

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES
November 15, 2023**

MEMBERS PRESENT

Thomas Zych	Chair
Ben Hoen	
Gayle Lewin	
Robert Brown	
Liza Wolf	

STAFF PRESENT

Karen Knittel	Assistant Planning Director
Jason Hines	Assistant Law Director
Nicole Blunk	City Planner I

CALL TO ORDER

The meeting was called to order at 7:00 p.m. All members were present and so there was a quorum.

APPROVAL OF THE MINUTES

Mr. Hoen motioned to approve the Minutes of August 16, 2023 (Mr. Zych, Mr. Hoen and Ms. Wolf were present), Ms. Wolf seconded the motion; the motion was approved.

Ms. Wolf motioned to approve the Minutes of September 20, 2023 (Mr. Zych, Ms. Wolf, Ms. Lewin and Mr. Brown were present), Mr. Brown seconded the motion; the motion was approved.

Ms. Lewin motioned to approve the Minutes of November 15, 2023 as distributed (Mr. Zych, Ms. Lewin and Mr. Brown were present), Mr. Brown seconded the motion; the motion was approved.

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 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.

NOVEMBER 15, 2023 PUBLIC HEARING

All who intended to speak were sworn in by Assistant Law Director Hines.

Cal. No. 3571 J. Lamkin, 2845 North Park Blvd., "AA" Single-Family, requests variance to (a) Schedule 1161.105(a) to permit the pavement related to the driveway to be greater than 12 feet in width maximum permitted. (b) Schedule 1121.12(c)(1)(b) to permit the total maximum front yard coverage to be greater than the 3,000 square feet maximum permitted.

Mr. Zych asked that the staff report dated November 1, 2023 be entered into the record.

Ms. Blunk presented the staff report using a PowerPoint Presentation.

Ms. Lewin asked if there were any previous variances on this property. Ms. Blunk responded that there were no records of a previous variances.

Mr. Zych invited the applicant and his representative to come to the microphone to review their statement of practical difficulty and the project.

Mr. Ryan Delia, the applicant's landscape architect and representative gave his address as 842 Abbe Rd. North Sheffield, Ohio.

Mr. Delia confirmed that the application submitted on behalf of Mr. Lamkin was true and correct. Mr. Zych asked that this application be entered into the record.

Mr. Delia reviewed the project and statement of practical difficulty. He emphasized that the current driveway is not an appropriate entrance to the house's scale and that the driveway is not functional. He said that in trying to make the turn on the driveway, service and delivery trucks drive off the driveway and onto the lawn. He said that they want to manage storm water appropriately, making as minimal impact as possible.

Mr. Jeff Lampkin, 2854 North Park Blvd., said that the shared driveway is what makes this situation unique. He explained that the door of his neighbor's house faces the driveway and that his front door is along the shared portion of the driveway where if a guest stopped there they would be blocking the shared driveway. He said the other unique feature is that his front door faces away from

the driveway making it difficult to find. He stated that when he first saw the existing driveway he was not sure if it was for pedestrians or vehicles. He stated that no one uses it.

There was no one else present who wanted to testify and so the public hearing was closed.

Ms. Lewin asked about storm water management and if they had considered permeable concrete or pavers.

Mr. Delia said that they had looked into this, however the cost of this option was too expensive to be a viable option.

Ms. Lewin asked how the water not going into the dry-well would be managed.

Mr. Delia said there was an extensive front yard that could accept and absorb the stormwater.

Ms. Wolf asked if there would be other landscaped areas being planned to help manage the stormwater.

Mr. Delia stated that the landscape design for this house included the extensive grass lawn area in the front and that this law area could manage the stormwater runoff.

