

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
April 21, 2021**

MEMBERS PRESENT:	Melissa Fliegel Dennis Porcelli Thomas Zych Ben Hoen	Chair Vice-Chair
STAFF PRESENT:	Eric Zamft Karen Knittel Pam Roessner Christy Lee	Planning Director Assistant Planning Director Assistant Law Director Administrative Assistant

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present with the absence of Ms. Wolf. A quorum is present.

APPROVAL OF THE MINUTES OF THE MARCH 17, 2021 MEETING

Minutes for the March 17, 2021 meeting will be considered at the next meeting.

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(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. 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.

PUBLIC HEARING

Cal. No. 3514

Benjamin Rose Institute on Aging/Margaret Wagner Condominium, 2373 Euclid Heights Blvd., MF-3 Multi-Family, a project to create 20 new senior apartments requests variance to Sect.1161.03(a)(5) to permit 20 surface parking spaces (20 spaces with 10 enclosed required).

Mr. Zych asked that staff report dated April 13, 2021, be entered into the record seeing and hearing no objections, the report is so entered.

All those wishing to testify were sworn in by Pam Roessner.

Ms. Knittel reviewed her staff report in a PowerPoint presentation as follows

Context

This property is located at 2373 Euclid Heights Boulevard. To the north is the single-family development of Kenilworth Mews. To the west are the historic Herrick Mews carriage houses, now one- and two-family dwellings located in an MF-3 District. To the east are apartments in an MF-3 District and to the south, across Euclid Heights Boulevard are apartment buildings and the city parking lot that is part of the Top of the Hill development site.

History

- 1959 Margaret Wagner House built as a nursing home
- 1992 Project No. 91-6: Margaret Wagner House granted conditional use permit to add 44,000 s.f. to an existing 5-story nursing home.
- 1997 Calendar No. 2643: Applicant obtained a use variance to operate its PACE service on the first floor and to house offices on the second floor of the former nursing home, uses not permitted in the MF-3 zoning district.
- 2000 Benjamin Rose Institute submits an application for the addition of dining room and porch
- 2001 Creation of 24 elderly apartments on the 4th and 5th floor of Margaret Wagner House determined to need no Planning Commission approval because the proposed use was less intensive than the previous use (nursing home). A permit was issued for 24 elderly apartments, most smaller than 600 s.f.
- 2003 Project No. 03-06: Applicant granted revision to its conditional use permit to accommodate expansion of its daytime health-care services for low-income elderly persons (PACE Program) onto the building's second floor. This use was never implemented.

2009 Calendar No. 3183 Applicant granted variances to permit 32 units to be smaller than minimum 600 s.f. and to permit no new parking spaces for 36 units where 18 surface & 18 covered spaces were required.

Project

The applicant proposes to create 20 new affordable senior apartments on the first floor. The existing building currently has 60 units of affordable senior housing with supportive services on floors 2 through 5. The site has 75 surface parking spaces.

Facts

- Section 1123.01(c) states that the MF-3 District is established to provide for very high-density residential development in limited areas of Cleveland Heights. The standards for the MF-3 District permit the development of approximately fifty-eight (58) dwelling units per gross acre.
- This project is 2.44 acres with 80 dwelling units, resulting in thirty-three (33) units per acre.
- Code section 1161.03(a)(5) requires one space for each senior citizen apartment dwelling unit, of which not less than 0.5 spaces per dwelling unit shall be enclosed
- The applicant is providing 20 spaces, however, is requesting a variance to permit all to be surface parking when the code requires 10 to be covered parking.
- This surface parking will be located on existing surface parking lots.
- The purpose of the new units is to create 20 new HUD 202 affordable senior housing units.
- The 2009 reduction in parking variance was granted as the applicant demonstrated that their senior residents typically do not have vehicles.
- Since 2009, the Pace program and senior adult day care program were moved to other locations, reducing the demand for parking from uses on site. In 2009, 44 parking spaces were designated for the PACE program staff and visitors.
- There are approximately 10 staff who work on-site, usually, these persons are not on-site at the same time.
- There are 75 surface parking spaces and there will be a total of 80 senior apartments.
- The project to create 20 new affordable senior housing units in this existing building is code conforming except for the covered parking requirement.

If approved, conditions may include:

1. Variance 3514 is granted to permit 20 surface parking spaces with no covered parking for the new 20 affordable senior housing dwelling units;
2. Receipt of a building permit;
3. Receipt of housing occupancy certificates; and
4. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel further stated that the applicant is present and can discuss the particle difficulty for the Board.

Mr. Zych asked if there were any questions from the Board to Ms. Knittel. There were no questions. He asked that the applicant is the applicant or the applicant representative be sworn in.

Ms. Roessner administered the oath to Ms. Mary Marita and Mr. David DeFrancesco.

Ms. Marita stated that she was with the Benjamin Rose Institute 10890 Fair Hill Road, Cleveland, Ohio, and Mr. DeFrancesco stated that he was with Hiti, DeFrancesco & Seabold Architects 1939 West 25th street Ste 300, Cleveland, Ohio.

Mr. Zych stated that hearing no objection, the application dated April 11, 2021, is entered into the record.

Mr. DeFrancesco thanked the Board he went on to detail the proposed project to add 20 new affordable, senior apartments along with the additional parking spaces. He further explains how this will improve on the current location giving those in need housing and reviewed the statement of practical difficulty.

Mr. Zych asked if there were any further presentations by the applicant. He then asked if there were questions from the Board.

Mr. Porcelli asked if there will be any additional units planned for this building in the future.

Ms. Marita said "No" and that this will finish out the conversation to senior housing of the facility in its entirety.

Mr. Zych asked if there were any public comments at this time.

Ms. Knittel said there was one person.

Ms. Roessner administered the oath to Elliott Posner.

Mr. Posner said he lives at 2376 Kenilworth Rd. He said that he has been a long-time resident surround the present project, he went on to say that he remembers the last variance for parking that was granted and stated that it is true that Kenilworth Lane did not become a parking area for Margaret Wagner House. He said that there was a formal or informal public agreement with the Margaret Wagner House that employees and others who work in the lane wouldn't park in the lane that they would use the parking spaces on their premises or across in the city lot. He asked if this would still be the standing agreement. He said that he finds the institution to be a good neighbor.

There were no additional public comments and the public hearing was closed

Mr. Zych asked the applicant to respond to Mr. Posner's question.

Ms. Marita thanked Mr. Posner for his comment, she went on to say that far as the parking behavior, for employees, the fact of the matter is that they no longer operate two day programs in the building so the number of employees who work in the building has dramatically changed over the past year. And the proposal of this project of adding 20 additional units would not require the organization to hire additional employees. However, there might be some contracted

support service individuals who may need to support those residents who live in the building. And certainly, access to available parking that is not designated to our residents on-site is provided to them. She went on to say that they're confident that the parking proposal will adequately provide the necessary parking for supportive services.

Mr. Hoen asked if the parking lot would be closed with a security gate prohibiting unauthorized parking to the public.

