

Oakwood, Dayton, Ohio

October 12, 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.....ABSENT
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:

Amy Williams, 225 Peach Orchard Avenue
Randy Potter representing Jane Schul, 320 Wisteria

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

It was moved by Mr. Bohachek and seconded by Mr. Roess that the minutes of the meeting held September 21, 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 #06-6, the request by Amy Williams to vary the side yard setback for the installation of a condenser unit at 225 Peach Orchard Avenue was reviewed. Mrs. Williams explained that they would like to move the condenser unit, currently outside the rear door, to the west side of the house which is up from the neighbor's deck and protected by a fence that will shield the unit from the street and neighbor. Mr. Roess asked if she had spoken with the neighbor. Mrs. Williams responded yes and added the neighbor agreed with the new location. Mr. Faulkner questioned why they wanted to relocate the unit. Mrs. Williams explained they are planning to install a deck. Mr. Faulkner referenced photos in the packet. Mrs. Killworth questioned why the unit couldn't be placed the rear of the house. Mrs. Williams indicated that would be more intrusive to the neighbor's deck. Mr. Bohachek asked about the furnace location. Mrs. Williams explained the furnace is in the middle of the basement. There being no comments from the audience, the public hearing was closed.

Mr. Faulkner expressed concern with relocating the unit to the west side yard. Mrs. Killworth noted the information states the unit is quiet. Discussion ensued in regard to the location and abutting neighbor's deck. Mr. Faulkner is concerned that the unit in the side yard could project more noise between the homes. Mr. Bohachek had no preference either way.

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 shape or topographical conditions which create a hardship 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: The applicant is preparing to construct a deck in her east side yard and is proposing to move the condenser to the opposite side of the house.
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 be able to relocate the condenser unit away from a proposed deck.
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 place the condenser unit in the west side yard where there is inadequate space to meet the side yard setback requirement.
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: We see no reason for the condenser unit to be located on the west side of the house when there appears to be adequate space available in the rear yard.
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 current location of the condenser unit cannot be seen from the street and complies with the required zoning setback. Although the proposed location of the condenser unit on the west side of the house will be located behind the wood picket fence which runs parallel to the street, it will be visible from the street and will also impact the adjoining neighbor to the west.
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 do not appear to be valid reasons why the condenser unit must be moved to a location which requires a variance when there appears to be adequate space available in the rear yard.
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: Unless there is a valid reason why the condenser unit cannot be relocated to the rear yard, we see no reason to grant the variance request.

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. Roess and seconded by Mrs. Killworth that application #06-6, the request by Amy Williams to vary the side yard setback for the installation of a condenser unit at 225 Peach Orchard Avenue, and known as lot #1514, 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 with three yeas and one nay (Mr. Faulkner) vote.

Application #06-7, the request by Jane Schul to vary the rear yard setback for a deck at 320 Wisteria was reviewed. Randy Potter explained he is the contractor representing the owner and they'd like to build a 12' x 20' deck with a partial railing that encroaches the 40' rear setback. Mr. Bohachek asked if the deck is the same level as the door. Mr. Potter explained yes, the height of the deck is less than 2'. Mr. Faulkner asked about the steps. Mr. Potter explained there are two risers, 12' in width. Mr. Bohachek noted three risers would be needed for two steps. Mr. Faulkner wondered why the stairs extend beyond the edge of the deck as is depicted on the drawing. Mr. Potter indicated this is the design the owner gave them, an octagon shape with some railing and benches. He noted the steps will start right on the corner. There being no other comments from the audience, the public hearing was closed.

Mr. Bohachek noted this is similar in scale and height to a deck three homes away and is unobtrusive. Discussion ensued in regard to the design, step location, and the absence of a skirt to screen the structural portions of the underside of the deck. The contractor noted that while no screening of the structural members is depicted on the drawings, he anticipates that the owner will probably add some form of screening. Mr. Faulkner pointed out the "pocket triangle" near the steps and suggested if this is approved, language be included that the steps line up to the corner of the deck, not as depicted.

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 of the house is 44 feet from the lot line so any extension beyond 4 feet from the back of the house encroaches into the rear yard setback.

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 not unique to properties in the R-4 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 be able to construct a deck 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 fact that the principle structure is located within 4 feet of the rear yard setback line.
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: There is adequate space in the rear yard and it does not appear the deck will impact either of the adjoining property owners.
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 deck will be constructed of high quality building materials and will not create an adverse aesthetic appearance or diminish or impair property values within 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: There are no shape or topography issues which impact 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: There do not appear to be any issues associated with this application which adversely impact the adjoining property owners or the neighborhood.

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. Roess that application #06-7, the request by Jane Schul to vary the rear yard setback for a deck at 320 Wisteria Drive, and known as pt lot #2410, be approved based on plans and information submitted subject to the stairs not projecting beyond the front corner of the deck and lining up with the post, 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.

The Board of Zoning Appeals adjourned. The public meeting concluded at 4:56 p.m.

CHAIR

ATTEST:

RECORDING SECRETARY