

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES
March 19, 2025**

MEMBERS PRESENT

Thomas Zych	Chair
Benjamin Hoen	Vice Chair
Gayle Lewin	
Elchanan Stern	
Liza Wolf	

STAFF PRESENT

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

CALL TO ORDER

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

APPROVAL OF THE MINUTES

Mr. Hoen motioned to approve the Minutes of February 19, 2025 as corrected. Ms. Wolf seconded the motion. The minutes were approved with no objections. Mr. Zych abstained from the vote.

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

Mr. Hoen 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. 3597 Congregation Ohel Sarah, 3769 Shannon Rd., "A" Single-Family, requests variance:

- A. to Code Section 1121.08(b)(1) to permit the corner side yard to be less than 15 feet;
- B. to Code Section 1121.12(b) to permit a porch to extend more than 6 feet into the required front yard;
- C. to Code Section 1121.12(c)(1) to permit the maximum coverage of the primary front yard to be greater than 30 percent; and
- D. to Code Section 1161.105(a): to permit a driveway width greater than 12 feet.

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

After hearing no objections, the staff report dated March 14, 2025, was entered into the record.

Ms. Wolf and Mr. Stern recused themselves from the case.

Before beginning the presentation, Mr. Yozwiak said that the applicant is withdrawing Cal. No. 3597B and Cal. No. 3597D because a code-conforming solution was found.

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

Mr. Yozwiak confirmed to Mr. Zych that the proposed corner side yard setback (11.56') would be a code-conforming side yard setback (5') for an interior lot.

Mr. Yozwiak told Ms. Lewin that he did not know the front yard setback of the existing home.

Mr. George Pelesky (6860 West Snowville Rd, Brecksville, OH; representative for the applicant) came forward to describe the statement of practical difficulty.

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

Mr. Pelesky said that the variance for the front yard coverage was minimal at 1 percent above the requirement. He explained the layout of the house and how it was designed to be as compact as possible.

Mr. Zych asked Mr. Pelesky if first-floor bedrooms are common in his developments. Mr. Pelesky said that he sees them in 40 to 50 percent of the homes that they sell. Mr. Zych added that Cleveland Heights encourages first-floor developments elsewhere for its mix of population.

Mr. Pelesky confirmed to Mr. Zych that the number of bedrooms in the proposed home is not an unusual number for the homes that he builds.

Mr. Hoen stated that regarding Cal. No. 3597 Congregation Ohel Sarah, 3769 Shannon Rd., he moved to grant the application for a variance with conditions:

- A. to Code Section 1121.08(b)(1) to permit the corner side yard to be less than 15 feet; and
- C. to Code Section 1121.12(c)(1) to permit the maximum coverage of the primary front yard to be greater than 30 percent.

After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions/circumstances exist in particular that the current corner side yard is non-conforming at 14 feet, this is a corner house, and the corner side yard would be code-conforming if it was a side yard because a 5-foot width would be the requirement;
- The variance is insubstantial and is the minimum necessary as demonstrated by the fact that the house is being built in a minimalist way in order to accommodate the abutting corner side yard, the corner side yard setback is the least amount of space that is required for the project to be a viable project, the applicant is asking for 31 percent coverage where 30 percent is the maximum, and the concrete area for the driveway and walkway is the minimum amount of area to make the driveway and walkway functional and safe;
- The essential character of the neighborhood would not be adversely affected by these variances and the home is a welcomed improvement to the neighborhood; and
- There is no evidence of an adverse effect on the delivery of government services.

If granted, the variance shall have the following conditions:

1. Calendar No. 3597 is granted to:

- A. to Code Section 1121.08(b)(1) to permit the corner side yard to be 11.56 feet as shown on the drawings submitted to BZA dated March 2025; and
- C. to Code Section 1121.12(c)(1) to permit the coverage of the front yard to be 31 percent yard as shown on the drawings submitted to BZA dated March 2025.
- 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. Lewin seconded the motion. The motion carried unanimously (3-0).

Cal. No. 3598 M. Newman, 3255 Berkeley Rd., “A” Single-Family, requests variance to Code Section 1121.12(d)(1) to permit the rear yard coverage for an accessory building to be greater than 20 percent.

Mr. Yozwiak said that the applicant is withdrawing Cal. No. 3598 because a code-conforming solution was found.

Mr. Hoen motioned to withdraw Cal. No. 3598 M. Newman, 3255 Berkeley Rd. Mr. Stern seconded the motion. The motion carried unanimously (5-0).

Cal. No. 3600 S. & M. Tolchinsky, 3811 Bendemeer Rd., “A” Single-Family, requests variance:

- A. to Code Section 1103.03(b)(85) to permit two (2) tandem parking spaces;
- B. to Code Section 1121.08(c) to permit the rear yard to be less than 30 feet;
- C. to Code Section 1121.12(a)(4) to permit an addition to be less than 5 feet from the side lot line; and
- D. to Code Section 1121.12(c)(1) to permit the front yard coverage to be greater than 30 percent.