Ms. Marita historically, it has not been a gated parking lot, neither the north parking lot nor the west parking lot. She said they would keep an eye on that because the parking is primarily there for residents and employees that work in the building. She said they are hoping that they don't have to walk down that path and invest in and incur the costs of a gated parking lot. But at this time, our utilization, and historically has not required that.

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

Mr. Hoen moved regarding Cal. No. 3514 Benjamin Rose Institute on Aging/Margaret Wagner Condominium, 2373 Euclid Heights Blvd., MF-3 Multi-Family, a project to create 20 new senior apartments requests variance to Sect.1161.03(a)(5) to permit 20 surface parking spaces (20 spaces with 10 enclosed required) to permit parking spaces where 20 spaces with 10 closed are required after reviewing the application and submission and hearing the evidence under oath I find and conclude that there are special conditions and circumstances that exist, which warrant a finding of practical difficulty the property itself has been operating as a nursing home slash elderly low-income housing since 1959 when it was originally opened. As we've heard the parking since that time has never been an issue and therefore, despite the fact that additional units are being proposed on this plan, there does not appear to be an urgent need for additional parking space moreover. Creating additional surface parking spaces with an enclosure would have an adverse effect on the neighboring properties and therefore, it would be undesirable. The variance is insubstantial in that previous variances having granted similar to the variance that's being asked for today. And as we've heard the variance that were previously, granted did not cause any adverse effect on the neighborhood properties specifically regarding overflow parking on Kenilworth lane. The essential character of the neighborhood would not be substantially altered as a result of the variance. Conversely, if we required them to. come to the table with a code-compliant plan it would adversely affect the nature of the neighborhood. The variance would not adversely affect the delivery of government services as there's no change to the property. The circumstances are not the result of the actions of the applicant when the building was built, the building would be changed in its nature and therefore the owner who has the property since inception had to the foresight of this, predicament cannot be resolved through a method other than a variance. As stated earlier the existing parking is sufficient for its needs and there has been no adverse effect on the neighborhood and the spirit and intent behind the zoning requirement is observed and substantial justice is done by granting the variance because this is a highly desirable project, meeting the need for additional housing. The intent behind the zoning requirement is being observed. If granted the variance should have the following conditions.

1. Variance 3514 is granted to permit 20 surface parking spaces with no covered parking for the new 20 affordable senior housing dwelling units;
2. Receipt of a building permit;
3. Receipt of housing occupancy certificates; and
4. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen raised a concern that the only thing that he would add at this point would be to continue to monitor the parking needs of its residents in cause there and would be the need to consider having a security gate so that the public can't take advantage of the free parking.

Mr. Zych asked if he was making this a condition of approval. Mr. Hoen said that it was a comment, not a condition.

Mr. Porcelli seconded the motion.

Mr. Zych asked if there were any further discussion.

Motioned carried 4-0.

Cal. No 3515 Jewish Education Center, 2030 S. Taylor Rd., MF-2 Multi-Family, requests a variance to Section 1123.12(e) to permit a 6'tall ornamental metal fence in front & corner side yards parallel to S. Taylor Rd., Superior Rd., and Hampstead Rd. (4' max. ht. permitted).

Mr. Zych stated that hearing no objection, the application dated April 13, 2021, is entered into the record. He added that there was a letter submitted from security LLC, March 5, 2021, which will also be entered into the record.

Ms. Knittel reviewed her staff report in a PowerPoint presentation as follows.

Context

The Jewish Education Center is located along South Taylor Road with Superior Road to the North and Washington Boulevard to the south. It is zoned MF-2 Multiple-Family. North, across Superior Road, is Cain Park. East across south Taylor Road is the Deborah S. Delisle Educational Options Center that is zoned C-1 Office, and to the west are single-family homes in an A Single-Family District.

Project

The applicant proposes to install a 6' fence around the building and parking lot. Ornamental metal fencing will be used in the front and corner side yards. Black vinyl chain link fencing will be used along the south property lines that abut the rear yards of the single-family homes on Hampstead Road and Washington Boulevard. The project includes an ornamental metal fence gate across the Washington Boulevard parking lot entry drive. (See March 19, 2021 site plan.)

Facts

- Code Section 1123.12(e) regulates fences and walls in the multi-family district stating that fences shall comply with regulations for fences in the Single-family Districts contained in Section 1121.12.

- Section 1121.12(i)(1) states that a fence or wall located in a front or corner front yard shall have a maximum height of four (4) feet above ground level and shall require Architectural Board of Review approval.
- The proposed 6' tall fence was reviewed and approved by the Architectural Board of Review at their March 16, 2021 meeting.
- The fence is set back a minimum of 26'7" from the Superior Road right-of-way.
- The fence is setback 36' from the Hampstead right-of-way.
- The fence is setback 6' from the South Taylor Road right-of-way.
- This site is approximately a 1.27-acre site. There is approximately 470 feet of frontage along South Taylor Road, approximately 172 feet of frontage along Superior Road.
- Access to the parking lot is from Washington Boulevard.
- There is a grade change from the site to the public right-of-way along Superior and Hampstead roads. The site's property is higher than the public sidewalk
- The Jewish Federation's Deputy Director of Security has written a letter detailing the need for security fencing to be taller than the 4' permitted by code.
- Similar security fencing taller than the 4' maximum permitted has been approved for other institutions, including the following addresses: 1700 S. Taylor Road (Cal. No, 3433, Sept. 2017), 1970 S. Taylor (Cal. No.3466, August 2018) 1860 S. Taylor Road (Cal. No. 3484, July 2019).

If approved, conditions may include:

5. Variance 3515 is granted is to permit a 6' tall in the front and corner front yards as shown on the site plan dated March 19, 2021.
6. Approval of a fence landscape plan by the Planning Director;
7. Receipt of a Fence Permit; and
8. Complete construction within 18 months of the effective date of this variance.

Mr. Zych asked if there were any questions from the Board.

Mr. Hoen asked that given the frequency of this particular request and in light of increased security measures around the city, has there been any thought given to amending the zoning code. It seems almost every meeting we have a request for security.

Karen Knittel stated that staff could look into this.

Ms. Roessner administered the oath to Mr. Ron Kluchin and Mr. Yossi Israeli.

Mr. Kluchin said his address is 23215 Commerce Park and Yossi Israeli affirm said his address is 2030 South Taylor Road.

Mr. Zych said that unless there were objections, the application dated March 11, 2021, would be entered into the public record.

Mr. Kluchin explained the need for the fence, how this will add to the security of the property. He went on further to discuss the location of the fence and how this will help to keep property safe and secure.

Mr. Zych asked if there were any questions from the Board.

Mr. Israeli added that there was a safety concern with an incident on the property, which raised concerns about the safety of the location which is why the fence is needed.

Mr. Zych asked if there was any public comment. There was none, he asked if there was a motion.

