

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
October 20, 2021

STAFF PRESENT: Karen Knittel Assistant Planning Director  
Pam Roessner Assistant Law Director

## CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present.

## APPROVAL OF THE MINUTES OF THE SEPTEMBER 14, 2021 MEETING

Mr. Zych stated that the September 14<sup>th</sup> BZA Minutes would be reviewed for approval at the next BZA meeting.

## THE POWERS OF THE BOARD AND PROCEDURES OF THE BOARD OF ZONING APPEALS PUBLIC HEARINGS FOR REGULAR VARIANCES

Mr. Zych stated that the purpose and procedures for tonight's meeting are stated for all in attendance. The hearings are quasi-judicial in nature and certain formalities must be followed as if this were a court of law. Anyone who wishes to speak about a case will first be placed under oath. For each case, City staff will make a presentation and then each applicant will present his or her case stating practical difficulty for which we are being asked to grant a variance. The Board will then open a public hearing to obtain testimony from any other persons interested in the case. The applicant will have an opportunity to respond to any testimony from the public and will address those comments to the Board. The Board may then ask questions of the applicant. Based on all the evidence in the record, the Board will make findings of fact and render its

decision by motion. The formal nature of these proceedings is necessary because each applicant is asking for an extraordinary remedy called a variance. A variance is a formal permission by the City for an individual not to comply with a portion of the municipal Zoning Ordinances which is binding to all others.

In making its decision of whether to grant a standard variance, the Board will weigh factors set forth in the Zoning Code in Section 1115.07(1). The burden is upon the applicant to demonstrate by a preponderance of the evidence that the literal enforcement of the Zoning Code would result in a practical difficulty. Preponderance of evidence means the applicant proved his or her position is more likely than not true. The applicant must demonstrate circumstances unique to the physical character of his or her property. Personal difficulties, personal hardships or inconvenience are not relevant to the Board's determination.

The Board is the final administrative decision-maker for all regular variances.

#### PUBLIC HEARING

**Cal. No. 3530 Start Right CDC, 961 Nelaview Rd.,** A Single-Family proposes constructing a new house requests variance to:

- a) Sect. 1121.08(a)(2) to permit front yard to be less than the established front yard (required minimum);
- b) Sect. 1121.08 to permit N. side yard to be less than 5' required minimum; and
- c) Sect. 1121.09(b) to permit attached garage with a visible door on the street (visible door on the street not permitted).

Ms. Knittel and the applicants were sworn in by Ms. Roessner.

Mr. Zych asked that the staff report dated October 14, 2021 be entered into the record.

Ms. Knittel gave her staff presentation.

#### Context

This vacant lot is zoned 'A' Single-Family. The surrounding properties are all zoned 'A' Single Family. The adjacent property to the south is a vacant lot, the houses surrounding this parcel are single-family houses.

The vacant lot is currently owned by the city who has a development agreement with Start Right CDC to construct infill housing on vacant lots in this neighborhood, including this parcel.

The Future Land Use Map of the zoning code shows the area in which the property is located as being used for detached single-family houses.

## **Project**

The applicant proposes to build a new single-family house on this vacant lot.

## **Facts**

This is a nonconforming lot in terms of both lot width and lot area. It is 40 feet wide and is 4,800 square feet in area. A code conforming 'A' Single-Family parcel is a minimum of 50 feet. Code Section 1121.09 states that the wide and has a minimum of 7,500 square feet in area. (Section 1121.06).

Code Section 1121.09 states that the minimum floor area of a dwelling unit in an 'A' Single-Family district is 1,500 square feet. This house has 1,500 square feet and conforms to this regulation.

Code Section 1161.03 (a)(1) requires 2 enclosed parking spaces. The proposed house is code conforming as it includes a 2-car garage.

Code Section 1121.08 establishes minimum dimensions for front yards, side yards, and rear yards. The proposed single-family house has a code conforming rear yard. Code requires a minimum of 30 feet and the site plan shows the rear yard is 30 feet.

The proposed single-family house has one side yard that is a code conforming 5 feet and is requesting a variance to permit the north side yard shared with 959 Nelaview to be 3 feet. The proposed single-family house has a 25'2" front yard. Schedule 1121.08 states that the front yard depth is 25' except as regulated in subsection (a).

Subsection (a) Front Yards on Partially Built-up Blocks states that where 40% or more of a block face was occupied by two or more dwellings, then the required front yard established by the existing conditions:

Item (1) considers all of the setbacks on the block face. If the furthest dwelling from the public right of way and the closest dwelling from the public right of way have no more than a 10' difference then an average of the existing front yards is used. This is a long block face and it was found that the difference in this measurement was just over 10 feet and so item 1 does not apply. The range was from 19.42 to 30.19 therefore the difference was more than 10'.

