

STATEMENT OF PRACTICAL DIFFICULTY

To obtain a variance, an applicant must show by a preponderance of the evidence, to the satisfaction of the Board of Zoning Appeals (BZA), that strictly adhering to the Zoning Code's standards would result in a "practical difficulty" for the applicant. To this end, a written statement of practical difficulty must accompany an application for a standard variance. Please complete this Statement of Practical Difficulty, **by addressing all of the factors listed below that are relevant to your situation.** Additional documents may be submitted as further proof.

In deciding whether to grant a variance, BZA will consider the following factors in determining whether a practical difficulty exists:

- A. Explain special conditions or circumstances that exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same Zoning District. (examples of this are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures or conditions):

Smallest useable square footage in immediate area due to no attic space; remained on market longer than other similar homes
No reasonable option for house addition due to configuration; not possible to finish basement
See attached supplemental information

- B. Explain how the property in question would not yield a reasonable return or there could not be any beneficial use of the property without the variance.

City requiring garage floor replacement - cannot be completed for less than cost of full garage replacement, which will not increase value of house to recover unanticipated higher cost
See also above and attached supplemental information

- C. Explain whether the variance is insubstantial:

Requesting additional 8 ft. in allowable height for total height of 23 ft. at highest point of roof, which would be allowable if attached and will be mostly out of sight from street
Requesting additional small kitchen space in space above garage, as all other nearby homes have additional useable square footage within home to be able to access kitchen
See attached supplemental information

Explain whether the variance is the minimum necessary to make possible the reasonable use of the land:

Height variance to allow additional space over garage is only way to recoup cost
Adding useable space above garage only way to make home as marketable as those surrounding
See attached supplemental information

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

New garage and additional space as far as possible from homes in adjacent lots; no views into other homes or blocking of sunlight
No other known detriment and no negative effect on character of neighborhood
See attached supplemental information

- E. Explain whether the variance would adversely affect the delivery of governmental service (e.g., water, sewer, garbage).

Homeowner to extend water/sewer line, but no expectation of increased total use
Not otherwise expected to affect government service
See attached supplemental information

- F. Did the applicant purchase the property without knowledge of the zoning restriction?

Purchased subject to point-of-sale requirement to replace garage slab that did not clearly note requirement to include curb (and therefore raise or replace garage) and did not include cost of additional required work in escrow estimate
See attached supplemental information

- G. Explain whether the special conditions or circumstances (listed in response to question A above) were a result of actions of the owner.

Special conditions/circumstances not the result of actions of owner
All physical conditions/circumstances pre-existing and continuing
See attached supplemental information

- H. Demonstrate whether the applicant's predicament feasibly can be resolved through a method other than a variance (e.g., a zone-conforming but unworkable example).

Garage can be rebuilt without space above, but would not address increased financial burden and issues of marketability affected by lack of additional useable space
See attached supplemental information

- I. Explain whether the spirit and intent behind the zoning requirement would be observed and/or substantial justice done by granting the variance.

Requested variances would not harm neighboring properties or character of neighborhood and do not violate the spirit of the zoning requirements; granting variances would do justice by repairing marketability and addressing cost issues related to unclear City POS requirements
See attached supplemental information

- J. Explain whether the granting of the variance requested will or 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.

Granting variance will place applicant on even footing with others in the district
See attached supplemental information

If you have questions regarding the BZA or this application, please contact Planning & Development staff at 216.291.4878 or via email at bza@clevelandheights.gov.

The factors listed above can be found in Subsection 1115.07(e)(1) of the Cleveland Heights Zoning Code.

**Seth and Sarah Ellen Duke
Standard Variance Application
Supplemental Information**

Background of Property Purchase

We purchased our home at 2661 Shaker Road in December 2019, just a few months before the COVID-19 pandemic would cause significant shut-downs, increases in construction costs, and other delays and challenges. At the time, we were required to pay a small amount (less than \$8,000) into escrow due to noted violations on the point-of-sale inspection. These included the need for replacement of the concrete slab garage floor, repair of the asphalt driveway, and concrete repairs at the stairs from the back yard to the basement. With the onset of COVID-19, we obtained extensions for POS repairs based on scheduling delays and funding considerations, but we later learned of additional difficulties.

Conditions Causing Practical Difficulty

Once able to proceed financially again with fixing POS violations, we began reaching out to potential contractors and found that the garage slab violation would cost tens of thousands of dollars more than the POS escrow estimate. We were told by multiple contractors that the garage slab would be problematic because the City of Cleveland Heights would not allow the contractor to replace only the flat slab; rather, the contractor also would be required to replace the curbs on which the garage sits. Some contractors who would typically perform a slab replacement would not do so at all in Cleveland Heights because replacing the curb requires lifting the garage. Others indicated the cost of the job would be the same as replacing the entire garage. The requirement of curb replacement is not indicated specifically on the POS inspection paperwork, and the escrow estimate for slab replacement does not take the lifting of the garage into account. The high cost of the repair would add nothing to the value of our home. Thus, we were left in a much worse financial position than expected at the time of purchasing our home.