Mr. Hoen regarding **Cal. No 3515 Jewish Education Center, 2030 S. Taylor Rd.**, MF-2 Multi-Family, requests a variance to Section 1123.12(e) to permit a 6' tall ornamental metal fence in front & corner side yards parallel to S. Taylor Rd., Superior Rd., and Hampstead Rd. (4' max. ht. permitted). Moved to grant for the variance. After hearing the evidence under oath, I find that there are special conditions and circumstances that exist at this property, that warrant the finding of practical difficulty that this property is open on all sides. There have been recent incidences that have involved intruders at the property is open on all sides. It is well known that security is heightened stands right now similar variances have been granted in the neighborhood and therefore this variance will not have an adverse effect on the neighborhood. And hearing the evidence on growth, I find that there are special conditions and circumstances that existing property, that orange of finding a practical difficulty that this property is open on all sides. There have been incidences recently, have invited intruders at the property are well known. That security is heightened stands right now similar variances have been granted in the neighborhood and therefore this variance will not have an adverse effect on the neighborhood. It is also allowed however, a 4-foot fence is not sufficient for security and therefore a 6-feet fence would be warranted. I do grant that with conditions that the approval of a fence landscape plans, the planning director be approved, read a receipt of the permit, and complete construction within 18 months of the effective date of this variance.

Mr. Zych stated that before a 2nd is called he asked that the motion on the floor reference 21123.12(e).

Mr. Hoen said "Yes" and apologized for the misstatement.

Mr. Porcelli seconded the motion.

Mr. Zych asked if there were any questions on this matter.

Mr. Porcelli asked whether or not they wanted to include the fence landscape mandate in lieu of the fact that it's been stated that landscaping is detrimental to security.

Mr. Hoen said that he was not in a position to make that determination. He said that he heard the applicant and is in favor of whatever the planning director is in favor of.

Ms. Knittel said that the landscape plan can include trees that having landscaping does not necessarily mean that it would block views or cause an issue with security. The landscaping plan would be agreed upon by the planning director and the applicant. At a minimum, we would like the trees maintained on the property.

Mr. Zych so the response is that the requirement of a landscape plan does not require any

specific landscape, rather it is a requirement that the applicant work with the planning director to determine what would be appropriate.

The vote was taken; the motion carried 4-0.

Cal. No. 3517 Mary Dunbar, 12628 Cedar Rd., A Single-Family, requests a variance to Sect.1121.12(i) (2) to permit 6'tall fence inside yard to be 4'3" from the applicant's house (minimum 6' setback required.).

Mr. Zych asked that the staff report dated April 13, 2021, be entered into the public record hearing and see no objection it was so entered. He mentioned that this report has a letter from the neighbor. He stated that the March 10, 2021 letter should be added to the record.

Ms. Knittel stated that the letter that was submitted on March 10, 2021, was in support of the project she went on to give her staff report using a PowerPoint presentation as follows.

Context

12628 Cedar is a single-family structure located in the cluster of 14 single-family homes off of Cedar Road. Across Cedar Road to the north is the Cedar Hill Baptist church zoned A Single-Family. To the east are Demington Drive single-family homes in an A Single-Family District.

Single-family homes zoned A Single-Family are to the west along Cedar Road. To the south across Nottinghill Lane are single-family homes in an A Single-Family District.

Project

The applicant proposes to install a 6-foot tall privacy fence with a portion of it located between the applicant's house and the neighboring residence at 12626 Cedar Road.

Facts

- Code Section 1121.12(i)(2) states that fences located in a side or rear yard shall not exceed seven (7) feet above ground level provided that a fence or wall may be located parallel to a principal building no closer than a distance equal to the height of the fence or wall.
- The 6'2" of the proposed fence will run parallel to the applicant's residence and will be 4'3" from the house (principal structure), resulting in the need for the variance.
- This is an unusual housing development for Cleveland Heights with the single-family homes clustered around a common private drive and have irregularly shaped lots.
- The applicant's parcel is a code conforming parcel having an area of 8,463 square feet and is 75' wide at the building line of the house. A code conforming A Single-Family parcel is a minimum of 50'wide at the building line and has a minimum of 7,500 square feet.
- The resident at 12626 Cedar Road has written a letter of support for the variance for the fence.

If approved, conditions may include:

1. Variance 3517 is granted is to permit a 6-foot tall to be located 4'3" from the applicant's house as shown on the site plan submitted with the variance application;
2. Receipt of a fence permit; and
3. Complete construction within 18 months of the effective date of this variance.

Mr. Zych asked if there were any questions from the Board. He went on to ask that he knows this has come up before however, the report refers to the fact that there is a fence and this fence may cross property lines how should this be handled.

Ms. Roessner Yes, there was a question about whether or not the party should be required to create an easement to put this fence. Because it was private property, the city did not want to take a stance in regards to that.

Mr. Zych asked if the neighbor's property is sold, the new owner in the absence of an easement would still have the ability to object to this.

Ms. Roessner yes there is a possibility.

Mr. Zych we just wanted to be clear for both the Board and the public that this Board doesn't have the power to grant easements.

Ms. Roessner administered the oath to Ms. Mary Dunbar.

Mr. Zych said that without any objection the letter dated February 9, 2021, will be entered into the public record.

Ms. Dunbar said she lived at 12628 Cedar Road and explained her practical difficulty. She stated that there is no privacy between the two homes, the kitchen windows look into one another. She said that having the fence would allow for privacy surrounding the home as well as giving the neighbor next to the property privacy. Ms. Dunbar added that this will also be of value to the home. She went on to stated that she knows what the requirements of the city are and that this project doesn't quite match them and that she is hopeful that the variance will be granted.

Mr. Zych asked if there was anything else the applicant wanted to add concerning the practical difficulty.

Ms. Dunbar replied that the lots are oddly shaped and that the statement of practical difficulty submitted with the application is correct.

Mr. Pocelli asked if either the applicant or the architect thought of installing a gloss film to the window for added privacy, instead of installing a fence.

Ms. Roessner administered the oath to David Toguchi.

Mr. Toguchi said his address was 17100 Van Aken Blvd, Shaker Heights. He said that several trees are surrounding this area and installing film to the windows would limit the amount of natural light that would come into the home.

Mr. Porcelli asked if the height of the fence was tall enough to limit the view into each kitchen

but still provide natural light.

Mr. Toguchi replied yes that a 6-foot fence would limit the views into the kitchen.

Mr. Porcelli asked if this would still limit light.

Mr. Toguchi replied that it would but that the fence allows light from above to come through the windows. He went on to say that this is a very thin fence, which allows for light to still come through, and that this would also add security to the homes.

Mr. Zych asked for better clarification of the description and placement of the fence.

Mr. Toguchi stated that the fence is parallel to the property lines between the two houses. He went on to say that the fence is a shadow box style.

Mr. Zych asked if there were other questions from the Board.

Mr. Hoen said that as he looks at the pictures, he noticed how close the homes are together and recognizing that the application before us is strictly about the setback not about the height of the fence. He asked if there would be any possible way to set up a code conforming fence between these properties? He asked if there was even enough space between these houses to have a fence with the proper setback?

