

Oakwood, Dayton, Ohio

June 8, 2006

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

The following officers of the city were present:

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

The following visitors were in attendance:

Eric and Virginia Seubert, 501 Maysfield Road
Steven Cox, 306 Haver Road

It was moved by Mr. Curry and seconded by Mrs. Killworth that the minutes of the meeting held February 9, 2006 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, the same passed unanimously and it was so ordered.

Application #06-2, the request by Virginia Seubert to increase by not more than 25% the maximum height (proposed 13-14') of an accessory building (playset) at 501 Maysfield was reviewed. Mr. Faulkner reviewed the meeting procedure with the applicant. Mr. Seubert explained the play structure is half completed and rather than buying a pre-made redwood structure they decided to design and build their own into two trees. He indicated the first 10 x 10 platform has been built around the tree and includes a ladder. The plan is to build another platform around the second tree and connect the two platforms with a rope bridge. The platform already in place includes a 3 ½' railing and a swing set. Mr. Seubert indicated the design has been worked on by an engineering friend of theirs after obtaining books on designs and structure regulations. Mr. Faulkner noted the slide on the second tree has not been depicted on the plan. Mr. Seubert indicated the platform at the second tree includes a slide and ladder. Mrs. Seubert explained their kids are 6, 8 and 10 and their hope is the children won't grow out of the structure.

Mr. Bohachek noted the engineer did not include his name on the plans. Mr. Seubert indicated Dave Bruns helped them design the structure and is also building it. Mr. Bohachek noted the structure does not match the plans. Mrs. Seubert indicated since she submitted the drawings, the plans were altered, he makes modifications as he builds it. Mr. Curry asked if the height of the platform is 10'. Mrs. Seubert concurred and explained it was built into the "arm" of the tree. Mrs. Killworth wondered if the platform could be lowered to avoid the variance. Mrs. Seubert indicated the platform has been bolted into the tree. Mr. Bunting noted they only plan to install a railing, no roof. Mrs. Seubert concurred. Mr. Seubert indicated the railing has been up about a week and is not in the pictures. Mr. Faulkner questioned why they kept building when there was a variance hearing outstanding. Mr. Seubert indicated they were led to believe, and interpreted that since the proposal was within the limits of the variance, they could proceed. He noted they aren't trying to break any laws or be threatening but understood they could continue within the limits. Mr. Faulkner noted the posts are continuous. Mrs. Seubert explained safety has been their major concern. Mr. Bunting indicated there would be a safety issue if the railing were lowered in height.

Mr. Roess asked if there were other changes to the drawings as compared to what is being built or designed. Mr. Seubert noted other than placing a hammock and chairs on the platforms, no other change. Mrs. Killworth asked how far the structure is from the lot line. Mr. Seubert estimated about 15 yards. Mr. Bohachek guesstimated 15-20'. Mr. Roess asked if a variance is needed for the setback and

expressed concern that the building is deviating from the drawings and that the applicants proceeded to build. Mr. Weiskircher indicated the only portion that exceeds the 12' height requirement is the railing. In response to a question from Mrs. Killworth, Mr. Bunting indicated they can place the structure only 5' from the lot line. Mr. Seubert explained due to the change in topography between the trees, the second structure, which hasn't yet been built, will be lower. Mr. Bohachek noted the drawings depict the railing at the same height which would necessitate a variance for both. Mr. Faulkner noted the variance is for the entire structure. Mrs. Killworth questioned the total structure width. Mr. Faulkner estimated 32' and asked for any other comments.

Mr. Steve Cox, 306 Haver and next door neighbor, submitted a letter and photos of the tree house as seen from the second story windows of their home. He expressed concern that the tree is on the highest point of the property and block, and how it will slope down another 2-3'. Mr. Faulkner indicated the drawings depict a 1.3' slope only. Mr. Cox indicated the rope bridge will also slope and all of that leads to the bushes which is very close to his property. Mr. Faulkner asked where the photo was taken from. Mr. Cox indicated the upstairs bathroom. Mr. Roess asked if permission was given to continue with the construction. Mr. Seubert indicated it was their understanding from a discussion with Mr. Bunting that they could proceed and since their request was within the variance, they chose to proceed. Mr. Bunting indicated he told them they could proceed with anything below the 12' height since they had obtained a permit. Mrs. Seubert indicated they also informed their neighbors.

There being no other comments, the public hearing was closed. Mr. Bohachek expressed the following concerns: 1) structural integrity, he isn't sure the platform is strong enough for support; 2) although this is an accessory structure, for safety and code reasons, the handrail should not be lowered; and 3) proximity to the neighbor which causes concern with the requested height variance. Mr. Curry noted the play structure could be built without a variance and the 1.5' height differential is not, in his mind, significant. Mr. Faulkner noted this is not a setback but a height issue. Mrs. Killworth believes the structure will be unsightly without the foliage. Mr. Faulkner noted play structures tend to be temporary in nature. Mr. Roess was disappointed the applicants decided to proceed with the construction in light of the variance request. Mr. Faulkner concurred. Mr. Curry asked if a condition could be added to the motion as it relates to the structural concern. Mr. Bohachek suggested a letter from the engineer with his seal confirming that his design is adequate to safely support the children.

It was moved by Mr. Curry that the variance be approved subject to a letter from the engineer that the structure meets all structural integrity standards. The being no second, the motion failed.

Mr. Faulkner indicated they could require that the height of the platform on the second tree be adjusted lower. Mr. Bohachek indicated the photos from the neighbor's bathroom suggested a lower height for more privacy. Mr. Faulkner noted the sketch depicts two platforms on the second tree, one at 7', the other at 10' and noted if they require the height be lowered this would make the rope ladder more interesting. Mrs. Killworth questioned the vegetation. Mr. Seubert indicated the evergreens are theirs. Mr. Roess questioned the height of the bushes. Mrs. Seubert responded 10-12'

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 for the owner if the height regulations are enforced.
 - 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 are no unique conditions in this application which do not apply to other properties in the R-1 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 allow the railing portion of the playstructure to exceed the 12 foot height restriction 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: The alleged difficulty is created by the applicant's desire to install a safety railing of sufficient height so as to prevent children from falling off the wood platform.
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 existing height regulations are applied.
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: It does not appear that granting up to a 2 foot height variance for the safety railing will be detrimental to the public welfare or injurious 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 variance will not impair an adequate supply of light or air to adjacent properties or create an adverse aesthetic appearance or 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, topography or other 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: There is a yet to be constructed bridge which will connect the partially completed platform to an adjacent tree and an attached sliding board. The railing surrounding the wood platform is the only portion of the playstructure which requires a variance.

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. Faulkner and seconded by Mr. Roess that application #06-2, the request by Virginia Seubert to increase by not more than 25% the maximum height (proposed 13-14' in height) of an accessory building (playset) at 501 Maysfield Road, and known as lot #379, be approved based on plans and information submitted, subject to 1) a letter from the engineer with his seal confirming the structural integrity of the platform; 2) the second 10' platform be lowered by 1.6'; and 3) the shrubs be maintained along the west lot line at the existing height during the life of the play structure and in the event the shrubs die, they be replaced with evergreens of a similar height; 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.

Mrs. Seubert noted the shrubs are being overtaken by vines which could be damaging. She wondered if her gardener may proceed with cleaning out the vines. Mr. Faulkner concurred.

The Board of Zoning Appeals adjourned. The public meeting concluded at 5:08 p.m.

CHAIR

ATTEST:

RECORDING SECRETARY