

Oakwood, Ohio  
April 11, 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. DAN DEITZ.....PRESENT
- MR. KEVIN HILL .....ABSENT
- 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:

- Cinthia Streidl, 306 Wonderly Avenue, Oakwood, OH 45419
- Randy Roach, Legal Counsel
- Laura Rapoch, 310 Wonderly Avenue, Oakwood, OH 45419
- Dave Montgomery, Legal Counsel

Mr. Bohachek shared that Mr. Hill was unable to attend the meeting and asked to be excused. Upon a viva voce vote on the question of the absence approval, same passed unanimously and it was so ordered.

Mr. Bohachek noted that since this is the first meeting of the Board of Zoning Appeals in 2019, the Board will need to appoint a Chair and Vice Chair. Mr. Bohachek shared that prior to the meeting, Mr. Hill offered to act as Chair or Vice Chair if there was a need. Following a brief discussion, Mrs. Weprin made a motion, second by Mr. Deitz, to reappoint Mr. Bohachek as Chair, and to appoint Mr. Hill as Vice Chair. The motions passed unanimously.

Mr. Bohachek asked the members of the Board if any discussion was warranted regarding the minutes from the December 13, 2018 meeting which were slated for approval. There being no discussion, Mr. Endsley moved that the minutes from the December 13, 2018 meeting be approved. Mr. Deitz 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.

Mr. Kroger referenced a PowerPoint presentation and explained that Application 19-1 was filed by Cinthia Streidl requesting a side yard variance for a previously installed basement egress window well at the existing single family residence located at 306 Wonderly Avenue.

As Mr. Kroger displayed an image of the site plan, he provided property details. The property at 306 Wonderly Avenue was built in 1942. The property is located in the R-5 (single family) Zoning District. The R-5 Zoning District is intended to preserve those residential areas which are best suited for small sized lot developments and to maintain the character of existing low-density single family developments.



The R-5 Zoning District requires a five foot side yard setback. 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 for 4 window wells. Prior to construction of the egress window well, the property was conforming as the existing home is setback five feet one inch from the side yard property line. The egress window well was installed last year by a contractor, without a permit, and is one foot four inches from the property line. The requested variance would allow this one foot four inch side yard setback, a difference of 20 inches from the required three feet.

Mr. Kroger closed his presentation by sharing that should the Board of Zoning Appeals choose to approve this application, staff recommends the following conditions: 1) the property owner must obtain a structural permit through the city of Kettering; and 2) any drainage pattern disruption resulting from the installation of the egress window must be addressed by the applicant so that there is no resulting negative effect on neighboring or city-owned property.

Mr. Endsley asked if the city of Kettering addresses drainage issues through the permitting process.

Mr. Bohachek explained that drainage can be a gray area and is always an issue. The plans would be evaluated to ensure that the project does not direct "concentrated water" on neighboring properties, and this is typically checked as part of the final inspection.

Mr. Bohachek opened the public hearing.

Mr. Jacques explained that this is a quasi-judicial hearing, so he administered an oath to those wishing to testify in the audience.

Ms. Cinthia Streidl, property owner of 306 Wonderly Avenue, explained that when the egress window was installed by the contractor, she was assured that the appropriate permits were secured. She was not aware that the appropriate permits were not in place until after the window was already installed, and was also unaware of the setback requirements.

Mr. Roach, legal counsel for Ms. Streidl, explained that the issue at hand is the variance that would change the side yard setback by approximately 1 foot 8 inches. He explained that his client, Ms. Streidl, was told by the contractor that the permits were secured for the project.

Ms. Laura Rapoch, 310 Wonderly Avenue, shared that she lives directly east of the applicant. Ms. Rapoch referenced a PowerPoint presentation, including images of her property, explaining that the installation of the egress window creates a direct negative impact to her property. The landscaping and change in slope continue to show the negative impacts. A day after the installation of the window well, some construction materials crossed over across the property line into her yard, and erosion continues further into her property. The erosion and limited setback creates a challenge for home maintenance and lawn care on the side yard. She explained that her basement has flooded on multiple occasions since the installation of the window well. Prior to the egress window, there had not been any flooding issues since she purchased the home in March 2016. She explained that the previous homeowner of her property installed a drain on the west side of her house. This drain emits water on occasion during rain events, but after the installation of the egress window, there has been significant drainage into the street creating dangerous ice conditions and the drain now emits water continuously despite having rain. The lip on the edge of the window well is creating continued erosion into her property, and also creating safety concerns. Ms. Rapoch closed her presentation by asking the Board to deny the variance request. She opined that the need for the variance is based on a condition created by Ms. Streidl which was under her control to avoid. The window well was illegally installed,