Ms. Knittel stated that they want a fence that is tall enough to block views from their windows which is why the request is for a 6-foot tall fence that would be set back 4 feet from the applicant's house. So a 4-foot fence would be permitted by code. This section of the code says that if you have a fence, that's parallel to your principal building, it has to be set back the same distance from the house as it is tall. Only the portion of the fence parallel to the house requires the variance, the section beside the patio is code conforming.

Mr. Hoen stated that the distinction is that usually they're talking about the height of the fence, but here, they're talking about the setback.

Mr. Zych asked if there were any other questions for the Board.

Mr. Zych asked if there were any public comments, there were no comments from the public. The Public Hearing was closed.

Mr. Zych asked if there were questions or a motion on the project.

Mr. Porcelli moved regarding **Cal. No. 3517 Mary Dunbar, 12628 Cedar Rd., A Single-Family**, requests a variance to Sect.1121.12(i) (2) to permit a 6'tall fence in the side yard to be 4'3" from the applicant's house (minimum 6' setback required) to permit the variance. After reviewing the application and other submissions and hearing the evidence under oath I find and conclude that special circumstances and conditions exist at this particular property regarding the need for privacy and the available space between the adjoining houses and that. The fact the variances insubstantial and the minimum necessary to make the possible reasonable use of the land the essential character of the neighborhood would not be substantially altered, and would not adversely affect the delivery of government services and the condition are the results of the

actions of the applicant but more to the original designer of the property. Not taking privacy into consideration. The predicament can only be resolved with granting of a variance. The spirit and intent behind the zoning requirement would be observed the gathering of the variance request will not confer on the applicant any special privilege that many others in the same situation. If granted the variance would have the following conditions

If approved, conditions may include:

1. Variance 3517 is granted to permit a 6-foot tall fence to be located 4'3" from the applicant's house as shown on the site plan submitted with the variance application;
2. Receipt of a fence permit; and
3. Complete construction within 18 months of the effective date of this variance.

Motioned second by Ms. Fliegel.

Mr. Zych commented that while the applicant stated that the request did not meet the City's requirement she was asking for the variance anyway. He stated that the Board is constrained by the code and that variances can only be granted if the Board finds practical difficulties as defined by the code. He noted that the statement of practical difficulty submitted with the application has stated reasons that he could rely including those discussed in the motion and therefore he could support the motion.

The vote was taken; the motion carried 4-0

Cal. No. 3518 Tom & Charlotte Wilson Veider, 3041 Essex Rd., A Single-Family, requests variances to Section 1121.12(a)(2) to permit a replacement garage/accessory building to be located 3' from rear (north) & 1.5' from side (east) property lines (minimum 5' required) & to Section 1121.12 to permit accessory bldg. to be taller than max. 15'.

Mr. Zych explained that procedurally they would hear one presentation on both variances but that separate votes will be required for each variance.

Mr. Zych asked that the staff report dated April 13, 2021, be entered into the public record, hearing and seeing no objection it was entered. He added that there were two emails sent by Beck Moris Horts, 3045 Essex Rd., dated April 20, 2021 at 3:57 p.m. and 5:01 p.m. Ms. Horts expressed her reasons for objecting to the variance in the 3:57 p.m. email.

Ms. Knittel reviewed her staff report in a PowerPoint presentation as follows.

Context

3041 Essex is a single-family house located at the corner of Essex and Stratford roads zoned 'A' Single-Family. The single-family houses to the east, west, and south are zoned 'A' Single-Family. To the north and rear of the applicant's property are two-family houses, zoned 'B' Two-Family.

History

2008 Calendar No. 3162 a variance was granted to permit a 5-foot tall fence and 8-foot 11-inch pergola to be in the corner side yard.

Project

The applicant proposes demolishing and replacing the existing 100-year old garage with a new two-car garage, storage space, and studio to provide additional usable square footage to supplement the existing house.

Facts

- This is a code conforming property in terms of area and width. It is 50 feet wide and is 8,350 square feet, Section 1121.06 states that 'A' Single-Family parcels have a minimum lot width of 50 feet and a minimum area of 7,500 square feet.
- 3041 Essex is at the northeast corner of the Essex Road and Stratford Road intersection.
- The house and detached garage are setback 1.5' from the side property line shared with 3045 Essex.
- The detached garage is setback 3' from the rear (north) property line shared with 3038 Kensington Road.
- If the applicant were rebuilding the garage in the same footprint the existing setbacks would have been permitted.
- Section 1121.12(a)(1) requires detached garages located in the rear yard to be a minimum of 3 feet from the side and rear property line.
- The applicant is proposing an accessory structure including a garage, storage space, and studio space making this an accessory building with setbacks regulated by Section 1121.12(a)(2) Pool house, storage shed, other similar buildings that require a 5-foot setback from the side and rear property line.
- The applicant proposes using the existing driveway location for access to the new garage.
- There is a large oak tree with a diameter of about 30 inches located near the street and the applicants' driveway. Moving the driveway further south toward Essex would impact this tree.
- The location of the proposed garage/accessory building allows 20 feet of the driveway between the garage door and the public sidewalk (right-of-way).
- A standard parking space is 20 feet long.
- Section 1103.03 states that "*Yard, corner side*" means on a corner lot, the yard between the principal building that lies between the principal building and the side lot line adjacent to the street and extending from the front yard to the rear lot line.
- The proposed garage/accessory building is in the rear yard, moving it closer to Stratford Road would result in the garage being in the corner side yard and would require a variance.
- The proposed garage/accessory building is on the April 20, 2021 Architectural Board of Review agenda. A report of this meeting will be provided at the BZA meeting.
- Section 1103.03 states that building height for a gable roof is *the mean height between the eaves and ridgeline*.
- Section 1121.12(g) states that the maximum height of an accessory structure is 15 feet.
- The proposed garage/accessory building has an asymmetrical roof, the south elevation has a height of 16.04 feet and the north elevation has a height of 17.83 feet.
- In the surrounding neighborhood, 2920 Coleridge had a garage with an attic, and storage

space variances were granted for this garage in 1991. 2977 Coleridge also has a garage with a second-floor area; no zoning record is available for this address.

If approved, conditions may include:

1. Variance 3518 is granted to permit a replacement garage/accessory building to be located 3' from rear (north) & 1.5' from side (east) property lines (minimum 5' required) & to Section 1121.12 to permit the accessory building to be taller than max. 15' as shown on the drawings submitted with the BZA variance application dated March 8, 2021.
2. Approval of the Architectural Board of Review;
3. Receipt of a Building Permit; and
4. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel stated that the Architectural Board of Review did approve plans for the new garage. She said that the public comment email from the neighbor that's located to the rear of the property is in support of the garage.

Mr. Zych asked for clarification from the comment of the neighbor who lives at 3045 Essex Rd. and there is a fence which is adjunct to the current garage. He asked if there were any additional questions from the Board. He asked to open the floor for public comment.

