CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
JUNE 20, 2018

MEMBERS PRESENT:	Denver Brooker	
	George A. Gilliam	
	Benjamin Hoen	
	Liza Wolf	
	Thomas Zych	Vice Chair
STAFF PRESENT:	Vesta A. Gates	Zoning Administrative Assistant
	Karen Knittel	City Planner
	Elizabeth Rothenberg	Assistant Law Director
	Richard Wong	Planning Director
OTHERS PRESENT:	Dennis Porcelli	Alternate BZA Member

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present.

APPROVAL OF THE MINUTES OF THE APRIL 18, 2018 PUBLIC HEARING

Mr. Zych stated that he had given Ms. Gates a correction to the minutes prior to the meeting. He asked for a motion.

Mr. Hoen moved to approve the April minutes as amended and enter them into the record.

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 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, following a presentation by City staff, each applicant will present his or her case, stating the practical difficulty on which we are being asked to grant a variance. The Board will then open a public hearing to obtain testimony from any other persons present and 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 and only to the Board. The Board will 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. 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 from the city for an individual not to comply with the portion of the municipal ordinances which is binding upon all others. In making its decision in whether to grant a standard variance, the Board will weigh factors set forth in our Zoning Code in section 1105.07(e)(1). The burden is on the applicant to demonstrate these factors by a preponderance of the evidence and to show that the literal enforcement of the Zoning Code would result in a practical difficulty. Preponderance of the evidence means convincing evidence that is both true and accurate. The applicant must demonstrate circumstances unique to the physical character of his or her property. Personal difficulties, personal hardships, or inconveniences are not relevant to the Boards determination. The Board is the final administrative decision maker for all standard variances. We will also consider several other forms of variances where the procedures are slightly different. We will be talking about an expansion of a non-conforming use. We will explain what that means when we get to it. We are additionally considering the expansion and in making its decision of whether to approve an expansion of a non-conforming use the Board will consider all the criterial set forth in the zoning code in section 1115.07(e)(2). The burden is on the applicant to demonstrate all seven criteria by clear and convincing evidence. This evidence must show that denial of the expansion would result in unnecessary hardship. Clear and convincing evidence means that evidence is substantially more likely than not true. In the case of standard variances the applicant must demonstrate circumstances unique to the physical character of his, her or its property. Tonight the Board is additionally considering a use variance. In making its decision of whether to recommend a use variance the Board will examine all the criterial set forth again in zoning code section 1115.07(e)(2). The burden is on the applicant to demonstrate all seven criteria by clear and convincing evidence. This evidence must, again, show that denial of the expansion would result in unnecessary hardship. Clear and convincing evidence means that evidence is substantially more likely than not true. As is the case with standard variances, the applicant must demonstrate circumstances unique to the physical character of

his, her or its property. Again, personal difficulties, personal hardships, or inconveniences are not relevant to the Boards determination. The Board is not the final decision maker for use variances. The Board's decision will be reviewed by City Council at their next regular meeting.

PUBLIC HEARING

JUNE 20, 2018

CALENDAR NO. 3456:

Dapcel, Inc., 2310-2314 S. Overlook Rd., 'A' Single-Family District, requests a variance to Section 1121.12(a)(10) to permit 2 air conditioning condensers in the front yard (not permitted).

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

Mr. Zych stated that if there were no objections, the staff report dated June 11, 2018 shall be entered into the record. Hearing no objections, it was so entered as part of the record.

Ms. Knittel's staff report was as follows:

Context:

North: single family house, zoned 'A' single family
South: two-family house, zoned 'A' single family
East: across S. Overlook single family houses, zoned 'A' single-family
West: single family house, zoned 'AA' single-family

Facts:

- This is a code conforming single-family parcel that is 50' wide and is 8,650 square feet. Minimum required by code is 50' wide and 7,500 square feet.
- This is a nonconforming two-family house.
- Code Section 1121.12(a)(10) permits air conditioning condensers are permitted in the side and rear yards.
- Side yard to the south is the location of the driveway. There is 11.34' from the side of the house to the side property line

- Side yard to the north is 2.5' wide.
- Access the attached garage for both units is from the rear yard
- The drive access to the rear garages extends 36.36' from the rear of the house into the rear yard
- The proposed location of the air conditioning condensers is set back 48.99' from the public right-of-way.

If approved, conditions should include:

1. Receipt of applicable Building Permits;
2. Submit landscape plan to screen the air conditioning condensers from view of street and neighbors for Planning Director's approval; and
3. Complete construction within 18 months of the effective date of this variance.

The applicant is present and prepared to present a brief overview of their project and statement of practical difficulty.

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

Stewart Unsdorfer, Central Heating & Air Conditioning, 243 Richmond Road in Richmond Heights came forward.

Mr. Zych stated that the Board has received an application dated May 7, 2018. He asked if, to the best of his knowledge, was the information contained therein true and accurate.

Mr. Unsdorfer stated that it was.

Mr. Zych asked the applicant to add anything he would like to staff's presentation.

Mr. Unsdorfer referred to the slides showing the rear and side of the property and stated that it was obvious that there was no other place to install the units. It was suggested to put them on brackets above the garage doors but he didn't like that idea because these things are kind of heavy and he would hate to see one come loose in 20 years. This proposal is really the safest spot and the size is about 3 square feet. He didn't think it would bother anybody and will make sure it is screened. He believed these were good arguments as to why this installation should be in the front. There is no other place to install them

That being the end of the applicant's presentation, Mr. Zych opened the public hearing. There being no one from the public who wished to testify, the public hearing was closed. Mr. Zych asked the Board members for any questions.

Mr. Hoen asked the applicant if he had any drawings showing what the completed project would look like.

Ms. Knittel referred the Board to the slide of the house with the black boxes drawn in the front of the house representing the units.

Mr. Hoen asked what will be used as screening.

Mr. Unsdorfer stated that the property owner will install arborvitae that will grow to 4 feet. The units are only about 30 inches tall.

Mr. Hoen asked if it was dangerous to have plants growing that close to the units.

Mr. Unsdorfer stated that the plants would have to be about 1 foot away. There is a lot of room there. From the wall to front of the stairs is about 8 feet.

Mr. Hoen asked about noise.

Mr. Unsdorfer stated that the units were pretty quiet. He hadn't received any complaints.

Mr. Zych stated that the application has been affirmed and if there is no objection, will be entered into the record. Hearing no objection, it was so entered.

