

Oakwood, Dayton, Ohio

August 11, 2005

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. Robert Curry, presided and the Acting Recording Secretary, Mr. Jay Weiskircher, recorded.

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

MR. ROBERT CURRY.....ABSENT  
MR. JIM FAULKNER.....PRESENT  
MR. KIP BOHACHEK.....PRESENT  
MRS. SHARON KILLWORTH....ABSENT  
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:

Rick Koehler, re: Mayeux  
Margaret Thomas, 1316 Raleigh  
Debbie & Arik Sherk, 1345 Devereux Drive  
Jayson Deck, 225 Lonsdale Avenue  
Cal Schlemmer, Cal's A/C & Htg. Inc.

It was moved by Mr. Roess and seconded by Mr. Bohachek that the absence of Mr. Curry and Mrs. Killworth 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. Roess and seconded by Mr. Bohachek that the minutes of the meeting held July 14, 2005 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. Faulkner explained to the two applicants the hearing procedures and added that since there are only three members in attendance, all three members must approve a variance for it to be granted. He added that an applicant can request that their application be tabled, but both applicants decided to proceed.

Application #05-6, the request by Julia and Greg Mayeux to vary the side yard setback for the installation of a family room addition at 1324 Woodstock was reviewed. Mr. and Mrs. Mayeux explained that they wish to construct a family room addition in their side yard. The family room addition encroaches from 1.5 to 2.5 feet into the required 10 foot setback. Mr. Mayeux noted that the architecture and building materials will match the existing home. Rick Koehler, architect for the project, noted that the Mayeuxs had met as recently as this morning with their neighbors and have modified their plans to accommodate several neighbor concerns. Copies of the modified plans were distributed to each member of the BZA. It was noted that a planned side door has been removed and the patio has also been relocated from the side to the rear yard.

Arik Sherk introduced himself as a neighbor and is also here to represent the interests of his mother-in-law, Mrs. Thomas, who is the neighbor to the north. Mr. Sherk remarked that the Mayeuxs have sensitively addressed previously stated concerns and the neighbors now support the modified proposal. Mr. Roess asked about the patio and Mr. Mayeux noted that it was relocated for practical purposes. Mr. Sherk added that there were originally privacy concerns expressed about the side yard location of the patio but those concerns were addressed and the patio has been relocated. Mr. Faulkner asked about the roof elevation and Mr. Koehler noted that copper will be used that should darken up within 30 days of installation. Mr. Bohachek commented on the flatness of the roof and noted that a quality membrane material will need to be installed to prevent roof leaks. Mr. Roess asked Mr. Mayeux if he was aware of

the setback issue when the family room was being designed. Mr. Mayheux indicated that he was, but to reduce the size of the family room would make it unusable. Mr. Bohachek concurred that the width of the room probably couldn't be made any smaller. Discussion ensued on the proximity of the existing fence to the property line, and it was noted that the fence is on the Mayheux side of the property.

#### 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 physical surroundings, shape or topographical conditions that present 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 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 to accommodate a family room addition and is not based 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 size of the proposed family room 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 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 an existing privacy fence and a row of taxus bushes which will screen a portion of the proposed addition from the abutting property owner.  
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 addition should not impair the supply of light to the adjacent property, nor will it create an adverse aesthetic impact 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 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:** The variance could be eliminated altogether by a minimal reduction in the size of the proposed addition.

**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 application #05-6, the request by Julia and Greg Mayeux to vary the side yard setback for the installation of a family room addition at 1324 Woodstock Drive, and known as lot 3453, be approved based on the revised plans 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 #05-7, the request by Christine Dock to vary the side yard setback for the installation of a condenser unit at 225 Lonsdale was reviewed. Jayson Dock explained that he had asked his HVAC contractor to relocate a condenser unit from his rear to his side yard to make room for a future deck or patio. A fence was subsequently erected to address visual and noise issues. Mr. Dock added that a gate will be installed across the front of the fence to screen the condenser unit from the street. Mr. Docks' contractor noted that this is a 14 year old unit that was moved. Mr. Roess asked if Mr. Dock has spoken to his neighbor about the condenser unit. Mr. Dock stated that while he had not spoken directly to his neighbor about the relocated unit, when he installed the fence, he held the fence back from the property line to accommodate his neighbor.

#### 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 physical surroundings, 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 conditions in this application are not unique to this property and are fairly typical of other properties within this zoning classification.

**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 enable the property owner to relocate an existing condenser unit from a rear yard location scheduled to be converted into patio space.

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 homeowner's desire to relocate the condenser unit from the rear yard to a side yard location.

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: Since the condenser unit will be screened by a newly installed privacy fence, granting the variance should not be detrimental to the public welfare or injurious to the abutting property.

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: Given the distance between the location of the condenser unit and the abutting property owner's home, noise should not be a factor. As mentioned, the unit is screened by a privacy fence.

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 is not enough space to relocate the condenser unit to the west side yard without encroaching into the side 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: It does not appear that the location of the

condenser unit will impact the abutting property owner.

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. Faulkner and seconded by Mr. Bohachek that application #05-7, the request by Christine Dock to vary the side yard setback for the installation of a condenser unit at 225 Lonsdale Avenue, and known as lot #2321, be approved based on plans and information submitted, subject to the installation of a fence gate 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.

Under miscellaneous, Mr. Weiskircher explained that The Snyders of 249 E. Peach Orchard received a rear yard variance last September for a large addition to their home. Variance approvals are valid for only 6 months, and the Snyders just submitted their plans this past week. The plans were delayed due to health issues involving Mrs. Snyder. Staff is asking that the 6 month deadline be extended given the special circumstances. The BZA unanimously approved the request.

There being no further business, the meeting adjourned at 5:20 pm.

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CHAIR

ATTEST:

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RECORDING SECRETARY