Ms. Roessner administered the oath to Mr. Tom Veider.

Mr. Zych said that unless there were any objections the application dated March 23, 2021, would be entered into the public record including the letter of support. Hearing and seeing no objection it was entered into the public record.

Mr. Veider gave a brief overview of the reason for the variance. He said that due to the small structure of his home this will allow for additional space and storage. He reviewed his statement of practical difficulty submitted with the application.

Mr. Zych asked if there were any questions from the Board for the applicant.

Mr. Porcelli asked what the dimensions of the proposed structure are critical that can't be reduced to comply with the code without a variance.

Mr. Veider stated that there are just a few inches. He said he studied this for a long time and that reducing the depth results in the enclosed storage area being useless. He added that the height of the garage is due partly by the architectural geometry and the slope was designed so that in the future solar panels could be installed.

Mr. Zych asked if there were any other questions. Mr. Zych stated that there was a statement made that the neighbor located behind the project would not be able to make repairs to her fence if this new addition was granted. Mr. Zych asked for clarification.

Mr. Veider stated that he was aware of the concerns of the neighbor, he stated that he has had a recent survey of the property to show the property lines. He said that the new construction will result in no difference from the conditions that currently exist and have existed for 18 years, he moved there in 2000. He said the siting of the new garage is aligned with the neighbor's garage

along Stratford and that's the starting point for the garage. He said that he does not have his neighbor's garage surveyed, but the intent is for the contractor to align those fronts. He said that he believes this will end up with a few more inches adjacent to his Essex Road neighbor. He said that he measured the current space between the fence and the garage and that it is two feet three inches. He said that over the years he has used this space to maintain his garage and cleaned leaves from there. He said there is room between the garage and the fence to make repairs.

Mr. Porcelli asked what will be the size of the new garage, where the cars are parked.

Mr. Veider said the garage will be 28 feet by 29 feet in the footprint.

Mr. Porcelli asked if this would give more depth than cars require.

Mr. Veider replied that it was but that it is due to the additional storage that is needed. He said that the area for the cars is a standard size garage for a typical suburban garage.

Mr. Porcelli asked could the garage space made for the cars be made smaller.

Mr. Veider stated that he studied that. He said that due to the need and all of the things that they currently have, snow blower, gardening tools, it would be very hard to have a smaller area.

Mr. Zych said that he was looking at the drawing showing the interior of the garage with two cars in it and there did not look to be much space in front or behind the cars.

Mr. Veider said that there is not much space and so he said it is minimum space in front and behind the cars.

Mz. Zych asked if there was any public comment.

Ms. Roessner administered the oath to Jodi Molner and Mr. Ernie Molner.

The Molners gave their address as 3038 Kensington Rd. Mrs. Molner went on to stated they are in support of the project.

Mr. Zych asked if there were any other public comments. There was none and the public hearing was closed.

Mr. Zych asked for a motion.

Mr. Hoen motioned to grant Cal. No. 3518 A Tom & Charlotte Wilson Veider, 3041 Essex Rd., A Single-Family, requests variances to Sect. 1121.12(a)(2) to permit a replacement garage/accessory building to be located 3' from rear (N) & 1.5' from side (E) property lines (minimum 5' setback required). After reviewing the application and other submissions and hearing the evidence under oath I find and conclude that special circumstances and conditions exist at this particular property, such as indicated that would warrant a finding of practical difficulty. The property lacks sufficient space for what is typical for storage in a suburban setting, therefore the property owner is looking to expand the footprint on his property and the practical way to do that would be to increase the space in the garage structure. The garage itself is going to be placed on the original footprint of the garage, had the garage been a strict

replacement of the original garage, it would have been exempt from a variance. However, because of the changes are being made the variance is necessary. And as a result, the variance is insubstantial and will not change the essential character of the neighborhood the neighbors who have appeared today have rendered their appreciation for the improvement to the neighborhood. Furthermore, the variance will not result in or affect the delivery of governmental services in any way. The conditions were not the result of the actions of the applicant in that the garages actually on the footprint of the original garage as it was purchased, at that time. The applicant predicament cannot feasibly be resolved other than a variance as stated the garage space its self is what would be typical of a suburban garage. The property itself is smaller than the typical property in the area and therefore, the owner desires to bring his property up to a situation where it would be commensurate with the other properties surrounding it if granted the following conditions would apply:

1. Variance 3518 is granted to permit a replacement garage/accessory building to be located 3' from rear (north) & 1.5' from side (east) property lines (minimum 5' setback required) as shown on the drawings submitted with the BZA variance application dated March 8, 2021.
2. Approval of the Architectural Board of Review;
3. Receipt of a Building Permit; and
4. Complete construction within 18 months of the effective date of this variance.

Motioned second by Ms. Fliegal.

Motioned carried 3-1.

Mr. Hoen moved regarding approval for Cal. No. 3518 B Tom & Charlotte Wilson Veider, 3041 Essex Rd., A Single-Family, requests variances to Sect. 1121.12 to permit a replacement garage/accessory building to be taller than maximum 15' height. With the BZA application submitted on March 2021 for the reason alluded to in my prior motion, incorporating all of the same findings and with the same conditions.

1. Variance 3518 is granted to Section 1121.12 to permit a replacement garage/accessory building to be taller than the maximum 15'height permitted as shown on the drawings submitted with the BZA variance application dated March 8, 2021.
2. Approval of the Architectural Board of Review;
3. Receipt of a Building Permit; and
4. Complete construction within 18 months of the effective date of this variance.

Motioned seconded by Ms. Fliegal

The vote was taken; the motion carried 4-0.

Cal. No. 3519 12401 Cedar Road LLC, 12401 Cedar Rd., S-2 Mixed-Use District, requests Use Variance from Section 1131.02 to permit a freestanding, walk-up ATM on the SW corner of the parcel (use not permitted).

Mr. Zych said that for everyone's benefit the Board's powers and procedures differ with regard to a use variance from those that were followed earlier in the evening with the standard variances. The Board is considering a use variance and in making its decision of whether to recommend a use variance the Board will examine all of the criteria set forth in the zoning code in section 1115.07(e)(2). It's on the screen for everyone's benefit. The burden is on the applicant to demonstrate all seven criteria by clear and convincing evidence. The evidence must show that the literal enforcement of the zoning code results in unnecessary hardship. Clear and convincing evidence means that the evidence is substantially more likely than not to be true. As was the case with standard variances, 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 our determination. We, as the Board are not in this instance, the final decision maker for use variances, the Board's decision will be reviewed by City Council at their next regular meeting.

Mr. Zych asked that the staff report dated April 13, 2021, be entered into the public record. Hearing and seeing no objection the report was entered.

Ms. Knittel staff report using a PowerPoint presentation as follows.