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

Mr. Gilliam moved to grant Dapcel, Inc., 2310-2314 S. Overlook Rd., a variance to Section 1121.12(a)(10) to permit 2 air conditioning condensers in the front yard where it is not permitted. After reviewing the application and other submissions; hearing the evidence under oath the Board finds and concludes that there is just not enough room on either side of the building to put the units on the side and the rear is totally taken up by the pavement of the driveway and the entrance to the garage. If the variance is approved conditions should include;

1. Receipt of applicable Building Permits;
2. Submit landscape plan to screen the air conditioning condensers from view of street and neighbors for Planning Director's approval; and
3. Complete construction within 18 months of the effective date of this variance.

Mr. Brooker seconded the motion.

Mr. Gilliam recalled the Board having granted a variance for an air conditioner unit in the front yard on Washington Boulevard, near the library. He had driven past the house often enough to state that you really can't see it from the street

Mr. Brooker agreed. He stated there was actually precedent on that street. There is another home with an air conditioner in the front yard and he challenged anyone in the room to find it.

There being no further discussion, the motion carried 5-0. The variance was granted.

CALENDAR NO. 3457:

Ruffing Montessori School, 17412 Shelburne Rd., 'AA' Single-Family District, requests variances to Section 1121.12(i)(1) to permit a 7' tall decorative fence in a portion of the front yard parallel to the property line shared with 17420 Shelburne Rd. (4' max. ht. permitted) and to section 1153.03(3) to permit an existing house with a front setback of 24.44' and side setback of 1.23' to remain as a school building (50' min setbacks req'd.).

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

Mr. Zych stated that if there were no objections, the staff report dated June 14, 2018 shall be entered into the record. Hearing no objection, it was so entered as part of the record.

Ms. Knittel's staff report was as follows:

History

- The house at 17412 Shelburne was built in 1927.
- Fairmount Montessori Association purchased the property in September 2017.

Context
The property is zoned 'AA' single-family.

North: is the intersection of Shelburne Road and Fairmount Boulevard
South: are single family houses along Shelburne Rd. in an 'AA' single-family district
East: across Shelburne are single family houses along Shelburne Road in an 'AA' single-family district
West: is the Ruffing Montessori school campus at 3380 Fairmount Blvd. To the southwest adjacent to the rear property line is the Beaumont School campus.

Project
Ruffing Montessori plans to join the parcel and develop an outdoor learning

environment consisting of garden space, outdoor student work areas, an open natural play space and a basketball court/four/square pad and tetherball pole. Current plans are to maintain the existing house and utilize it for school purposes. Planning Commission approved the school's conditional use permit for this expanded use and reviewing the lot joining at their June 13th meeting.

Facts

- Schools are conditionally permitted uses in 'AA' Single-family districts
- Ruffing Montessori School has a Conditional Use Permit from the Cleveland Heights Planning Commission and has requested the Planning Commission to review the addition of this property at their June 13, 2018 meeting.
- 1742 Shelburne is a code conforming parcel as it is 34,932 square feet and code requires 'AA' single-family parcels to be a minimum of 15,000 square feet, also, the parcel is approximately 118 feet at the building line and the minimum required by code is 100 feet.
- This is an unusually shaped parcel as the frontage is 165.95' and curved along Shelburne road and narrows to 52.11' at the rear property line.
- The existing house built in 1952 is located 26.21' to26.29' from the public right of way. This is closer to the street than the adjacent houses, 17420 Shelburne Road which is approximately 119' from the public right of way.
- This side of Shelburne does not have a public sidewalk and the public right of way includes about 50' of what appears to be front yard between the front parcel line and the street edge.
- The 1742 Shelburne house is located 2.34' to 5.53' from the side parcel line shared with 17420 Shelburne Road.
- The school is planning to adaptively re-use this existing building which aligns with our Sustainability Guidelines, Section 1165.06(a).
- The owner-occupant at 17420 Shelburne wrote a letter of support for a 7' tall privacy fence along the shared property line.

If approved, conditions should include:

1. Receipt of a Fence Permit;
2. The setback variances apply only to the existing single family house as shown on the Welsh's Cleveland Survey dated May 2018. Any renovation to the existing building or new construction that encroaches on the front yard and/or the side yard adjacent to 17420 Shelburne would require a return to the Board of Zoning appeals for a new variance.
3. Complete construction within 18 months of the effective date of this variance; and
4. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the fence's height or length in the front yard.

The applicant is present and prepared to speak to their statement of practical difficulty.

Mr. Zych asked the applicant's representative to come to the microphone.

Debra Mitchell, representing Ruffing Montessori School, 3380 Fairmount Boulevard and Matt Hils, DHM Advisors, 6555 Carnegie Avenue, came forward.

Mr. Zych stated that the Board has received an application dated May 8, 2018. He asked for confirmation that to the best of their knowledge the content of the application is true and correct.

Ms. Mitchell stated that it was.

Mr. Zych asked the applicants if there was anything they wished to add to staff's presentation.

Ms. Mitchell stated that the only thing she wished to add was that because the house was built in the early 1900's, it was already within the 50 foot setback. It was obviously built before that code existed. We want to replace the existing fence, the same height and length. It will be a nicer looking fence. The neighbor to the south is supportive of that replacement fence being 7 feet tall even though part if it will be seen from her front yard.

Mr. Zych asked for any questions from the Board.

Ms. Wolf asked if the current proposal is to use the existing building as part of the school.

Ms. Mitchell explained that the final use of the building had not been determined. The building is currently being maintained as a residential property. We will go before the Board and school community to determine the best use, but it will be for a school use, whether it is for training or offices or meeting space.

Ms. Wolf asked about the use of the grounds.

Ms. Mitchell stated that clearing work will begin this summer, the fence will be installed this summer. In the summer of 2019, you will begin to see the open greenspace, the flat amphitheater, and the basketball court. The outdoor workspaces will also be installed next summer.

Ms. Wolf asked if the new height of the fence was for the safety of the children.

Ms. Mitchell explained that it was mostly for privacy, especially for our neighbors. There will be play in the basketball court and mini basketball court and we want the fence to be high enough so they won't be throwing balls over the fence. We are on very good terms with our neighbor to the south. This neighbor really likes the look

of this fencing and the height and we want to keep her happy. She prefers the 7 foot height.

