

Oakwood, Dayton, Ohio
December 13, 2012

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, Mr. Jay Weiskircher, 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 officers of the city were present:

Mr. Jay A. Weiskircher, Assistant City Manager

The following visitors registered:

Ms. Jeannie Andrews, 2703 Shafor Blvd.

It was moved by Mr. Hill and seconded by Mr. Deitz that the minutes of the meeting held October 11, 2012 be approved with the correction noted by Mr. Hill 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. Bohachek reviewed the meeting procedure with the applicant.

Application #12-5, the request by Jeannie Andrews to vary the side yard setback for an existing condenser unit/heat pump at 2701-2703 Shafor Blvd. was presented. Ms. Andrews explained that her contractor failed to secure a permit prior to installing the unit. She noted that there is very little space available along the west side of the property abutting the Dorothy Lane Market parking lot so the contractor decided to locate the condenser unit long the south side yard. It was noted that the original condenser unit was located in the rear yard. In response to a question by Mrs. Voisard, Ms. Andrews indicated that a permit for the condenser unit has subsequently been secured, albeit after the fact. During the course of the discussion Ms. Andrews clarified that only one (1) new condenser unit was installed, and Mr. Lauterbach confirmed that the unit is located within a DP&L easement. Mrs. Andrews added that the abutting double to the south fronts on East Drive and the garage serving that property effectively screens the condenser unit. Ms. Andrews added that the condenser unit is also screened from Shafor Boulevard by existing vegetation, and that she would be willing to install additional vegetation to further screen the unit.

Mr. Bohachek opened the public hearing and with no one else in the audience except the applicant, the hearing was closed.

Discussion ensued on the proximately of the condenser unit to the side lot line and it was pointed out that the BZA has typically denied these types of requests in the past. It was noted that the unit could be placed around the corner of the house within the rear yard and behind the privacy fence. It was also noted that the placement of the condenser unit within a utility easement is problematic.

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 in this application 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 in this application are fairly typical of 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 meet the lifestyle needs of the property owners 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 is created by the applicant's desire to construct an addition that encroaches into the required 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 in question can yield a reasonable return if the variance is 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: The granting of the variance will not be detrimental to 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: The proposed addition will have no impact whatsoever on the four unit apartment building 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, 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: Since the applicant wishes to maintain an existing basement window, the addition must be moved to the east thereby encroaching approximately one foot into the required side yard setback.

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.

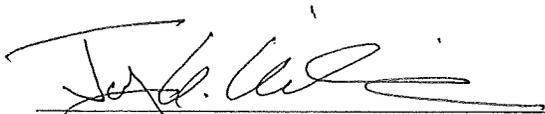
Therefore, it was moved by Mr. Bohachek and seconded by Mr. Lauterbach that application #12-5, the request by Jeannie Andrews to vary the side yard setback for a condenser unit/heat pump at 2701-2703 Shafor Blvd., and known as lot 3917, be denied based on plans and information submitted. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Deitz noted that he recently attended the Zoning Workshop at Sinclair along with Mrs. Voisard and Mr. Hill. Mr. Deitz added that during one of the sessions it was recommended that anyone offering comments at a public meeting should be sworn in, and that Boards should discourage the submission of written statements since the author cannot be cross examined.

There being no further business, the Board of Zoning Appeals adjourned. The public meeting concluded at 5:05 p.m.


CHAIR

ATTEST:


RECORDING SECRETARY