

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
March 17, 2021

MEMBERS PRESENT: Melissa Fliegel
 Benjamin Hoen Vice Chair
 Dennis Porcelli
 Liza Wolf
 Thomas Zych Chair

STAFF PRESENT: Karen Knittel Assistant Planning Director
 Pam Roessner Assistant Law Director

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:02 p.m. at which time all members were present.

APPROVAL OF THE MINUTES OF THE FEBRUARY 17, 2021 MEETING

Mr. Hoen moved approval of the Minutes as submitted and revised, Ms. Wolf seconded the motion; the motion was approved.

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

Mr. Zych stated that the purpose and procedures for tonight's meeting are stated for all in attendance. The hearings are quasi-judicial in nature and certain formalities must be followed as if this were a court of law. Anyone who wishes to speak about a case will first be placed under oath. For each case, City staff will make a presentation and then each applicant will present his or her case stating practical difficulty for which we are being asked to grant a variance. The Board will then open a public hearing to obtain testimony from any other persons interested in the case. The applicant will have an opportunity to respond to any testimony from the public and will address those comments to the Board. The Board may then ask questions of the applicant. Based on all the evidence in the record, the Board will make findings of fact and render its decision by motion. The formal nature of these proceedings is necessary because each applicant is asking for an extraordinary remedy called a variance. A variance is formal permission by the City for an individual not to comply with a portion of the municipal Zoning Ordinances which is binding to all others.

In making its decision of whether to grant a standard variance, the Board will weigh factors set forth in the Zoning Code in Section 1115.07(1). The burden is upon the applicant to demonstrate by a preponderance of the evidence that the literal enforcement of the Zoning Code would result in a practical difficulty. Preponderance of evidence means the applicant proved his or her position is more likely than not true. The applicant must demonstrate circumstances unique to the physical character of his or her property. Personal difficulties, personal hardships or inconvenience are not relevant to the Board's determination.

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

PUBLIC HEARING

Cal. No. 3510 C. & K. Kanner, 2465 Marlboro Rd., AA Single-Fam., requests a variance to Section 1121.12(i)(1) to permit a fence in the front yard to be taller than 4'.

Ms. Knittel was sworn in by Ms. Roessner. Mr. Zych asked that the staff report dated March 11, 2021 be entered into the record.

Ms. Knittel gave her staff presentation:

Context

This is a single-family house in an 'AA' Single-family district.
The property is surrounded by single-family houses in the 'AA' Single-family district.

Project

The applicant proposes to add a 5'2" fence ornamental metal fence with posts that are 5'4" tall in a portion of the front yard.

Context

- The parcel is 176' wide and 47,236 square feet in area. Code Section 1121.06 states that in an 'AA' Single-family district the minimum lot width is 100 feet and the minimum lot area is 17,000 square feet.
- This parcel is located at the southeast corner of the Marlboro and Fairfax roads intersection.
- The parcel has 208' of frontage along Fairfax Rd. and 176' of frontage along Marlboro Rd.
- Although this is a Marlboro Rd. address, the front door of the house faces Fairfax Rd.
- The siting of the house results in the area used by the family as the rear yard being defined by the zoning code as a front yard.
- The proposed fence will meet the neighbor's 5'6" tall fence.
- The Architectural Board of Review approved this fence at their December 1, 2020 meeting.

If approved, conditions may include:

1. Variance 3510 is granted to permit a 5'2" tall fence with 5'4" tall posts to be located in the Marlboro front yard as shown on the site plan submitted with the BZA application;
2. Receipt of a fence permit; and

3. Complete construction within 18 months of the effective date of this variance.

She stated that the applicant was present and prepared to review their statement of practical difficulty.

Ms. Roessner swore in the applicant's representative, Ruth Kanner.

With no objections, Mr. Zych asked that the application dated January 29, 2021, be entered into the public record.

Ms. Kanner reviewed the statement of practical difficulty that was submitted with the application. She said that because the house had been vacant for so long, many walk through the yard and even look into the house windows. She said that the fence is needed for privacy and protection. She said that the area is heavily landscaped.

