

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES**

August 21, 2024

MEMBERS PRESENT

Thomas Zych	Chair
Benjamin Hoen	Vice Chair
Gayle Lewin	
Liza Wolf	

STAFF PRESENT

H. Lee Crumrine	Assistant Law Director
Karen Knittel	Assistant Planning Director
Xavier Yozwiak	Planner / Zoning Inspector

CALL TO ORDER

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

APPROVAL OF THE MINUTES

Ms. Wolf motioned to approve the Minutes of July 17, 2024. The motion was seconded by Ms. Lewin. The minutes were approved with no objections.

**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 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(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, personal hardships, or inconveniences are not relevant to the Board's determination.

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

PUBLIC HEARING

Cal. No. 3586 S. Mastroianni, 3237 E Fairfax Rd., "A" Single-Family, requests variance:

- A. to Code Section 1121.12(g) to permit garage height to be taller than the maximum 15 feet; and
- B. to Code Section 1121.12(a)(2) to permit garage to be less than the minimum 5 feet from the side property line.

Assistant Law Director Crumrine swore in all who intended to speak.

After hearing no objections, the staff report dated August 16, 2024, was entered into the record.

Mr. Yozwiak reviewed the staff report using a PowerPoint Presentation.

Mr. Yozwiak confirmed to Mr. Zych the west elevation of the garage and that it contains two second floor windows.

Ms. Knittel responded to a question from Mr. Hoen and explained the history behind the consideration of garages with human activity as a "pool house, other similar structure." Mr. Zych added that the practice relates to the visibility into a neighbor's yard.

Ms. Knittel and Mr. Yozwiak confirmed to Ms. Wolf that an addition to the home could be within the required side yard.

Mr. Zych entered an email from Mr. Mastroianni dated July 25, 2024 to staff and a public comment from Ms. Erika Olbricht (3231 E Fairfax Rd.) dated August 21, 2024 into the record without objection. Mr. Zych described that Ms. Olbricht's letter reads in opposition to the

proposal and expressed concern about the windows on the second floor of the design of the garage.

Mr. Mastroianni (3237 E Fairfax Rd.) came forward to describe his statement of practical difficulty.

Mr. Zych entered Mr. Mastroianni's application into the record.

Mr. Mastroianni stated that the three-foot setback was needed so that the garage stays in alignment with the driveway, to save the tree near the garage, and to avoid the remaining lawn east of the garage being "impractical" for outdoor activities. He said that the height of the proposed garage was needed for modern vehicles and other "architectural considerations." Regarding Ms. Olbricht's concerns, he mentioned that he can already see into her yard from his house. The windows on the west side of the garage are needed because they will most likely use their garage in the afternoon and evening.

Mr. Mastroianni confirmed to Mr. Hoen that the tree would have to come down if the garage is moved over two feet.

Mr. Yozwiak confirmed to Ms. Wolf that if the garage was five feet from the west lot line it would be more than five feet from the east lot line.

Mr. Mastroianni noted that the proposed garage would obstruct views from the second floor of his home into his neighbor's property (3231 E Fairfax).

Ms. Lewin asked if the windows on first floor of the garage on the western side are necessary. Ms. Lewin asked if another window on the eastern side of the garage would be a suitable alternative. Mr. Mastroianni said the windows are for additional light and that he would be "open to" the alternative Ms. Lewin proposed. Mr. Mastroianni confirmed to Mr. Zych that the fencing around the garage is a six-foot fence. Ms. Lewin suggested that removing the first-floor windows on the western side of the garage, even though they are blocked by the fence, may relieve some privacy concerns.

Ms. Lewin suggested that the location of the office on the second-floor of the garage could be rearranged. Mr. Mastroianni said that his initial compromise would be to frost the windows. Mr. Zych noted that the location of the windows is typically considered by the Architectural Board of Review, but that the Board is trying to address the privacy concerns.

