

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING

August 16, 2023

MEMBERS PRESENT:

| | |
|---------------|-------|
| Thomas Zych | Chair |
| Benjamin Hoen | |
| Liza Wolf | |

STAFF PRESENT:

| | |
|---------------|-----------------------------|
| Karen Knittel | Assistant Planning Director |
| Lee Crumrine | Assistant Law Director |
| Christy Lee | Recording Secretary |

CALL TO ORDER

The meeting was called to order at 7:00 p.m.

APPROVAL OF THE MINUTES

The June 21, 2023, Minutes, were approved 3-0.

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 the 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 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 outlined in the Zoning Code in Section 1115.07(e)(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. The 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, hardships, or inconveniences are irrelevant to the Board's determination.

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

PUBLIC HEARING

The staff report dated June 15, 2023, was entered into the public record.

Lee Crumrine swore in all applicants and staff.

Mr. Zych noted that a letter from James Edmonson of 2882 Hampshire Rd will be entered into the record.

Karen Knittel reviewed the staff report using a PowerPoint presentation:

Context

- This is an "A" Single-family property. The building is a nonconforming structure with 3 dwelling units. The adjacent properties to the east and west are nonconforming structures with 2 dwelling units, zoned "A" Single-Family. The properties north, across Hampshire Road are single-family homes, zoned "A" Single-Family. To the south is a single-family house, zoned "A" Single-Family.
- The Master Plan Future Land Use Map shows this area as continuing to be used for detached single-family housing.

History

- This was a two-family house that was renovated to include a third dwelling. The work began in approximately 2016. While the renovation expanded its nonconforming use (having more than one dwelling unit), it did not expand the building footprint.

Project

The applicant is requesting to build a 3-car garage with driveway access.

Facts

- This parcel is 57 feet wide and has 7,450 square feet in area, making it a nonconforming parcel in terms of area. Section 1121.06 requires "A" Single-Family properties to be a minimum of 50 feet wide at the building line and to have a minimum lot area of 7,500 square feet.
- This 3-unit structure is a legal nonconforming use in the "A" Single-Family District.
- Off-Parking Regulations Schedule 1161.03(a0(4) requires one parking space for each dwelling.
- The Architectural Board of Review approved the design of the garage at their August 3, 2023 meeting.
- The garage is code-conforming in terms of floor area and the amount of rear yard coverage.
- The rear yard is 47 feet deep and is 1,850 square feet in area.
- The pavement related to parking is a total of 770 square feet or 42%.
- Schedule 1121.12 (d) permits nonconforming parcels to have maximum coverage for pavement related to parking, including the driveway to be 40%. For this parcel that would be 740 square feet.

- The total rear yard coverage is 1,370 square feet or 74%.
- Schedule 1121.12 (d) permits nonconforming parcels to have a maximum rear yard coverage of 70%. For this parcel, that would be 1,295 square feet.

If approved, conditions should include:

1. Variance 3566 is granted to permit
 - a) the pavement related to parking to be 770 square feet; and
 - b) the total rear yard coverage to be 1,370 square feet as shown on the site plan dated June 8, 2023, submitted with the BZA application.
2. Receipt of a Building Permit; and
3. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel stated the applicant was present and prepared to briefly review their project and statement of practical difficulty.

Mr. Zych asked Ms. Knittel if was it correct that in 2016 the code went from one non-conforming to another from two-family to three-family, and what approvals if any from the city would have been required.

Ms. Knittel stated that it went through ABR and then Planning Director Wong reviewed it for planning. So, to my knowledge, the City did approve the change.

Ms. Wolf, is there currently a garage?

Ms. Knittel, currently there isn't a garage originally there was one two-car garage on-site.

Mr. Zych asked Mr. Mahler if there was an application that was submitted on June 21, 2023, asking if could he confirm that it was true and accurate. Mr. Mahler affirmed and the application was submitted to the record.

