

Oakwood, Dayton, Ohio

November 9, 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 Recording Secretary, Ms. Cathy Blum, 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....PRESENT
MR. WILLIAM J. ROESS.....PRESENT

The following officer of the city was present:

Mr. Jay A. Weiskircher, Assistant City Manager

The following visitors registered:

Bob Ferguson, 306 East Drive
David Eaton, 2408 Far Hills
Linda Thomas, 327 East Drive
Stephen and Ginger Marquitz, 312 East Drive
James & Gloria Smith, 311 East Drive
Elaine Allison, 326 East Drive
Jim Miller, 8707 N. Dixie
Chuck Metzner, 8707 N. Dixie
Don Sutch/Robyn Angel, 422 Glendora Avenue

It was moved by Mr. Roess and seconded by Mrs. Killworth that the minutes of the meeting held October 12, 2006 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.

Application #06-9, the request by Dan Stugh and Robyn Angel to vary the front yard setback for an attached garage addition and to vary the side yard setback for a driveway at 422 Glendora was reviewed. Mr. Eaton, Architect, reviewed plans to add a garage to the front of the house extending toward Glendora and at the same setback as the house, a pre-existing non-conformity. He explained the existing garage will be used for storage, the new garage will be 60-70% below grade, have a flat roof system and constructed from white stucco to match the majority of the house. He added although the home was built in the 1920's there are three different styles. Mr. Faulkner asked if real stucco will be used rather than EFIS. Mr. Eaton concurred. Mr. Bohachek asked if there will be enough drive area to turn into the garage. Mr. Eaton agreed and explained the drive is shared and the prior owner had a basketball hoop in that location. Mr. Roess noted the addition doesn't extend toward Glendora any more than what exists. Mr. Faulkner asked if there were any comments. Mr. Eaton indicated the owners are also available. There being no other comments, the hearing was closed.

Mr. Bohachek noted the existing garage is a problem; this makes sense, a good design that blends in nicely. Mr. Faulkner wondered why the drive isn't larger since it abuts a vacated alley. Ms. Angel indicated the previous drive was gravel and although the preceding owner requested permission to pave that area the neighbor denied the request. She added access was granted in perpetuity when the alley was vacated in 1936. Mr. Eaton pointed out the owner's drive is paved. Mr. Faulkner wondered how that access area became grass. Ms. Angel explained the owner lived there for 75 years, never drove nor used the garage. She indicated the new paving was completed a couple years ago. Mr. Faulkner asked if the city was comfortable with the drive issues. Mr. Weiskircher agreed. Mr. Roess and Mr. Curry indicated they had no problem with the proposal.

Upon consideration of these representations by the applicant, the board made a finding that these

standards for variances have been met.

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:
- Front yard variance: The front yard is already non-conforming so any improvements to the front of the house, regardless of any physical surroundings or topographical conditions, require a variance.
 - Side yard variance: The existing driveway already encroaches into the 5' side yard setback and is not related to challenges associated with the physical surroundings or topographical conditions.
- 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_
- Front yard variance: The front yard of the existing home is already non-conforming and the proposed variance does not expand the non-conformity.
 - Side yard variance: Like the front yard variance, the existing driveway already encroaches upon the 5' side yard setback requirement for driveways.
- 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:
- Front yard variance: The purpose of the variance is to construct a new garage and convert the existing space for use as additional storage and is not based upon a desire to make more money out of the property.
 - Side yard variance: The purpose of the variance is to provide convenient ingress and egress to the new garage 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:
- Front yard variance: The hardship already existed when the new owners recently purchased the property.
 - Side yard variance: Similarly, the driveway condition existed at the time of the purchase.
- 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:
- Front yard variance: The property recently sold so it can yield a reasonable return if the variance is not granted.
 - Side yard variance: The existing driveway already encroaches upon the 5' side yard setback.
- 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_
- Front yard variance: Since the proposed addition does not encroach any further into the existing front yard setback, it should not be detrimental to the neighborhood.

- Side yard variance: As already stated, the driveway currently encroaches into the 5' side yard setback. This condition has existed for many years and does not appear to have had a negative impact on the adjoining property to the north.

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:

- Front yard variance: The proposed exterior materials for the new garage will match the house so it should not have an adverse aesthetic appearance or impair property values in the neighborhood.
- Side yard variance: The driveway will continue to be used as it has been for many years so it will not have a negative impact on the area.