There were no members of the public who wanted to comment on this case. The public hearing was closed.

Ms. Wolf moved regarding Calendar Number 3510, Carl & Kim Kanner, 2465 Marlboro Road, to grant with conditions the variance to Section 1121.12(i)(1) to permit a fence in the front yard to be taller than the maximum 4' height permitted. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that special circumstances which are peculiar to the land and structure involved. This is a corner lot and does not have the typical front yard and back yard and if it had a typical yard this would be a code conforming fence; the variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land and structure as a shorter fence would not serve the purposes of safety and security for the applicants. The essential character of the neighborhood would not be substantially altered as a result of the variance as there are other homes in the area with fences of the approximate same height including the neighbor's fence. The variance would not adversely affect the delivery of government services as there are no services that would be blocked by this fence. The following special condition and circumstances exist that are not a result of actions by the applicant: the lot is situated on two streets as it is a corner lot at Marlboro and Fairfax and the applicant was not aware of this zoning regulation when they purchased the property. If granted the variance shall have the following conditions:

1. Variance 3510 is granted to permit a 5'2" tall fence with 5'4" tall posts to be located in the Marlboro front yard as shown on the site plan submitted with the BZA application;
2. Receipt of a fence permit; and
3. Complete construction within 18 months of the effective date of this variance.

Mr. Hoen seconded the motion. Mr. Zych noted that while the family discussed their family security concerns these are typical security concerns for properties located near high traffic areas and to properties with larger land areas. There was no further discussion. The motion passed, 5-0.

Cal. No. 3511 I. Volokh, 3413 Meadowbrook Blvd., A Single-Fam., requests a variance to Section 1121.09(b) to permit an attached garage with a visible door on the street. (visible door on the street not permitted)

Mr. Zych asked that the staff report dated March 11, 2021 be entered into the record.

Ms. Knittel gave her staff presentation:

Context:

This vacant parcel is located in a single-family district. A single-family house located on this parcel was demolished.

The parcels on either side are vacant. The properties to the north are single-family zoned 'A' Single-family. Single-family houses in 'A' Single-family district are along Meadowbrook Boulevard.

Project:

The applicant proposes to build a new house on a vacant parcel. The house would have an attached garage with a door visible from the street.

Facts

- The parcel is a nonconforming parcel in area as it is 60' wide and 5,520 square feet in area. Code Section 1121.06 states that in an 'A' Single-family district the minimum lot width is 50 feet and the minimum lot area is 7,500 square feet.
- While the parcel is wider than the minimum width required by code, the depth of the parcel ranges 99.23' to 85.62'.
- The parcel slopes from the rear property down to Meadowbrook Blvd.
- The house that was demolished had a front-facing attached garage.
- Code section 1121.09(b) states that when 75% or more of a blockface have a detached rear yard garage or attached garages with doors not visible on the street elevation, new attached garages shall have doors not visible on the street elevation.
- This parcel is located on the north side of Meadowbrook Blvd. between South Taylor Road and Goodnor Road. There are 11 houses in this block face. There are 2 houses (18% of the block have) having an attached garage with a visible door on Meadowbrook and 8 houses (73% of the block face) having a rear yard detached garages and the corner house at Goodnor has a rear yard detached garage with driveway access from Goodnor.
- There are vacant parcels on either side of this parcel.
- Other than the visible garage doors, the house conforms to the zoning code.

If approved, conditions may include:

1. Variance 3511 is granted Section 1121.09(b) to permit an attached garage with a visible door on the street.
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.

She stated that the applicant was present and would briefly review his statement of practical difficulty.

The applicant Vladislav Volokh and his representative Mikhail Sudnitsyn were sworn in by Pam Roessner.

With no objections, Mr. Zych asked that the application dated January 28, 2021, be entered into the public record.

Mr. Volokh reviewed the statement of practical difficulty. He described the topography of the property and that a neighboring house has a front-facing garage.