Context

This property is zoned 'S-2' Mixed-Use. Properties to the north, east, and west are zoned 'S-2' Mixed-Use. To the north is an apartment building, to the east across Lennox Road is a Starbucks and a number of businesses, and to the west along Cedar Road at 12397 Cedar is the parking lot and former location of Zoss the Swiss Bakery and the barber salon adjacent to the former Nighttown site.

The properties to the south, across Cedar Road are zoned 'C-2' Local Retail. A Sunoco service station is at the southeast corner of Bellfield Avenue and Cedar Road and a Chase bank is at the southwest corner of Bellfield Avenue and Cedar Road.

Project

12401 Cedar Road is the location of the former Fifth Third Bank that is currently being redeveloped into a Chipotle restaurant at the corner of Cedar and Lennox Roads. The proposed project is for a freestanding, walk-up ATM that would be located in the southwest corner of the parking lot abutting the Cedar Road public right-of-way. The ATM would be associated with Fifth Third Bank.

History

- September 2014: Cal. No. 3354, BZA granted a variance to permit the removal of the Cedar Road entry and to build an entry from the secondary street (Lennox Road) frontage (entry from primary street frontage required).
- July 2020: The Chipotle Restaurant site plan submitted for the Architectural Board of Review was reviewed and found to be code conforming by the Zoning Administrator. The Chipotle Restaurant has a pick-up window for paid orders, no food orders will be taken or paid for at this pick-up window.

Facts

- Section 1145.01(a) of the Zoning Code states that the purpose of the ‘S-2’ Mixed Use District is to provide an opportunity for modern and imaginative architectural design, site arrangement and city planning for certain special areas in Cleveland Heights which offer unique development opportunities.
- Section 1145.02 specifically states that principal uses, permitted by right, conditional uses permitted only by obtaining a conditional use permit, or accessory uses permitted in association with principal or conditionally permitted uses are those enumerated in the MF-2 or C-2 Districts.
- Section 1131.02 enumerates the permitted and conditionally permitted uses in commercial districts
- Schedule 1131.02(b)(4) provides that **Financial Institutions with Automatic Teller Machines (ATM)** are conditionally permitted in the C-2 District.
- Section 1153.05(m) provides supplemental standards for conditionally permitted Automatic Teller Machines, stating: *‘An Automatic Teller Machine (ATM) on the outside or in a vestibule of principal building, and which is accessible during normal regular business hours or enclosed separately in a freestanding building, shall only be permitted as a conditional use and developed according to the following*
 - (1) *Such facility should be located so as to be the least disruptive to pedestrian and vehicle traffic;*
 - (2) *There shall be adequate and safe standing space for persons waiting to use the facility;*
 - (3) *The Police Division has determined that the location and operation of the proposed ATM would not constitute a traffic or safety hazard;*
 - (4) *The Planning Commission may require additional parking spaces if deemed necessary than otherwise required for the principal use; and*
 - (5) *The ATM shall be owned and operated by the financial establishment on the same premises.*
- The proposed freestanding walk-up ATM would not have a financial institution on the same premises as it would be on a parcel with a Chipotle Restaurant. Therefore, it would require a Use Variance.
- In addition, the proposed freestanding walk-up ATM is not proposed on the outside or in a vestibule of a principal building or enclosed separately in a freestanding building.
- The Chipotle Restaurant site plans were reviewed and approved by the Architectural Board of Review at their August 5, 2020 meeting. The site dimension plan, sheet number SP4, showed has a detail labeling the “Appox. Loc relocated ATM (by others)”. The ABR Minutes do not reflect that the ATM was discussed.
- No parking or stopping is permitted along this section of Cedar Road.
- Recent changes to traffic regulations require all vehicles from Lennox Road to turn right.
- The Chipotle parking lot exit onto Cedar Road is to the east of the proposed location.
- The entry to the parking lot at 12397 Cedar Road is just to the west of the proposed location.
- The site includes an existing parking lot with 17 spaces designated for the Chipotle restaurant
- Cleveland Heights Police Chief Annette Mecklenburg has reviewed the proposed location and has safety hazards and traffic concerns. She will be present at the BZA meeting to

review these concerns.

- Code Section 1131.06 requires principal uses have a front yard setback to be a minimum of 5 feet. The proposed ATM is located within the required 5-foot front yard setback and would either require relocation or a variance permitting a reduced setback.

USE VARIANCE CONSIDERATIONS

Properties in the City of Cleveland Heights are governed by the City's Zoning Code. A property only may be occupied by land uses that are explicitly permitted by the Code in the Zoning District in which the property is located. Property owners wishing to use their land for a use not permitted by the Code must apply to the Board of Zoning Appeals (BZA) for a use variance. Granting of a use variance is a two-step process. First, the BZA must find that the applicant will suffer unnecessary hardship if strict compliance with the terms of the Code is required. Second, that finding must then be approved by City Council utilizing the same criteria. An applicant has the burden of demonstrating such hardship **by clear and convincing evidence to all seven (7) of the criteria listed in Code Section 1115.07(e)(2)**. BZA (and then Council) must find that **all** the listed factors apply.

If the BZA chooses to approve the Use Variance, that the following conditions may be included:

1. Locate the ATM to conform to Code Section 1131.06 requiring a minimum of 5-foot front yard setback or request a variance for a setback less than 5 feet;
2. Receipt of a Conditional Use Permit for an Automatic Teller Machine (ATM) from the Planning Commission;
3. Approval of the ATM structure by the Architectural Board of Review; and
4. Complete construction within 18 months of City Council's approval.

Ms. Roessner administered the oath to Police Chief Annette Mecklenburg.

Chief Mecklenburg gave her address as 40 Severance Circle. Chief Mecklenburg stated her concerns about the free-standing ATM and its proposed location. She said that first of all it would be located on a street where there will be no parking permitted in front of it. She explained their experience with other ATMs in the City in similarly situated positions has resulted in problems with people parking, or just stopping there blocking traffic and creating a hazard. This can be dangerous to other vehicles in the area and to pedestrian traffic. The other concern is that the new location for Chipotle will have the entrance from Lennex Rd. and that the exit only drive lane will be to Cedar Rd. and she is concerned that people realizing they can't park on Cedar will turn into Chipotle's exit only drive lane which can create a hazard for other vehicles. She said that the plans show some type of barriers but stated these would need to be of a good size. She said it has been a while but that a few years ago there was a rash of smash and grabs of ATMs and with an ATM like this being positioned so close to the roadway, it would be an easy target. She also said that other safety concerns are for lighting and cameras by this ATM. This location being so close to the road would allow the walk-up users to be easy targets for criminals to target them and then drive off into Cleveland.

Mr. Zych said that to the east of the property there is a Starbucks that has no parking and there is

always an influx of people parking on Lennex and on Cedar which is just part of the traffic in the area. He asked if the impact of the new development has any impact on the Chief's assessment.

Chief Mecklenburg stated that there will be an increase in the amount of traffic with a lot more pedestrians and visitors to the area.

Mr. Zych asked if the applicant or applicant representative present.

Ms. Roessner administered the oath to Mr. Rico Pietro.