Mr. Zych commented that there is a reason for the larger setback for schools. It is for the safety of the children and for the order of the neighborhood. He asked the applicant if she could address, given the outdoor activities, how that will be managed in the school setting, so the Board will be comfortable that the setback encroachment isn't going to disturb the usual distance setback in residential areas.

Ms. Mitchell stated that the fence will come up to the rear corner of the house which will prohibit children from running through that side. A fence will run from the existing garage to the stone wall. Any time the students are out they will be supervised. In the back there is a little bridge connecting to Beaumont's track which is used for afternoon recess and there is existing landscaping that prevents students from going out into the parking lot area. There is a gate to the north that keeps them from going out into the drive.

Mr. Zych opened the public hearing. There being no one from the public who wished to speak, the public hearing was closed.

Mr. Zych asked for a motion.

Mr. Hoen moved to grant Ruffing Montessori School, 17412 Shelburne Rd., ' variances to Section 1121.12(i)(1) to permit a 7' tall decorative fence in a portion of the front yard parallel to the property line shared with 17420 Shelburne Rd. where a 4 foot maximum height is permitted and to section 1153.03(3) to permit an existing house with a front setback of 26'.21"' and side setback of 2.34' to remain as a school building where 50 feet minimum setbacks are required. After reviewing the application and other submissions, hearing the evidence under oath, I find and conclude that this Board has granted a fence variance at a similarly situated school facing the same challenges as Ruffing Montessori where it is in a residential neighborhood, close to a public sidewalk and a fence is a desired addition to the school not only for aesthetics but for the safety of the children. Obviously when there is such close proximity to the public you want to make sure the safety of the children is paramount. I also find that there are special conditions requiring the variance and establishing the hardship the property is contiguous to the existing school location. The school is adding this property. The property is currently non-conforming and has a historic home located there which the school is going to be utilizing in its present form, so preserve the historic nature of the neighborhood and the home, the variance would be necessary because otherwise they couldn't meet the 50 foot setback requirement in the front. The essential character of the neighborhood is being preserved and is not being adversely affected. It will not affect delivery of government services. The building of the fence for the purpose of the safety of the children in the school cannot be resolved through a method other than this variance as the existing structure would prohibit

building a fence with a 50 foot setback. If granted the conditions should include:

1. Receipt of a Fence Permit;
2. The setback variances apply only to the existing single family house as shown on the Welsh's Cleveland Survey dated May 2018. Any renovation to the existing building or new construction that encroaches on the front yard and/or the side yard adjacent to 17420 Shelburne would require a return to the Board of Zoning appeals for a new variance.
3. Complete construction within 18 months of the effective date of this variance; and
4. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the fence's height or length in the front yard.

Mr. Gilliam seconded the motion.

Mr. Zych pointed out that a 50 foot setback would require partial demolition of the building. He stated that I'm not an architect or engineer and can't decide whether that would be physically feasible but would certainly not be desirable. A code-conforming solution would do violence to the code for adaptive reuse and to the general policies of the city. For that reason I would be supportive of this proposal. There being no further discussion, the motion carried 5-0. The variance was granted.

CALENDAR NO. 3458

Lachelle Crawl, Mayfield Rd. PPN 681-20-022, 'MF1' Multi-Family District, requests a use variance to Sections 1123.02 and 1123.03 to permit a single family house to be constructed (not permitted).

Mr. Zych asked the applicant and anyone else wishing to testify in the matter to stand and be sworn in.

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

Mr. Zych asked the applicant or the applicant's representative to come to the microphone.

Lachelle Crawl, 15517 Brewster Rd., East Cleveland, OH and Eli Mahler, 3947 West Ash Lane, Orange Village, OH came forward. Mr. Mahler stated that he was the architect on the project.

Ms. Knittel asked the chair if he would like to hear the staff report next.

Mr. Zych stated that he would.

Ms. Knittel's staff report was as follows:

Context

- The parcel is zoned 'MF-1' Multiple-family
- North-single family houses on Rumson Road, zoned 'A' Single-family
- East- Help Inc., a vacant lot, a two-family house, 2 vacant lots, a single family house and the Wieder-Silver Manor Apartments at the corner of Mayfield Road and Forest Hills Boulevard. Zoned 'MF-1' Multiple-family.
- West- side yard and a single-family house, a vacant lot, single family house, and the Forest Hill Inc.'s lot at the corner of Mayfield Road and Burlington Road zoned 'MF-1' Multiple-family.
- South- across Mayfield Road is Saints Constantine & Helen Greek Orthodox Cathedral. Zoned 'MF-1' Multiple-family.

Project

- The applicants propose to construct a single family house on the parcel.

History

- The zoning for this area of Mayfield Road has changed over the years:
  1921 – zoned 'U5'commercial
  1954 – zoned 'A' single-family
  1970 - zoned 'A' single-family
  1976 - zoned 'MF1' multiple-family

- Prior to the 1993 Zoning Code amendment, single family uses were permitted in multi-family districts.

For a use variance, Code Section 1115.07(e)(2) states that in making its determination, the BZA must find that the applicant has demonstrated that the applicant will suffer unnecessary hardship if strict compliance with the terms of the Code is required and that such hardship has been demonstrated by clear and convincing evidence to **all** seven criteria.

The Future Land Use Map from the Master Plan shows this parcel as being used for attached or multi-family, which would include a range of high-density options including townhomes and apartment buildings.

The corner parcel at Forest Hills Boulevard and Mayfield Road is the Wieder-Silver Manor Apartments with a Forest Hills Boulevard address (1452 Forest Hills Blvd). This property has 152 feet of frontage and is 31,681 square feet.

There are twelve parcels on the blockface along the north side of Mayfield Road between Burlington Road and Forest Hills Boulevard. Ten of these are nonconforming parcels as all are 70 feet wide and 14,700 square feet in area including the applicant's parcel. (These are shaded blue.) Only one of these 6 vacant parcels is owned by the same owner as an adjacent parcel. Permanent Parcel Number 681-20-021 is owned by the same owner as the parcel 681-20-020 that has a single family house.

Of the ten nonconforming parcels 3 have single family houses and 1 has a two-family house.

In 1995, a Use Variance was granted to construct the single family home in a multi-family district at 3315 Mayfield Road (PPM 681-20-020) (Calendar Number 2561)

Two parcels are conforming in terms of area:
One is permanent parcel number 681-20-001 which is owned by the Forest Hill Homeowners, Inc. and is vacant. It has 109' of frontage along Mayfield Road and is 21,800 square feet. This parcel is located at the corner of Mayfield and Burlington. The second parcel is Permanent Parcel Number 681-20-023 that is owned by Help, Inc. and has apartments.