Item (2) states that if there are adjacent houses 100' or less from the proposed house, a line connecting the adjacent houses is drawn, establishing the front yard. Measuring the location of these lines shows the required front yard is 29 feet (measurements from Cuyahoga County MyPlace GIS aerials). Therefore, a variance is required for the proposed front yard of 25'2".

Code Section 1175.02 NONCONFORMING LOTS OF RECORD states that lots with less area or width than has been established in an 'A' Single-Family district a single-family dwelling and customary accessory buildings may be erected. Variances of requirements in the Zoning Code shall be obtained only through action of the Board of Zoning Appeals.

These are a few photos of the adjacent properties. The adjacent lot, the blue house at the top is also 40' wide and 4800 s.f., however, the house is nonconforming as it only has 816 s.f. of living area. The adjacent house on the other side of the 2<sup>nd</sup> vacant lot – the trim is a reddish-brown also is on a lot that is 40' wide and 4800 square feet. This house also is nonconforming as it has 1399 s.f. of living space. The yellow house at the corner of Nelaview & Winslow has a 52' wide parcel with 5200 square feet, the house is nonconforming with 1454 square feet of living space.

This is a photo of the houses across the street. The parcels are also 40' wide and 4800 square feet. The square footage of living area of the houses are 1367 and 1442, this is nonconforming in terms of required living space

Code Section 1121.09(b) Enclosed parking spaces require enclosed parking in either a detached or an attached garage. When 75% or more of a blockface have detached rear yard garages or attached garages with doors not visible on the street elevation, new attached garages shall have doors not visible on the street elevation.

The proposed house does have an attached front-facing garage. It is setback 5' from the front of the covered porch. This project was designed using Proposed zoning code amendments that City Council will consider on November 1. Under the proposed zoning amendment this design would be code conforming.

However, we must use the current or existing code, and therefore we must look at the garages on this blockface. This parcel is located in a long blockface that is located between Winsford Road and Noble Road. There are 37 single-family parcels and 5 parcels with townhomes (at the corner of Nelaview and Noble). Of the 37 single-family properties, there are 9 vacant lots, 2 properties that appear to not have a garage (driveway to rear but no detached garage), and 26 properties with detached garages. There are no houses with attached garages or attached garages with doors facing the street. (Information from county aerials 1/1/2021). Again, since 75% of the blockface does not have attached garages with doors visible on the street a variance is needed.

The proposed garage is designed for two vehicles and is code conforming in the number of enclosed spaces required for a single-family house. (Section 1161.03(a)(1))

The plans have had a preliminary review by the Architectural Board of Appeals. The applicant has modified the plan as suggested by ABR. Final approval of the plans by ABR is required.

If approved, conditions may include:

1. Cal No 3530 variance
  - a. to Section 1121.08(a)(2) to permit the front yard to be less than the established front yard as shown on the site plan dated Sept. 29, 2021;
  - b. to Section 1121.08 to permit the side yard shared with 959 Nelaview to be 3 feet; and
  - c. to Section 1121.12.09(b) to permit an attached garage with a visible door on the street as shown on the materials submitted with the BZA application
2. Approval of the Architectural Board of Review;
3. Receipt of a building permit; and
4. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel concluded by reporting that the applicant has submitted a Statement of Practical Difficulty with their application and is prepared to review it tonight.

Mr. Zych stated that an application was submitted and revised on September 7, 2021 and that it includes a site plan dated September 30, 2021. He asked the applicant if he was familiar with that application and to the best of his knowledge were the facts stated in the application accurate and correct. Rev. Jimmie Hicks answered affirmatively. Mr. Zych stated that hearing no objections, the application is entered into the record.

Rev. Jimmie Hicks, Start Right CDC Executive Director, introduced their project manager, Mr. Tom Stone, and their architect Mr. Dan Bickerstaff. Rev. Hicks reviewed their statement of practical difficulty that was submitted with their BZA variance application (attached to both the staff report and to the variance application).

Ms. Wolf asked what style of houses in the neighborhood. Mr. Bickerstaff stated that there was a diversity of house styles along the street and in the neighborhood and that the proposed house is compatible with the style of houses on the street.

Mr. Zych closed the Public Hearing.

Mr. Zych asked if there was a motion.

