

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
NOVEMBER 16, 2016

MEMBERS PRESENT:	Gail E. Bromley George A. Gilliam Benjamin Hoen Liza Wolf	Chair
MEMBERS ABSENT:	Thomas Zych	Vice Chair
STAFF PRESENT:	Vesta A. Gates Karen Knittel Elizabeth Rothenberg Richard Wong	Zoning Administrative Assistant City Planner Assistant Law Director Planning Director

CALL TO ORDER

Ms. Bromley called the regular meeting to order at 7:00 p.m. at which time all members were present except Mr. Zych 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. His motion was seconded by Mr. Gilliam and carried 4-0.

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, Ms. Bromley 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

NOVEMBER 16, 2016

CALENDAR NO. 3409

Heights Medical Building, LLC, 2460 Fairmount Blvd., 'C-2' local retail, requests a variance from Code Section 1163.06(e)(4)(B) to permit up to 6 business identification signs inclusive of the existing Cube Workspace sign, each up to 33.19 square ft. on the building for business not on ground floor (not permitted).

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

Ms. Knittel, who had been sworn in, gave the following staff report.

The Heights Medical Building is surrounded to the north by commercial properties, to the east and south by residential properties and to the west by a combination of commercial and residential properties. The building is curved to follow Fairmount Boulevard and, in some portions has a deep setback and in others has parking cut into the curb.

As described above, the Heights Medical Building curves with the curve of Fairmount Boulevard and is located at the intersection of Fairmount Blvd. and Cedar Road. NOACA traffic counts show that 8,000 vehicles per day travel Fairmount Blvd and that Cedar Road has 14,000 vehicles per day. The street trees that are part of our streetscape in this district will continue to grow and impact the ability of pedestrians and motorist to see portions of the building.

Businesses not located on the ground floor must comply with zoning code section 1163.06(e)(4) for signage. Signage is permitted at the ground floor entrance for tenants. The code permits one square foot of signage for each lineal foot of building frontage devoted to the entrance and permits a minimum sign area of 10 square feet and a maximum of 150 square feet. This signage is considered a commercial identification sign as regulated by 1163.04.

Also, for a multi-story retail or office building, each tenant above the ground floor is permitted one permanent sign to be placed in a window of the tenant's space, not to exceed ten percent (10%) of the window area. In no case shall the maximum permitted area exceed twenty (20) square feet. These signs may be considered in addition to the maximum allowable area for identification signs pursuant to Schedule 1163.04.

In July 2015, BZA approved Cal. No. 3374 to permit Cube Workspace to install a 33.19-square-foot sign on the building face for a business not on the ground floor. The Resolution concerning this approval is attached. It was approved by Council on August 3, 2015.

Notably, a condition of this approval was the development of an Architectural Board of Review approved comprehensive sign plan for the building. When an application was received to add an additional sign to the second floor, the Law Department suggested that a total comprehensive sign plan for any and all future signs on the second floor be revised prior to seeking a variance.

Accordingly, in September 2016, a revised Comprehensive Sign Plan for the Medical Heights Building (attached to the applicant's application) was approved by the Architectural Review Board contingent on the necessary variance(s) being granted. The signage plan was reviewed and discussed at two ABR meetings before being approved. In addition, the ABR reviewed the specific sign for the Cleveland Heights Dental office that is located on the second floor of the Heights Medical Building. While this sign is currently the only sign that has been reviewed by and approved by the ABR, contingent on receipt of all required variance(s), future signs would likely only be reviewed by ABR.

The signage plan allows for up to 6 business identification signs. This includes the Cube Workspace sign that has already received a variance. Should this proposed

plan be denied or approved now and later revoked, the variance for the Cube Workspace shall remain. The applicant is seeking a variance for the implementation of the entire signage plan (i.e. for all 6 signs), as the applicant states that all upper level businesses have the same practical difficulty.

The signage plan has two parts: (1) a written description that provides aesthetic parameters and materials that are to be followed for any sign on the upper level of the building and other related details; and (2) a picture indicating the location of where the signs may be located on the building. Each future individual sign for the second floor of the building would need to be reviewed by the ABR and would be subject to both parts of the approved sign plan. ABR would be responsible to check for compliance with the sign plan.

If approved, conditions may include:

1. Only tenants located on the second and third floor of the Heights Medical Building may have business identification signage located in one of the six sign locations shown on the ABR approved Comprehensive Sign Plan for the Heights Medical Building;
2. Each sign must conform to the ABR approved Comprehensive Sign Plan for the Heights Medical Building;
3. Each sign must receive approval of the Architectural Board of Review; and
4. Each individual business identification sign must receive applicable Building Department Permits.

Ms. Bromley asked the applicant to come to the microphone.

Jeff Rosenthal, 2466 Fairmount Blvd., and Sal Russo, 2460 Fairmount Blvd., came forward.

Ms. Rothenberg explained that she was interrupting the usual procedure at this time because the process will be a little bit different. The staff report does not include the practical difficulty as it usually does, so she asked the applicant to describe it now.