encroaches into the side yard setback and has created a negative impact on her property. Ms. Rapoch explained that if there was a hearing prior to the installation as mandated by the Code, she would have attended and asked that the variance be denied due to drainage concerns given the existing slope, the side yard accessibility for property maintenance, and safety concerns. The failure of the contractor to secure the required permits does not negate Ms. Streidl's responsibility. Allowing the window well to remain, in her opinion, rewards Ms. Streidl for ignoring the City's zoning regulations, and provides a stamp of approval to the harm it is causing.

Mr. Bohachek commented that there seems to be question on whether or not there was a sump pump installed with the window well.

Mr. Montgomery, legal counsel for Ms. Rapoch, provided a copy of Ms. Rapoch's PowerPoint presentation to Ms. Stacel for the record.

Mr. Bohachek shared that he did not see evidence of a sump pump when he viewed the window well.

Ms. Streidl explained that there is nothing electrical hooked up around the window well for a sump pump. She added that the previous property owners of 310 Wonderly Avenue dug a trench creating drainage into the street. She is aware that there were also previous incidents of water in the basement at 310 Wonderly Avenue prior to the installation of the window well.

Mr. Roach said that Ms. Streidl is more than willing to address any of the Board's concerns to mitigate any Zoning Code violations. The problem is not the window, it is with the setback. While the contractor was negligible in securing the appropriate permits and information to Ms. Streidl, the water drainage issues were a problem experienced by the previous owners before the egress window was installed. He added that the information being provided about the water drainage is speculative, and no one is certain of the water drainage source. He added that it is not in the spirit of the Zoning Code to penalize residents.

Mr. Deitz reiterated that there is still question on whether a sump pump was installed.

Ms. Streidl responded that she is not sure about the sump pump, but the contractor charged her for a sump pump as part of the project. She opined that the water is coming from Ms. Rapoch's yard due to a trench dug by the previous owner.

Mrs. Weprin asked if the grading around the window is now higher than it was when the window was initially installed.

Ms. Streidl explained that she hired landscapers to correct any issues to Ms. Rapoch's property as a result of the window well installation. She added that it was not her intention to create friction or to cause a hardship with her neighbors.

Mr. Roach shared that after looking at the property foundations for 310 Wonderly Avenue and 306 Wonderly Avenue, he believes that the elevation of the hill into 310 Wonderly is occurring naturally over time versus as a result of the window well.

Mrs. Weprin asked if there are downspouts located on either property.

Ms. Streidl responded that she has one underground downspout. She added that there is a downspout on the front and back of the house. She shared that her neighbor at 310 Wonderly



Avenue has two hoses into the yard and a spout with an extender to keep the water from draining into her driveway.

Mr. Bohachek asked Ms. Rapoch if a surface drain or catch basin was installed on her property.

Ms. Rapoch said she believes a drain was installed by the previous owner on the west side of the home, and a rear yard catch basin comes all the way to the front of the property.

Mr. Bohachek asked if her sump pump runs in the winter.

Ms. Rapoch answered no, and explained that she turns off the sump pump in the winter. However, she let it run this past winter due to water intrusion that happened after the egress window well was installed.

Mr. Bohachek asked if her gutters or downspouts are underground.

Ms. Rapoch responded that there is an underground pipe extending to the front of the house, but she does not know if it is fed by downspouts or something else.

Mr. Endsley asked Ms. Streidl if the window in discussion is the only basement egress window on her property. He also asked if there are any other windows in the rear of the house.

Ms. Streidl confirmed that there are no other egress windows, and that the home has two windows on the right and two windows on the left of the house. There are no basement windows on the rear of the home.

Mr. Montgomery commented that the practical difficulty that now exists is not because of pre-existing conditions. The applicant failed to follow City procedures by gaining variance approval. Neighboring property owners should not have to bear the burden of the failed project. He explained that he is sympathetic to the applicant, but the significant side yard setback is a burden to his client, Ms. Rapoch, residing at 310 Wonderly Avenue.

