

Oakwood, Ohio  
May 9, 2019

The Board of Zoning Appeals of the city of Oakwood met in regular session at 4:30 p.m., in the council chambers of the City of Oakwood, 30 Park Avenue, Oakwood, 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. KEVIN HILL .....PRESENT  
MR. DAN DEITZ.....PRESENT  
MRS. LINDA WEPRIN .....PRESENT  
MR. NICK ENDSLEY .....PRESENT

The following officers of the city were present:

Mr. Robert F. Jacques, City Attorney  
Mrs. Jennifer S. Wilder, Personnel and Properties Director  
Mr. Ethan M. Kroger, Code Enforcement Officer

The following visitors registered:

Cynthia Streidl, 306 Wonderly Avenue, Oakwood, OH 45419  
Randy Roach, Legal Counsel

Mr. Bohachek asked the members of the Board if any discussion was warranted regarding the minutes from the April 11, 2019 meeting which were slated for approval. There being no discussion, Mr. Deitz moved that the minutes from the April 11, 2019 meeting be approved. Mr. Hill seconded the motion. Upon a viva voce vote, motion passed and the minutes were approved.

Mr. Bohachek reviewed the meeting procedure with all in attendance. He explained that the Board conducted a public hearing on April 11, 2019 for Application 19-1, which involves a side yard setback variance for an egress window well. The Board tabled the application to confirm additional information related to water drainage and sump pump installation. City staff provided an investigative report with the additional details to the Board, and the report was sent to the homeowners at 306 Wonderly Avenue and 310 Wonderly Avenue and to their respective attorneys.

Mr. Bohachek asked Mr. Kroger if he wished to present a staff report before taking the matter off the table and reopening the public hearing.

Mr. Kroger summarized the previous proceedings, noting that during the April 11, 2019 hearing, the Board heard testimony from the applicant, Ms. Streidl at 306 Wonderly Avenue, and her next door neighbor, Ms. Rapoch at 310 Wonderly Avenue, regarding water drainage issues that may or may not be attributable to the previously installed window well. Ultimately, the Board tabled the application pending information on the following questions: 1) is there a sump pump or other drainage system present in the egress window well on the east side of 306 Wonderly Avenue, and if so, where does it discharge water; 2) where is water discharged from the basement sump pump at 310 Wonderly Avenue; and 3) based on the grade between the homes, the presence of any catch basins in either yard, and the downspout drainage at 306 and 310 Wonderly Avenue, are there indications that the egress window well at 306 Wonderly Avenue is directing water flow towards 310 Wonderly Avenue?



Mr. Kroger explained that city staff's investigation was performed jointly on April 22, 2019, by Streets Foreman David Shuey, who is responsible for maintenance of all public rights-of-way and the City's stormwater drainage utility; Water and Sewer Line Foreman Chris Harold, who is responsible for all aspects of the City's water distribution system and the sanitary sewer utility; and Code Enforcement Officer Ethan Kroger, who is responsible for administration and enforcement of the City's Zoning Code, Property Maintenance Code, and Building Code. Also attending the investigation were Cindy Streidl, owner of 306 Wonderly Avenue, and a representative of Laura Rapoch, owner of 310 Wonderly Avenue. Ms. Streidl and Ms. Rapoch had previously consented to the investigation at the April 11, 2019, BZA meeting.

Mr. Kroger then summarized the findings from city staff's investigation, noting that there is no sump pump installed in the window well at 306 Wonderly Avenue; the sump pump at 310 Wonderly Avenue is the source of the drain tile that discharges water onto the public sidewalk; and there are no other indications that water is moving towards 310 Wonderly Avenue as a result of the window well. It appears that the likely cause of water intrusion at 310 Wonderly Avenue is a combination of clogged downspouts at that address plus the way they are positioned to discharge near the foundation of that property. City staff does not believe the egress window well is the likely cause of basement water intrusion at 310 Wonderly Avenue.

Mr. Kroger also noted that based on staff's investigation, the water and ice issues along the sidewalk and street appear to be caused by the sump discharge from 310 Wonderly Avenue, and not by the window well.

Mr. Kroger closed his presentation, and asked the Board to remove this matter from the table for further proceedings regarding the egress window well.

Mr. Endsley asked if a variance is required even when a window well complies with the Code.

Mr. Bohachek answered yes.

Mr. Deitz asked if the side yard requirement is measured by the closest structure or from the property line.

Mr. Jacques explained that the provision requires a five foot side yard setback. However, window wells may extend no more than two feet into the required setback in which the window is being placed, effectively creating a three foot side yard setback. The structure is measured starting at the property line versus from the house.

Mr. Deitz commented that the egress may be less because of the thickness of the window well.

Mr. Jacques shared that the egress is shown on the provided drawings.

Mr. Bohachek stated that the window well structure's composite top edge is only an inch or two thick based on the plans that were submitted.

Mr. Deitz added that one of the drawings measures the window well 3.9 feet (or 45 inches) from the property line.

Mr. Endsley commented that now that the drainage issues have been evaluated, the Board can focus on the egress window well structure. He shared concerns related to safety, and was curious if either a cap or enclosure could be used to mitigate safety concerns.



reduced to 36 inches, shortening the existing window well by five to eight inches.

Mr. Endsley asked if a compliant egress window well requires a variance.