Ms. Bromley advised the applicant that as was stated in the preamble, that is the expectation of any applicant who is requesting a variance.

Mr. Russo stated that the practical difficulty dates back to when they were in the supermarket business. Retail is really tough and he found signage really helps. It needs to happen for almost all retail businesses. It's when you get to the second floor when you have the most difficulties identifying businesses that are trying for visibility at street level and there are certain businesses that act more like retail than other business. The Cube Workspace is one example. When we were developing a practical difficulty in that instance, it was a little easier to explain that it was more like a retail business but can be on a second floor. There are a lot of

other businesses like that, such as this dental practice, and a number of similar businesses in this building already. With first floor tenants, the signs are key to the identity of the business. For the second and third floor businesses, it is more for driving sales. Small businesses are having a very difficult time making it. I have had a lot of business that have not made it within this building. It all comes down to sales, traffic, customers, and being able to generate those things. Identity is a key element of that. If you go to some other major cities, you will see signage on the second floor. I think this is a great opportunity for the smaller businesses in Cleveland Heights. You want them to survive, have an identity, and make it. There are a lot of small businesses in Cleveland Heights and not that many big businesses. Bario's is getting big but they are currently a small business. When we were Russo's market, we started with one store. We know how difficult it is to make it as a small business owner and it's getting very competitive. There are more big box stores coming in. If you don't have some type of system to help you with your small business, it's very difficult to make it. Signage is a key element in every business that survives and that's why I believe that it is key in this particular instance. It's key for the business and key for our building, in terms of the number of cars that drive by. This is a great opportunity to gain tenants for the building because they know how important signage is. How many tenants have approached me about signage for the building in the last 20 years? Not very many. Cube Workspace was the first one on the second floor to ever approach me about it. At that point in time when I was discussing this with the staff in zoning, I didn't think anyone from the upper floors would ever approach me again about a sign. Then the very next day, Jeff bought the dental practice, and referring to the Cube sign, said "I love that sign. Can I get one?" I said, "Jeff, we're really going to have to explain it to the city because it was very difficult to get the sign for Cube." The practical difficulty is for businesses to make it anywhere in Cleveland or Cleveland Heights or business in general, and we think that a sign would really help.

Ms. Bromley asked the applicant if he wanted to speak about location or visibility to help the Board understand the importance of the signage. Is there some unique aspect that will help us understand why this building is different, or, this location is different from other locations.

Ms. Rothenberg added that it should tie in with the building and this particular location because we are not changing the whole zoning code so everyone can get a sign on the second floor. It should be just why this building needs the sign.

Mr. Russo explained that this is a very large building and the frontage is long because it faces Cedar and Fairmount Blvd. With the size of the building, the number of cars that drive by it and the location of the building, it really helps to have signage on the second floor.

Mr. Rosenthal added that it would help tremendously. There are 22,000 cars a day going through that intersection which is an incredible amount of cars. Referring to

the slide showing the building frontage, he pointed out a faint, white, window sign that was barely visible. He pointed out that anyone walking along the sidewalk is not going to see it. Somebody walking across the street or in the median, or stopping at the light as you come up from the Murray Hill area, would not see that small sign in the window. What would be visible would be the signs for the cleaners, Dave's Super Market, or Subway or Barrio's. My location on the second floor begins at the center of the building over the entire right side of the building, extending across eight windows along Fairmount and Cedar. For this business a sign would have a tremendous impact towards the growth of what we are trying to do.

Mr. Russo stated that he personally did not allow window signage on his building. He did not think they were attractive and he didn't think they worked. They are too small to make any impact and so he didn't allow any on the building. Window signage is what the code allows but as a building owner and a business owner knowing retail, he knew it didn't work. It just clutters up a window and a pedestrian can't even see it from the street. So how does a business owner advertise other than the traditional way? When the Cube Workspace sign went up, the owner called and said he had already gotten 6 phone calls in the first week that the sign was up. It's just a natural thing that a business would acquire traffic from that. Mind you, you have to do all the other things for the business; facebook, social media, regular advertising. You have to run a great business but this is a really good way to get visibility. This building is unique in Cleveland Heights because of its size, the location and the number of vehicles that go by it. You can also see the tender love and care that we put into this building. We put a lot of money into this building and are constantly putting money into it to make it better. We have brand new LED lights up-lighting the building. We converted the whole building to LED and are trying to conserve energy that way. We are going to own this building for a very long time. We've owned this building for 20 years and owned the building next to it for 60 years. It just makes sense to help these business owners make it. They pay payroll taxes, we pay property taxes. It will be an ongoing entity. If these businesses make it, it helps everyone. You will probably get other building owners asking for second floor signage. You have to look at this on a case-by-case basis. We are currently trying to figure out which bay to put the sign in to make it look right. Right now the building has only two second floor signs. Will there be more requests in the future? No one else has asked so far but I can never say no one will ask me again. That's the main reason we are here trying to get these 6 spaces finalized. If a seventh person asks I can easily say "I'm sorry we can't do it." It takes the burden off us.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

There being no one from the public who wished to testify, Ms. Bromley asked for questions from the Board.