Mr. Yozwiak said that the applicant is requesting to continue Cal. No. 3600 to the April BZA meeting to adjust their design.

Ms. Wolf motioned to continue Cal. No. 3600 S. & M. Tolchinsky, 3811 Bendemeer Rd. to the April BZA meeting. Mr. Stern seconded the motion. The motion carried unanimously (5-0).

Cal. No. 3602 P. Herrgesell & B. Cooper, 2888 Fairfax Rd., “AA” Single-Family, requests variance to Code Section 1121.12(b) to permit a deck to extend into the primary front yard more than 12 feet in front of the building.

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

After hearing no objections, the staff report dated March 14, 2025, was entered into the record.

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

Mr. Zych said noted that 2888 Fairfax Rd. may be one of the most irregularly sited homes that he has ever seen on BZA.

Mr. Yozwiak confirmed to Ms. Wolf that the is deck going over the pool and the front yard coverage will be unaffected.

Mr. Paul Herrgesell (2888 Fairfax Rd.) came forward to describe the statement of practical difficulty.

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

Mr. Herrgesell explained that the pool was constructed in the 1920's and how the deck would bring them more year-round enjoyment.

Mr. Herrgesell confirmed to Mr. Zych that the chain-link fence around the pool will be maintained.

Ms. Lewin asked if there was a reason Mr. Herrgesell was not going to remove the pool. Mr. Herrgesell said that the structure of pool made the deck easier to construct and in case future property owners wanted to remove the deck.

Mr. Herrgesell confirmed to Ms. Lewin that the deck will be a permanent structure.

Ms. Wolf asked if Mr. Herrgesell was leaving up the chain-link fence for future use of the pool. Mr. Herrgesell said that it was for privacy.

Ms. Wolf stated that regarding Cal. No. 3602 P. Herrgesell & B. Cooper, 2888 Fairfax Rd., she moved to grant the application for a variance with conditions to Code Section 1121.12(b) to permit a deck to extend into the front yard more than 12 feet in front of the building.

After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- There are special conditions/circumstances that exist as this is an irregularly-shaped lot with a very large front yard;
- The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as the deck is not going to cover any more of the front yard, the patio and current pool already exist, and the applicant does not use the pool and is putting a deck over it to make use of that piece of the property;

- The essential character of the neighborhood would not be substantially altered as a result of the variance because the patio currently exists and will just be used as a patio and as a deck in the future; and
- The variance would not adversely affect the delivery of government services.

If granted, the variance shall have the following conditions:

1. Calendar No. 3602 is granted to Code Section 1121.12(b) to permit a deck to be 125' to 127' from the front of the house and 31' into the required front yard as shown on the drawings submitted to BZA;
2. Receipt of a Building Permit; and
3. Complete construction within 24 months of the effective date of this variance.

Ms. Lewin seconded the motion. The motion carried unanimously (5-0).

Cal. No. 3603 J. & R. Gruenebaum, 3781 Bendemeer Rd., "A" Single-Family, requests variance:

- A. to Code Section 1121.08(b)(1) to permit the corner side yard to be less than 22 feet;
- B. to Code Section 1121.12(e)(3)(B) to permit a garage to be set back less than 5 feet from the façade of the primary structure on the side that contains the driveway.

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

After hearing no objections, the staff report dated March 14, 2025, was entered into the record.

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

Ms. Lewin asked which street is the side street. Mr. Yozwiak said that it is Maple Rd.

Mr. Yozwiak confirmed to Mr. Zych that the current corner side yard 3781 Bendemeer Rd is 10 feet and the proposed home will add 6.7 feet to the width of the corner side yard.

Mr. Yozwiak confirmed to Ms. Lewin that Code Section 1121.12(e)(3)(B) requires the face of the garage to still be 5 feet behind the side façade even though where the garage opens is not the front of the home.

Mr. George Pelesky (6860 West Snowville Rd, Brecksville, OH; representative for the applicant) came forward to describe the statement of practical difficulty.

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

Mr. Pelesky said that the proposed corner side yard is a 6.7-foot improvement from the current home. He explained how they considered a front facing garage, but that would have made the entire building deeper and required other variances.

Ms. Rivka Gruenebaum (3781 Bendemeer Rd.) said that there is a bus stop nearby and that children walk down Shannon Rd. She said that having a front-facing driveway would be a safety issue.

Ms. Lewin stated that regarding Cal. No. 3603 J. & R. Gruenebaum, 3781 Bendemeer Rd., she moved to grant the application for a variance with conditions:

- A. to Code Section 1121.08(b)(1) to permit the corner side yard to be less than 22 feet;
- B. to Code Section 1121.12(e)(3)(B) to permit a garage to be set back less than 5 feet from the façade of the primary structure on the side that contains the driveway.

