

Oakwood, Dayton, Ohio

July 13, 2006

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. Jim Faulkner, presided and the Acting Recording Secretary, Mrs. Lin Rich, recorded.

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

MR. JIM FAULKNER.....PRESENT
MR. ROBERT CURRY.....PRESENT
MR. KIP BOHACHEK.....PRESENT
MRS. SHARON KILLWORTH....ABSENT
MR. WILLIAM J. ROESS.....ABSENT

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:

Jay A. Vitali, 1900 Shroyer Road

It was moved by Mr. Curry and seconded by Mr. Bohachek that the absences of Mrs. Sharon Killworth and Mrs. William J. Roess be excused. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

I regard to the June 8, 2006 meeting minutes, Mr. Faulkner noted that motion for Application #06-2 should be four (4) yeas and one (1) nay. Therefore, it was moved by Mr. Faulkner and seconded by Mr. Curry that the minutes of the meeting held June 8, 2006 be approved as amended 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 reviewed the meeting procedure and explained that since only three of the five members are at the meeting, a unanimous vote is required to pass any variance. If the applicant so chooses, he may table to request until another meeting.

Application #06-3, the request by Jay Vitali to vary the rear yard setback for a deck at 1900 Shroyer Road, and known as lot #3401, was reviewed.

Mr. Vitali explained his plans to build a deck, however, his back yard is limited and he needs a variance on the rear yard setback in order to accomplish this. He is proposing a deck, including vegetation screening, which fits more in line with the house, walks, and rear yard and which will be more aesthetically pleasing and increase property value. The deck, with some railing, will be built over an existing concrete pad. He also stated that the two Oakwood neighbors to the south have no problem with the plans.

Discussion ensued on a portion of the deck which will be 12 inches in height, posts indicated on the plans on the south side of the deck, and existing steps. Mr. Vitali explained because of the yard and existing concrete pad, there is a section of the deck which will be approximately 12 inches in height which will be visible from Wiltshire Blvd. He went on to explain he has plans to install lilac plantings in this area, and lattice under the decking where the ground is not level. The concrete pad and steps will be entirely covered with the new deck. There was general discussion on board sizes and step risers to assure code compliance. There being no other comments, the hearing was closed.

Mr. Faulkner inquired about the condition of the driveway. Mr. Bunting stated it was not an outstanding violation. Mr. Curry noted that the property owner has already invested and improved the property. Mr.

Bohachek commented there is adequate space for the deck, but feels fencing and vegetation screening requirements are appropriate. Mr. Curry complemented the applicant on the nice job he has done on the property so far.

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 applicant's garage occupies a significant portion of the available rear yard. Without a variance, the deck would have to be substantially smaller to the point of possibly being impractical.
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: Since the property is accessed from the side street (Wiltshire) rather than Shroyer Road the location of the garage further reduces the size of what is already a small rear yard.
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 create useable rear yard space for the enjoyment of the property owner 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 applicant's desire to have what is a fairly large deck in a small rear yard.
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: Although the property can yield a reasonable return without a variance, the size of the deck would have to be reduced by nearly 50%.
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: If a privacy fence or other form of screening is installed along the south property line, the granting of a variance should not be detrimental to the abutting neighbor to the south or other property in the area.
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: If the deck is well built with quality materials and adequate screening is provided, it should not create an adverse aesthetic appearance 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: The limited amount of available rear yard space makes it extremely difficult to meet the setback requirements for the district.
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 deck appears to be rather large for the limited space available and there does not appear to be a privacy fence or other screening proposed for the benefit of the applicant or the abutting neighbor to the south.

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. Bohachek that application #06-3, the request by Jay Vitali to vary the rear yard setback for a deck at 1900 Shroyer Road, and known as lot #3401, be approved based on plans and information submitted, subject to: 1) four (4) foot vegetation screening on south side and 2) the driveway issue be resolved by the end of the year; in accordance with all applicable city rules and regulations. Mr. Bohachek's motion was not seconded. Mr. Curry then made a motion, seconded by Mr. Bohachek to approve the request without condition #2; Mr. Faulkner concurred. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

The Board of Zoning Appeals adjourned. The public meeting concluded at 4:55 p.m.

CHAIR

ATTEST:

RECORDING SECRETARY