Ms. Wolf asked the applicant what was the total occupancy of his building.

Mr. Russo stated there are 97 leases and one small office that are vacant.

Ms. Wolf pointed out that the applicant is leasing 3 suites but proposes the sign to be located at the end of the building.

Mr. Rosenthal explained that was the originally proposed location because it is across from Surrey Road and if you are on Cedar Road, which has the most volume of vehicles coming down towards Case Western University, that intersection has a better viewpoint of an end-sign. Fairmount Boulevard really has no viewpoint if you are coming down. If you are coming up you may pass it if you are stopped right at the light. My position is not to have anything to do with the first floor signage. I'm never going to be seen that way but it's really for the pedestrian traffic; people walking along Cedar Road and coming up from the Murray Hill area on Surrey Road.

Mr. Gilliam stated that this is a 3 story building with 6 upper signage positions. He asked the building owner if he had someone on the second floor and somebody different on the third floor, who gets to put a sign in?

Mr. Russo explained that it depends on who wants a sign. Then he would evaluate the situation first to figure it out. I may say I think I am reserving this spot for another tenant. It would make more sense logically if the actual tenant was below the space. For example, the dental sign is going to be above his space so it makes perfect sense that he would take one of those sign spaces. If someone called me from the 3rd floor in the back of the building and said, wow I'd love to have one of those signs, I'd ask what is their business and how long have they been in the building. Does it make sense for them to have a sign? But according to the way the sign plan is approved, they would have the right to have one of the signs up there if they wanted to.

Mr. Gilliam explained he was thinking more about the architectural details above the windows on the third floor.

Ms. Knittel further explained that the sign plan that has been approved by the Architectural Board of Review is only for those positions that you see in red. Those would be the only sign locations approved if this variance is granted.

Mr. Wong added that the ABR members noted that the band of stone on the building is perfect for placement of these types of signs. The ABR all agreed there is no place available above that band and he didn't think the landlord would want that.

Mr. Rosenthal stated that was his first question when he considered this request. He will be the third generation of dentists going in there. This practice transferred

from someone who operated in Cleveland, and the person he purchased the business from moved into this building and conducted business for 25 here years. That lease was inherited when the Russo's purchased the building. During a site check of the building prior to moving in, he had asked Mr. Russo what were his chances of getting a similar Cube Workspace sign. Since his purchase of the practice in June, that was one of the key aspects he wanted to try to get in that specific band on the building.

Describing the sign, Mr. Rosenthal stated that the "CLE" portion of the sign is seen on t-shirts all over the city. The black and gold of the "Heights Dental" part of the sign are just the colors of Cleveland Heights High School.

Mr. Russo stated that he hated to continue to harp on how difficult it is to run a small business but in his 35 years in business, he knew how hard it is to run a small, medium, and going into a larger size business and he'd seen a lot of businesses that don't make it. This is going on not only in Cleveland Heights but all over the country. Some business owners aren't savvy enough. They really want to succeed but they don't have the tools. Hard work isn't always enough. As a building owner he had a keen eye for it because of being in business for a long time. There are city ordinances that have to be followed and Cleveland Heights is recognizing these business that need to make it. Anything the city can do to help these guys make it, everybody wins. His building isn't fully leased because he sat around waiting for tenants to come to him. This building is a small business so he knows what needs to be done to keep a full building. In this instance we discussed the relationship we are going to have because we don't want just anyone to come into this building. We talked for months to make sure he was the right fit. He is the same way. The Mad Greek was in this building for 35 years so we know what it takes to run a business and to run a building. It takes more than hard work sometimes. But I believe this signage will really help him.

Mr. Hoen stated that he had one problem with this request, although he understood what the applicant was saying. The Board's job is to find the practical difficulty to grant a variance from the zoning code. He recalled being in favor of the Cube Workstation sign when it came before the Board. We as a Board painstakingly went through that request and found specific reasons for a practical difficulty for that particular sign. I think the problem I'm having here is that we are being asked to consider 6 unidentified signs. I understand why you are doing this, because you don't want to come back here for every sign.

Ms. Rothenberg explained that this proposal totally came from her. The applicant would have been happy to come back to the Board for each sign but being a part of how painstaking the consideration for Cube Workspace was, we just thought a comprehensive sign plan would be better to consider in totality. The reality may be that this dentist sign will be the last sign that goes up for however many years, but she wanted to make it clear that the recommendation came from the Law

Department for the owner to figure out the maximum number of signs he would want. It went before the ABR several times and she had been at those meetings. The ABR took this request very seriously and the applicant had to go back to the drawing board on a couple of occasions. There were a lot of hours of consideration taken to get to this point and it was a recommendation from the City to try and help the Board out.

Mr. Hoen stated that he was just trying to do what is required of the Board, which is to find a practical difficulty. Since we haven't been presented with specifics as to the other 5 signs it's hard to find a practical difficulty on which to grant the variance.