There were no public comments. The public hearing was closed.

Mr. Hoen moved regarding Calendar Number 3511, Ilya Volokh, 3413 Meadowbrook Boulevard, to grant with conditions the variance to Section 1121.09(b) to permit an attached garage with a visible door on the street. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that there are special conditions and circumstances at this property warranting a variance the lot is a nonconforming lot. The typical house in the neighborhood takes up the entire width of the lot making it difficult to put a driveway to accommodate a non-street-facing garage. In addition, there is a slope to the property which makes rearranging the house to be aesthetically pleasing or practical on this lot. The intent of the zoning code is met in this instance, as the intent is to keep neighborhoods looking consistent and it was presented that the neighboring property immediately next to this parcel has a front-facing garage. The variance is insubstantial and the essential character of the neighborhood will not be changed. This variance will not adversely affect the delivery of any government services and it is not the result of the actions of the applicant as it was not possible to build a house without a front-facing garage as is made evident by the fact that the previous house that was demolished had an attached garage with a front-facing garage door. If the variance is granted it should include the following conditions:

1. Variance 3511 is granted Section 1121.09(b) to permit an attached garage with a visible door on the street.
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.

Mr. Porcelli seconded the motion. Mr. Zych noted that these are not easy cases as he is mindful of the role of this Board. He stated that they have limited powers and that they can only do what the City Code has delegated to them, which is to grant variances. He stated that he is always concerned about the Board's mission to creep to where we do spot zoning or in fact changing the zoning code as much as that might please any one of them. He stated this is a reminder that he gives himself all the time. He stated that the front-facing garage is one of these issues. He said there is a reasoned policy that is stated in the zoning code and we are not allowed to rezone and there is this calculation that is done that gives an exception. He stated that he is always careful with his vote that he is not advocating or facilitating in effect the change of the zoning code. In this instance, the question he asked is the one that is drove his thinking which is: is anything else possible? Mr. Zych stated that the property must have enclosed parking and the record is quite clear that there is no other place for it. This point drives his decision, that there is the impossibility of meeting the requirement of having enclosed parking in the first place.

Mr. Porcelli stated that he believes the code is remiss in not considering the circumstances of extremely steep lots. Ms. Wolf stated that when staff spoke of the intent of the code she talked about the snout nose garages, where the garage jutted out in front of the house which would

affect the appearance of the neighborhood and would not be in character or in the spirit with the rest of the neighborhood.

The Vote was taken and passed, 5-0.

Cal. No. 3512 A. & F. Klien, 3489 Shannon Rd., A Single-Fam., requests a variance to Section 1103.03(b)(85) to permit tandem parking spaces in 2-car garage (tandem parking not permitted) & to Section 1121.09(b) to permit an attached garage with a visible door on the street. (visible door on the street not permitted)

Mr. Zych asked that the staff report dated March 11, 2021 be entered into the record. Ms. Knittel gave her staff presentation:

Context:

This is a single-family house located in an 'A' Single-family district.

The property is surrounded by single-family houses in 'A' Single-family district

Project:

The applicant proposes to construct a two-story addition that includes an attached tandem garage with a garage door visible on the street.

Facts

- The parcel is a nonconforming parcel in area as it is 55' wide and 6,765 square feet in area. Code Section 1121.06 states that in an 'A' Single-family district the minimum lot width is 50 feet and the minimum lot area is 7,500 square feet.
- Code section 1103.03(b)(85) defines 'parking space, off-street' as an open or enclosed area adequate for parking an automobile and states: '*Arrangement of the parking space shall be such as to allow ingress and egress of an automobile without the necessity of moving any other automobile...*'
- The tandem garage is a design element that is not often used in Cleveland Heights. One is located at 2103 Coventry Rd that can park 4 cars in 2 bays of tandem parking.
- In 2013, a variance was granted to 3709 Shannon to permit an addition with an attached tandem parking garage and doors visible to the street.
- The additional square footage to the house, providing 2 additional bedrooms on the second floor above the garage.
- The proposed tandem garage is located in the side yard where the existing driveway is located.
- The addition is a code-conforming 5' from the side property line (Code section 1121.08).
- Code section 1121.09(b) states that when 75% or more of a blockface have a detached rear yard garage or attached garages with doors not visible on the street elevation, new attached garages shall have doors not visible on the street elevation.
- The house is located on the south side of Shannon Road between South Taylor Road and Janette Road. The Synagogue is on the corner of South Taylor and Shannon roads and then there are 11 houses in this blockface, All have rear yard detached garages.

