

BOARD OF ZONING APPEALS MINUTES
BZA-04-05 Alfred Miller 1753 Oakwood Ave. Variance to Setback
08/10/04

Present: McLimans, Mack, Johnson

Absent: Dill, Jones

Others: Damman-Building Inspector, Alfred Miller, Tom Nadia-Contractor, Jody Howe, David Cordes

McLimans: Gave Oath of Office to those wishing to speak.

McLimans: Asked if neighbors had been duly notified.

Damman: Neighbors were notified and there were no calls or letters sent back.

McLimans: **Background:** An application for Public Hearing has been filed by Alfred Miller, Napoleon, and OH. The applicant is requesting variance to the required front yard setback at the location of 1753 Oakwood Avenue, Napoleon, Ohio, 43545. The request is pursuant to City Code Chapter 1117. The property is located in an R-4 Residential Zoning District.

Damman: **Research And Information:** 1) The applicant is requesting to construct an uncovered porch within the front yard setback area. He has asked to extend 12 feet from the front of the existing house wall. This is considered unreasonable as it would then encroach seven (7) feet into the front setback which is 25 feet. It would seem reasonable to allow a minor encroachment of three (3) feet which would then protrude to the same point as one of the homes in his block (2 doors South of him). This would allow an eight (8) foot wide porch which is much more normal to see on a typical house.

Damman: **Administrative Opinion And Recommendations:** The Standards for variance do not appear to have been satisfied based on the request to encroach seven (7) feet into the front setback. The standards could be met however if the variance request were three (3) feet which would allow an eight (8) foot wide porch to be constructed. Therefore, I am recommending the approval of Board of Zoning Appeals Resolution #BZA 04-05 which has a provision allowing an eight (8) foot wide porch to be constructed to the existing dwelling. The eight foot is measured from the existing front foundation wall.

Motion: Mack

Second: Johnson

To remove from table BZA-04-05 Alfred Miller 1753 Oakwood Ave. Variance To Setback.

Roll call vote on above motion:

Yea-Johnson, Mack, McLimans

Nay-

Passed

Damman: He stated since the last hearing he has gone out a measured from the foundation wall of Mr. Miller's home at 1753 Oakwood Avenue and the dimension is 30'2" and the neighboring property to the South which is referenced in the memo of at 1711 Oakwood measures 21'2" with a difference of 8'4". The property line is 3' off the sidewalk. There is a 25' setback. He stated an 8' porch would be 2'10" into the 25' required building setback. In other words the encroachment would be 2'10". In retrospect the porch would be encroached 6'10' into the required setback. He stated the Board has done a number of hearings over the years and in case law the terms reasonable comes up many times and in that minor variances and granting minor variances to setbacks is what the

Board is all about. Any time a person encroaches beyond what is considered reasonable or minor (minor is somewhat subjective also meaning just a few feet as opposed to 5', 6' or 8') into the required setback. What we are careful not to do, is to encroach so far, that in essence, we eliminate the zoning requirement all together and breach it to the point it is no longer useable so that other neighbors next to him, an on down the road, could do the same thing once we would give him permission to do so. We are very careful as to how we do this so we do not set a new standard of encroachment. In your neighborhood a standard has already been set by your neighbor to the South which again is 2'10" to the setback and we feel if you encroach that same point you would not be setting a new standard you would be simply be going to the point where your neighbor is at which we feel is reasonable. Tom Nadia stated he made the 25' mark on the drawing from the edge of the sidewalk like Mr. Damman said. Mr. Damman stated the property line is 3' back. Tom Nadia said that Mr. Damman did not say that he stated to measure 25' from the edge of the sidewalk and we could go 8' to 10'. Mr. Damman stated "no you only heard part of what I said, Sir. I said the sidewalk is 3' off the property line; do not put words in my mouth as I have been very consistent about this". Tom Nadia stated "you did say we could go for 10'". Mr. Damman stated "no that would be the Board's decision. Tom Nadia asked what was I doing the day this was discussed. Mr. Damman stated that was irrelevant. Tom Nadia stated this was brought up because you came to the house the day I was doing electrical work and asked what was Mr. Miller doing with the stakes out in front of the house and you said I don't think he will be able to go 12' but he may be able to 8' or maybe 10'. You stated to my father-in-law and myself if you try to go to 12' it but the chances of getting it would be almost nothing or if you go to 8' to 10' or would like to go for 10' or within the 2' markings we have a rather draftsman who drew this up of the whole place of the porch which is to erected and we have samples of everything. This is a year old drawing photo because there has been a lot done since with permits. Mr. Damman stated all this shows is the existing porch which is all Mr. Damman wanted to show. Mr. Miller stated that is true. Mr. Damman asked if the property had been surveyed. Tom Nadia stated no, he was just showing what Mr. Miller wanted to do as the Board asked for more information the last time. This is the layout the way the porch is going to be, it says uncovered but it was covered. It will have a roof on it as it was decided on at the last meeting. Mr. Damman stated that was not brought to his attention. Tom Nadia stated well that I am not saying that it was. But it is covered as I had it drawn up the last time? Do you remember me showing you that paper? Mr. Damman stated the change that was advertised was for an uncovered porch. Tom Nadia stated that is what I was saying to Mr. Miller it is covered why are they saying uncovered. Mr. Damman stated the request is for a variance to a setback and is generic enough. Tom Nadia says he has got 8' to the red marker and he didn't know about the 3'. Mr. Damman asked what red marker? Tom Nadia stated he had went out and measured 25'. Mr. Damman stated that is not the right mark because the property line is 3' off the sidewalk and 28' from back of sidewalk. Mr. Damman stated he had marked it for him. Johnson asked how far the 8" encroachment to this. Mr. Damman stated 2'10" into required setback. Mr. Damman given the concrete post that they would put around the post it is part of the structure as well. The overhang was not included so the encroachment would be more. If we come out 8' or 10' out from the wall and have 2' overhang. Mr. Damman stated this is the Board of Zoning Appeals decision as to how far they will allow you to come out. He recommended 8' so it will not be a new standard. Dave said 8' would no problem, 10' would probably be negotiable and 12' would be a problem. Damman stated he did not deny saying but that was before I measured the neighbor's house and had all the facts and it was reasonable at that time. Tom Nadia stated trying to decide to go 10' and 2' of material which is a lot of material. If you want a overhang we can show you an overhang. Mr. Miller stated he was trying to work with the city and get what he wanted also. He would settle for 10' and do a straight cut with no overhang.

