

Oakwood, Dayton, Ohio

January 8, 2009

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 Vice Chair, Mrs. Sharon Killworth, presided and the Recording Secretary, Mrs. Cathy Gibson, recorded.

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

MR. KIP BOHACHEK.....ABSENT  
MRS. SHARON KILLWORTH.....PRESENT  
MR. ROB STEPHENS.....PRESENT  
MR. DAN DEITZ.....PRESENT  
MRS. JANE G. VOISARD.....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:

Tom Potter, 33 Corona  
John Jervis, 335 Maysfield Road

It was moved by Mrs. Voisard and seconded by Mr. Deitz that the absence of Mr. Bohachek 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. Stephens and seconded by Mr. Deitz that the minutes of the meetings held November 13, 2008 and November 17, 2008 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.

Vice Chair Killworth reviewed the meeting procedure.

Application #09-1, the request by John and Lori Jervis to vary the side yard setback for a deck at 335 Maysfield was reviewed. Mr. Jervis indicated at varying points, the deck sits 4' from the property line and added if there are specific questions, his builder is available. Mr. Potter, Blue Sky, referenced the existing pad and stone wall in relation to the proposed deck. Mr. Stephens questioned the red marks on the drawing. Mr. Potter explained that is where the rock wall straddles the property line. Mr. Stephens questioned the distance from the tree line to the deck. Mr. Potter explained 18"-2' but noted those trees don't belong to this property but with the abutting vacant lot. Mr. Stephens asked if they spoke to the neighbor. Mr. Jervis responded yes, there were no problems. Mr. Stephens wondered if that vacant lot is sellable. Mr. Jervis explained it is a buildable lot and the owner has already contacted him to see if in the future he would be interested in purchasing it. Mr. Weiskircher inquired whether the added width of the deck at 16'8" is significant for any reason. Mr. Jervis explained that is the width near the existing walk/stone pavers and noted the deck is level with the back door. Mr. Potter explained during the planning stages, he had a different assumption of where the property line was located. Mrs. Killworth wondered why the deck couldn't be lined up with the rear of the house. Mr. Potter responded due to the location of the rock wall. There being no further comments, nor anyone in the audience, Mrs. Killworth closed the public hearing.

The board reviewed the proposal. Mrs. Voisard believes the request is too close to the property line and expressed concern since the abutting vacant lot that could be developed. Mr. Deitz asked if the board has granted such a variance. Mr. Weiskircher explained the board reviews each application on its own merit. Mr. Stephens believes if that vacant lot were developed, the driveway would most likely abut the Jervis property. Discussion ensued in regard to sent meeting notices to neighbors, and how in the past neighbor objections have been received either in writing or person, etc.

## 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: In order to meet the 10' west side yard setback requirement, the deck would have to be reduced in width from approximately 17' to 9'.  
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: Except for the fact that this property abuts a vacant lot, the conditions in this application are fairly typical of properties in the R-3 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 a deck and is not related to a desire by the property owner 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 west side of the home is already non-conforming and the proposed deck will further reduce the west side 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 in question 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 would normally be opposed to a deck that is only +/- 2' from the property line but in this particular case, since the west side of the property abuts a vacant lot, the side yard encroachment should not be detrimental to the public welfare or injurious to other 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 proposed deck will not create a substantially adverse aesthetic appearance or diminish 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: Other than the fact that the width of the deck would have to be reduced significantly in order to meet the 10' setback requirement, there are no topography issues that 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: As there is no residential structure abutting the west side yard, the proposed deck should not have an adverse impact upon other properties in the immediate area.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Stephens and seconded by Mr. Deitz that application #09-1, the request by John and Lori Jervis to vary the side yard setback for a deck at 335 Maysfield Road, and known as lot #390, 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 (Mrs. Voisard) and it was so ordered.

The board reviewed the recent zoning seminar held at Sinclair.

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

---

VICE CHAIR

ATTEST:

---

RECORDING SECRETARY