In addition to the detrimental financial condition caused by the lack of clarity in the POS requirement, we have learned that our home has the smallest useable space of the surrounding homes. While a few nearby homes on our street technically have slightly smaller square footage for assessment purposes, each has a third floor attic space, either finished or unfinished, that can be used as additional living space. Our home does not have any attic. (Please see the attached diagram showing this information for a section of Shaker Rd. and the nearest single-family homes on Fairmount Blvd. using square footage and attic information from the Cuyahoga County website.) Some also have finished areas in basements and may have room for additions to the home. Due to ceiling height, location of pipes, and other physical attributes, our basement does not have any space that may be finished. The location of our garage on the lot and location and layout of our home also do not allow any reasonable options for an addition to the home. The only other nearby home without an attic is directly next to ours and is 500 square feet larger than ours.

In reviewing data regarding sales around the same time as our home, it is very telling to see how this data affected the home's marketability. Four other single-family homes in near proximity to ours were placed on the real estate market between March and July 2019, with ours being second to the market in April. The five homes ranged in size from 1,727 sq. ft. to 2,010 sq. ft., with ours being third in size at 1,816 sq. ft. Our home was the only home of the five homes without an attic; this also may explain why only our home had three bedrooms instead of four, despite technically having more square footage than two others. All four other homes sold quickly, with closings ranging from less than one month to approximately two

months from the listing date, based on data available from Zillow.com. Original listing prices ranged from approximately \$190,000 to \$265,000, and the homes sold for approximately \$190,000 to \$250,000. Unlike the other homes, our home sat on the market. While listed in April, we did not contract to purchase it until October, and closing occurred in December, eight months after listing. This lengthy time on the market also caused the price to drop several times, with the original listing price at approximately \$173,000 (already less than others due to the escrow requirement), and our final purchase price at \$135,000, including the seller agreeing to have the POS escrow deducted from that purchase price.

At the time it went on the market, our home was move-in ready with only a few POS violations, primarily related to exterior repairs that are not noticeable from the street. The listing price had already accounted for the need for POS funds. There were no significant other issues raised upon inspection that may have kept buyers from pursuing the home. Yet our home was the only one that did not sell quickly and for an amount close to the original listing price. Everything else nearby sold well. We can only surmise that the additional square footage created by the third floor attics common to the neighborhood were a key factor in marketability and that our home is at a disadvantage to other similar homes in close proximity.

Proposal

In light of the above considerations, we began exploring our options to address the garage slab violation in a way that would add space and value to the home. Replacing the current one-car garage would not add any value. Increasing from a one-car garage to a two-car garage also would not add enough value to recoup the cost. As there is also no way to add useable square footage to the home itself, we propose replacing the garage with a two-car garage with an additional useable space above it.

As you will see from the attached drawings, the useable space above the garage would be approximately 500 sq. ft., which is similar to or smaller than the square footage made available by finishing attics in the homes in our neighborhood. Ellen currently works primarily from home and anticipates moving her home office to the space to create a sense of a "false commute." We also plan to use it as an exercise space and for occasional visits from family.

To construct the garage as planned would require a variance from the maximum garage height of fifteen feet. The proposed new height is 23 feet. We note that adding useable space above the garage would likely be allowed if the garage were attached. Our garage is close to the house but not attached.

This detached nature also leads us to request a variance to have a small second kitchen in the new space. All other homes in our area have additional useable square footage within the home, thus having no need to vary the standard of one kitchen per dwelling. For our home, the requested kitchen variance is the only way to add useable space with kitchen access.

Creating this additional useable space also will allow us to make repairs and updates to the main home as needed without having to leave our home for a period of time. We currently have only one bathroom with a tub/shower, and it is in need of repairs, particularly to the window and walls around the shower that have suffered water damage over the years.

No Detrimental Impact

The proposed variances will not have a detrimental impact on the surrounding homes, but will place us on even footing with others in the neighborhood. It will create similar useable square footage with kitchen access available in all other homes in close proximity.

As you will see on the attached photos, plans, and renderings, our garage is close to our home and as far as possible from all other homes on adjacent parcels. The proposed plan includes clerestory windows, as well as two windows on the front of the additional space and one on the back facing a neighbor's garage and a very large tree along the fence line. This will allow plenty of light into the space above the garage without having any issues with views into other yards. We will not be intruding on the privacy of our neighbors, and they will not be able to see into our space. From the street, the garage height will be clear only from a limited vantage point due to the positions of our own home and a neighbor's garage.

Our home is also very close to the Taylor-Fairmount commercial district, and there are many multi-family homes nearby on Idlewood Road and Fairmount Boulevard, including some very large side-by-side duplexes.

Thank you for considering our variance application. We trust that the above factors, along with the additional documentation provided, clearly show the practical difficulty we face in bringing our home up to the same marketability standards of the neighborhood and how such issue may be resolved by granting the requested variances. We look forward to answering any questions from Board members.