- The existing detached garage and garage door are not large enough to accommodate current minivans.
- The existing detached garage and drive access will be removed, restoring approximately 1275 square feet of green space in the rear yard (area measured on Myplace.cuyahoga.county.us).

If approved, conditions may include:

1. Cal. No. 3512 variances are granted to Section 1103.03(b)(85) to permit tandem parking spaces in a 2-car garage where tandem parking is not permitted & to Section 1121.09(b) to permit an attached garage with a visible door on the street where this is not permitted.
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.

She stated that the applicant was present and would review his statement of practical difficulty.

Ms. Fliegel asked if the ABR had reviewed this project. Ms. Knittel stated that there was a preliminary review. Ms. Fliegel asked what the ABR feedback was. Ms. Knittel stated that she believed they had comments about the roofline and it was decided to continue with the application to see if the variances for the tandem parking and front-facing garage would be approved. Ms. Fliegel asked if this was a code conforming plan except for the requested variances. Ms. Knittel responded that it is code conforming except for the requested variance. Mr. Zych asked if there was room on the property for a code-conforming two-car garage that would not have a front-facing garage. Ms. Knittel stated that it would be possible to rebuild the garage in the same location.

Mr. Klein and his designer, Mr. Sudnitsyn were sworn in by Pam Roessner.

With no objections, Mr. Zych asked that the application dated February 9, 2021, be entered into the public record.

Mr. Klein reviewed his statement of practical difficulty. He stated that garage in the back old and was not built for today's cars. He said the garage was about 40 feet from the home. He said it does not serve their purpose as you have to park the car in the garage and walk all the way to the house. The goal is to be able to park in the garage and enter the house from the garage. He said they are also able to add floor space to the house above the garage for his family. He said they would change the roofline of the garage.

Mr. Zych asked if there were any factors that the Board could consider that the applicant would like to provide.

Mr. Klein stated that it was a popular idea to have an attached garage and that right now it is unusable. He said it would not infringe on any property lines. He said that once they have the roofline the same as the house it will conform to the look of the neighborhood. He said it is a useable option that he knew others in the neighborhood would like to have an attached garage. He said that this design would allow them to gain a backyard rather than a very large driveway. He said that the neighbors in this area only use the front portion of their driveways. He said he

had three people tell him they would like to do this if it is a concept that can work.

Mr. Sudnitsyn said that you can see in the aerial photos that the car is parked in the front of the house next to the street because it is impractical to go into the backyard and use the garage.

Mr. Procelli asked if the applicant had considered allowing access to the rear yard and garage under the second floor addition. Mr. Klein stated that relocating the garage would allow them to create green space for the children to play.

Ms. Wolf asked if they considered putting an attached garage on the rear of the house. Mr. Klein stated that this would again result in no green space.

Ms. Knittel read into the record an email received from Rabbi Klein. With no objections, Mr. Zych asked that the email be made part of the public record

There were no other public comments. The public hearing was closed.

Mr. Zych stated that he is familiar with detached garages and is aware of the predominance of detached garages in Cleveland Heights and that they are used for storage and parking cars. He stated that he has concerns that we have testimony as part of the record that this case may be the spur for others to do this. He said he is concerned about this Board doing spot rezoning or making it okay to ignore the zoning code. He recognized and is concerned about green space but that they were being asked to consider something that the code very clearly does not permit. While each BZA member has the authority to decide on their own, he has the concern that this design is for a front-facing garage in an area where they do not have the exception. He said that he is also concerned that it is possible to have a code conforming garage that is not tandem parking and that there are not topographical or site conditions causing difficulties. He stated that again this is only one person's view.

