

Oakwood, Dayton, Ohio
October 10, 2013

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..... PRESENT
MRS. JANE G. VOISARD PRESENT
MR. GREG LAUTERBACH PRESENT
MR. KEVIN HILL PRESENT

The following officers of the city were present: -

Mr. Jay A. Weiskircher, Assistant City Manager
Mr. Dave Bunting, City Inspector

The following visitors registered:

Rick Filbrun, 9069 St. Rt. 571

Application #13-3, the request by Steve and Heather Kleinhenz to vary the west side yard setback for a proposed 18' x 30' greenhouse addition at 310 Southview Road and known as lot 367+.

Mr. Bohachek then asked the members of the Board if any discussion was warranted regarding the minutes from the September 12, 2013 meetings which were slated for approval. There being no discussion, Mr. Bohachek moved the minutes be approved. Mr. Lauterbach seconded the motion and it was so ordered.

Mr. Bohachek opened the public hearing. Mr. Rick Philbrun, contractor for 310 Southview Road, addressed the Board. Mr. Philbrun stated that the owner, Dr. Kleinhenz is an avid gardener and currently owns two gardening plots at Wegerzyn Gardens. He explained that Dr. Kleinhenz starts all of his plants from seeds and is very interested in having his own greenhouse. Mr. Bohachek stated that he visited the residence at 310 Southview Road and was told that the orange marked areas were the corners of the greenhouse which didn't match the plot plan submitted. Mr. Philbrun shared that the orange markings were not the corners of the greenhouse; they were markings to show the applicants the greenhouse location if it was moved back behind the deck. Mr. Bunting explained that in order to eliminate the need for a variance, the greenhouse would need to be moved back behind the deck. Mr. Dietz asked if the original proposal for the greenhouse was larger than the plans that were provided? Mr. Philbrun confirmed that the greenhouse has been reduced from 18' x 30' to 14' x 29'. Mr. Lauterbach inquired if the steps going down to the greenhouse had the same elevation as the patio? Mr. Philbrun said that was the original plan, but not any longer. Mrs. Voisard asked if the greenhouse was considered an accessory structure and if there was a size limit or a limit of the

number of accessory units? Mr. Bunting confirmed that it is an accessory structure but there is no limit and the size regulations require that it is not more than 20% of the area.

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

Mr. Hill commented that although he felt it was a large structure, he didn't have concerns for the non-conforming setback especially since there were not any issues raised from the adjoining neighbors and they appear to support it. Mr. Bohachek asked what the maximum height for the greenhouse would be if moved to the rear of the lot? Mr. Bunting explained that it could be 12 ft. from grade to peak. Mr. Lauterbach asked if it was measured different for a home? Mr. Weiskircher responded that the height measurement is different for a home. Mr. Lauterbach shared that he felt the applicant had enough opportunity to get what was needed without a hearing. He said that if the greenhouse was approved before the deck was built it more than likely would not require a variance. Mr. Bohachek asked if the west side of the greenhouse will line up with the side of the house? Mr. Philbrun confirmed that it would originally, but now it is about 4 ft. further from the edge of the house. Mr. Lauterbach expressed concern that if the variance is approved, the Board is approving a greenhouse that they don't have the details for due to the plans not being available. Mr. Lauterbach asked if there is any HVAC equipment that will be used in the greenhouse? Mr. Philbrun shared that it is dependent on the size and ventilation approved, but he believes mostly interior fans will be used. Mr. Dietz asked if the greenhouse would have a stack as shown in the pictures provided? Mr. Philbrun confirmed that it would not have that type of equipment. Mrs. Voisard asked what kind of maintenance is needed to keep the greenhouse in good condition? Mr. Philbrun said that he really wasn't sure of the maintenance, but the greenhouse will be aluminum; painted white or green. Mr. Bohachek asked why the updated plans were not provided? Mr. Philbrun shared that they haven't been generated due to the added cost to the client. Mrs. Voisard shared that she feels the greenhouse is inappropriately scaled for the neighborhood. Mr. Weiskircher added that the proposed location is better than if it was moved further back where it could be placed only 5' from the lot line. He added that he feels very strongly that the structure is too big for a residential application. Mr. Weiskircher asked if the greenhouse was a kit? Mr. Philbrun confirmed that a large residential greenhouse kit that would be used. Mrs. Voisard said that she doesn't feel they have enough information to make a decision. Mr. Bohachek explained that they had the option to table if needed until further information is needed. Mr. Hill added that the Board needs to consider that if tabled, the applicant may retract and simply move the greenhouse to the rear portion of the lot and place it closer to the lot line. Mr. Bohachek asked what would happen if the Board denied the variance? Mr. Weiskircher explained that the applicant would have to wait 6 months to resubmit or reapply. Mr. Dietz asked the applicants desired timeframe for building? Mr. Philbrun said that they are ready right now so they would have it accessible to plant seeds in February. Mr. Weiskircher explained that the Board could grant conditional approval contingent upon additional information being provided and then have a subcommittee review and approve the submittals.

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 necessitate placement of the greenhouse in the proposed location.
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 fairly typical of most properties in the R-1 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 accommodate the placement of a proposed 14' x 29' greenhouse and is not based primarily 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 variance request is necessitated by the applicants' desire to locate the greenhouse in close proximity to the principal structure and deck. Although the greenhouse appears to be out of scale for a residential application, if it was moved to the rear 20% of the lot, it could be placed 5 feet from the rear lot line without the need for a hearing.
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 proposed 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: Notwithstanding the fact that the greenhouse is transparent, at 14' x 29', it is a very large structure even for an R-1 lot.
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 greenhouse seems more suited for a commercial application than a developed, upscale residential neighborhood. Moreover, the proposed location puts it in the direct line of site of the adjoining neighbor's deck.

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 topographic conditions that make it difficult to comply with the zoning 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 proposed greenhouse will take on an even more imposing presence atop a newly constructed retaining wall.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Hill and seconded by Mr. Bohachek that application #13-3, the request by Steve and Heather Kleinhenz to vary the west side yard setback for a proposed 14' x 29' greenhouse addition at 310 Southview Road be conditionally approved subject to submission of a revised site plan with accurate dimensions and details of greenhouse including a revised south elevation, blocked elevation of the west for an accurate scale of the house, and drawings depicting the stone foundation. The submittals should include a picture of the proposed structure

similar to the picture included with the original application. The subcommittee will review the submittal and advise the contractor/applicant as to a final decision on the appearance of the proposed greenhouse.

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

Thereupon Mr. Bohachek made a motion for adjournment, seconded by Mr. Lauterbach. The public meeting concluded at 5:50 p.m.



CHAIR

ATTEST:



RECORDING SECRETARY