Ms. Knittel stated that her understanding of the applicant's practical difficulty as submitted was that the entire building has the same practical difficulty in that the entire building is curved, there is a high volume of traffic on that street, there are trees and curb-cuts where people park. Also, window signage is not readable. All of that combined would be a practical difficulty no matter who was seeking a variance from the 2nd or 3rd floor.

Mr. Hoen stated that the practical difficulty then becomes perhaps someday in the future someone will ask for a sign.

Ms. Knittel further explained that it is only the sign location that the Board is being asked to approve.

Ms. Wolf pointed out that it was also because they have such a large frontage that there isn't a lot of visibility.

Mr. Hoen commented that the applicant also stated that there were several examples of 2nd floor windows, not in Cleveland Heights, but in the metropolitan area.

Mr. Russo explained that he meant in other cities. He had an office in Akron, 2 in Mentor, another in Streetsboro where 3 of them are in shopping plazas, and 1 is in a 2nd floor hospital building. One building has a captive audience because the whole building is full of medical doctors so he didn't really need additional signage there. As for other areas, in the City of Cleveland you can just go downtown and look at the Nine Building, Red's Steakhouse, Winking Lizard and so forth. They are allowing 2nd floor tenants more visibility, from law firms to dental practices to cleaners to restaurants so they can promote their businesses. In this country there is an attitude where big businesses are not necessarily seen as favorable as the small business person that wants to try and live the American dream. You are dealing with a dental practice that has had 5 to 7 years of declining revenues. You are doing a tremendous job of renovating the area and improving it. Judging by the flyers I get from the Fairmount organizations, they are trying to promote that

internally, so it only seems fair to ask you to promote it externally as well and continue to help us.

Ms. Rothenberg stated that Mr. Hoen pointed out that the reasons why Cube Workspace was approved was because of that particular location on the building and the business itself, but I would encourage the Board to look at the language of the resolution that was passed which captures the motion that was made at that meeting. It generally talks about the building, but is not specific to the business itself or that curved part of the building. It states "the location and configuration of the building provide for a unique challenge to identify legitimate businesses on the second floor given the traffic volume at various times of the day and the distance of the location of the sign from the street view and eye level." It goes on to talk about how it wouldn't disrupt the character of the neighborhood which may or may not be specific to Cube Workspace.

Mr. Hoen asked if any thought had been given to revising the zoning code based on these concerns with businesses coming into the city and visibility issues. That sounds more like a systemic issue so we might want to consider revising the zoning code to allow for this.

Mr. Wong explained that the thing about this City is that there are so few buildings that are this tall we didn't give it that much consideration until Mr. Russo brought it to our attention. He is absolutely right that the window signs are no good to a business because as soon as there is glare off the glass you can't read the sign at all. We are not disputing the applicant's contention the code is not equipping the 2nd or 3rd floor businesses with adequate signage. The code provisions do afford signs but they are ineffective.

Ms. Bromley asked Mr. Hoen if, in addition to the practical difficulty being clearly articulated, is the other issue the fact that we don't know what those other signs will look like. Is that what I heard you say?

Mr. Hoen stated that was something that was brought up during the review of the Cube Workspace signage. It is the fear of the unknown.

Ms. Rothenberg explained that the ABR is the appropriate venue to be looking at that and this is what they think in the abstract wouldn't look too cluttered. If someone comes in with a sign that is offensive to the overall plan, that consideration is in their jurisdiction as the Architectural Board of Review, and that is why you only see 6 blank spaces. Because we want ABR to be the proper body to be looking at the specific aesthetics of the sign. We thought we were anticipating what the Board would want because there had been a request by the Board for ABR review and a comprehensive sign plan. So we thought, let's address their request first, so they won't need to ask for it this time and there won't be so many questions. It seems it may have backfired. That's what the thinking behind this

proposal was, determining which body is most appropriate. If it's not the right thing I would hope we could at least consider the dental sign today. We can modify the application if that's what the Board wants. ABR has already approved the sign.

Ms. Bromley asked Mr. Hoen, going back to the practical difficulty, what additional information from the applicant would you feel would be helpful.

Mr. Hoen stated that the applicant has already presented a pretty strong case. It's just because we don't know what type of tenants are going into the spaces. What is the actual practical difficulty? There is a broad practical difficulty for any potential tenant who might want a sign but is that an actual practical difficulty or an academic practical difficulty. I don't think the Board is here for academic practical difficulties but for actual practical difficulties. This is what I'm on the fence about.

Mr. Gilliam stated that he looked at this as more of an ABR problem than this Board's. The third condition of the staff report states "3. Each sign must receive approval of the Architectural Board of Review;". I think that is where the review of the unknown would happen. It's under ABR's purview. We asked for a comprehensive plan and they gave it to us. For better or worse, ABR will advise them whether it's good, bad or indifferent. I'm satisfied with the practical difficulty of the configuration of the building and the location of the sign and where the traffic is, which is not at eye level.