As PPN 681-20-022 is a nonconforming parcel, to build a multi-family dwelling variances would be required which include:

- A variance to the minimum development area; this parcel is 14,700 and the minimum development area is 20,000; and
- A variance to the to the building line width as this parcel is 70 feet wide and the minimum building line width required is 100 feet.

Code Section 1123.01 (a) provides the purpose of 'MF1' Multiple-Use Districts to be:
The MF-1 District is established to provide for townhouses and garden-type apartments where buildings are low (two (2) stories) and there is ample open space and parking on surface lots usually in the rear of the buildings. These are placed in the MF-1 District which has a minimum lot area per dwelling unit resulting in a density of approximately twelve (12) dwelling units an acre.

Code Section 1123.03 provides that the principal uses permitted in a MF1 district are:
Townhomes, MF dwellings, cluster development, and public parking (surface lot). Permanent Parcel Number 681-20-022 is a nonconforming lot as it is 70 feet wide and 14,700 square feet in area. A conforming MF1 Multiple-family parcel is a minimum of 100 feet wide at the building line and has a minimum of 20,000 square feet in area.

This parcel is located on the north side of Mayfield Road between Forest Hills Boulevard and Burlington Road.

To the north and the rear of the property are single family properties with Rumson Rd. addresses.

If approved, conditions should include:
1. Approval of any required site plan variances by the Board of Zoning Appeals;
2. Approval of the Architectural Board of Review;
3. Receipt of a Building Permit; and
4. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel concluded her report by stating that the applicant was present and prepared to briefly review their project and statement of hardship.

Mr. Zych stated that we have staff's report dated June 12, 2018, without objection to be entered into the record. Hearing no objection, it was so entered. He further commented that to call that a multi-family district seems to be a bit of fiction but it is what it is. He asked the applicant and her representative to come forward again. He stated that we have an application dated May 23, 2018. He asked Ms. Crawl if, to the best of her knowledge, the contents of that application true and correct.

Ms. Crawl stated that it was.

Mr. Zych stated that if there is no objection the application will be entered into the record. Hearing no objection, it was so entered. He asked the applicant if she wished to add or elaborate on anything the staff has just presented.

Ms. Crawl thanked staff for that summary. She stated that she could only reiterate the information given. The lot doesn't have the minimum requirement for a multi-family building. We have already started the plan for a single family house. We saw the home plans that were developed by my architect, Eli Mahler. She asked Mr. Mahler if he wanted to add anything.

Mr. Mahler stated that he would be more involved in the second part of this Application but, as was stated clearly, you could not build a multi-family structure on this parcel because of all these conditions. It is more geared toward a single-family structure.

Mr. Zych asked staff to show the slide with the factors to be addressed. He asked the applicant or the representative if they could address those factors to be helpful to the Board in making its determination. In this case the applicant has to establish all of the conditions by clear and convincing evidence, so if you can add specifically to any of those it will be helpful to us.

Mr. Mahler stated that all of these points have been addressed. Whether the granting of the variance will not adversely affect the rights of adjacent property owners or residents. The granting of the variance will not adversely affect the public health, safety or general welfare. These are consistent with the single-family structure. Number one is really what we are asking for and most applicable. The variance sought is the minimum which will afford relief to the applicant.

Ms. Rothenberg stated that we haven't heard anything about factor 'A' which is very important. We haven't heard any testimony about economic, viable use.

Mr. Mahler stated that we would have to come back to this Board if we were to put a multi-family structure on this parcel because of the conditions. The 70 foot width at the building line versus the 100 foot requirement. Your square footage is way off. The property owner would like to build a single-family home that would be in character with the neighborhood. Again, a lot of this discussion will be more related to the second half of this.

Mr. Zych stated that this is a public hearing and there were people who were sworn in. Is there anyone who would like to help us out? There will be two different calendar items. This one specifically concerns permitting a single-family house where the zoning code would not otherwise permit it, so would anyone like to speak to that issue?

Joan Fox. Rumson Road, Forest Hill, stated that she was here as the President of the Forest Hill Homeowners Association. As you know Forest Hill is a deed restricted community and this is one of last available lots in Forrest Hill. It was sold about a year ago. As president and officer of the association, it is my fiduciary duty to protect the value of the homes in Forest Hill and the wellbeing of the residents. I was interested to see point E up there (Code section 1115.07(e)(2) *The granting of the variance will not adversely affect the public health, safety or general welfare*) and I wondered what caused you to write that because the first thing I heard when the residents on Rumson Road received notice that this was going up they immediately let me know of their concerns. Because their neighbors to the east, when there had been construction going on there, they had serious problems with flooding of their landscaping and basement. This is because Rumson is downhill from Mayfield and it is already wetland. So they are very concerned that whatever is built on this lot has adequate drainage and storm water drainage, I'm not an architect so I don't know the right words. The residents that live immediately behind at 3326 Rumson Rd., Mr. Holms who is serving in Afghanistan, would be here. His wife works nights so she can be with the kid during the day, so they can't be here but the residents from next door are here and I believe they want to speak to that issue. There is a second issue that I would like to address as president of the homeowners association, when John D. Rockefeller deeded approximately 1000 lots to the community, he wrote the restrictive covenants and if I could just read

some of the key ones here. "No dwelling or any additions or alterations shall be erected, reconstructed, placed or suffered to remain unless or until the architect thereof, the size, location, type, style of architecture, use, material, construction, color scheme, the grading plan of the lot, including the grade elevations of said dwelling, the plot plan showing the proposed location of said dwelling upon said premises, the plan, specifications and other details of said dwelling, shall have been approved in writing by the grantor, which is now the Homeowners Association, and a true copy of said plan, specification and details have been lodged permanently with the Homeowners Association. No dwelling except such as conforms to said plan, specifications and details shall be erected, reconstructed, placed or suffered to remain upon said premises. No dwelling shall be erected, reconstructed, placed or suffered to remain nearer the front or street line or lines than the building setback line or line shown upon the plat of said subdivision nor nearer to any sideline or rear line than the building than shall be determined by the Homeowners Association in writing at the time of the approval of the plan and specifications of said dwelling. The restriction as to the distance at which said dwelling house shall be placed from the front, side, and rear lines of said premises shall apply to and include porches, verandas, ect., ect."