Johnson: His concern was in the future, it is a main feeder route to town and some day if they continue to develop the rest of the development and we get into the right of way to far there could be problems. He had no problems with the neighbor's being 2'10" and the standard is set.

Damman: Part of reasoning of the set back to the front of the home is for safety reasons and of course street appeal. He had no problems with the neighbor's being 2'10" and the standard is set.

Mack: The reason it was postponed was because of discrepancies over the measurement and if the measurement is correct then he was in favor of letting Mr. Miller encroach as much as the other property. Is the measurement correct? Mr. Damman: Stated yes it was, and had measured from the foundation to the sidewalk. Johnson had no problem as long as he did not go farther out than the neighbor. Mack asked if the resolution was written for 2'10". Yes it was written for 8' and 2'10" encroachment for the variance. It was not written for a 2' overhang. Mr. Miller stated they would put the gutter right underneath it. Mack stated this resolution allows for an 8' porch measured from the foundation with 2'10" encroachment into the variance. Mr. Miller asked if the 28' measurement was okay. Damman the length of it in front of the house. Mack Yes that looks okay.

Motion: Mack

Second: Johnson

To approve of Resolution BZA 04-05 Alfred Miller 1753 Oakwood Ave. with a 2' 10" variance to setback.

Roll call vote on above motion:

Yea-Johnson, Mack, McLimans

Nay-

Passed

Damman: Asked Mr. Miller to turn in his construction plans as soon as he was ready and he would issue the building permits.

Miller: Asked what the distance for the porch was suppose to be.

Damman: Stated 8' from the existing foundation. Mr. Miller stated he doubted if he was going to do it then and it would stay just the way it is. Damman stated this is up to you, Sir, but you are allowed to go out 8'.

Miller: Regarding the Appian Avenue Property building started that is real close to the road. Why? Damman Replied it is because there were extraordinary exceptional circumstances that met the criteria of the zoning variance. Kenny Woods is building right on the sidewalk. Damman stated there was 0 setback in the C-1 District.

1127.02 BUILDING SETBACK LINES.

Building **setback** lines shall be required along all public streets as hereinafter provided. Any yard abutting a street shall be deemed a **front yard** for the purpose of determining **front building setback** lines.

Front yard requirements are as follows:

- (a) For residential uses where 25% or more of the lots in the block frontage are occupied by buildings, the average **setback** of such buildings determines the dimension of the **front yard** in the block frontage, but the **front yard** need not exceed 50 feet in any case.
- (b) In business and industrial districts where 25% or more of the lots in a block frontage are occupied by buildings, the **setback** of existing buildings shall determine the location of the building line.
- (c) Building **setback** lines established in a recorded subdivision shall establish the dimension of **front yards** in such subdivisions.
- (d) In case of conflict with the **front setback** requirements of the zoning district, conditional uses, or other applicable provisions of this code, the most restrictive requirement shall govern.
- (e) On through or corner lots, **front yards** shall be provided from each street, however, one **front yard setback** may be reduced by 50% of the required **front yard setback** as determined by the Zoning Administrator.