Mr. Yozwiak confirmed to Mr. Zych and Mr. Hoen that there would not be any second-floor windows if the garage was a code-conforming height (15 feet).

Ms. Wolf asked if the Board could make a condition about using frosted windows. Mr. Zych said that kind of condition would be possible with careful wording. Mr. Crumrine confirmed that that kind of condition is possible.

Mr. Mastroianni mentioned his company's experience constructing the garage at 2791 Scarborough Road.

Ms. Wolf stated that regarding Cal. No. 3586 S. Mastroianni, 3237 East Fairfax Road, she moved to grant the application for a variance with conditions: (TS 43:00)

- A. to Code Section 1121.12(g) to permit garage height to be taller than the maximum 15 feet; and
- B. to Code Section 1121.12(a)(2) to permit garage to be less than the minimum 5 feet from the side property line.

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 as moving the garage over two feet would create a need to remove a tree that is healthy and existing; also moving the garage would cause the garage to not be aligned with the driveway and make it more difficult to move modern vehicles in and out of the garage;
- The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as the height of the garage is necessary to allow the space to become usable living space and the applicant has indicated that their basement cannot be used for additional living space so that they are using the garage as that additional space;
- The essential character of the neighborhood would not be substantially altered as a result of the variance as there are existing garages within the height of the variance;
- The variance would not adversely affect the delivery of government services; and
- The following special conditions/circumstances exist that are not a result of actions of the applicant: the tree has been existing, the garage is an older garage that needs to be redone, and a garage is needed for current/modern living conditions.

If granted, the variance shall have the following conditions:

1. Calendar No. 3586 is granted:
 - a. to Code Section 1121.12(g) to permit the garage to be 22.25 feet tall as shown on the revised drawings received by the Planning Department on 8/3/2024; and
 - b. to Code Section 1121.12(a)(2) to permit the garage to be 3 feet from the west lot line as shown on the drawings submitted to BZA;
2. Relocation of the storage structure to a code-conforming location in the rear yard;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit;

5. Complete construction within 24 months of the effective date of this variance; and

Ms. Wolf added an amendment to include the condition that:

6. The windows built on the second story of the west elevation of the garage be installed in such a way that, while emitting ambient external light, shields the neighbor's yard from view and working in consultation with the neighbor to find a solution that meets those two goals.

The motion was seconded by Ms. Lewin.

Mr. Hoen made a motion to remove the amendment (Condition 6) from the conditions of the approval of the variance. His motion failed for lack of a second.

Ms. Wolf's motion with the amendment (Condition 6) passed 3-0-1, with Mr. Hoen abstaining. Mr. Hoen stated that he supported the variance without the amendment.

OLD BUSINESS

Mr. Crumrine gave an update about Cal. No. 3585 T. Mortford, 2677 Berkshire Rd: adjacent property owners have appealed the board's decision at the July 17, 2024 meeting granting two variances. State law allows an appeal to the common pleas court when no further administrative appeal or remedy is available. The city has forty (40) days from August 14, 2024 to prepare and certify a complete record of the proceedings, including a hearing transcript. The court's review is generally limited to that record. The court will determine whether the board's decision is supported by a preponderance of reliable, probative, and substantial evidence and that the agency's decision is in accordance with the law. If the court finds that the board did not meet that standard, the court may reverse, vacate, or modify the board's decision. The notice of appeal does not allege that the board erred during the meeting. It alleges that the appellants did not receive notice of the hearing. The Law Department will defend the city and the BZA in this matter, and we will keep you updated.

NEW BUSINESS

Ms. Knittel gave an overview of a new zoning tool, Gridics, provided by the City:

<https://map.gridics.com/us/oh/cleveland-heights#12.3/41.51997/-81.5574/0/45>

Ms. Knittel said there will be BZA cases next month.

The meeting is adjourned at 7:52 PM.




Thomas Zych, Chair




Xavier Yozwiak