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 that the adjacent property is set further back compared to other properties in the neighborhood which makes the corner side yard requirement significantly larger and the applicant is increasing the side yard compared to the existing home;
- The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as demonstrated by the facts that they are minimizing the house as much as possible, the layout is as compact as possible, and the applicant considered various layouts for the garage and driveway in order to make the variance as minimal as possible;
- The essential character of the neighborhood would not be substantially altered as a result of the variance because a new house will be an improvement to the neighborhood and the front porch will improve safety for children in the neighborhood;
- The applicant's predicament feasibly cannot be resolved through a method other than a variance because they are minimizing the house size that they need to accommodate their family with the size of the property that they have; and
- 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.

If granted, the variance shall have the following conditions:

1. Calendar No. 3603 is granted to:
 - A. to Code Section 1121.08(b)(1) to permit the corner side yard to be 16.70 feet as shown on the drawings submitted to BZA; and

- B. to Code Section 1121.12(e)(3)(B) to permit a garage to be set back 1.67 feet from the side façade as shown on the drawings submitted to BZA.
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. Stern seconded the motion.

During discussion, Mr. Hoen brought up the changes to zoning code that make Cal. No. 3603A unnecessary on March 21, 2025. Ms. Knittel confirmed to Mr. Hoen that the variance would still stand if the zoning code was changed again in the future.

The motion carried unanimously (5-0).

Cal. No. 3604 The Cedar-Grandview Company, 12438 Cedar Rd., “C2” Local Retail, requests variance to Code Section 1163.06(e)(2) to permit a sign larger than fifteen (15) square feet at the rear entrance.

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

After hearing no objections, the staff report dated March 14, 2025, was entered into the record.

Ms. Lewin recused herself from the case.

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

Mr. Chris White (Ad Art Sign Company, representative) came forward to describe the statement of practical difficulty.

Mr. Zych entered Mr. White’s application into the record.

Utilizing location
Grocery Outlet has had rapid growth
Organic

Mr. White confirmed to Mr. Zych that the variance is for 93.9 square feet of signage and smaller than the amount that was advertised (162.3 square feet).

Mr. White confirmed to Mr. Hoen that other Grocery Outlet locations with their primary entrance in the front typically have more signage than what they’re proposing at 12348 Cedar Rd.

Mr. White confirmed to Mr. Zych that the entrance on Cedar Rd will still be open.

Mr. Hoen stated that regarding Cal. No. 3604 The Cedar-Grandview Company, 12438 Cedar Rd., he moved to grant the application for a variance with conditions to Code Section 1163.06(e)(2) to permit a sign larger than fifteen (15) square feet at the rear entrance.

After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- There are special circumstances that exist at the property in particular that this is a commercial grocery store along the Cedar-Fairmount corridor, the primary entrance and the entrance that abuts the parking lot to the store is in the rear of the building which is unique, and the signage that is being requested on the rear of the building would typically be on the front of the building;
- The signage would not adversely affect the essential character of the neighborhood because it would be an enhancement to the current building;
- The variance is insubstantial and the minimum necessary in that typical grocery stores and commercial outlets of this type have much larger signage compared to the proposed signage; and
- There is no evidence that the variance would adversely affect the delivery of government services because it will help the delivery of government services to know where the entries and exits are located.

If granted, the variance shall have the following conditions:

1. Calendar No. 3604 is granted to Code Section 1163.06(e)(2) to permit 93.9 square feet of sign area at the rear entrance as shown on the drawings submitted to BZA;
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 amended the first condition of the motion to be:

1. Calendar No. 3604 is granted to Code Section 1163.06(e)(2) to permit 93.9 square feet of sign area at the rear entrance as shown on the drawings submitted to BZA and shown at the March 19, 2025 hearing;

Mr. Stern seconded the motion as amended. The motion carried unanimously (4-0).

OLD BUSINESS

Mr. Yozwiak stated that regarding Cal. No. 3593 V. & C. DiTrollo, 2524 Arlington Rd., the applicant withdrew their request because they found a code-conforming solution.

NEW BUSINESS

Mr. Yozwiak discussed the change to BZA quorum that will be in effect at the April meeting. Ms. Lewin suggested that the variance applications be sent with the agenda when it is posted and Mr. Yozwiak said that that could be done. Ms. Wolf requested additional clarification around conflicts of interest and when recusals are necessary. Mr. Crumrine stated that the Law Department can prepare guidelines for the Board and Ms. Knittel said that the staff would like to do ethics training with Board. Mr. Zych said that giving advance notice about recusals is important to make sure that the Board's alternate can attend the meeting.

Mr. Yozwiak reminded the Board members that the meeting next month will be on April 23rd and stated the next BZA meeting will have one to two cases.

Mr. Crumrine stated that the evidentiary hearing for the appeal to Cal. No. 3585 T. Morford, 2677 Berkshire Rd. is scheduled for March 28, 2025.

The meeting was adjourned at 8:34 p.m.



Thomas Zych, Chair

Xavier Yozwiak, Secretary