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:

- Front yard variance: There are no shape or topographical conditions which make it difficult to comply. The difficulty is associated with the existing setback conditions.
- Side yard variance: Similarly, the difficulty with the driveway has to do with the existing conditions rather than shape or topography issues.

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:

- Front yard variance: It does not appear that granting the variance for the garage addition will negatively impact the neighborhood in any way.
- Side yard variance: Likewise, the driveway variance does not change the use of the existing driveway.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Roess and seconded by Mr. Bohachek that application #06-9, the request by Dan Stugh and Robyn Angel to vary the front yard setback for an attached garage addition and to vary the side yard setback for a driveway at 422 Glendora and known as pt lots 332 and 2655, 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.

Application #06-10, the request by Bob Ferguson to vary the front and side yard setbacks for an attached garage at 306 East Drive was reviewed. Mr. Metzner, representing the owner, explained since the property has no garage, the only location is in the front and since the garage needs to be 20' deep for cars, it is too close to the street. He noted although the proposed garage is also 4" greater than the required side yard setback, he could scoot the garage over if that is an issue. Mr. Weiskircher indicated even if it were shortened by 1 ½' it doesn't compare with the other setbacks, the average of which is 42'6". Mr. Curry noted the required setback is 25'. Mr. Weiskircher indicated the variance in this instance it is based on the average setbacks in the block.

Mr. Faulkner asked for comments. Mr. Marquitz, 312 East, is unclear what is being planned and asked how far out it will extend. Mr. Weiskircher responded 20'. Mr. Marquitz indicated that will look very odd, particularly since no other garage in the area sets out that far and questioned the issue to the side. Mr. Weiskircher responded it also requires a 6" side yard variance. Mr. Marquitz noted his opposition with this request since the properties are very close. He is afraid this would deplete the value of his home. Mrs. Marquitz indicated they haven't seen the plans. Mr. Faulkner responded the plans are on file at the city office. Mr. Marquitz expressed concern with this 20' proposal.

Mrs. Smith, 311 East Drive, agreed with the neighbor, this will diminish property values. She also wondered if there are plans to enlarge the drive. Ms. Allison, 326 East Drive, agreed with the neighbors, the 20' protrusion will look rather odd and she is also opposed to the request.

Mr. Ferguson, 306 East Drive, indicated the house next door on the corner of Hathaway also has an extension that protrudes out, this will blend in nicely and overall will look good as the gable roof and windows will match the home. He noted the project is very attractive and believes it will increase property values.

Mr. Marquitz noted since the property was sold, there has been no activity. He believes Mr. Ferguson's intention is to flip the house.

There being no other comments from the audience, the hearing was closed. Mr. Curry noted the corner property does have a shorter setback but nevertheless, these are unusual circumstances and he agreed with the expressed objections. Mr. Faulkner agreed this is too great a variance request and the project will look out of scale and character with the neighborhood. Mr. Roess agreed and noted this is one of the reasons the variance standards are in place to prevent such a request.

Upon consideration of these representations by the applicant, the board made a finding that these standards for variances have not been met.

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: Notwithstanding the fact that the property does not currently have a garage, there are no shape or topographical conditions which create a hardship for the property owner.

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 Although this is the only property on the block without a garage and the proposal results in a structure that only encroaches 1.5' into the front yard setback, the location of the proposed garage will be a noticeable deviation from the setbacks of the other structures along this side of the street.

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 garage 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 alleged difficulty or hardship was created by the conversion of the former garage into living space and the limited options now available to the current owner to locate a garage on the site.
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 was recently purchased by the applicant so it 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: Staff is concerned that even though the garage will only encroach 1.5' into the front yard setback, the resulting setback will be noticeably different than the other properties on this side of the street.
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 variance will result in a significantly smaller setback in comparison to the other structures along the street and may create aesthetic as well as property value issues.
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 topography issues involved with 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 original garage was converted into living space nearly 40 years ago and now the new property owner is asking to build a garage that extends into the front and side yard setbacks.

BOARD OF ZONING APPEALS FINDINGS: Sustained.

Therefore, it was moved by Mr. Curry and seconded by Mrs. Killworth that application #06-10, the request by Bob Ferguson to vary the front and side yard setbacks for an attached garage at 306 East Drive, and known as lot #3569, be denied based on plans and information submitted. Upon a viva voce vote on the question of the motion, same was unanimously denied and it was so ordered.

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

CHAIR

ATTEST:

RECORDING SECRETARY