Ms. Wolf made a motion regarding Calendar Number 3512, Alexander and Faygke Klein, 3489 Shannon Road, I move to grant the application with conditions for the variance to Section 1103.03(b)(85) to permit tandem parking spaces in a 2-car garage where tandem parking is not permitted and to Section 1121.09(b) to permit an attached garage with a visible door on the street where this is not permitted. After reviewing the application and other submissions, hearing evidence under oath, I find and conclude that special conditions and circumstances do exist in particular with these small lot sizes it is very tough to fit garages that will yield the uses and purpose of a garage, to park in the garage and to have access to the home from the garage, green space is lacking, and by attaching the garage to the home the green space is expanded. The property in question will not yield a reasonable return without the variance, as the applicant stated the garage is so far back from the home it is not accessible to the home. The variance is insubstantial and is the minimum necessary to make possible due to the smaller lot size, the tandem parking for a 2-car garage, and making it attached increases space in the home and increases green space. The essential character of the neighborhood would not be substantially altered as driving through this area you see many front-facing garages. This will not adversely affect the delivery of government services such as water, sewer, and trash pick-up. The applicant did testify that he purchased the property without knowledge of the zoning restriction. If granted the variance shall have the following conditions:

1. Calendar Number 3512 variances are granted to Section 103.03(b)(85) to permit tandem parking spaces in a 2-car garage where tandem parking is not permitted and to Section 1121.09 to permit an attached garage with a door visible from the street where this is not permitted.
2. Complete construction within 18 months of the effective date of this variance, and
3. Architectural Board of Review approval.

Mr. Hoen asked if the case can be discussed. Mr. Zych stated that the motion needs to be seconded to allow discussion and that making a motion or a second does not require a member to vote for the motion.

Mr. Hoen stated that he would second the motion to move into the discussion phase.

Mr. Zych stated that the motion was made and seconded and asked for discussion.

Mr. Hoen stated that he was conflicted on this. He stated he is strongly in favor of the additions going on in Cleveland Heights and specifically in this neighborhood. He said that this particular one bothers him some because he has seen similar additions that have gone up on similar lots and the owners had taken pains to stay within the Code, even if that meant sacrificing something. He stated that he understands the noble cause of having more green space, but that perhaps having an attached garage in the back of the house, giving the applicant ability to enlarge the house would be more palatable and it may be a code-conforming use of the property. And in this case, we have a code conforming property with a detached garage and we are causing it to be nonconforming by building this attached garage and without, what I perceive to be any considerable consideration for alternatives. He stated he is conflicted on this one and wanted to open the discussion.

Ms. Fliegel added that she is conflicted as well. She understands the desire to increase the number of bedrooms in the home, and that this is one solution in doing so. However, she does not agree that there is a hardship in having a detached garage as this is very, very common in Cleveland Heights and she thinks that this is something that needs to be factored in when purchasing a home in Cleveland Heights where this is one of the conditions for lot size. She stated that she is very concerned that if this variance is granted that a precedent will be set. She stated that her biggest concern is the tandem orientation and questions the true functioning of a garage that is only 12 feet wide. She stated that she thinks other solutions may be possible.

Mr. Porcelli stated that he has more than small concerns about the wisdom of granting this request. He stated that he sees issues with government services as fire access would be blocked and the structure is being built closer to the neighboring house and creating a more congested look to the street elevation. He stated that this seems to be a matter of personal preference by the homeowner. He stated that you cannot buy a house in Cleveland Heights without realizing that detached garages are the general rule and that if you want an exception to that you have to make an exception to your particular case and he does not see where this project meets the standards for granting a variance.

With no further discussion, the vote was taken. The motion was denied, 1-4. (one Aye, 4 Nays)
Mr. Zych stated that the variance is not granted.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 8:22 p.m.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary