

Oakwood, Dayton, Ohio
May 8, 2014

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, Ms. Lori Stacel recorded.

Upon call of the roll, the following members of the board responded to their names:

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| MR. KIP BOHACHEK | PRESENT |
| MR. DAN DEITZ..... | PRESENT |
| MRS. JANE G. VOISARD | ABSENT |
| MR. GREG LAUTERBACH..... | PRESENT |
| MR. KEVIN HILL | PRESENT |

The following officers of the city were present:

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

The following visitors registered:

Charles and Lynnette Dinkler, 174 Lookout Drive
Robert Stamper, 175 Lookout Drive
Jen Enseleit, 188 Lookout Drive
Charles Chambers

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

Mr. Bohachek then asked the members of the Board if any discussion was warranted regarding the minutes from the October 10, 2013 meetings which were slated for approval. Mr. Dietz inquired if information should be added to the minutes about the sub-committee approval that transpired after the meeting. It was decided that the existing signed agreement from the Board was all that was needed. There being no further discussion, Mr. Hill moved that the minutes from the October 10, 2013 meeting be approved. Mr. Dietz seconded the motion and it was so ordered.

Application #14-1, the request by Charles and Lynnette Dinkler to vary the rear yard for a two-story addition at 174 Lookout Drive and known as lot 3656.

Mr. Bohachek opened the public hearing. Mr. Charles Chambers, architect and contractor for 174 Lookout Drive, addressed the Board. Mr. Chambers shared that Mr. and Mrs. Dinkler currently have multiple ongoing exterior update projects and feels that this addition will fall nicely in place with these updates. Mr. Hill asked what roofing material will be used. Mr. Chambers noted that the roof was replaced not too long ago so the material will match the existing roof. Mr. Bohachek mentioned that he noticed the mud room is encroaching on the rear yard requirements. Mr. Chambers commented that the Dinkler's want to fence in the back portion of the yard and this allows the dogs to go directly to the back with a basin to clean up after the dogs and then the kids can come into the opposite side into the kitchen.

Mrs. Lynnette Dinkler shared that their home was purchased eight years ago from the Lutheran Church. The encroaching area will be in the direction toward the parking lot of the church. She noted that in the future, they want to take down the existing chain link fence and build a new fence providing more of a privacy barrier between their rear yard and the parking lot. She added that the second story would not block any view and is needed to accommodate their four children. She spoke with the church and fully has their support. Mrs. Dinkler referenced plans that were given to her from the church when they purchased the home to show where her property is in comparison of the church and then a referenced work-up designed by Mr. Chambers of the street view of the home once the work is complete.

Jen Enseleit, 188 Lookout Drive, shared that her property will be impacted by the addition the most. She added that the Dinkler's have been more than accommodating to the neighborhood and she is fully supportive of the project.

Robert Stamper, 175 Lookout Drive, shared that this house has always been a huge white house hidden by trees and never really maintained. The Dinkler's have added tremendous value to Lookout Drive and he fully supports the project.

There being no other comments, Mr. Bohachek closed the public hearing and the Board reviewed the request.

Mr. Lauterbach commented that he does not have any issues with this request. He said that he understood the concern for the mudroom but it makes sense by acting as a double access point. Mr. Dietz added that he would be interested to hear from the church in regards to this request. Mr. Weiskircher explained that the legal ad notice was sent to Lutheran Church of our Savior and that he has not heard of any concerns from church representatives. Mr. Hill felt it was very helpful to have a full architectural plan to review. He likes the plan and feels that the current exterior updates will be a cohesive ensemble with the project. Mr. Dietz shared concern about the current condition of the driveway and asked that it be added as a stipulation with the approval of this application.

Mrs. Dinkler reported that they would probably be requesting another variance for the driveway due to the curve which makes it challenging to get into the garage. They would like the driveway completely reconfigured and completely replaced. Mr. Weiskircher inquired and Mrs. Dinkler confirmed that the applicants plan to replace the driveway in the fall.

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: The rear yard is already non-conforming at 27 feet (west side) and 33.9 feet (east side) so any proposed addition will require variance approval.

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 rear yard conditions in this application are not typical of other properties in this immediate area.

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 increase the living area of the house in order to meet the lifestyle needs of the property owners 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: As previously mentioned, the rear of the house is already non-conforming.

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 request 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 rear yard of the property abuts the parking lot of Lutheran Church of Our Savior so the proposed addition should not be detrimental to other residential properties in 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 architecture, scale and appearance of the proposed addition is consistent with the existing home and will not diminish or impair property values in the neighborhood.

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 rear of the house is already non-conforming so any proposed addition requires a variance.

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: Besides the church property to the south, the proposed addition is more than 53 feet from the east lot line where 10 feet is required.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Bohachek and seconded by Mr. Lauterbach that application #14-1, the request by Charles and Lynnette Dinkler to vary the rear yard for a two-story addition at 174 Lookout Drive with the stipulation of the driveway being repaired or replaced in the next 12 months due to the asphalt being in poor condition.

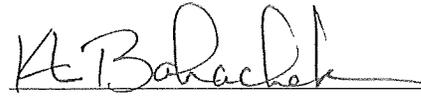
Mr. Hill asked if it was appropriate to levy a condition for the driveway when it is not part of this project. Mr. Weiskircher confirmed that since the applicant is requesting a variance, the BZA is permitted to add conditions that do not directly relate to the variance request.

Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

Mr. Bohachek added that the Dinkler's can work with city staff on the driveway and that everything else is approved as proposed.

At the end of the meeting, discussion ensued on swearing-in procedures and if this should be adopted during the Board of Zoning Appeals meetings. Mr. Weiskircher explained that further discussion is needed with the Law Director but the Planning Commission currently follows a procedure where they only swear-in individuals in those instances where there is a chance that litigation is a real possibility.

The public meeting concluded at 4:59 p.m.


CHAIR

ATTEST:


RECORDING SECRETARY