Mr. Bohachek confirmed yes and explained that if the window well was the minimum compliant size, it would project three feet from the house and would have a two foot setback. This would require a variance of 12 inches instead of 20 inches.

Mr. Hill shared concern that if this application is approved, it will set a precedent. He added that it is the Board's responsibility to uphold the Code, but he sympathizes with the applicant's situation given that the contractor provided misleading information.

Mr. Endsley commented that more than likely, the Board would not have approved this variance, and the issues with the misinformation should be taken to the contractor directly.

Mr. Bohachek stated that the variance request is for 20 inches, but he is inclined to suggest that the variance be changed of 12 inches. He noted that if the Board requires the window well to be removed and replaced, the final dimensions may differ depending on whether it is replaced with the same kind of well or if it is made from other material such as retaining wall blocks, which are much thicker.

Mr. Jacques explained that the Board may approve the variance request, deny the variance request or approve the variance request with conditions. The Board cannot revise the applicant's request. The Board may impose a condition as long as it is a condition imposed to eliminate an adverse effect on the adjacent property or the neighborhood. If the variance is approved, the applicant will only have six months to replace the window well before the permit expires.

Mr. Bohachek commented that now that the drainage concerns are eliminated, the window well as it is now is not adversely affecting the neighborhood.

Mr. Endsley noted that no one has a right to trespass on private property, so that moderately eliminates his safety concerns as well.

Mr. Bohachek said that he is unsure if there is a way to reconfigure the window well without removing the current window well and completely replacing it.

Mr. Roach shared that the window well opening is four feet wide.

Mr. Bohachek commented that the width is not the issue. The extension from the house is the issue.

Mr. Roach explained to the Board that under zoning laws, each application stands on its own merit, so a precedent cannot be set. He invited the Board to confirm that with the City Law Director; Mr. Jacques concurred and stated that by Code, each application is reviewed on a case by case basis, and this is especially true for variance requests because they are intended for situations that are unique to a particular property.

Mr. Hill stated that he is willing to make a motion to approve the window well as it is.

Mr. Jacques suggested that the motion should come from a member of the Board who has attending both proceedings and was present at April 11 meeting.

Mrs. Weprin agreed with Mr. Hill that the application should be approved as is. She shared that



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even reputable contractors may not follow the rules. She believes Ms. Streidl is trying to do the right thing now by getting the appropriate approvals and permitting, and this variance will do substantial justice within the spirit of the Zoning Code.

Therefore, it was moved by Mrs. Weprin and seconded by Mr. Bohachek that tabled application #19-1, a request by Cinthia Streidl to vary the side yard setback for an egress window well at 306 Wonderly Avenue, be approved.

For purposes of the minutes, the preliminary staff findings as stated in the Staff Report were as follows:

#### **STANDARDS FOR VARIANCES**

- A. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;

##### **PRELIMINARY STAFF FINDINGS:**

- The property can yield a reasonable return with or without the variance.

- B. Whether the variance is substantial;

##### **PRELIMINARY STAFF FINDINGS:**

- Staff believes this variance request is not substantial in nature and will result in livable space within the basement. However, the egress window well was installed without obtaining zoning and structural permits, which must be obtained should the BZA grant the variance request.

- C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

##### **PRELIMINARY STAFF FINDINGS:**

- It is the opinion of staff that the essential character of the neighborhood would remain intact should the BZA be inclined to grant this variance request.
- Staff has been made aware of a drainage concern at the neighboring property that may have resulted from the installation of the egress window. Staff is unable to opine whether the drainage problem is, in fact, related to the window well. Should the BZA be inclined to grant this variance request, staff recommends conditioning such approval upon satisfactory management of water runoff created by this improvement, so that it does not negatively impact adjacent homes in area.

- D. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, refuse, police/fire);

##### **PRELIMINARY STAFF FINDINGS:**

- There is no reason to believe governmental services would be adversely affected due to the granting of the variance. (See attached comment forms.)

- E. Whether the property owner purchased the property with knowledge of the zoning restriction;

##### **PRELIMINARY STAFF FINDINGS:**

- Staff has no information as to the owner's knowledge at the time of purchase. The owner acknowledges that she was aware of the permit requirement and believed her contractor had complied.



F. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

**PRELIMINARY STAFF FINDINGS:**

- Window wells are permitted in all required yards (front, corner side, side and rear). Staff was unable to consult with the owner due to the fact the egress window was installed prior to obtaining proper permitting.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;

**PRELIMINARY STAFF FINDINGS:**

- The spirit and intent of the setback requirement is to ensure a reasonable distance between the principal structure and the property line, and to align houses with other homes in the block for aesthetic purposes.

H. Any other relevant factors.

**PRELIMINARY STAFF FINDINGS:**

- The window well currently exists as proposed above and this application was filed seeking retroactive variance.

Upon call of the roll on the question of the motion, the following vote was recorded:

MR. KIP BOHACHEK ..... YEA  
 MR. KEVIN HILL ..... YEA  
 MR. DAN DEITZ..... NAY  
 MRS. LINDA WEPRIN ..... YEA  
 MR. NICK ENDSLEY ..... NAY

There being three (3) YEA votes, thereon, said motion carried.

There being no further business, the meeting concluded at 5:18 p.m.

  
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 CHAIR

ATTEST:

  
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 RECORDING SECRETARY