

Oakwood, Dayton, Ohio

September 21, 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 Acting Chair, Mrs. Sharon Killworth, 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.....ABSENT
MR. ROBERT CURRY.....ABSENT
MR. KIP BOHACHEK.....PRESENT
MRS. SHARON KILLWORTH....PRESENT
MR. WILLIAM J. ROESS.....PRESENT

The following officer of the city was present:

Mr. Jay A. Weiskircher, Assistant City Manager

The following visitors were in attendance:

Linda Lantz, 519 Woodview
David House, 511 Woodview

It was moved by Mr. Roess and seconded by Mr. Bohachek that the absence of Mr. Faulkner and 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 August 10, 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, same passed unanimously and it was so ordered.

Tabled application #06-4, the request from Dave and Barb House to vary the rear yard setback for an addition at 511 Woodview was reviewed. Mrs. Killworth referenced the additional requested information which was submitted. Mrs. Lantz indicated she forwarded pictures of projects she has undertaken which include the questioned materials and the detailed drawings which include two windows on the side. She also submitted samples of the proposed material that comes in 4 x 8, 4 x 9 or 4 x 10 sections. On the drawing, she noted the division between the sections and added a lot of tudors are spaced in that manner. Mrs. Lantz noted, however, the property is not a traditional tudor style. Mrs. Killworth asked if this addresses Mr. Faulkner's concern and if the seam will be obvious. Mrs. Lantz referred to a photo of 518 Woodview which has the same material, however at 511 Woodview; it will be done in neutral colors. The board reviewed the various samples and Mrs. Lantz pointed out although it can be used on either the smooth or stucco side, they plan to use the stucco. She also submitted literature on the product.

Mr. Bohachek referenced the revised drawings and the varying roof pitch. Mrs. Lantz explained the varying roof pitch depicts the family room versus the mudroom. Mr. Bohachek recalled a brick soldier course being noted on the original drawing, not the revised sketch. Mrs. Lantz indicated she removed use of the brick, felt it was too busy and since they plan to landscape that area, the brick would be covered anyway. Mr. Bohachek cautioned them about the proposed material board and how critical it is to install flashing to avoid any water issues. Mrs. Lantz indicated she has worked with different builders and knows during various inspection stages, the joints and flashing are reviewed. Mr. Bohachek indicated some inspectors don't catch all those details. Mr. Roess believes they have received requested information on the aesthetic and material concerns. Mrs. Lantz indicated the owner, Dave House, is also in the audience.

There being no further public comment, the hearing was closed. Mr. Roess had no objection but wondered if they should include a notation about the flashing detail. Mr. Bohachek believes that was a concern of Mr. Faulkner and he too is concerned that there be no water intrusion. He had no problem with the design after he reviewed the home again and was also pleased that the large wall was broken up with windows.

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: Due to the close proximity of the house to the minimum setback line, the proposed addition will encroach approximately 15' 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: In this application, the proximity of the existing home to the rear setback is fairly typical of 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 expand the existing kitchen and create additional living space for the property owners.
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 difficulty in this application is created by the desire of the property owners to expand the footprint of their home and thus encroach into the rear 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 can certainly yield a reasonable return if a 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: Since the house to the north fronts on E. Thruston, there is already a solid building mass along the north side of the House's rear yard. The designer for this addition project is the adjoining property owner to the south.
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: You need to evaluate whether the added bulk associated with the proposed addition will have a negative impact on the adjoining properties.
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: With the existing location of the house on the lot, any new addition more than 4' in length will encroach into the rear yard setback.
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 already significant rear yard development in this immediate area so the question is whether this addition will have a negative impact on the adjoining property owners.

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 Mr. Bohachek that tabled application #06-4, the request from Dave and Barb House to vary the rear yard setback for an addition at 511 Woodview, and known as lot 2520, be approved based on plans and information submitted, subject to installation of flashing at the joints 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.

Application #06-5, the request by Bruce and Elizabeth Reger to vary the rear yard setback for an addition at 432 East Drive was reviewed. Mrs. Killworth noted although the applicant is not in attendance, staff has indicated they may proceed. Mr. Bohachek wondered whether the rear yard measurement is accurate since the fence was removed and the pin is about 5' from that fence. Mr. Weiskircher indicated the measurement is from the pin. Mr. Roess asked if neighbors have expressed concerns. Mr. Weiskircher responded there have been no comments received. Mrs. Killworth questioned materials. Mr. Bohachek noted vinyl siding and indicated his only concern relates to the west elevation and proximity of the fireplace to the neighbor's deck; however, since a privacy fence is already in place that should take care of the issue. Mrs. Killworth noted they could condition approval of the variance on requiring a fence be maintained. Mr. Roess felt overall the project will be an improvement to the property. Mr. Bohachek concurred and noted there is currently vinyl siding to the front of the home.

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 owners wish to remove the existing addition and install a larger sunroom. By doing so, they will encroach approximately 8 feet into the rear yard setback. There are no shape or topographical conditions pertaining to the property which result in a hardship for the 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 typical of lots in the R-5 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 construct an enlarged sunroom rather than 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 homeowner's desire to remove the existing sunroom and replace it with a larger addition.
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 existing addition meets the rear yard setback.
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: Since there is an existing addition and the rear yard is enclosed with a privacy fence, it does not appear that the proposed improvement, albeit a 50% larger footprint, will 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 sunroom is larger than the existing addition but it should not impair an adequate supply of light to the adjoining properties, nor will it create an adverse aesthetic appearance.
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: Except for the fact that the homeowners wish to replace the existing addition with a larger sunroom which encroaches into the rear yard setback, there are no shape or topographical 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: Although the proposed sunroom is larger than the existing addition, the exterior materials for the new addition are more in keeping with the principle structure.

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 #06-5, the request by Bruce and Elizabeth Reger to vary the rear yard setback for an addition at 432 East Drive, and known as lot #3297, 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.

The Board of Zoning Appeals adjourned. The public meeting concluded at 4:52 p.m.

ACTING CHAIR

ATTEST:

RECORDING SECRETARY