JANE G. VOISARD .....PRESENT
- MR. GREG LAUTERBACH.....PRESENT
- MR. KEVIN HILL .....PRESENT

The following officer of the city was present:

Mr. Jay A. Weiskircher, Assistant City Manager

The following visitors registered:

Jason Sheets, Architect  
 Suzanne & Todd Rogers, 210 Southview Road  
 Charles Rossi, 1119 Oakwood Avenue

It was moved by Mrs. Voisard and seconded by Mr. Deitz that the minutes of the meeting held June 14, 2012 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. Bohachek reviewed the meeting procedure.

Application #12-2, the request by Todd and Susan Rogers to vary the corner side and rear yard setbacks for a two-story addition which includes a three-car garage at 210 Southview was presented. Mr. Sheets, architect for the owners, explained the lot is non-conforming and they tried to stay within the setbacks as much as possible. He noted they are at 27' in the front, where 35' is required, and in order to blend with homes on the street, and to assist with the mass, they are redoing the exterior finishing with new siding and masonry elements. Mr. Bohachek asked if all the exterior finishes will be redone once the addition is complete. Mr. Sheets responded yes. Mr. Lauterbach referenced the second floor plan and asked if the balcony and master bedroom extension will protrude into the 35' front yard. Mr. Sheets explained it will extend some, the thought was rather than a massive gable, this extension will be no deeper than the porch.

Mr. Lauterbach asked about the importance of a three-car garage. Mr. Sheets indicated that was based on need and noted if they removed the third garage stall, it would not help with the mass. Mrs. Voisard referenced the first floor plan and the size of the nook that projects. Mr. Sheets indicated the nook already exists. Mr. Hill noted the garage and study seem to push the massiveness to the north and south along the streetscape. Mr. Sheets explained they did that rather than have the garage doors facing the street which they felt was overbearing. This also maximizes that yard area for the kids since there is a very small rear yard. Mr. Hill asked if the lot to the south is not owned by the Rogers. Mr. Sheets concurred.

Mr. Rogers explained when they purchased the property, they knew it was a non-conforming lot and wanted something that would fit in with the neighborhood. In order to avoid a one-dimensional mass and wanting a nice architectural appearance and curb appeal, they plan to redo the exterior. He noted there is a need for a three-car garage as they have two teenagers and he appreciated the board's consideration.

Mr. Bohachek asked for comments from the audience. There being none, the board reviewed the building plans. Discussion ensued about the use of exterior materials, concerns with the corner side yard setback, other homes on the street, etc. Mr. Lauterbach asked if the setback is 26'. Mr. Sheets indicated 26.3'. Mr. Lauterbach noted the site plan depicts 30'. Mr. Sheets indicated the survey line on the plot plan appears set off the walk and indicated the addition will project out 11' plus the overhang. Mrs. Voisard indicated they need to know the exact number for the variance. Mr. Sheets requested 11' for the record.

Mr. Bohachek noted an 11' extension toward Southview from the foundation line. Mr. Weiskircher indicated staff noted it was 13' from the edge of the foundation. Mr. Sheets indicated if 11' makes the board comfortable, they will find a way to squeeze out 2' and not hurt the scale of the project. Mr. Hill questioned the height of the upper gable on the north elevation. Mr. Sheets indicated 28.6' to match the existing slope. Mr. Deitz asked if they plan to replace the patio at the same time of the drive. Mr. Sheets agreed. Mrs. Voisard asked if the elevation drawings are more accurate than the rendering. Mr. Sheets concurred; the rendering was done before the elevation drawings. Mr. Bohachek explained he had concerns, but after hearing the discussion and the amendment of an additional 2', believes this makes sense with the layout of the house. Mrs. Voisard expressed concern with the discrepancies in the measurements on the plans compared to the site survey. Mr. Bohachek agreed, they need to make sure they know exactly what is being approved. Mrs. Voisard asked if there was a time constraint. Mr. Sheets suggested they make a conditional approval on revised drawings depicting the required 11' extension.