Mr. Wong further stated that if the Board has the "Zych" concern as to whether the Board is overstepping its bounds, City Council will not approve it if they feel the Board is legislating into place something they are not comfortable with.

Ms. Wolf stated that the Cube Workspace business was approved based on the practical difficulty of the business itself. What type of business was it?

Ms. Bromley asked if staff wanted to re-read the resolution that was approved for Cube Workspace.

Ms. Wolf stated that she had already read the resolution but didn't see a reference specific to the business.

Ms. Rothenberg explained that was because no matter what the discussion was, at the end of the day, what the Board ultimately approved is in the resolution.

Ms. Knittel explained that the business is a shared office space and often people traveling will look for a space to work in for a day or two.

Ms. Wolf asked if people can just walk into the space.

Ms. Knittel affirmed that was her understanding.

She asked the applicant if people could just walk into the dentist office also.

Mr. Rosenthal stated that walk-ins are accepted as well as scheduled appointments.

Mr. Russo stated that the sign ordinance should be changed citywide. This city has a lot of buildings that can use second floor signage. I know this is not what the Board is addressing but I might as well speak my piece. It would really help.

Ms. Bromley stated that from the Board's standpoint she wanted to be sure all the questions relative to practical difficulty were asked and answered so there is clarification with that. We did indeed ask for a plan because it was felt at that time there was the potential for more signs being requested and we got it. At this time she asked for a motion.

Mr. Gilliam moved to grant the variance request for Heights Medical Building, LLC, 2460 Fairmount Blvd., 'C-2' local retail, to Code Section 1163.06(e)(4)(B) to permit up to 6 business identification signs inclusive of the existing Cube Workspace sign, each up to 33.19 square ft. on the building for businesses not on ground floor, where they are not permitted, based upon the practical difficulty that still exists, which is the configuration of the building itself which inhibits the ability of businesses and their customers to locate each other based upon the configuration of the building. Also we have put on the building itself a provision that the applicant has conformed with, which is to come up with a signage plan. If approved the following conditions should be included:

1. Only tenants located on the second and third floor of the Heights Medical Building may have business identification signage located in one of the six sign locations shown on the ABR approved Comprehensive Sign Plan for the Heights Medical Building;
2. Each sign must conform to the ABR approved Comprehensive Sign Plan for the Heights Medical Building;
3. Each sign must receive approval of the Architectural Board of Review; and
4. Each individual business identification sign must receive applicable Building Department Permits.

Ms. Wolf seconded the motion which carried 3-0-1; Mr. Hoen abstained.

Ms. Bromley asked Ms. Rothenberg if it would be in the Board's best interest to have an amendment to the motion, which would require a second vote, to discuss the traffic flow.

Ms. Rothenberg stated that it couldn't hurt because Council is only going to hear what is contained in that motion. An amendment can be made to talk about the heavy traffic flow as an additional special condition which makes reading signage difficult.

Mr. Gilliam amended his motion to include what he said before and the fact that the location and configuration of the building provides a unique challenge to identify a business on the second floor given the traffic flow at various time of the day and the distance of the location of the sign from the street view and eye level.

Ms. Wolf seconded the motion which carried 3-0-1; Mr. Hoen abstained.

Ms. Bromley advised the applicants that the minutes of this meeting will reflect the recommendations of several people that City Council consider future review of the zoning code on this matter of signage. She also reminded them that City Council must review all variances.

CALENDAR NO. 3411

Tom Leneghan d.b.a. Barrio, 2466 Fairmount Blvd., 'C-2' local retail district, requests a variance to Code Section 1163.07(b)(3) to permit a business identification sign to project 5'6" from wall (max. projection 4').

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

Ms. Knittel, who had been sworn in, gave the following staff report:

The Heights Medical Building is surrounded to the north by commercial properties, to the east and south by residential properties and to the west by a combination of commercial and residential properties. The building is curved to follow Fairmount Boulevard and, in some portions has a deep setback and in others has parking cut into the curb.

As described above, the Heights Medical Building curves with the curve of Fairmount Boulevard and is located at the intersection of Fairmount Blvd. and Cedar Road. NOACA traffic counts show that 8,000 vehicles per day travel Fairmount Blvd and that Cedar Road has 14,000 vehicles per day. Due to the existing siting of the building, the curve of the building, trees and the irregular and very busy intersection seeing the existing first floor building signage is difficult.

In recent years, the City amended the Zoning Code to permit projecting signs. Properly designed, projecting signs can add vitality to commercial districts. We have encouraged interesting projecting elements to be added to signs to add excitement and to draw attention to our city's many unique businesses.

The applicant is requesting a variance to Code Section 1163.07(b)(3) to permit the sign to project 5'6" from the building wall; code permits a maximum projection of 4 feet. The oval sign is 5' at its widest point and 2'8" at its highest point. The area is a code-conforming 12.47 square feet. Code permits projecting signs to be a

maximum of 16 square feet. The storefront length is 53'4", which would permit the applicant to have an identification sign that is 53.33 square feet. The applicant shows the projecting sign being a code conforming 10' above the sidewalk. The applicant is utilizing a metal bracket with a skeleton on it to hold the oval identification sign.

