

Oakwood, Dayton, Ohio
August 14, 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:

MR. KIP BOHACHEK	PRESENT
MR. DAN DEITZ.....	ABSENT
MR. GREG LAUTERBACH	PRESENT
MR. KEVIN HILL	ABSENT
MRS. LINDA WEPRIN	PRESENT

The following officers of the city were present:

Mr. Dave Bunting, City Inspector
Ms. Lori Stacel, Clerk of Council

The following visitors registered:

Tess Mitchner Asinjo, 318 Patterson Road

Mr. Bohachek noted that this is Mrs. Weprin's first meeting as a member of the Board of Zoning Appeals. Mr. Bohachek welcomed Mrs. Weprin and those sentiments were echoed by the rest of the Board.

Mr. Bohachek moved to excuse the absence of Mr. Dietz and Mr. Hill. The motion was seconded by Mr. Lauterbach. Mr. Bohachek then asked the members of the Board if any discussion was warranted regarding the minutes from the July 17, 2014 meetings which were slated for approval. There being no further discussion, Mr. Bohachek moved that the minutes from the July 17, 2014 meeting be approved. Mr. Lauterbach seconded the motion and it was so ordered.

Mr. Bohachek reviewed the meeting procedure with all in attendance.

Application #14-4, the request by Emmanuel Asinjo and Tess Mitchner Asinjo to vary the rear yard setback for a proposed deck at 318 Patterson Road and known as lot 1953.

Mr. Bohachek opened the public hearing. Mrs. Tess Mitchner Asinjo, property owner at 318 Patterson Road, shared that her family moved into the home at 318 Patterson Road a year ago and over the summer, decided to make a few changes to the backyard. They recently removed an old concrete patio to increase the green space, which provides a larger play area for her children. She added that the proposed wood deck would cover the recently removed large concrete patio and to cover an electric meter box. The deck would act as a cover to keep people from being around the electric meter box by allowing for a table and chairs as well as a large plant to cover the exposed portion of the electric meter box on the deck itself.

Mr. Bohachek asked if the proposed deck would be level with the interior floor. Mrs. Mitchner Asinjo shared that the deck would be approximately 14" high off grade. She added that the current distance between the back door and ground is approximately 18" so the proposed deck would be an added safety feature to lower the grade.

Mrs. Weprin commented that the concrete patio was rather large and the proposed deck would be smaller. Mrs. Mitchner Asinjo confirmed that it would be smaller and added that she suspects that the concrete patio was used as a turnaround for the driveway.

Mr. Lauterbach commented that the plans appear to be asking for a 4' variance versus a 6' variance. Mr. Bohachek confirmed that the variance works out to be about 5.5'.

Mr. Lauterbach asked if the proposed deck will have an opening for the oak tree. Mrs. Mitchner Asinjo shared that there is an old historic oak tree that provides a lot of shade in the backyard so they wanted to keep the tree and plan to build the deck around it.

Mrs. Weprin asked if the A/C unit will be moved. Mrs. Mitchner Asinjo confirmed that the A/C unit will stay where it currently is and the deck will be built around that as well.

Mrs. Mitchner Asinjo thanked the Board and added that she is a long-time Oakwood resident and appreciates the Board keeping the integrity and beauty of the city.

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

Mr. Lauterbach asked Mr. Bunting if a variance would be required if the project was for a concrete porch versus a wood deck. Mr. Bunting shared that it would not require a variance and would not be an issue unless it didn't meet the appropriate green space requirements.

Mr. Bohachek asked if the only reason for extending the deck is to only get away from the electric meter box to allow for a table and chairs to keep people away from the box.

Mrs. Mitchner Asinjo confirmed that it was the reason for extending the deck.

Mr. Bohachek commented that he feels that 18' is more than enough room to get away from the meter with a table and chairs. Mr. Lauterbach agreed.

Mrs. Weprin commented that the table and chairs would take approximately 14' and consideration needs to be made regarding moving a chair out from the table to allow for enough room so it will not fall off the deck. She added that it may sound like a lot, but not after adding the table and chairs.

Mr. Bohachek asked if there will be a railing around the deck.

Mrs. Mitchner Asinjo confirmed that there will be a railing.

Mr. Bohachek and Mr. Lauterbach agreed that their concerns of the proposed deck are reduced because the proposed deck is lower to the ground so it is more like a patio.

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 that cause a hardship to the property owner if the letter of the regulations are carried out.

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 this property.

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 not 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 property owners desire to build a deck that encroaches approximately 4' 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 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: It does not appear that granting the variance will have a detrimental impact on the abutting 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 not create an adverse aesthetic impact nor diminish 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 conditions that make it difficult to comply with the setback requirements.

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: This is a fairly large deck and we question the need to encroach into the rear yard setback.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Lauterbach and seconded by Mr. Bohachek that application #14-4, the request to vary the rear yard setback for a proposed deck 14" above grade in configuration shown on provided site plan at 318 Patterson Road be approved.

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

The public meeting concluded at 4:55 p.m.


CHAIR

ATTEST:


RECORDING SECRETARY