Oakwood, Dayton, Ohio
October 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 Chair, Mr. Kip Bohachek, 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.....PRESENT
MRS. SHARON KILLWORTH.....PRESENT
MR. ROB STEPHENS .....PRESENT
MR. DAN DEITZ.....ABSENT
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:

Terry and Julia Hall, 2600 Fairmont Avenue

It was moved by Mrs. Killworth and seconded by Mrs. Voisard that the absence of Mr. Deitz 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 Mrs. Killworth and seconded by Mr. Stephens that the minutes of the meeting held June 11, 2009 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.

Mr. Bohachek reviewed the meeting procedure.

Application #09-6, the request by Terry Hall to vary the existing non-conforming setbacks so as to enclose the existing porch at 2600 Fairmont Avenue was presented. Mr. Hall explained plans to enclose the porch facing Dell Park (front) and referenced plans from the previous owner which were approved in 1998 but never completed. He plans to do the same with some slight modifications and referenced photos of the house pointing out the porch arch facing Fairmont which will be enclosed with a single oak door, not French door as shown, and cedar shakes. The materials will match the home and the proposed windows are single pane oak. Mrs. Hall indicated they plan to make this a three-season room with no heat/electric.

Mr. Bohachek noted there was no one else in the audience. Mrs. Voisard believes the wood around the window will detract from the integrity of the arch. Mr. Hall explained the cost was too high for only glass without a frame and they are using old oak casement windows removed from Sugar Camp with the original hardware and then painted to match the home. Mr. Stephens asked if there is only one step down from the door. Mr. Hall agreed.

There being no further comments, Mr. Bohachek closed the public hearing. Mrs. Voisard expressed concern with how visible this is and the ñin-fillò use of an existing space. Ms. Killworth asked if the doors/windows will be natural oak or painted. Mrs. Hall responded the wood will be painted to match the house, everything will be a dark brown/green and by next year all the trim will be repainted to match. Mrs. Killworth suggested they paint the cedar shakes as well so the fill under the arch wonôt detract from the beautiful brick design. Mr. Hall noted the trim will match the color of the shed. Mrs. Voisard questioned the percentage of solid material in the arch. Mrs. Hall estimated 25%. Mrs. Voisard indicated they might be disappointed with the fill; there wonôt be the same open air feeling. Mr. Hall indicated they have a balcony on the south side of the house which will always be open.

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 front porch is already non-conforming and the planned improvements will not extend the non-conformity.

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 and are fairly typical of many other 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 improvement is to convert the porch into habitable space that can be used year round.

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 hardship in this application has not been created by the applicant.

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 approved.

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 front porch already exists enclosing same should have no impact whatsoever on 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: As the applicant appears to be using quality doors and windows and will be matching exterior building materials, the proposed improvement will not create an adverse aesthetic appearance nor 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, topography, or land conditions that 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: The proposed improvement is fairly common throughout Oakwood and historically, the BZA has routinely approved this type of request.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Stephens and seconded by Mrs. Killworth that application #09-6, the request by Terry Hall to vary the existing non-conforming setbacks so as to enclose the existing porch at 2600 Fairmont Avenue and known as lot #1793, 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.

Mr. Bohachek suggested they obtain the building permit prior to commencing any further work on the project.

The board reviewed a past request from Mrs. Anzalone to attach a patio enclosure to the garage, the issue was tabled and later the applicant withdrew the request yet built a structure in the yard and concern with the regulation which permitted that. Staff explained that the enclosure was constructed in the rear yard and met the requirements for an accessory structure; was built on an existing impervious area; and, met the 50% rear yard requirement. Staff added that corner properties always present a challenge and they will review the ordinance to see if new regulations are needed. The board also discussed corner lot issues and the trend to enclose front yard porches. Mrs. Voisard expressed concern that this practice runs counter to the fabric of the community.

The Board of Zoning Appeals adjourned. The public meeting concluded at 5:00 p.m.

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CHAIR

ATTEST:

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RECORDING SECRETARY