

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES
April 23, 2025

MEMBERS PRESENT

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

STAFF PRESENT

H. Lee Crumrine	Assistant Law 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. Zych corrected the Minutes of March 19, 2025 to say that “Mr. Zych stated that the purposed and procedures...” instead of “Mr. Hoen stated...” Ms. Lewin motioned to approve the Minutes of March 19, 2025 as corrected. Mr. Hoen seconded the motion. 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. 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 a carport to be less than 5 feet from the side lot line;
- D. to Code Section 1121.12(c)(1) to permit the front yard coverage to be greater than 30 percent; and
- E. to Code Section 1121.12(i)(2) to permit a fence parallel to the carport to be taller than the distance to the carport.

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

After hearing no objections, the staff report dated April 23, 2025, was entered into the record.

Ms. Wolf recused herself from the case because of a business relationship with the applicant.

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

Mr. Yozwiak confirmed to Mr. Hoen that garages with tandem parking are still required to seek a variance. Mr. Yozwiak said that he was not aware of a previous zoning code amendment that would have allowed tandem parking.

Ms. Lewin asked Mr. Yozwiak if the applicant had talked to their neighbor about the proposed fence style. Mr. Yozwiak said that the fence style did not come up in his conversation with the applicant and suggested that the applicant address the question.

Ms. Rebecca Fertel (3429 Blanche Ave; representative for the applicant) came forward to describe the statement of practical difficulty.

Mr. Zych entered Ms. Fertel's application into the record.

Ms. Fertel explained that the rear-yard variance was required to create first-floor living space so that the owners could stay in the home long-term. She noted that first-floor living space is generally in-demand in Cleveland Heights. She added that the variance for the front-yard coverage allowed for a better porch design that provided a space for trash bins. She said that the carport was preferable to an enclosed garage because an enclosed garage would have an almost zero-foot setback. She said that the purpose of the tandem parking was to create a larger area of greenspace in the rear yard. Lastly, she said that the neighbors did not say if they had a preference about having the fence or not.

Mr. Zych asked about the impact on the neighbor's property from car exhaust and noise from the unenclosed parking. Ms. Fertel argued that an open driveway would have the same impact.

Mr. Zych asked if the fence would mitigate those impacts. Ms. Fertel said that the fence provides visual screening but does not mitigate the noise.

Mr. Zych closed the public hearing.

Mr. Hoen stated that regarding Cal. No. 3600 S. & M. Tolchinsky, 3811 Bendemeer Rd., he moved to grant the application for a variance with conditions:

- 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 a carport to be less than 5 feet from the side lot line;
- D. to Code Section 1121.12(c)(1) to permit the front yard coverage to be greater than 30 percent; and
- E. to Code Section 1121.12(i)(2) to permit a fence parallel to the carport to be taller than the distance to the carport.

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

- Special conditions and circumstances exist with this property in that the property is narrow and a non-conforming lot therefore the only practical way to fit a functioning

carport on the property is to have tandem parking and the area in the existing lot is not sufficient to allow for a home that is the size of the homes that are desirable in this area;

- The variance is insubstantial in that the front yard coverage is not substantially more than 30 percent and the variance itself would be a reasonable fence of 4 feet;
- The essential character of the neighborhood would not be substantially altered as a result of the variance because the front porch will enhance the essential character of the neighborhood and is a pleasant addition to the house;
- The applicant's predicament feasibly cannot be resolved through a method other than a variance because the property is non-conforming and narrow in its nature, therefore being near the side lot line is the only practical way to implement the carport and the only code-conforming fence that would be allowed here would be a 2-foot fence which is ineffective for any privacy or protection to the applicant or the neighbor's property; and
- The spirit and intent behind the zoning requirement would be observed by granting variance because although the existing garage will be removed is a code-conforming garage, the purpose of removing that garage will be to enlarge the usable space in the backyard which is a desirable outcome of the project.

If granted, the variance shall have the following conditions:

1. Calendar No. 3600 is granted to:
 - A. to Code Section 1103.03(b)(85) to permit two (2) tandem parking spaces as shown on the drawings submitted to BZA dated March 27, 2025;
 - B. to Code Section 1121.08(c) to permit the rear yard to be 26.8' deep as shown on the drawings submitted to BZA dated March 27, 2025;
 - C. to Code Section 1121.12(a)(4) to permit a carport to be 2.4' from the side lot line as shown on the drawings submitted to BZA dated March 27, 2025;
 - D. to Code Section 1121.12(c)(1) to permit the front yard coverage to be 33 percent as shown on the drawings submitted to BZA dated March 27, 2025; and
 - E. to Code Section 1121.12(i)(2) to permit a fence 2.4' from the carport to be 4' tall as shown on the drawings submitted to BZA dated March 27, 2025.
2. Approval of a reduction in enclosed parking by the Zoning Administrator for two (2) unenclosed parking spots;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit; and
5. Complete construction within 24 months of the effective date of this variance.

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

Cal. No. 3605 P. & C. Byrne, 1224 Oxford Rd., "A" Single-Family, requests variance:

- A. to Code Section 1121.08(b) to permit an attached garage with a second-floor living space to be less than 5 feet from the side lot line;
- B. to Code Section 1121.08(c) to permit an attached garage with a second-floor living space to be less than 30 feet from the rear lot line;

- C. to Code Section 1121.12(a)(8) to permit a driveway to be less than 3 feet from the side lot line; and
- D. to Code Section 1121.12(e)(2) to permit the garage floor area to be greater than 610 square feet.

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

After hearing no objections, the staff report dated April 23, 2025, was entered into the record.