Ms. Wolf stated that regarding Calendar No. 3530 (a) Start Right CDC, 961 Nelaview Rd., she moves to grant with conditions the application for the variance to Section 1121.08(a)(2) to permit the front yard to be less than the established front yard that is the minimum required. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions/circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same Zoning District, in

particular, the parcel is an existing nonconforming lot in terms of both width and area making it difficult to construct a code conforming 1500 square foot house on it.

- The property in question will not yield a reasonable return without the variance as the applicant met with the community to identify floor plans and housing types that are desirable to this neighborhood.
- The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as demonstrated by the fact(s) that creating a house that is one-floor living is not possible without a variance.
- The essential character of the neighborhood would not be substantially altered as a result of the variance because there are a variety of housing styles that already exist in this neighborhood.
- The variance would not adversely affect the delivery of government services.
- The property owner testified that she/he purchased the property without knowledge of the zoning restriction, in fact, without the variance there would the parcel would not be viable to purchase as it is a nonconforming lot in terms of width and area.
- The applicant's predicament feasibly cannot be resolved through a method other than a variance.
- The spirit and intent behind the zoning requirement would be observed and substantial justice is done by granting variance because the style of the home will fit in with the neighborhood and building a new house would add value to the community.

If granted, the variance should have the following conditions:

1. Variance Cal No 3530 (a) to Section 1121.08(a)(2) is granted to permit the front yard to be less than the established front yard as shown on the site plan dated Sept. 29, 2021;
2. Approval of the Architectural Board of Review;
3. Receipt of a building permit; and
4. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen seconded the motion. The motion was approved 5-0.

Ms. Wolf stated that regarding Calendar No. 3530(b) Start Right CDC, 961 Nelaview Rd., she moves to grant with conditions the application for the variance to Section Sect. 1121.08 to permit the north side yard to be less than 5' required minimum; after reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions/circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same Zoning District, in particular, this is a nonconforming lot in terms of width and area and a variance is

necessary to build a code conforming 1,500 square foot single-floor house.

- The property in question will not yield a reasonable return without the variance as the community desires this type of housing and there is a need for this.
- The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure.
- The essential character of the neighborhood would not be substantially altered as a result of the variance because there are a variety of housing styles that already exist in this neighborhood.
- The variance would not adversely affect the delivery of government services.
- The property owner testified that she/he purchased the property without knowledge of the zoning restriction, in fact, without the variance there would the parcel would not be viable to purchase as it is a nonconforming lot in terms of width and area.
- The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district. This will enable the construction of much-needed housing that provides one-floor living.

If granted, the variance should have the following conditions:

1. Variance Cal No 3530 (b) to Section 1121.08 is granted to permit the side yard shared with 959 Nelaview to be 3 feet;
2. Approval of the Architectural Board of Review;
3. Receipt of a building permit; and
4. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen seconded the motion. The motion was approved 5-0.

Ms. Wolf stated that regarding Calendar No. 3530 (c) Start Right CDC, 961 Nelaview Rd., she moves to grant with conditions the application for the variance to Section 1121.09(b) to permit the attached garage with a visible door on the street where a visible garage door on the street is not permitted. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions/circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same Zoning District, in particular, this is a nonconforming parcel in terms of width and area and that constructing a code conforming 1,500 square foot, single-floor house
- The property in question will not yield a reasonable return without the variance as this is a nonconforming parcel in terms of width and area.

- The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as it is a code conforming 1,500 square foot, single-floor home.
- The essential character of the neighborhood would not be substantially altered as a result of the variance as there already exist various styles of houses in this neighborhood.
- The variance would not adversely affect the delivery of government services.
- The property owner testified that she/he purchased the property without knowledge of the zoning restriction, in fact, without the variance there would the parcel would not be viable to purchase as it is a nonconforming lot in terms of width and area.
- The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district. This will enable the construction of much-needed housing that provides one-floor living.

If granted, the variance should have the following conditions:

1. Variance Cal No 3530 (c) to Section 1121.09(b) to permit an attached garage with a visible door on the street as shown on the materials submitted with the BZA application;
2. Approval of the Architectural Board of Review;
3. Receipt of a building permit; and
4. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen seconded the motion. The motion was approved 5-0.

#### OLD BUSINESS

There was no old business to discuss.

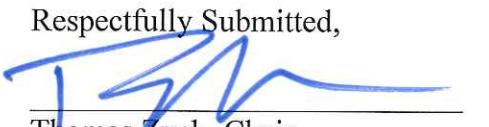
#### NEW BUSINESS

Ms. Knittel reported that variance applications had been received and so there would be a November 17 BZA meeting.

#### ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 8:01 p.m.

Respectfully Submitted,

  
Thomas Zych, Chair

  
Karen Knittel, Secretary