In connection with the provisions contained in the two sections I've just read you, "If in the opinion of the homeowners association by reason of the shape, dimensions or topography of the premises hereby conveyed or by reason of the type of dwelling to be erected thereof or for any other reason satisfactory to him the enforcement of the provisions of said sections would work a hardship grantor may modify such provisions so to permit variations in cost, size, type, location or otherwise that will not do material damage to any abutting or adjacent property. So again that has come into consideration based upon the judgement of the Forest Hill Association.

The Association reserves the sole and exclusive right to establish grades and slopes on the premises hereby conveyed and to fix a grade at which any building shall be hereafter erected or placed thereon so that the same may conform to a general plan."

So given our fiduciary responsibilities to the residents, the Executive Committee felt compelled to come and remind you that this is what these covenants were written for what is now the Forest Hill Homeowners Association and still apply to the lots and this lot is still bound by these covenants. We are not saying we don't want this house built and the architect hasn't configured the appropriate drainage, but we are very concerned that the plans weren't brought to us first. Everyone who lives in Forest Hill, when they buy a property it's in the deed that they sign, an agreement so they know they are bound by the covenants. The fact that this was bypassed is of concern. So we do want to see these plans that shows us and satisfies us and allows us to approve and file away in our records before going any further. I guess we want our residents to know that their properties will not be affected, that their

property values will not be decreased by any issues that could be addressed by changing any architectural drainage grade issues. So that is what I would like to say and I know that the residents have more passionate comments to make.

Ms. Rothenberg stated it was her understanding that Ms. Fox was speaking on behalf of the Forest Hill Homeowners Association.

Ms. Fox stated that she was speaking as its President.

Ms. Rothenberg asked for an address associated with the Homeowners Association.

Ms. Fox stated that it is called the Blue Cottage on Lee Boulevard. I have the address in my cell phone.

Ms. Rothenberg stated that was alright. We'll get it later.

Mr. Zych asked if there were anyone else who wished to provide information germane to this calendar.

Kathleen Kaul, 3318 Rumson Road, stated that her property was not directly behind this property but directly to the east. We are much lower than this subject property. This plan already shows a minimal slope and her property is 6 to 8 feet lower that the subject property. When the house next door was constructed, our neighbor behind us lost all of their landscaping and they are still dealing with water constantly flooding their basement. So the neighbors up front suffered the same issues. Once construction of the house was done, the woods were removed, there was no grading that would keep the water from coming straight down. Our concern is to request that the Board require a change in grading of the entire property to facilitate proper drainage. We have no problem with construction of the house.

Donna Kolb, 3162 Rumson Road, stated that she has lived on Rumson about 28 years. She is currently located at the other end of Rumson, closer to Newbury Road but she wanted to speak about her personal experience with the drainage issue. She had no issue with the property owner building a house. This issue is more regarding some of the issues that were talked about earlier as it relates to the regulations and standards that were there prior to a certain year of construction. She had purchased 3290 Rumson Road and during that time She witnesses her neighbor's yard fill up like a dam, with the water rushing, flowing from Mayfield Road into the yard. After that she sold her property because the market dropped and one home wasn't selling. The one that sold was a newer home so she moved back to the other one. Shortly after moving back to 3162 Rumson, her basement was flooded with water. She had approached the city regarding the drainage from Mayfield Road into her yard. She was told that there was nothing she could do to stop the water from coming into my yard from the other homes, either from Mayfield Road homes or other homes on Rumson Road. If she did, she would be

causing a problem for her neighbors by allowing that water to stay in their yard when but it was OK to allow the water to remain in her yard so she did not cause an issue for them. What she had to do was install very expensive waterproofing inside and out. She had French drains installed all over her yard, which is half an acre corner. She added downspouts and had all her gutters snaked and cameras run through them. The reason of all this additional water was because of construction on Mayfield Road. So new construction will just add to that problem unless there is some protection or something put into place that will not allow the water to come into the neighboring yard. Those homes are well maintained and beautifully landscaped. Her landscaping at 3290 Rumson was architecturally designed but she still had to add additional downspouts to address the additional water. She is here to let the Board know that this is a real issue. She is located at an angle behind UHaul. When her basement was flooded she went to the UHaul and saw the UHaul property was a sea of water which was running into the yards on Rumson and Newbury. According to the city there was nothing that could be done because of the time that those buildings were constructed. Something needs to be put in place, not just at this property but the water comes from other properties. Water seeks its weakest level. This issue should be taken into consideration.

There being no one else from the public who wished to testify, the public hearing was closed.

Mr. Zych asked the applicant and her representative to come back to the microphone to address any issues that were raised in the public hearing.

Ms. Crawl thanked the residents and Ms. Fox for their comments. As a resident in Cleveland Heights she valued the homes there and her goal is to create a safe and functional dwelling. In the next part of this request Eli can show how the design will lift the property up in order to help with that drainage issue.

Mr. Mahler stated that the city engineer will review the plans and one of the main considerations will be the drainage. This is a 1-story house with no basement. All the trees in back of the property will remain. Only those trees that are within the footprint of the house will be eliminated. He felt bad for the residents with the drainage problems but he did not believe this 1-story home being constructed will add to that problem considering that the engineering will be reviewed and all of that will be addressed.

Mr. Zych stated that in the process between now and the construction of a home there are other entities within Cleveland Heights that will be passing on this. What in the process will address the issue of drainage, whether in terms of the permitting or the like that would address the concerns raised by the neighbors.

Mr. Wong stated that was a good question. He had been looking through the code,

but the only reference he could find addressed the requirement for a one acre property that obligates an owner to keep water to themselves but in general the principal we operate under is that the way our city is sloped, you are not supposed to increase the flow of water from your property to a neighbor's property but you can't be expected to change the slope of the earth toward Lake Erie. You would really be fighting nature essentially to be asked to stop gravity in essence, to stop water from flowing. But our Building officials will review this to make sure it complies with all the residential codes for safety and health. He did not know of a requirement to stop the water at the border, unnaturally.