Mrs. Wolf stated that regarding Calendar No. 3572 J. Cohen & E. Cohen, 3767 Severn Rd., "A" Single-Family, requests variance to Schedule 1161.105(a) Single-Family and Two-Family Residential Driveways to permit the pavement related to the driveway to be greater than 12 feet in width maximum 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, the existing front yard is large and the existing driveway is larger than Schedule 1121.12(c)(1)(b) permits; the property in question will not yield a reasonable return without a variance due to the lack of functionality in the existing driveway; the variance is insubstantial and is the minimum necessary to make possible the reasonable use of land/structure as demonstrated by the fact that the existing driveway lacks functionality; the essential character of the neighborhood would not be substantially altered as a result of the variance because the driveway design compliments the Tudor architecture of the home; and the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance because it will allow for a functional driveway to be constructed. If granted the variance shall have the following conditions:

1. A) the pavement related to the driveway to be 16 feet wide along the circular drive and with the connector drive to range in width as shown on the site plan submitted with the BZA application; and
B) the total maximum front yard coverage to be 3,928 square feet or 42% as shown on the site plan submitted with the BZA application.
2. Zoning Administrator approval of a Landscape Plan that includes management of stormwater runoff from new

- pavement.
3. Receipt of a Building Permit; and
4. Complete construction within 24 months of the effective date of this variance.

Ms. Lewin seconded the motion; the motion passed. (5-0)

Cal. No. 3573 S. Goldsmith, 3360 Berkeley Road., "A" Single-Family, requests variance to (a)Schedule 1121.08 to permit the rear yard depth related to the proposed structure to be less than the depth of 30 feet minimum permitted. (b)Schedule 1121.09 to permit the living space related to the proposed structure to be less than the 1,500 square feet minimum permitted.

Ms. Wolf abstained from this case due to a conflict. Mr. Zych asked that Ms. Wolf sit in the gallery since she has recused herself and noted that there was still a quorum to hear the case.

All who intended to speak were sworn in by Assistant Law Director Hines.

Mr. Zych asked that the staff report dated November 1, 2023 be entered into the record.

Ms. Blunk presented the staff report using a PowerPoint Presentation.

The applicant, Ms. Shira Goldsmith, 3667 Berkeley Road, and her representative Mr. Derrick Childs, came to the microphone. Ms. Goldsmith confirmed that the application submitted was true and correct. Mr. Zych asked that this application be entered into the record.

Ms. Goldsmith reviewed her project and statement of practical difficulty. Ms. Goldsmith emphasized that this was a nonconforming parcel in terms of total area making it difficult to construct a livable home on the parcel without a setback variance. She said that she has lived in Cleveland Heights for many years and that many houses in Cleveland Heights have less than the required 1,500 square feet.

Mr. Childs added that he builds shipping container homes. He explained the need for the size of the structure and the size of the shipping containers and that they thought the pool area would be counted as living space.

There was no one else present who wanted to testify and so the public hearing was closed.

Mr. Hoen asked if the dressing and bathroom areas of the pool could be counted as living space, and asked what the square footage of these areas are. Staff responded that per code the pool area could not be counted toward their living space and stated that the Board could determine that the washroom and dressing areas are livable areas and that the applicant would be able to provide this square footage as it was not provided.

Mr. Childs said that it was about 132 to 135 square feet. Mr. Zych stated that this additional square footage was still not quite enough to meet the required minimum of 1500 square feet.

Ms. Lewin stated that regarding Calendar No. 3573. Cohen & E. Cohen, 3360 Berkeley Rd., requests variance to (a) Schedule 1121.08 to permit the rear yard depth related to the proposed structure to be less than the depth of 30 feet minimum permitted. (b) Schedule 1121.09 to permit the living space related to the proposed structure to be less than the 1,500 square feet minimum 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, the lot square footage is non-conforming; the property in question will not yield a reasonable return without a variance due to the nature of the applicant's business and the square footage of the lot; the variance is insubstantial and is the minimum necessary to make possible the reasonable use of land/structure as demonstrated by the fact that the applicant maximized the use of the land with the minimum possible variances; the essential character of the neighborhood would not be substantially altered as a result of the variance because the existing conditions are a vacant lot; nonconformities in the property square footage that result in special conditions or circumstances that are not a result of the actions of the applicant; and the granting of the variance requested will not confer on the applicant any special privilege due to existing homes in Cleveland Heights that are currently smaller than 1,500 square feet of livable space; if granted the variance shall have the following conditions:

1. A) the rear yard depth related to the proposed structure to be less than the depth of 30 feet minimum permitted and B) to permit the living space related to the proposed structure to be less than the 1,500 square feet minimum permitted as shown on the drawings submitted with the BZA application.
2. The pool shall not be used for public recreational activities or memberships.
3. All proposed business or nonprofit activities will adhere to code section 1165.02(b) Home Occupations Accessory to a Dwelling Unit in a Residential District.
4. Approval from the Architectural Board of Review
5. Receipt of a Building Permit; and
6. Complete construction within 24 months of the effective date of this variance

The motion was seconded; the motion passed. (4-0-1)

Cal. No. 3574 S. Duke & S. Duke, 2661 Shaker Road., "A" Single-Family, requests variance to Schedule 1121.12(g) to permit the height of a proposed accessory structure to be greater than the 15 feet maximum permitted.