In 2012, BZA granted a variance to The Fairmount located at 2448 Fairmount Blvd. to allow their 13.8 square foot sign to project 5'10" from the building. This oval sign is 5' at its widest point and 2'8" at its highest point and has a portion of the letter 'F' with an olive on it below the oval. The variance included a condition that future projecting sign variances shall also possess a similar artistic graphic composition. (Resolution for Cal. No. 3299 is attached.)

The nearby Luna oval sign is 5'-3" at its widest point and is 21 square feet. In 2009, the BZA granted a variance for a 36 square foot, 5'-10" deep projecting sign for Melt Bar & Grilled.

The applicant did receive approval from the Architectural Board of Review as shown at the meeting last night.

If approved, conditions may include:

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

Ms. Bromley asked the applicant to come to the microphone.

Jake Holley, 3190 West 63rd St., and Tom Leneghan, 2466 Fairmount Blvd. came forward.

Mr. Holley stated that he had 3 existing locations and each has a 5-foot long sign. Two of those buildings are stand-alone buildings, so they stand out a little more but they still have the 5-foot sign which is a part of our branding and our logo. For those reasons we feel this signage to very necessary. There are several examples of other signs that have been approved although ours is a little less gaudy. It is a very simple wooden sign, lit from both sides.

Mr. Leneghan repeated that all the locations have the same sign which is our brand. In other communities, such as in Lakewood, an up and coming area where business is booming, our branding for small a business is very important. Being a designer from the far west side of Cleveland, he recalled that they didn't change zoning laws very often. Considering the point of view of the businesses, he asked himself why signage was necessary. In Cleveland they don't change zoning laws very often. Laws for restaurants, bars, nightclubs, are mostly from the '30's because it allows

the city to keep ultimate control. If you want to do something in Cleveland, you have to come to your local councilperson and make your proposal favorable to him or her and they move forward with the process. If every procedure was already spelled out in black and white, the councilperson or powers that be wouldn't have much say so in who is allowed to do what. When we decided to move to Lakewood, we heard horror stories about how difficult it was to open a business there, but we found them to be amazingly easy to work with. We have been there for 2 years and found it to be a great community. He wanted to open a brewery and pizzeria in Tremont but every time you want to do something in that area they make it so difficult for entrepreneurs.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Ms. Bromley observed that no one in the audience had been sworn in to testify. She asked for questions or comment from the Board. There being no comment, she asked for a motion.

Mr. Hoen moved to grant Tom Leneghan d.b.a. Barrio, 2466 Fairmount Blvd., a variance to Code Section 1163.07(b)(3) to permit a business identification sign to project 5'6" from the wall where the maximum projection permitted is 4 feet, based upon the practical difficulty that the building is unique in that it is curved and the sidewalk is set back somewhat and it is difficult for pedestrians to see the signage and therefore it is necessary to have signs that protrude from the building. There are a number of similar signs already approved on this building therefore this is a small variance that will actually enhance the view of the building. It falls within the general aesthetic of the building as it is currently structured. The neighborhood will not be adversely affected, in fact it will be enhanced through this type of modern signage that brings our neighborhoods up to the current trends that we are seeing in other neighborhoods. Without the variance the brand name of this particular restaurant will be difficult to integrate into Cleveland Heights. If approved, conditions may include:

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

Ms. Wolf seconded the motion which carried 4-0.

Ms. Bromley reminded the applicants that City Council must review all variances.

CALENDAR NO. 3410

Mark & Melanie Biche, 2507 Fairmount Blvd., 'AA' single-family, requests variance to Code Sect.1121.09 to permit 1,031 sq. ft. accessory dwelling unit to remain as the principal structure (min 2,000 sq. ft. req'd.).

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

Ms. Knittel, who had been sworn in, gave the following staff report.

This property is located in an 'AA' single family district. The properties to the west across Fairmount Blvd. are zoned 'AA' single-family. The single-family houses along Fairmount Blvd. to the south are also zoned 'AA' single family. To the north, across the Nottingham Lane pathway is the Cedarmount Town Homes development that is part of an Overlay District that permits town house development. The properties to the east are single family homes in an 'A' single family district.

The property is code conforming and is 100 feet wide along the street and is 24,840square feet. Code requires properties in an 'AA' single-family district to have a minimum lot width at the building line of 100 feet and be a minimum of 15,000 square feet. The parcel is located beside the Nottingham lane pathway with driveway access to Nottingham Lane. Nottingham Lane ends at the parking area for 2507 Fairmount and continues as a pathway to Fairmount Blvd. The property to the south, 2517 Fairmount (Permanent Parcel Number 685-28-018) is also owned by Mr. & Mrs. Biche has a driveway easement across the eastern portion of the parcel that access the residential home that they are currently constructing.