Mr. Zych stated that he recalled other properties where the city has required storm water collection and required greening in such a way that we are not increasing the flow of the water off the property by pavement or otherwise. For example, we have the regulations regarding rear yard coverage or total property coverage for the purpose of making sure there is greenspace that absorbs water as best it can with gravity and hydraulics taken into consideration. He noted that it is always useful for us to remind ourselves, and it helps the public to understand, of who we are and who we are not. We are the Board of Zoning Appeals, a body of limited jurisdiction. We exercise only the powers given to us by City Council. We are not the Planning Commission and cannot supplant them. We are not the Architectural Board of Review, we do not make comments on aesthetics. We are not the Planning Commission or other body that can prevent someone from building a structure. It is not in our power to require properties to remain vacant unless the code so states. That is outside of our purview. We are not a Court of Common Pleas nor are we a municipal court. The restrictive covenants to the extent they are enforceable are private issues among the owners of the property and have ways to enforce those so that we don't have in our procedures given to us by the code the ability to say there are now new legal conditions precedent to our proceedings, including deed restrictions. We remember that there were many restrictions in the deeds that Mr. Rockefeller left for the properties and I am informed that one of those restrictions would have kept Ms. Crawl from buying the property. I'm not questioning anyone's motive at this point, I'm just saying there's always a history. The restrictions are enforceable and one has the right to enforce them but we can't do that for anyone nor can we stop someone. That is by way of explanation. With all of that said, I guess we are ready for a motion.

Mr. Hoen stated that he wanted to point out to everyone that should this use variance pass and we move on to the standard variance which is related in the next calendar item, there is a condition attached to that variance which is approval of a storm water plan. So it is built into this overall application.

Ms. Wolf wished to clarify something with staff before the motion. The lot requirement for a multi-family is that the lot be 100 feet wide and the area must be 20,000 square feet. Is that correct?

Ms. Knittel stated that was correct.

Ms. Wolf stated therefor the only option for the applicant to build on this parcel is a single family home.

Ms. Knittel stated that the zoning code for the multi-family district requires a minimum of 100 feet at the building line and an area of 20,000 square feet so even a code-conforming multi-family use would have required a variance for the building width and the area because it is a non-conforming parcel.

Ms. Wolf asked the applicant if she had considered building a multi-family building on this parcel.

Ms. Crawl stated that she had not.

Ms. Wolf asked if she had been aware of the zoning designation when she purchased the property.

Ms. Crawl stated that she was aware of the zoning but also aware there were other single-family homes on the block.

Mr. Hoen asked the applicant how long this property had been vacant.

Ms. Crawl stated that she purchased the property one year ago but before that time she had no idea.

Ms. Knittel stated that to the best of staff's knowledge, it has never been developed.

Mr. Brooker commented that something that has helped the Board in this case is the nature of the way those parcels are zoned in this multi-family district is a little aspirational from a zoning standpoint. Those lots would really work best if someone were to have acquired multiple lots, consolidated them, and then developed something. I've worked for many developers as an architect and the nature of that property, even if you were to develop it as a multi-family parcel it would only allow you, at zoning allowed density, 3 units. There are very few developers that will build 3 units on a parcel with all the complexities involved. I think the thing supporting the position here is that a single-family house takes up much less of the land than 3 units would which will minimize, in your next phase of development, your storm water management problems. The zoning code was trying to create a dense block along here and minus ownership of multiple parcels, it will never be realized.

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

Ms. Wolf moved to grant a use variance to Lachelle Crawl, Mayfield Rd. PPN 681-20-022 Sections 1123.02 and 1123.03 to permit a single family house use where such use is not permitted. After reviewing the application and other submissions; hearing the evidence under oath the Board finds and concludes that the property cannot be put to any economically viable use as we just discussed. The lot size in its current size is not sufficient to properly develop a multi-family residence. Being that the lot is only 70 feet wide and 14,000 square feet in area it does not meet those requirements. The hardship condition was not created by actions of the applicant since the lot was purchased with its current boundaries. The granting of the variance will not adversely affect the rights of adjacent property owners as we are discussing right now only the usage of it to build a single family home where there are other single family homes on this street. That's what we are looking at right now, not whether to building a multi-family structure, whether it will affect drainage and other issues regarding the neighbors but we are looking at the fact of can you build a single family home on this property. So I do not believe that portion of it will affect other property owners being that there are several other single family homes built on that block. It will not adversely affect the public health safety and the general welfare being that there are other single family homes built there. It is consistent with the spirit and intent of the zoning code because the lot size is not large enough to build a multi-family home so a single-family home seems to be the only option here. The variance sought is the minimum because we would not be able to build a multi-family structure. If granted the use variance should have the following conditions:

1. Approval of any required site plan variances by the Board of Zoning Appeals;
2. Approval of the Architectural Board of Appeals;
3. Receipt of a Building Permit; and
4. Complete construction within 24 months of the effective date of this variance.

Mr. Gilliam seconded the motion.

Ms. Rothenberg stated that we didn't hear any discussion about factor 'B' and as you know this is going to City Council so it would be helpful before you vote if someone could speak about factor 'B' (*The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district).*

Mr. Zych stated that he would be happy to. We have, as I noted before, a fictional MF1 district. So what is unique to the property is that you have something located in what has been designated by the zoning code as an MF1 district which consists of parcels that can't give us a code-conforming MF1 structure. What's unique is unlike other MF1 areas in the city of Cleveland Heights where it is feasible and

actually code-conforming to build a multi-family structure, it may not be unique within this block but this block presents a unique situation for the issue.

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

CALENDAR NO. 3459:

Lachelle Crawl, Mayfield Rd. PPN 681-20-022, 'MF1' Multi-Family District, requests variance to Section 1123.07 to permit side yards to be 8' (15' min req'd.); to permit width at building line to be 70' (100' min. req'd) and to permit development area of 14,070 s.f. (20,000 s.f. min. req'd).

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

Mr. Zych stated that if there were no objections, the staff report dated June 13, 2018. shall be entered into the record. Hearing no objections, it was so entered as part of the record.

Ms. Knittel explained that as we just finished discussing the prior case and we are on the same parcel, I'm not going to go back to the same context. However, should we start the discussion and you need to ask a question to review something we've already heard, please feel free to do so. One point I do want to reiterate is that because this is a non-conforming parcel in a multi-family district, any structure that would be built on it would require the variance regarding the building line width of 70 feet where 100 feet is required and to permit development of the 14,070 square feet parcel where 20,000 minimum square feet is required.

Ms. Knittel's staff report was as follows:

Context

- The parcel is zoned 'MF-1' Multiple-family
- North-single family houses on Rumson Road, zoned 'A' Single-family
- East- Help Inc., a vacant lot, a two-family house, 2 vacant lots, a single family house and the Wieder-Silver Manor Apartments at the corner of Mayfield Road and Forest Hills Boulevard. Zoned 'MF-1' Multiple-family.
- West- side yard and a single-family house, a vacant lot, single family house, and the Forest Hill Inc.'s lot at the corner of Mayfield Road and Burlington Road. Zoned 'MF-1' Multiple-family.
- South- across Mayfield Road is Saints Constantine & Helen Geek Orthodox Cathedral. Zoned 'MF-1' Multiple-family.