#### 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: Other than the unique conditions typically associated with corner lots, there are no unusual shape or topographic conditions in this application.  
 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: With this being a corner lot, the side and rear yards for this parcel are the opposite of the rear and side yards of the other homes along this side of Southview.  
 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 variances are to accommodate a two story addition and are 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 hardship in this application is created by the applicant's desire to increase the footprint of the house thereby encroaching into the corner side and rear yard setbacks.  
 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 one or both variance requests are not approved.  
 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: Of the two variance requests, the encroachment into the frontage along Southview appears to be much more significant than the garage addition on the west side of the house.  
 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: If the corner side yard variance is granted, the resulting setback of 26' will be substantially less than the 39' average setback of the other eight lots along the south side of Southview Road.

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 location of the proposed addition makes it impossible for the applicants to comply with the corner side and rear yard setbacks.

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 not submitted any information to justify why a nearly 26% variance of the required corner side yard setback along Southview is justified given the setbacks of the other properties along both sides of the street.

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. Lauterbach and seconded by Mr. Deitz that application #12-2, the request by Todd and Susan Rogers to vary the corner side and rear yard setbacks for a two-story addition which includes a three-car garage at 210 Southview Road, and known as pt lot 1875, be approved subject to the corner side yard addition not extending further than 11' from the existing foundation toward Southview, use of building materials as shown, accurate drawings submitted to staff for their review, 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. KIP BOHACHEK..... YEA
- MR. DAN DEITZ..... YEA
- MRS. JANE G. VOISARD ..... YEA
- MR. GREG LAUTERBACH..... YEA
- MR. KEVIN HILL..... YEA

There being five (5) yea votes and no (0) nay votes, said motion was declared passed.

Application #12-3, the request by Charles Rossi to vary the side yard setback for the installation of a deck with stairs at 1119 Oakwood was presented. Mr. Rossi explained plans to build a 5' wide deck in the side yard where 13' exists and only 8' will remain. He reviewed photos of the home and pointed out the

sliding glass door off the kitchen that goes nowhere and this deck will provide access. He submitted photos to the board and added he spoke with the neighbor to the north who had no concerns. Mr. Deitz asked if the staircase will only be on the side, no stairs on the back. Mr. Rossi agreed. Mr. Lauterbach wondered what is on the rear wall inside the home. Mr. Rossi indicated kitchen cabinets. Mr. Lauterbach was curious since relocating the sliding door to the rear might help with the plan. Mr. Rossi would prefer not to cut through the brick. Mr. Lauterbach reviewed the posts on the deck.

Mr. Bohachek asked if there were any other comments. There being none, the board reviewed the plans. It was noted this project is isolated from the neighbors and provides use of the sliding glass door.

- 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: In 2006, the property owner replaced an existing window with a sliding door and was told at the time that a variance would be needed to provide access to the door.

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: There is nothing particularly unique about the conditions in this application.

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 provide ingress and egress from an existing sliding door.

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 side yard is already non-conforming so any improvements require 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 yield a reasonable return if the variance is not granted.

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 proposed landing/deck is nearly 180' from the edge of the adjoining home to the north and will not be plainly visible from the street.

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 landing/deck will be constructed of treated wood commonly used in deck construction so it should not have an adverse aesthetic appearance nor impair 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: There are no shape or topographical conditions associated with this application.

## 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 proposed landing/deck will have no impact whatsoever to the public welfare nor other properties in the immediate vicinity.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mrs. Voisard and seconded by Mr. Hill that application #12-3, the request by Charles Rossi to vary the side yard setback for the installation of a deck with stairs at 1119 Oakwood Avenue, and known as pt lot 2719, 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. Bohachek commented on the poor quality of drawings and suggested a structural steel post to make it easier to access the garage. The board also discussed their disappointment in the discrepancy of the drawings on the Southview application.

The Board of Zoning Appeals adjourned. The public meeting concluded at 5:25 p.m.

  
CHAIR

ATTEST:

  
RECORDING SECRETARY