Mr. Pietro gave his address as 27900 North Woodland, Pepper Pike.

Mr. Zych asked if there was an application submitted requesting a use variance.

Mr. Pietro stated that we completed an application for a use variance and they affirmed that it was true and correct.

Mr. Zych stated that unless there are any objections, he asked that the application dated March 22, 2021, be entered into the public recorded, hearing, or seeing objection it was so entered.

Mr. Zych again reminded the applicant that the Board has to find each and every hardship condition with record of clear and convincing evidence in order to consider granting a variance, and so he asked for information for each of the conditions so the Board could make their decision.

Mr. Pietro thanked Chief Mecklenburg for her comments. He said they believe their application meets the standards for unnecessary hardship as well as practical difficulty. He said they will not negatively impact the neighbors as they control the properties on both sides and it is minimally intrusive.

He said their overall plans and current development plans override their awareness of a zoning restriction. They are asking to install a walkable ATM as part of their mixed-use development within the Night Town block. They plan to redevelop the property directly to the west as a vertical development. The Chipotle property was not economically practical to add a drive-through lane, commercial space structured parking for an ATM use, and an ATM is needed in the area.

Mr. Pietro said their development team also wanted to keep the architectural integrity of the original building which will remain and is historically relevant and is nearly 56 years old. Adding parking to this would be practically and economically undesirable for them as well as razing a piece of history at the top of the hill. A variance is the only way to allow for this.

Mr. Pietro said that as part of their application they agree to add both lighting and security cameras complete with DVR and attach them to the Night Town building to provide adequate assurances to the police department of cameras in the general area. In addition to that with reference to parking, there is a 550 vehicle, \$20 million publically subsidized garage with walkable sidewalks to this ATM machine which will be part of our walkable Night Town block mixed-use development. The Fifth-Third ATM offers residents an alternative and is strategic to our master plan which will include vertical developments. This was also documented in our

original application for the Chipotle development. There are other precedents of ATMs being included in Mr. Hero's, in grocery stores, convenience stores, pharmacies throughout the Cleveland Heights area. There are a few other pieces that he would like Mark Feldman to address if we want to go line by line. To start with the police department's comments, they will add security. He said that from their standpoint as a developer if every development was stopped because 'what if somebody broke the law' does not seem like a reasonable precedence. People stop in front of Starbucks all the time to pick up coffee. They would probably stop to pick up a burrito but an ATM machine, we believe it logical to park in the new publically subsidized 550 vehicle garage and follow the sidewalks to the ATM. We are asking for any other questions the Board may have.

Mr. Zych asked if there were any questions for the applicant or the applicant representative. If not were there any questions from the Board.

Mr. Porcelli asked where will the services to feed this location be coming from according to your drawings there are underground feeds that go to this unit.

Mr. Pietro said they would be going from the center property, between the Night Town property and this property. He said it is known as the bakery property, and that their long-term plans will be to have that be vertically developed and it'll be part of the primary service being provided by what their redevelopment of the center property will be.

Mr. Porcelli asked why this location is more advantageous than putting it near the parking structure where you're saying the people that are going to use the machine will be going to park.

Mr. Pietro said they believe that the spirit of the original, robust architectural kind of review of the top of the hill project, and what we've heard through most of these different comments was to make this a walkable area both for the residents of Ascent as well as the city park that is planned just to the west of the Night Town restaurant, they want to embrace that design. He said that the opportunity to do that, they believe the ATM here avoids the traffic patterns that are required by the Chipotle and offers adequate access for customers of Night Town, and their vertical development that'll be just to the west of the Chipotle project, as well as the residents of the Ascent and those that want to come in and park at the publically subsidized parking garage and be able to walk in the area with easy access to consumer ATM service.

Mr. Porcelli said that he mentioned other facilities have ATMs in them and asked if any consideration has been given to putting an ATM in the Chipotle restaurant.

Mr. Pietro stated that it just is not a prototype for Chipotle with thousands of locations throughout the United States. He said they also wanted to embrace the merit of the new zoning for this mixed-use component and embrace the value of the investment by the community in its thoughtful approach to creating new vertical residences in a walkable opportunity on Cedar Road. He said they wanted to embrace the prior hard work that has been done for this development and the idea of keeping this clean, safe, and walkable for the residents in the Cleveland Heights area and they wanted to further back that up by providing an extra layer of lighting in the area as well as HD capable DVR cameras to give the police department state of

mind that there will be eyes on this ATM. If we need to add additional signs to say there are cameras, they are happy to do so. They want to take advantage of the walkability and the hard work that has been done with the city to get the Top of the Hill project of the board and are looking forward to infill the center parcel which is the next critical step along with getting Night Town opened.

Ms. Fliegel stated she was a member of the Architectural Board of Review during the submission of the Chipotle plans. She said that at times with different projects they asked if any variances are required for the development of the project. She did not recall if that was recorded in those minutes relative to this project.

Ms. Knittel said that the Minutes of the ABR meeting didn't indicate that was discussion about the ATM.

Ms. Fliegel stated that her understanding of the project was that the bank was leaving and it was a full redevelopment of the property to a Chipotle. She asked if the Chipotle site meet or exceed the number of parking spaces required. She asked if the ATM could be installed within the setback requirements.

Ms. Knittel stated that there is adequate parking on the site for the restaurant. She went on to say that this design has a pick-up window and that some of the available parking spaces would be used by those waiting on their orders.

Ms. Fliegel asked the applicant about the lighting levels and the security levels. She said that the bank further to the east by Buffalo Wild Wings, minimal lighting levels were required.

Mr. Pietro stated they are open to working with the City to ensure that the correct lighting and all safety measures are taken to satisfy the police department and the city.

Mr. Zych asked staff to confirm that the requirements of the use variance have to be met by the property and apply to that property.

Ms. Knittel responded that Mr. Zych was correct.

Mr. Zych then stated that the Board has limited jurisdiction and we are bound by what City Council has given to us. The variance is for a specific parcel not to a development. This is a specific parcel that's where it's going to be located.

Mr. Zych used that the use variance standards be shared for all to see.

Mr. Zych said that the first standard keeps coming to mind and he does not believe they have heard much about it. It says the property, not the development, but the parcel can not be put to any economically viable use under any other permitted uses in the zoning district but for the variance, that is but for the ATM. It is not is it desirable or can we see a reason why this will provide a service. He explained that they cannot grant the variance unless they find by clear and convincing evidence that the property cannot be put to any economically viable use under any of the permitted uses in the zoning district without the ATM and asked the applicant to address that.

Mr. Pietro stated that he believed that the ATM was a part of the original master plan with

Chipotle. They did not believe that adding structured parking in the drive-through lane to create an economic viable opportunity for an ATM machine allowed for that to be contemplated. Further he believes that this property, although on a separate parcel, is part of the Night Town block, all three properties were bought together, and just because of a parcel line, he thinks the property is being separated for convenience. The properties are all intertwined as one acquisition. If somebody buys a residential property or a commercial property and there are two parcel lines, this would not be a prerequisite to multiple parcel lines that are under the same ownership.