History

The zoning for this area of Mayfield Road has changed over the years:

1921 – zoned 'U5'commercial

1954 – zoned 'A' single-family
1970 - zoned 'A' single-family
1976 - zoned 'MF1' multiple-family

- Prior to the 1993 Zoning Code amendment, single family uses were permitted in multi-family districts.

Project:
The applicant would like to build a one-story single-family house setback 50 feet from the Mayfield Road right-of-way with 8 foot side yards and 96.67 foot rear yard.
Facts:

- Permanent Parcel Number 681-20-022 is a nonconforming lot as it is 70 feet wide and 14,700 square feet in area. A conforming MF1 Multiple-family parcel is a minimum of 100 feet wide at the building line and has a minimum of 20,000 square feet in area.

- This parcel is located on the north side of Mayfield Road between Forest Hills Boulevard and Burlington Road.

- The wooded nature of this section of Mayfield Road between Burlington Road and Forest Hill Boulevard contributes to the character of this area of Cleveland Heights.

- To the north and the rear of the property are single family properties with Rumson Rd. addresses.

- The parcel is currently a wooded lot.

- The parcel slopes to the north-west towards the rear yard of 3318 Rumson Road.

- As PPN 681-20-022 is a nonconforming parcel, to build a multi-family dwelling variances would be required which include:
    - to the minimum development area; this parcel is 14,700 and the minimum development area is 20,000.
    - to the building line width as this parcel is 70 feet wide and the minimum building line width required is 100 feet.

- Section 1123.07 regulates the minimum yard requirements for principal uses:
    (a) Front yard - 30' minimum set back required
    (b) Side yard abutting MF district - 15' minimum setback required
        (townhouse dwelling that abuts another townhouse dwelling in the same development are permitted a 0' side yard)
    (c) Rear yard abutting an A District – 30'

If approved, conditions should include:

1. Use variance approval by City Council;
2. Approval of the Architectural Board of Review;
3. Receipt of a Building Permit;
4. Approval of a landscape plan by the Planning Director;
5. Approval of a storm water plan to manage storm water on-site as much is feasible and to assure that no additional storm water flows from the site during and after construction; and
6. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel showed a topographic map which showed how the land was sloped and how the water does flow to the north and west of the property.

Mr. Wong asked Ms. Knittel to explain how far apart the drops were on the map.

Ms. Knittel stated that the drops were 2 feet apart.

Mr. Zych stated the width of 100 feet is required and the lot is 70 feet wide, so to conform with that one would have to encroach on neighboring property which is legally impossible. If we do 15 feet on each side, it would leave a width of 40 feet, correct?

Ms. Knittel stated that was correct.

Mr. Zych observed that 20,000 square feet would chew up more of the parcel.

Ms. Knittel stated that 20,000 square feet is larger than this parcel which is only 14,700 square feet.

Mr. Zych stated that we have another legal and physical impossibility to comply with that requirement.

Ms. Knittel stated that was correct.

Mr. Zych noted that the Board has received an application dated May 23, 2018. He asked the applicant if to the best of her knowledge the content of this application is true and correct.

Ms. Crawl stated that it was.

Mr. Zych stated that hearing no objection, it was entered into the record.

Mr. Mahler stated that there is a distance from the proposed house to the adjacent house building line is 53 feet. The property on the other side is a vacant wooded lot. We are not cramming this house on the lot. If this were in another district we

would certainly meet the requirements. Additional circumstances are the applicant's elderly mother will be moving into this house which requires a single floor plan. The frontage of this house is 64 feet with an 8 foot setback on both sides which makes a more attractive house rather than trying to squeeze something between a width of 40 feet. Also the architecture fits more in line with what is already in this neighborhood.

That being the end of the applicant's presentation, Mr. Zych opened the public hearing.

Donna Kolb, 3162 Rumson Road, stated that she wanted to reiterate that in terms of the construction, and even with the spacing, as I said before, water seeks out its weakest point. I would like to say that the structures that were there prior to this construction did cause the water to flow over to the yards on Rumson. My point is cause and effect. We have already experienced the resulting effect from the newer developments.

Kathleen Kaull, 3318 Rumson Road, stated that with the rainfall we have received during this last week her back yard still squishes when you walk on it. She had recently been informed that her house and 3 others have been built over an underground stream. Of these 4 houses, all have tried planting landscaping and trees but they have just toppled over and died from drowning. We have put a lot of money into our back yard, planting evergreens to block the noise and create a better habitat and we would hate to have the loss of the landscape. We have also had to install a sump pump for interior and exterior water issues due to this underground stream. I would like that to be taken into consideration to encourage and ensure appropriate drainage. Obviously, even with the front a side concrete, if it's going to be leveled off, it's going to run off somewhere. So I really would appreciate measures to ensure no further damage to those of us that are downhill. Thank you.

There being no one else who wished to testify, the public hearing was closed.

Mr. Zych asked the applicant and her representative to come back to the microphone. There being nothing further they wished to add, Mr. Zych asked for a motion.

Mr. Brooker moved to grant Lachelle Crawl, Mayfield Rd. PPN 681-20-022, variances to Section 1123.07 to permit side yards to be 8' where 15' minimum is required; to permit width at building line to be 70' where 100' minimum is required and to permit development area of 14,070 s.f. where 20,000 s.f. minimum is required after reviewing the application and other submissions hearing the evidence under oath the Board finds and concludes special conditions and circumstances exist the nature of this property is that it is not a code-conforming width and the setbacks were designed for a 100' wide property. I think that consideration has to

be given that you have a narrower property and accompanying a narrower property there will be narrower setbacks. The setbacks were actually designed for a multi-family building and we are not construction a multi-family building here. Setbacks are often tied to the type of structure and use of structure. In the case of larger setback are for larger higher density buildings being further away from other buildings. In this case that is not happening. I think the proposed setbacks are appropriate balance between the size of the parcel and the use of the property. Certainly the variance doesn't affect the delivery of government services or the character of the neighborhood. Finally, a general comment not applicable to this, the approach to the site plan actually minimizes pavement on the site and potential increased water concerns. There are a number of ways you could develop that site. The one that they approached utilizes the least amount of parcel possible.