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

Mr. Yozwiak confirmed to Ms. Lewin that the rear yard setback requirement is 30 feet for an attached garage with or without second-floor living space.

Mr. Yozwiak confirmed to Mr. Zych that a height variance is not required for the project.

Mr. Zych asked if the drawings show where the windows will be for the living space and what people in the space will be able to see. Mr. Yozwiak pointed out the windows on the elevation that face the neighbor's property at 1228 Oxford Rd and the windows that face the rear property line. Mr. Yozwiak also showed the photos from the site visit that show the portion of the neighbor's rear yard adjacent to the windows.

Mr. Zych asked if the trees close to the property line are going to stay after construction. Mr. Yozwiak deferred to the applicant.

Mr. Patrick Byrne (1224 Oxford Rd.) came forward to describe the statement of practical difficulty.

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

Mr. Byrne said that he was a handyman, and he needed the larger garage to keep supplies.

Ms. Jennifer Avery (1228 Oxford Rd.) was sworn in and expressed concern about the location of the property line. She said that she always maintained the trees near her property line and thought that initially the 18-inch setback would spare the trees. She asked if there was anything the city could do to determine the property line.

Mr. Yozwiak said that unfortunately the city does not provide boundary surveys for residents. He also mentioned that previous BZA cases have included boundary surveys as a condition of approval or have continued cases until a survey is complete.

Ms. Wolf expressed concern about the location of the property line being uncertain and questioned whether the Board could grant the variances. Mr. Zych echoed the concern and said that the implication could be that the Board either grants it should not have or the variance would be invalid.

Ms. Avery added that she had no issues with windows. She said she has a back porch but does not use it. She said she liked Mr. Byrne as a neighbor. She finished by saying that her only concern is the location of the property line.

Mr. Zych asked if Mr. Byrne would address the concerns about the location of the property line and what will happen to the trees on the property line.

Mr. Byrne said that he hoped that the trees would still be viable. He said that location of the pin, which he used to set the property line, made sense because it was 4 feet from his driveway and 50 feet from the edge of his neighbor's property (1228 Oxford Rd.). He said that the margin of error in the property line measurement was probably 6 to 8 inches.

Mr. Hoen asked why the addition could not be moved over so that the side yard variance was not required.

Mr. Byrne said the side yard variance was needed to so that the rear yard was still a useful yard, to fit both cars in the garage, and because of an AC condenser at the rear of the home.

Mr. Byrne described to Mr. Zych how both cars would enter the garage.

Ms. Wolf asked about the permit requirements for building an addition and if drawings completed by a professional architect were required.

Mr. Yozwiak said that all drawings that get a building permit need to meet the requirements of professional plans. He said that the Building Commission told him that individuals and non-professionals could still meet that standard.

Ms. Wolf said that she felt like more official plans were required and asked if a variance could be granted with the current measurements.

Mr. Yozwiak said that that question could be for the other Board members and their comfort level with granting the variance. He said that a variance must be precise and that it's the liability of the applicant if the property line is not what's granted in the variance.

Ms. Lewin said that the Board regularly trust applicants, what they submit as the property line, and that stamped survey plans are not required. However, she said a survey was worthwhile in this case because of the neighbor's concern, the closeness of the proposed setback, and her professional experience as a civil engineer and involvement in litigation around property lines.

Mr. Zych said that it is not the common circumstance that the Board requires a full survey to show the property lines. He added that a survey has been requested in the past when uncertainty about the property line would have affected the Board's decision on a variance. He continued that two variances in this case deal with the side lot line and the rear lot line variance is closely related. He said that he did not have the information to decide the variances. He concluded by saying that the Board could deny or continue the case, and that it would be more cooperative to continue it.

Mr. Byrne reiterated that he was pretty sure about the property line location and that it was based on the pin in his front yard and the distance of that pin to his neighbor's driveway.

Mr. Hoen said that he thought that Ms. Lewin's counsel was wise. He said that if he was the homeowner, and was making an investment of this magnitude, he would not want to mistakenly create an encroachment and have the building be torn down.

Mr. Byrne asked if the variance could be conditionally approved.

Mr. Zych said that the testimony of the Board suggests that they are not comfortable with granting two of the variances because of the doubt about the property line. He said that their options are to deny or continue the matter and have the applicant work with staff to get the certainty that is needed.

Ms. Wolf said that she did not intend to force the applicant to get a survey done. She encouraged the applicant to work with a professional architect to avoid restarting the variance process in case the plans would need to change. She added that she would like to continue the application.

Mr. Zych closed the public comment.

Ms. Wolf motioned to continue Cal. No. 3605 P. & C. Byrne, 1224 Oxford Rd. to the May BZA meeting until there is further information about the actual property lines. Ms. Lewin seconded the motion.

Ms. Wolf said to the applicant that the Board does want to help the applicant achieve their project and add living space, but that they need a little bit more information.

The motion carried unanimously (5-0).

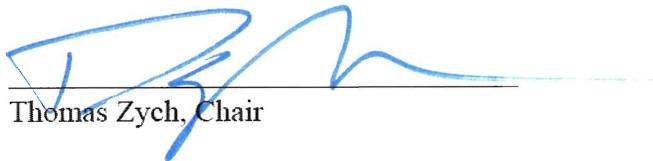
OLD BUSINESS

There was no old business.

NEW BUSINESS

Mr. Yozwiak said that there will be up to five cases at the next BZA meeting.

The meeting was adjourned at 8:27 p.m.



Thomas Zych, Chair



Xavier Yozwiak, Secretary