

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
OCTOBER 19, 2016

MEMBERS PRESENT:	Nancy Dietrich George A. Gilliam Benjamin Hoen Liza Wolf Thomas Zych	Alternate Vice Chair
MEMBERS ABSENT	Gail E. Bromley	Chair
STAFF PRESENT:	Vesta A. Gates Karen Knittel Tiffany Hill Richard Wong	Zoning Administrative Assistant City Planner Assistant Law Director Planning Director
OTHERS PRESENT:	Kahlil Seren	Vice Chair, Planning & Development Committee

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present except Ms. Bromley, whose absence was excused.

APPROVAL OF THE MINUTES OF THE AUGUST 17, 2016 PUBLIC HEARING

Mr. Hoen moved to approve the minutes as written and distributed. Mr. Gilliam seconded the motion which carried 5-0.

THE POWERS OF THE BOARD AND PROCEDURES OF THE
BOARD OF ZONING APPEALS PUBLIC HEARINGS

For the benefit of the applicants, representatives, and the public, Mr. Zych stated that these hearings are quasi-judicial and certain formalities must be followed as if this were a court of law. Those who wish to speak regarding each case will be placed under oath. Following a presentation by City staff, each applicant may present his or her case. The Board will open a public hearing to obtain testimony from any other persons and the applicant will have a chance to respond to any such testimony. The Board will then ask questions of the applicant and render its decision. The formal nature of these proceedings is necessary because the applicant is asking for an extraordinary remedy called a variance. A variance is formal permission for the applicant not to comply with the municipal ordinances by which all other citizens are bound. The factors and criteria weighed by the Board with respect to the granting of variances are set forth in the Zoning Code and have been made available to all applicants. The burden is upon each applicant to establish the right to a variance under these criteria. The applicant must demonstrate circumstance unique to the physical character of his or her property, not personal difficulty, hardship or inconvenience. All variances granted by this Board are subject to review by City Council.

PUBLIC HEARING

OCTOBER 19, 2016

CALENDAR NO. 3408

Peter Menczer and Barbara Ryan, 2643-45 Hampshire Rd., 'MF3' multiple-family district, request variances to Section 1161.03(2) to rebuild a two-car garage (4 enclosed spaces req'd) and to Section 1123.12(a)1 to permit 3.5' rear (W) and side (S) yard setbacks (5' min. req'd).

All those who wished to testify regarding this request were sworn in by Ms. Hill.

Ms. Knittel, who had been sworn in, reported the following: This two-unit house is located on Hampshire Road and is surrounded by other two-family homes on each side and across the street. The rear of the property abuts a 3-unit structure and a 4-unit structure, both located on Mayfield Road.

This area is zoned 'MF3' multiple-family. The Zoning Code defines "dwelling, multiple family" *as a building or portion thereof designed for occupancy by three or more families living independently of each other in three or more dwelling units where the units are separated by party walls with varying arrangements of entrances.* Therefore, this property is an existing nonconforming use.

The minimum lot frontage in a multiple family district is 60 feet and the minimum lot width at the building line in this district is 100 feet. The 2643-45 Hampshire Road lot is 50' wide and has an area of 7,500 square feet, making it a nonconforming parcel. To assist in understanding the scale of this property, a code conforming parcel in a 'B' two-family district has a minimum lot width of 60' at the building line and a minimum area of 10,000 square feet.

The applicants' two car garage was 20.2' by 22.2'. It was damaged and needs to be rebuilt due to a tree falling on it during a storm. The applicants would like to reconstruct a two car garage that would be 23' by 22.2'. Zoning Code 1161.03(a)(2) requires two-family dwellings to have two enclosed spaces per dwelling unit which would require a 4 car garage to be constructed. The parking requirements for the apartment buildings located behind the applicants parcel is regulated by Schedule 1161.03(a)(4) and requires apartments to have 2 parking spaces per unit, with one space enclosed.

In addition, the MF-3 regulation 1123.12(a)1 requires the accessory structure to be set back a minimum of 5 feet from the side and rear property lines. The applicant would like to rebuild the garage in the same location. The existing concrete driveway will be utilized for access to the garage.

The applicant points out that the lot is 50 feet wide and that a four car garage is typically 44 feet wide. Therefore a four car garage could not be constructed without setback variances. The existing garage is 3.5' from the rear (west) property line and 3.5' from the south property line and the applicant is seeking a variance to reconstruct the new garage in this same location. The applicant also states that the runoff from a four car garage would be too great for the existing storm sewer and states that the existing house's downspout sewer is too shallow to allow for the correct pitch to the corners of the garage without freezing in the winter.

Construction of a four car garage would result in approximately 83% of the rear yard being covered by the garage and pavement. A three car garage and pavement covers approximately 71% rear yard. The applicant states that this coverage is not in keeping with environmental sustainability.

The applicant is seeking a variance to rebuild a new two-car garage with the same setbacks to preserve the use and plantings of the rear yard and to retain the character of the property and neighborhood. The garages in this area of Hampshire Road are predominantly two-car garages.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of applicable Building Permits; and
3. Complete construction within 18 months of City Council's approval of this resolution.