2507 Fairmount Blvd. is located along a curve on Fairmount Blvd and most of the parcel is at a higher elevation than the Fairmount Boulevard street and sidewalk. There are steps that provide access from the parcel down to the public right-of-way. The trees and shrubs along the edges of this property assist in this site blending into the surrounding neighborhood.

The applicants are seeking a variance to maintain the 1,031 square foot one-bedroom apartment and studio building as the principal structure on this parcel. Code requires principal structures in an 'AA' single-family district to have a minimum floor area of 2,000 square feet. The studio building contains an outdoor, semi-enclosed car port, a courtyard and a two-car garage. The applicants intend to demolish the existing nonconforming 1,663 square foot house. This structure is vacant and is in severe disrepair. The demolition of the structure results in the accessory apartment and studio building becoming the principal structure which is why a variance is required.

The applicants considered joining the two parcels; however this option also results in a variance being needed in order to permit two dwelling units and multiple garages on one lot in a 'AA' single-family district.

If approved, conditions may include:

1. Receipt of applicable Building Department Permits;

2. Complete demolition of the current nonconforming 1,663 square foot deteriorated house within 18 months of City Council's approval of this resolution; and
3. Approval of a landscape plan by the Planning Director.

Ms. Bromley asked the applicant to come to the microphone.

Melanie Biche, 22401 Shaker Blvd., Shaker Heights and Jason Baylor, Payne and Payne Builders, 10750 Mayfield Rd., Chardon, came forward.

Ms. Bromley added that the Board had also received two letters of support from David Hunt and Joe Manino. Both letters will be entered into the record.

Ms. Biche stated that they had been proud residents of Cleveland Heights since 1991 and residents of Fairmount Boulevard since 1996. We purchased the properties at 2507 and 2517 Fairmount knowing that we happened upon a special property in Cleveland Heights. The unique access via Notting Hill Lane shared with all manner of pedestrians and bikers and heavily wooded lot was a perfect match for the type of home we wanted to build while complementing the stately homes of Fairmount's historic district. However, as our structure went up on 2517, it became clear to us that the mid-century modern property at 2507 would not only be an eyesore from the new house but would detract from the appeal and aesthetic value of the two lots as a whole. Many neighbors have commented to us that they look forward to the demolition of 2507 as it has very little, if any, aesthetic value on an otherwise graceful stretch of Fairmount Boulevard as one ascends the hill from Cedar Road. Having said all this, we submit a letter of practical difficulty from Mike Caito of Caito Architects which I will read. "We recognize our request involves variances to the zoning code yet we feel the unique nature of the property and its location warrant the minor exception. To reiterate, on the structure we are building at 2517, the driveway access is through the easement of Notting Hill Lane and the current 2507 is also accessed via Notting Hill Lane. There currently is no driveway access from Fairmount Boulevard, so it is very unique in that sense. We have been evaluating the existing home and the suite studio garage structure on the parcel 685-28-019 and the existing main home is vacant and in serious disrepair. The plywood siding is rotting out, the original wood windows and doors need to be replaced and the drain on the flat roof is leaking into the house and there are significant black mold issues. Most of the mechanical systems are old and out of date and there has been very little update since the house was constructed in the 50's. We considered renovating it but a whole house renovation would likely exceed the potential return because of its limited square footage and it has no basement or second floor. Based on our analysis the cost to renovate the home far exceeds the value of its use. The hardship is nothing we created but an existing condition. The main house is currently uninhabitable. We considered living there temporarily while we were building the new home but it was not acceptable in its current condition. We thought about a light update to the house but that proved to

be too costly to a house that has very little interior or exterior merit. Unless removed, the main house will just sit vacant and become a large eyesore as it continues to deteriorate. The main house being removed creates valuable greenspace and we would be happy to let you tour the property so you can see the issues we are concerned with. We are also working on a landscape plan for the property, regardless of whether we are permitted to tear the house down. What is of value to us is the existing suite studio garage structure which for whatever reason is in far better condition and is currently in use. We have a tenant living in the suite and they had been leasing from the previous owner of the property. We are allowing them to stay there until a future date. We anticipate using that structure in the future for children and guests when it is no longer being rented. We've been embarking on a landscape plan that utilizes the property. The main house is in the way, is an eyesore, and doesn't have any functionality for us. We are investing in a brand new house next door at 2517 and extensive landscape improvements to both houses and the demolition of the main structure at 2507 is an improvement to the property, the surrounding neighborhood and does not degrade the value or future potential use of the remaining lot. We believe that the variances are minimal and do not adversely affect the character or use of the property and our proposal is to landscape this property and make it part of the new home on the adjacent parcel. The suite and studio will continue to be fully functioning. The carport and garage will also be used and the requested variances will not limit the sale of 2507 or its future uses. At some point in the future someone could build a new main house and the studio could revert back to an accessory structure or someone could remove the accessory structure and start over on the lot. We just want to maintain maximum flexibility for the future. The essential character of the neighborhood will not be altered as the current main structure at 2507 has no interior or exterior architectural significance. Neighboring properties will enjoy the benefit of the home in disrepair being removed and the introduction of more landscaping and greenspace. We see this as a meaningful improvement of the quality of life along Notting Hill Lane for walkers, joggers, bikers and the surrounding property owners on Delamere and Fairmount. The granting of the variances will not hinder the delivery of governmental services or utilities and we purchased property with the intent of redeveloping it into a new residence. Upon further investigation it became clear that there was no desire to refurbish the main house and that it is in such disrepair from years of deferred maintenance. We understood that there would be zoning issues that needed to be addressed to remove the main house and keep the accessory structure. We could have knocked down both structures and returned 2507 to a vacant piece of land but that would devalue what we had purchased. We could have combined both parcels and built in the center of the new parcel but that would have limited future use of 2507 in addition to not being code compliant with 2 homes on one parcel. We feel the land has more value with the parcels being kept separate for us, future owners, and the City of Cleveland Heights and maintains more optionality with the accessory structure and garage spaces remaining. 2507 and 2517 Fairmount were purchased together. There was one main house and an accessory structure at