Mr. Roach noted that the Oakwood Zoning Code allows the placement of egress windows and his client, Ms. Streidl, has the right to install one on her property. Unfortunately, Ms. Streidl relied on her contractor who provided incorrect information creating a one foot eight inch encroachment error.

There being no further public testimony offered, the public hearing was closed and the Board of Zoning Appeals began its deliberations.

Mr. Bohachek asked if city staff identified the property lines.

Mr. Jacques explained that in the absence of a property survey, city staff does not make concrete property line identifications. He added that property owners have the right to change grading on their property. If drainage issues occur, the concerns are civil issues between two private property owners.

Mr. Endsley asked how the Board has handled detrimental reliance that occur as a result of unreliable contractors.

Mr. Bohachek commented that the responsibility still lies with the homeowner.

Mr. Jacques added that the egress window was installed without a required permit. The homeowner either has to remove the window or obtain a permit.

Mr. Bohachek stated that 306 Wonderly Avenue sits higher than 310 Wonderly Avenue. The reason for the drainage issues is undetermined and he questions the source of the water. Usually, window well installations do not negatively impact drainage unless the sump pump at the bottom of the well is draining into a neighbor's yard.

Mr. Endsley asked if the project plans submitted by the applicant are "typical" drainage or what was installed.

Mr. Kroger responded that the contractor said that the plans provided are standard window well plans.

Mr. Bohachek shared that there are technical issues with this project that need to be answered. He commented that he seriously doubts that a sump pump was installed with the window well, but that should be easy to confirm. The origination of the water drainage is harder to determine. The Board can either deny the application or table until additional information is received.

Mr. Endsley commented that the Board's analysis of this application should be the same as if the application was presented prior to the egress window being installed.

Mr. Bohachek suggested tabling this application until further information, including confirmation of a sump pump and drainage reports, is provided to the Board.

Mrs. Weprin asked Ms. Streidl and Ms. Rapoch if the Board has their permission to inspect their properties to observe the water drainage.

Ms. Streidl and Ms. Rapoch approved.

Mr. Deitz asked how the Board would enforce conditions if imposed.

Mr. Jacques explained that if it is determined that drainage is an issue, it would be treated as a civil matter versus the Board being involved.

Mrs. Wilder went on to explain that if the application would have been presented prior to the installation of the window well, the Board would not be evaluating drainage concerns, but instead focusing on the side yard setback variance request.

Mr. Bohachek commented that if the application would have been presented prior to the installation of the window well, the Board could have suggested a three foot deep well. A sump pump is not required, but the top of the well could have been contoured to match the existing grade to prevent soil from back filling. This would have prevented any drainage issues.

Mr. Jacques recommended that a member from City staff should inspect the properties versus members of the Board, and the information could be submitted as a supplemental staff report.

Mr. Deitz commented that the Board did not really discuss the variance request. Even if there were no drainage concerns, the Board would have suggested a smaller egress window well.

Mr. Endsley asked if drainage would be an issue if the egress window well was conforming.



Mr. Deitz commented that drainage may not have been an issue if the window well was smaller and lower.

Mr. Bohachek noted to the Board that if the window well creates a hardship that was not there prior to the installation of the window, the Board has the option to deny this application.

Mr. Deitz shared that he feels that the Board should gather additional information prior to an approval or denial. He then asked the Board if they were in agreement to table this application until further information is received.

The Board was in agreement, and spent a few moments developing a list of factual questions to be investigated by staff.

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.

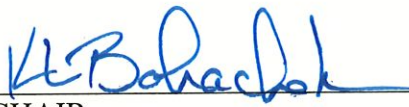
- H. Any other relevant factors.

**PRELIMINARY STAFF FINDINGS:**

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

Therefore, it was moved by Mr. Deitz and seconded by Mr. Bohachek that application #19-1, a request by Cinthia Streidl to vary the side yard setback for an egress window well at 306 Wonderly Avenue, be tabled pending confirmation of the existence of a sump pump and City staff's evaluation of the drainage between the properties of 310 Wonderly Avenue and 306 Wonderly Avenue. Specific questions to be addressed by staff's investigation include: 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. Upon a viva voce vote on the question of the motion, same passed unanimously and it was so ordered.

There being no further business, the meeting concluded at 6:07 p.m.

  
 CHAIR

ATTEST:

  
 RECORDING SECRETARY