Mr. Zych stated that this is not a matter of convenience that it is a matter of what the zoning code says. He said that it is the property in question and asked the applicant again to answer the question of how does the Board find that property that has a Chipotle restaurant on the property, that that property could not be put to any economically viable use under any of the permitted uses without the ATM.

Ms. Roessner administered the oath to Mr. Marc Feldman, council to the applicant.

Mr. Feldman thanked the Board for this opportunity and said that most of what is in their application has been hit on. He said that this is one parcel. He represented the ownership when they bought it. He understands the plain language of the text. He says that he makes the argument that banking is done differently these days, it is done on convenience. He said that banking is done on the phone and that deposits are made at all hours of the day. He said the shrinking of bank branches and an expansion of ATMs, convenience banking. He said this property, while it has a Chipotle's on it, the owners have humbly brought from conception to reality. They believe there is more economic viability to pursue on this property and having an ATM on the property allows both economic viability and vibrancy for the overall development. He said he is not ignoring the question, one cannot say the property has zero economic viability but on the call today, and heard compelling reasons that need to be taken into consideration. He said that the other big point is that there was an ATM on this property. So it was economically viable as an ATM property before and losing it creates less economic viability. He said looking at it as a whole, having the ATM significantly increases the economic viability, it restores the property to no worse condition than it was before. It actually improves it so that they are providing an amenity to the parcel, to the Night Town development, and to the larger development. Taking away the ATM will hurt ownership and the neighborhood, the future of banking is these ATMs. He said this is also a loss to Fifth-Third Bank.

Mr. Porcelli asked where does the word "Hardship" apply to this case.

Mr. Feldman said he believes that there is hardship from the applicant's standpoint, they lose economic viability, they lose an amenity that was on the property. He said that the ATM had been on the property and that Fifth Third Bank also suffers a hardship.

Mr. Porcelli responded that it might also be argued that taking away a bank branch building is a hardship to a community. He said that he knows there is a lot of electronic banking people use bank cards, debit cards, charge cards, they bank on their phones. You have acknowledged that banking is changing so you are saying that you do not need a brick and mortar building, but do you really need an ATM that really just functions to give people cash, which we seem to be

using less and less of these days. If people have different means of banking, how is not having an ATM a hardship?

Mr. Pietro stated that the banking industry is decided by the banks, not by the developers. We are providing something that economic viability to the investment. We are cordially asking for a relocation of an ATM we cannot change the dynamic of Fifth Third Bank, this something that is driven to the consumer and it embraces the spirit of the Cleveland Heights progressive approach to get the Ascent built and to make the \$20 million public subsidized investment into a parking structure to accommodate visitors, pedestrians into this area.

Mr. Hoen asked for clarification on section "E" which is the granting of the variance will not adversely affect the public health, safety or general welfare. He said the applicant just gave testimony that they want to move the ATM 20 feet from its original place on the bank building but moving this ATM is moving it 20 feet closer to a main thoroughfare. He said he appreciated the Chief of Police taking time to share her perceptions of this project with the Board. He said he presumed that the applicant had plenty of time before submitting the application to work with the Chief of Police to come to some consensus. He said that while it is true that you cannot proceed with these types of projects anticipating people committing crimes, he would suggest, rather that what the Chief of Police told us is more reasonably foreseeable. He said that he says this because he had the same concerns when reading the application as the Chief of Police. He said he does not think this is solved by simply adding cameras. He believes this would invite crime as an attractive nuisance. He asked if the applicant could address this.

Mr. Pietro stated that he wishes that they had more time and that they are open to discussion in making sure that we have the right security in place. He said their thoughts are that you do not put an ATM in a hidden corner of a property, that you put it out in the open especially in an area with an \$80 million investment into a new 24-hour residential facility. We believe cars are not going to stop in this area because of all of the engineering work that has been done to generate people to that parking structure.

Mr. Zych asked for the site plan to be shown and stated that the ingress to Chipotle is off of Lennox and that the egress is exiting onto Cedar. He said that people would be standing at the ATM, there are cars parked at an angle near there and there are cars that are exiting the property. He asked if there any barriers to protect the people walking up and using the ATM from the traffic.

Mr. Pietro stated people who would be walking up to this ATM would be coming from west to east so they will not be using that exit route coming from the Chipotle property. There will be necessary bollards that are required to surround the ATM giving adequate setbacks areas for somebody to transact at the ATM without interruption from the parking vehicles there will also be curbs and landscaped barriers that accommodate a belt and suspenders approach to the ATM.

Mr. Zych asked for public comment. There was no so public comment and the public hearing was closed.

Mr. Zych asked for a motion.

Mr. Hoen said he would like to discuss the merits of continuing this to give the applicant the opportunity to work with the Chief of Police and other departments in the city.

Ms. Fliegel said that she would support this as one of her concerns in looking at the drawing, she questions whether the location of the ATM could be altered that would both meet the walkability nature that is desired and would also meet more safety requirements.

Mr. Zych added one note that he has a remaining concern about the finding of economic viability, not is it more or less viable, not is it more or less attractive, but the standard that is given to us. He said he agrees that it sounds like a very hard standard, but he does not get to amend the code of the City of Cleveland Heights. So the record may benefit from more information that addresses the issue of economic viability since we have Chipotles that exist and apparently thrive without an ATM.

Mr. Zych stated that when the Board says continue this is neither grant nor deny but continue to allow for continued discussion with safety officers and the Chief and better development of the record for economic viability.

Mr. Pietro said that since this still has to go to City Council, he asked if there is the opportunity to get the approval of the police post this meeting and prior to a City Council vote.

Ms. Knittel stated that the case does not go to City Council until after a use variance is granted.

Mr. Feldman stated that they can work with the Police Chief and that the opportunity to resolve this in a timely fashion.

Mr. Zych asked if this case can be continued and heard at the next BZA meeting. Ms. Knittel responded that this was possible.

Mr. Portcelli commented that the canopy on the ATM seems small for this climate given wind, rain, and snow and that perhaps something similar to a bus shelter may be a consideration.

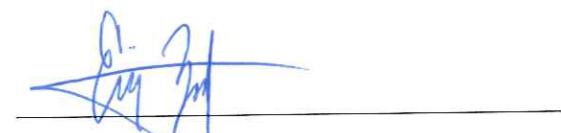
Mr. Hoen moved to a continue Cal. No. 3519 12401 Cedar Road LLC, 12401 Cedar Rd., S-2 Mixed-Use, requests use variance to Sect 1131.02 to permit a freestanding, walk-up ATM on the SW corner of the parcel to the next BZA meeting.

Motioned was seconded by Mr. Porcelli

The vote was taken and the motion to Continue was granted 4-0.

With no further business to discuss, the meeting was adjourned at 9:59 p.m.


Thomas Zych, Chair


Eric Zamft, Secretary