2507 and 2517 Fairmount was a vacant lot. We do not believe we created any special conditions or circumstances. Only a variance to keep the accessory structure will resolve our predicament. We do not want to knock down the accessory structure because it has significant value, meaningful current and future uses and someone is living there. The main house really has no value. It is uninhabitable and a less significant, uneconomical investment is made and is an eyesore that cannot be easily and cost effectively resolved. The spirit and intent of the zoning code is being preserved with the granting of this variance. The Biche family have great respect for the Cleveland Heights community and its zoning laws. Prior to purchasing 2517 and 2507 Fairmount we lived for 20 years at 2568 Fairmount Boulevard and 5 years prior at 2270 North St. James Parkway. During those 25 years we have restored and updated both homes and maintained our properties to high standards and we have received community improvement awards and street improvement awards for both homes as well as accolades from neighbors. As evidenced by the purchase of these properties and the construction of the new home at 2517 Fairmount, we are committed to Cleveland Heights and support its zoning laws. We believe substantial justice will be done by granting the variance. We do not believe granting the variance will confer any special privilege because it is such a special property. The granting of this variance will allow us to make full use of the 2 parcels with the potential for selling off one parcel in the future. The granting of the variances does not preclude someone purchasing 2507 Fairmount Boulevard in the future to build a new home on that lot, which would of course need to adhere to applicable zoning laws. Thank you.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

As there were no questions or comment from the Board, Ms. Bromley asked for a motion.

Mr. Gilliam moved to grant Mark & Melanie Biche, 2507 Fairmount Blvd., a variance to Code Sect.1121.09 to permit a 1,031 sq. ft. accessory dwelling unit to remain as the principal structure where a 2,000 square foot minimum is required based upon the finding that there are other ways we could do this that would result in other variances being required because the garage would become the principal structure, which is not permitted, so granting of this variance is the lesser of two evils. The granting of the variance will not negatively affect the essential character of the neighborhood or substantially alter the adjoining properties in any detrimental way. The spirit and intent behind the zoning requirement is observed in the granting of this variance because the alternative would require more variances. If this variance is approved conditions should include: 1. Receipt of applicable Building Department Permits; 2. Complete demolition of the current nonconforming 1,663 square foot deteriorated house within 18 months of City Council's approval of this resolution; and 3. Approval of a landscape plan by the Planning Director.

Mr. Hoen seconded the motion which carried 4-0.

Ms. Bromley reminded the applicant that City Council must review the variance.

OLD BUSINESS

Ms. Knittel informed the Board that City Council confirmed the variances granted by the Board for 2643-45 Hampshire Rd to rebuild a two-car garage where 4 enclosed spaces were required and to permit 3.5' rear and side yard setbacks where 5' minimum setbacks are required.

NEW BUSINESS

Ms. Knittel stated that it has been determined that in the past staff was presenting the practical difficulty for the applicant, but the code actually states that the applicant is supposed to present the practical difficulty.

Ms. Rothenberg added that when Council doesn't approve a resolution and the applicant gets really mad, it puts staff in an unfair position where she was just summarizing what the person said. Instead of doing that, we will allow the applicants to speak for themselves, with some guidance.

Ms. Knittel stated that we are also in the process of changing the application to be almost like the Board's worksheet so we are asking the applicant to address as many of the factors as can be applied to their request. The current applicants were given the same directions. The code says that staff can observe things, which is why staff reports whatever can be seen on that parcel as well as what the zoning code states. Then it is up to the applicant to address the factors they believe is pertinent to their request. Hopefully, this will be more helpful to the Board when making motions because you will have the format you need for what they are addressing.

Ms. Rothenberg added that even if they don't read exactly from their report, it's still part of the record so its fine for the Board to highlight what you prefer and just read it when the motion is made.

Ms. Knittel added that we have no cases for December so there will be no meeting and no agenda meeting.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 8:32 p.m.

Respectfully Submitted,

Gail E. Bromley, Chair

Vesta A. Gates, Secretary