Eli Mahler 3947 West Ash Lane, and affirmed the oath. Mr. Mahler went on to further explain the proposed project adding additional details. Mr. Mahler went on to state that they have approval from ABR regarding this project. He further went on to respond to Mr. Edmondson's concerns with the project, responding to all questions and concerns that Mr. Edmondson had providing further details as to why this project has come before the Board of Zoning Appeals. The downspouts will be connected to a yard drain which is connected to the home's foundation drain and then goes to the storm drain. With the placement of the garage, they will follow all regulations from the Building Department. Mr. Mahler referred to the site plan regarding the property line and placement of the garage. Finally, Mr. Mahler stated that the project would not encroach onto Mr. Edmonson's property and that the current tenants would like a covered parking area.

Ms. Wolf asked if the garage in the site plan to the left is the neighbor's garage.

Mr. Mahler responded "Yes".

Mr. Zych asked if there was anyone else from the public who would like to speak at this time.

Mr. Robert Brown 2903 Hampshire, affirmed the oath. He mentioned that Mr. Edmonson's home was classified as a two-family however they are the only persons that reside there so it is a single-family house. He went on to say that he doesn't object to Proj. Cal No. 3565 however, he wanted to bring to attention that he has never seen a zoning code so permissive as this one in the City of Cleveland Heights. This was a legal non-conforming two-family house and the applicant applied for a permit to add a third floor and third dwelling unit. He went on to say that that adding the third floor to a non-conforming two-family house did not require a variance because the code as long as the footprint of the house is not being expanded the non-conforming use can be expanded.

Mr. Zych thanked Mr. Brown and made him aware that the Board of Zoning Appeals acts on what the City Council has done in cases that come before this board.

Ms. Wolf asked to see the PowerPoint once again relating to the project.

Ms. Knittel pulled up the PowerPoint showing the neighbor's driveway, with an example of how the current parking situation between the neighbors works.

Mr. Mahlers said that to the left of the property is an 8-foot section which used to be the driveway but that it is now impossible to go through there as this is the current location of electrical panels and the space is too close the the neighbor's garage.

Ms. Wolf asked for a photo of the current driveway.

Mr. Mahler pointed out what used to be a curb cut on the property.

Mr. Zych asked if there was a motion on the floor at this time.

Mr. Hoen motioned approval regarding Calendar No. **Cal. No. 3566 P. Karas, 2878 Hampshire Rd.,**
"A" Single-Family, requests variance to

- (a)Schedule 1121.12(d)(3) to permit the pavement related to parking to be greater than 40% maximum permitted.

- (b)Schedule 1121.12(d)(5) to permit the total maximum rear yard coverage to be greater than 60% maximum permitted.

After reviewing the application and other submissions, and hearing the evidence under oath, the Board finds and concludes special conditions/circumstances exist which are peculiar to the land/structure involved and are not generally applicable to other lands/structures in the same Zoning District, in particular, that they are not able to access the driveway in a manner that would be suitable to both them and their neighbor. The Property in question will not yield a reasonable return without the variance. The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as demonstrated by the fact that this will provide accessibility to the driveway for parking. The essential character of the neighborhood would not be substantially altered as a result of the variance, the variance would not adversely affect the delivery of government services. the property owner testified that they purchased the property without knowledge of the zoning restriction. The following special conditions/ circumstances exist that are not the result of the actions of the application. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. The granting of the variance will not confer on the applicant any special privilege, If granted, the variance shall have the following conditions:

1. Variance 3565 is granted to permit the garage floor area to be 880 square feet as shown on the plans 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.
- 5.

The motion was seconded by Ms. Wolf, motion passed 3-0.

The staff report dated August 10, 2023, was submitted to the record.

Mr. Crumrine swore in staff and the public.

Ms. Kittel's PowerPoint presentation was as follows:

Cal. No. 3567 N. & D. McLaughlin, 865 Quarry Dr., "A" Single-Family, requests variance to Schedule 1121.21(a)(5) to permit a patio to be located less than the minimum 3 feet from the rear property line, and from the side yard property lines.

Context:

- This is a single-family house zoned "A" Single-Family. The properties to the north, south, and west are all single-family houses, zoned "A" Single-Family. To the east (rear of the property) is an apartment complex zoned "MF-1" Multiple-Family.
- The Master Plan Future Land Use Map shows this area as continuing to be used for detached single-family housing.

Project: The applicant would like to install a patio.

Facts:

- This parcel is 40 feet wide and 5,200 square feet in area making it a nonconforming parcel in terms of width and area. Section 1121.06 requires "A" single-family parcels to have a minimum width of 50 feet and to have a minimum lot area of 7,500 square feet.
- The application materials included a survey demonstrating that the property line locations are known.
- The applicant's rear yard is 2,491 square feet in area.
- Code Section 1121.12(d) permits rear yard coverage for structures not exceeding 3 feet in height, including sidewalks and patios to be 60% and the total rear yard coverage to be a maximum of 60%.
- The total rear yard coverage including the proposed patio would be approximately 49% which is code-conforming.
- Section 1121.12(a)(5) requires structures such as patios not exceeding 3 feet in height to be a minimum of 3 feet from the rear and side property lines.
- The applicant is requesting that the patio be 1'3" from the rear property line and that it has a 0' setback from the side property line.
- The proposed location of the patio is at the rear of the applicant's property with the multi-family property located to the rear and the would be located at the property line behind their neighbor's detached garage.

If approved, conditions should include:

1. Variance 3567 is granted to permit the patio to be 1 foot 3 inches from the rear property line and to have a 0-foot setback from the side property line as shown on the site plan submitted with the BZA application.
2. Receipt of a Building Permit; and
3. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel stated that the applicants were present and prepared to briefly review their project and statement of practical difficulty.

David McLaughlin 865 Quarry Dr, Affirmed the oath.

Mr. Zych, there was an application date of July 19, 2023, and to the best of your knowledge, this application was submitted by you and is true and correct.

Mr. McLaughlin "Yes" Mr. McLaughlin went on to state that they have been long-term residents of the City of Cleveland Heights. The back portion of the property where the fence currently is located was installed years ago. In 2021 he asked for permission from the neighbor to install an additional fence. The difficulty that was faced is that grass will not grow in this area on the left-hand side of the property. Mc. Laughlin further detailed how this presented difficulties for the family and the reason for the variance request for the patio.

Ms. Wolf asked if the fence was currently there.

Mr. McLaughlin "Yes". The patio will go to the left of the fence right on the patio line which will allow us to maintain the garage.

Mr. Zych asked to see additional photos from the PowerPoint.

Ms. Wolf are fences allowed directly on the property line?

Ms. Knittel "yes" they can be.

Mr. Zych asked if there was a motion.

Ms. Wolf stated that regarding **Cal. No. 3567 N. & D. McLaughlin, 865 Quarry Dr., "A" Single-Family**, requests variance to Schedule 1121.21(a)(5) to permit a patio to be located less than the minimum 3 feet from the rear property line, and from the side yard property lines. After reviewing the application and other submissions, and hearing the evidence under oath, the Board finds and concludes that special conditions/circumstances exist that are peculiar to the land/structure due to this being a non-conforming parcel, where a conforming parcel will be 50 feet wide and 7500 sq. ft. and this parcel is 40 ft. wide and 52 square feet. The property in question will not yield a reasonable return without the variance as the land cannot, where the land in which the patio will be installed can grow grass or plants due to the condition of tree roots and shell rock. The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as demonstrated by the fact that in order to sustain the life of the tree near the patio area it must be placed in that specific place location.

The essential character of the neighborhood would not be substantially altered as a result of the variance as the location of the patio is behind the neighbor's garage with the rear of the property line is that of a multi-family. The variance would not adversely affect the delivery of government services and currently, the fence is located on the property line and the patio will be within that area. The following conditions/circumstances exist that are not the result of the actions of the applicant as the land exists as it is with the shell rock and tree roots.

If approved, conditions should include:

1. Variance 3567 is granted to permit the patio to be 1 foot 3 inches from the rear property line and to have a 0-foot setback from the side property line as shown on the site plan submitted with the BZA application.
2. Receipt of a Building Permit; and
3. Complete construction within 24 months of the effective date of this variance.

The motion was seconded by Mr. Hoen and approved 3-0.

Mr. Crumrine swore in staff and the public.

Staff Report August 10, 2023, submitted into the record.

Ms. Knittel's PowerPoint is as follows:

Cal. No. 3568 Start Right Community Development Corp., 961 Nelaview, "A" Single-Family, requests variance to Schedule 1121.21(10) to permit air conditioning machinery to be located less than the minimum 5' from the side property line.

Context:

- This is a newly constructed single-family house, zoned "A" Single-Family, the properties surrounding it are also single-family houses, zoned "A" Single-Family.
- The Master Plan Future Land Use Map shows this area as continuing to be used for detached single-family housing.

Project:

- The applicant is requesting to locate the air conditioning machinery 3 feet from the side property line.

History:

- In September 2021, Cal. No. 3530 granted variances to permit the side yard to be less than the minimum of 5 feet and to permit an attached garage with a door visible to the street.

Facts:

- This parcel is 40 feet wide and is 4,800 square feet, making it a nonconforming parcel in terms of lot width and lot area. Section 1121.06 states that in an "A" Single-Family District the minimum lot width is 50 feet and that the minimum lot area is 7,500 square feet.

- The infill house was purposefully designed with community input to provide one-floor living, resulting in the house being longer than adjacent homes.
- The house is built on a slab, there is no basement.
- The rear deck is the width of the house.
- The side yard is a code conforming 5 feet.
- Schedule 1121.12 states that free-standing air conditioning machinery is permitted in the rear yard and the side yard, but not in the required side yard which is 5 feet.
- The proposed location of the air conditioning unit would result in there being 3 feet between the unit and the side yard property line.
- Because of the length of the applicant's house, the location of the air conditioning unit would not be adjacent to the neighbor's house but would be adjacent to the neighbor's rear yard.
- The neighbor has a fence along the shared property line.

If approved, conditions should include:

1. Variance 3568 is granted to permit the air conditioning machinery to be located 3 feet from the side property line as shown on the site plan submitted with the BZA application.
2. Receipt of a Building Permit; and
3. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel stated the applicants were present and prepared to review their project and statement of practical difficulty.

Mr. Zych asked for the photo to be enhanced to verify if the object in question was the air conditioner unit.

Ms. Knittel "Yes" that is the air condition unit, which has already been placed on the property.

Rev. Jimmy Hicks Jr. 3315 Mayfield Rd affirmed the oath.

Mr. Zych, there was an application submitted on July 20, 2023, and to the best of my knowledge this application was submitted is true and correct.

Rev. Hicks "Yes". Rev. Hick went on to explain that the unit was put in place before knowing that a variance was needed. He stated that having the unit placed on the side of the home was the best solution considering the electrical and HVAC lines. He explained also that screens will be placed surrounding the unit, to also minimize the noise and appearance of the unit and giving the neighbor the ability to continue to maintain their property.

Mr. Zych asked for a motion.

Mr. Hoen stated that regarding Cal No. **3568 Start Right Community Development Corp., 961 Nelaview, "A" Single-Family**, requests a variance to Schedule 1121.21(10) to permit air conditioning machinery to be located less than the minimum 5' from the side property line.

After reviewing the application and other submissions, and hearing the evidence under oath, the board finds and concludes that special conditions/circumstances exist which are

peculiar to the land/structure involved which are not generally applicable to other land/structure involved which are not generally applicable to other land /structures in the same zoning district, in particular the placement of the air conditioning unit. The property in question will not yield a reasonable return without the variance due to how the electrical and HVAC units are placed on the property. the variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as demonstrated by the fact that again how the electrical units are placed on the property. the essential character of the neighborhood would not be substantially altered as a result of the variance as screens will be placed around the unit. The variance would not be adversely affecting the delivery of government services, the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. If granted the variance shall have the following conditions:

1. Variance 3568 is granted to permit the air conditioning machinery to be located 3 feet from the side property line as shown on the site plan submitted with the BZA application.
2. Receipt of a Building Permit; and
3. Complete construction within 24 months of the effective date of this variance.

The motion was seconded by Ms. Wolf motioned approved 3-0.

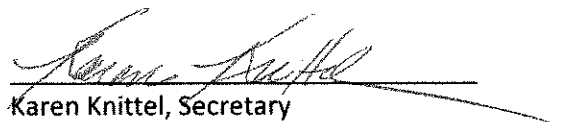
Old Business

New Business

Adjournment 7:59 p.m.



Thomas Zych, Chair



Karen Knittel, Secretary