Mr. Zych asked the applicant to come to the microphone.

Peter Menczer and Barbara Ryan, 29576 Gates Mills Blvd, Pepper Pike, OH came forward. They had been sworn in. Mr. Menczer stated that this had been their first house and they lived on the 2645 side. The house had been vacant for 2-1/2 years when they purchased it and was a wreck. They proceeded to repair and remodel the entire structure. This was the first house that was refurbished at the beginning of the resurgence of Hampshire Road. Back in those days it was kind of a party street. At one time he was getting his license at Severance when he ran into a previous tenant who told him there once was a drug dealer living on one side of the house before they purchased it and a woman of dubious repute living on the third floor. It was a colorful area back then. We have tried to maintain the character of the neighborhood. We have fought to have tenants living within the requirements of the law. We've always written our leases to allow no more than 2 cars per side so tenants are not packing the house with cars and people and running the house down. The facts of the situation are indisputable. The lot is 50 feet wide and will not accommodate a 4-car garage without some type of variance. We are requesting the minimum variance necessary for us to preserve the nature of the back yard.

Ms. Ryan submitted a picture to the Board of what the yard looked like before the tree fell. She stated that this was a nice back yard. It is one of the most important issues for the property and it has helped us find good and long-lasting tenants. The tree is gone and a lot of what was growing there was damaged or crushed but it is coming back and I hope it will look the same again. Even a 3-car garage and adding the paving to access it would just destroy the rear yard. That is our main concern.

Mr. Menczer repeated that a 4-car garage just will not fit. We'd have to pave from the sidewalk up to the garage and that would take out the garden bed. He also envisioned the tenants driving back and forth would eventually damage the garage or the interior post. Also there is no drainage in the back yard. The sewers for the downspouts are too shallow. Referring to the slide showing the front of the garage, he pointed out where the existing drain is approximately 5 feet in front of the garage, explaining that drain was installed when the driveway was last paved but it freezes in the winter. So paving the whole area, further preventing the absorption of water would create more of a problem back there. This proposal is about what is the minimum variance necessary and still maintain the character of the yard and the neighborhood. Our tenants make use of the hammock in the picture and tenant's children have played in the back yard.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Mr. Zych asked for questions or comments from the Board.

Ms. Wolf asked if each tenant had two cars, was there enough room for a second car to be parked in front of a car parked inside the garage on either side?

Mr. Menczer stated that there was enough room immediately in front of the garage for a second car of both tenants.

Ms. Ryan added that the lease actually says each tenant is only allowed 2 vehicles. One goes inside the garage and the other vehicle is immediately behind it. This has worked well for nearly 3 years. We often rent to medical residents who need to come and go at odd hours of the day and night and it is vital that they not be blocked in.

There being no further comment from the Board, Mr. Zych asked for a motion.

Mr. Gilliam moved to grant Peter Menczer and Barbara Ryan, 2643-45 Hampshire Rd., variances to Section 1161.03(2) to rebuild a two-car garage where four enclosed spaces are required and to Section 1123.12(a)1 to permit a 3.5 foot rear and side yard setbacks where 5 foot minimum setbacks are required based upon the size of the lot not being wide enough to accommodate the required 4-car garage and the character of the neighborhood is such that most of the houses have 2-car garages so nothing in this proposal will negatively affect the surrounding neighborhood. If the variances are approved conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of applicable Building Permits; and
3. Complete construction within 18 months of City Council's approval of this resolution.

Mr. Hoen seconded the motion.

Mr. Zych suggested two amendments to the motion to state; A more conforming design will result in the loss of almost all the greenspace, including damage to trees and shrubs making it an almost all paved rear yard; and a 4 car garage and the loss of the absorption of the ground will result in problems with water runoff and because the downspout drain is too shallow to allow the correct pitch from the corners of the garage and there isn't special drainage to take care of that much water from the property.

He asked if he motioner would accept these amendments.

Mr. Gilliam stated that he would.

There being no further discussion of the motion, the motion passed 5-0.

Mr. Zych reminded the applicant that all variances must be reviewed by City

Council.

OLD BUSINESS

Ms. Knittel reported that the variance granted for 2350 Ardleigh Rd. for a driveway setback of 0 feet had been approved by City Council. However, the variance for 3500 Fenley Road, for the chicken coop attached to the garage was denied. We have included Council minutes for the Board's review in case there were any questions regarding their reasoning.

Mr. Zych commented that he could only imagine what Council's reasoning possibly could have been. It was one of the most, to his mind, one of the most sensible requests for a variance, given the fact that we are moving toward being chicken coop friendly and apparently have not done a great job in enacting what we needed to do and the variance seemed very sensible. I'm never surprised by anything but I am disappointed in the action of Council, but that's just me.

NEW BUSINESS

None

ADJOURNMENT

There being no further business to come before the Board, Mr. Zych asked for a motion to adjourn. Mr. Gilliam so moved. Ms. Dietrich seconded the motion which carried 5-0. The regular meeting was adjourned at 7:21 p.m.

Respectfully Submitted,

Thomas Zych, Vice Chair

Vesta A. Gates, Secretary