All who intended to speak were sworn in by Assistant Law Director Hines.

Ms. Lewin stated that she wanted to make all aware of that the applicant works with an architectural firm that her business does business with but that there is no conflict of interest as no-one from her firm has been involved with project, which she believes was done by the applicant not the architectural firm for which he

works. Mr. Zych agreed that there was no apparent conflict of interest and no need for recusal and thanked Ms. Lewin.

Mr. Zych asked that the staff report dated November 1, 2023 be entered into the record.

Ms. Blunk presented the staff report using a PowerPoint Presentation.

The applicants, Mr. Seth Duke & Ms. Sarah Ellen Duke, 2661 Shaker Road, came to the microphone. Mr. Duke confirmed that the application submitted was true and correct. Mr. Zych asked that this application be entered into the record.

Mr. Duke reviewed their statement of practical difficulty. He emphasized that when they purchased the home pre-Covid they did not realize they would both be working from home. He stated this has caused them to realize their need for home office space and additional living space that could be as flexible as possible.

Ms. Duke stated that they were carefully reviewing why their house sat on the market longer than other houses in the neighborhood. She said they noticed all the other houses around them have attic space which they do not. She said most of the other homes had four bedrooms while their home has three bedrooms and they have no way to increase space in their home other than to build this space over the garage.

With no one in the audience, the Public Hearing was closed.

Mr. Hoen asked if the design was discussed with neighbors.

Mr. Duke stated they had discussed it with the neighbor to the rear.

Mr. Zych asked if there was room to conduct maintenance to the garages.

Mr. Duke replied that the two garages are actually catty-corner to each other and that the garage would be a minimum of five feet from the property line.

Mr. Duke confirmed that there was not a practical way to add onto the house.

Mr. Hoen stated that regarding Calendar No. 3574 S. Duke & S. Duke , 2661 Shaker Rd., "A" Single-Family, requests variance to 1121.12(g) to permit the height of a proposed accessory structure to be greater than the 15 feet maximum 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 and structure involved which are not generally applicable to other lands/structures in the same Zoning District, in particular, the existing architecture of the structure does not permit additions to be constructed on the top or rear; the property in question will not yield a reasonable return without a variance due to the lack of the ability to create additional living space in the primary structure; required garage repairs result in special conditions or circumstances that are not a result of the actions of the applicant; and the predicament cannot be feasibly resolved through a method other than a variance due to the current garage height zoning code restriction of 15

feet and the lack of ability to create living space off the existing structure; if granted the variance shall have the following conditions:

1. The height of the proposed accessory structure to be greater than the 15 feet maximum permitted as shown on the drawings submitted with the BZA application;
2. Approval from 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.

Liza Wolf seconded the motion; the motion passed. (5-0)

OLD BUSINESS

Cal. No. 3534 (a,b,c & d) Oak Tree Veterinary Hospital, 1794, 1788 & 1784 South Taylor Rd.. Per Section 1115.07 (j) Terms of the Variance request for extension of time.

Mr. Hoen motioned to grant the time extension of 18-month to Cal. No. 3534 (a,b,c, & d) Oak Tree Veterinary Hospital, 1794, 1788, 1784 South Taylor Road.

The motion was seconded; the motion passed. (5-0)

NEW BUSINESS

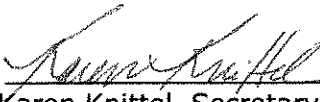
There was no new business.

ADJOURNMENT

The meeting adjourned at 8:30 PM.



~~Thomas Zych, Chair~~ Benjamin Hoen Vice chair



Karen Knittel, Secretary