Mr. Zych asked the motioner if he would include the conditions.

Ms. Rothenberg stated that in listening to Mr. Brooker's reasoning she wondered if the Board would consider adding a condition to state that the use must be for a single family home.

Mr. Brooker agreed that his motion was tied into the proposed use. The 8 foot setback being proposed is for a single-family home. If you were to put a multi-family building on this property, the consideration would be different.

Mr. Zych commented that he would be amenable to adding a condition to state that it apply only to a single-family use.

Mr. Brooker agreed and added the following conditions:

1. Approval of Use Variance by City Council;
2. Approval of the Architectural Board of Review;
3. Receipt of a Building Permit;
4. Approval of a landscape plan by the Planning Director;
5. Approval of a storm water plan to manage storm water on-site as much is feasible and to assure that no additional storm water flows from the site during and after construction;
6. The side yard setback variances are only applicable to a single family structure; and
7. Complete construction within 24 months of the effective date of this variance.
8. This variance is specific to a single-family use on this property.

Mr. Gilliam seconded the motion which carried 5-0. The variance was granted.

CALENDAR NO. 3460:

Masterworks Automotive, 1789 S. Taylor Rd., 'C2' Local Retail District, requests expansion of nonconforming use to occupy a greater land by expanding their building as shown on the site plan dated May 15, 2018 per Nonconforming Uses Code Section 1173.01.

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

Mr. Zych stated that if there were no objections, the staff report dated June 14, 2018 shall be entered into the record. Hearing no objections, it was so entered as part of the record.

Ms. Knittel's staff report was as follows:

Context

Located in the Cain Park Village commercial district along S. Taylor Road.

North - a synagogue, zoned 'C-2' local retail

South - across Bendemeer Rd along S. Taylor Road is a synagogue and commercial properties, zoned 'C-2' local retail

East - along Bendemeer Rd. are single family houses; the first house adjacent to Masterworks is zoned 'C-2' retail and then the zoning then becomes 'A' single-family.

West - across S. Taylor Rd. are two-family homes, zoned 'C-2' local retail

History

Cal. No. 2229, April 1991: Oh's Auto Repair granted conditional use permit to operate automobile repair business on site of former gas station/auto repair; granted variance for construction of 6' tall, 8 square feet two-faced externally lit ground sign; denied variance for building-mounted sign.

Proj. No. 09-15, October 2009: MasterWorks Automotive granted transfer of conditional use permit from Oh's Auto Service per Code sections 1115, 1131, 1151, 1153 and 1161, with conditions that included landscaping, parking striping, dumpster screening, new signage and operation from 8 a.m. – 6 p.m. Monday through Friday.

Proj. No. 16-2004, August 2016: MasterWorks Automotive granted lot joining; granted approval of new conditional use to renovate and expand existing 2-bay auto repair to 8-bay auto repair and received a modification of parking requirements approving 26 parking spaces (32 spaces req'd.).

March 2017 – The Zoning Code was amended removing automotive uses as conditionally permitted uses in the C2 local retail districts.

Project
MasterWorks, a nine-year-old Cleveland Heights business, has conducted a three-year-long planning and design process for expansion. The process is founded on a critical factor, that MasterWorks Automotive must remain operational throughout the construction process. The expansion from 2 bays to 8 bays is needed to realize economic growth. The applicant has determined that the current building is not viable to continue serving current and future customers. The Planning Commission approved a lot joining and a revised conditional use permit in August 2016 for this expansion. The Architectural Board of Review approved the project in September 2017 and on June 1, 2018 a building permit was issued (in error as zoning approval had not occurred).

NONCONFORMING USE EXPANSION OF USE TO OCCUPY A GREATER AREA OF LAND REQUEST

Relevant Code Sections

- Code section 1173.07(a), Continuation of Nonconforming Uses, *Alterations* states:
  "No existing building devoted to a use not permitted by this Code in the district in which it is located shall be extended, reconstructed or structurally altered to occupy a greater area of land than was occupied, nor by the addition of accessory uses which would not be permitted elsewhere in the same district, except upon approval by the Board of Zoning Appeals."
- Code section 1109.06(e), holds that Powers and Duties of the Board includes *"To allow or permit the expansion or extension of a nonconforming use where the enforcement of the regulations pertaining to nonconforming uses will result in unnecessary hardship."*
- Code section 1115.07(e)(2) sets forth seven (7) criteria each of which the applicant must demonstrate by clear and convincing evidence to establish an unnecessary hardship.
- BZA's findings and conclusions of law concerning a proposed expansion of a nonconforming use pursuant to Code section 1173.07 are not subject to Council review.

Facts

- MasterWorks is an existing nonconforming auto repair use in a C2 Local Retail District.
- When the applicant began the zoning approval process in 2016, his automotive service use was conditionally permitted.
- Auto uses have been on this site since the 1930s.
- This property originally sold gasoline kept in metal underground storage tanks. Reuse of this property for a code conforming, non-automotive use would require a much more stringent standard of soil cleanliness. Unknown expenses and unpredictable approval timeframe are typical when developing a non-automotive use at a property that had been a gasoline station with

metal underground storage tanks.

- MasterWorks has operated at this location for over nine years.
- The parcel is code conforming. It is approximately 28,336 square feet. Code requires a C2 commercial property to have a minimum development area of 10,000 square feet.
- Code section 1153.05 (u) regulates Supplemental Standards for Conditional Uses:

  Automobile Service Station - Major Repair, Automobile Service Station - Minor Repair, Car Wash. In a C-3 District, an automobile service station or a car wash may be conditionally permitted provided that:

  (1) There shall be a minimum building floor area of 1,200 square feet;

  (2) All activities including cleaning, washing and drying operations shall take place inside the building;

  (3) No merchandise except oil may be stored or displayed outdoors;

  (4) No junk, inoperative or unlicensed vehicle will be permitted to remain outside on the property for more than forty-eight (48) hours;

  (5) All outdoor wiring, including electrical and telephone wiring, shall be installed underground;

  (6) Locations where such use abuts a residential district or dwelling shall also provide a buffer zone along the entire length of the common boundary between the commercial use and the residential use which shall be maintained not less than ten (10) feet in depth. This buffer zone shall be landscaped with grass, shrubbery and trees, as approved by the Planning Commission and shall contain a solid brick wall three (3) feet in height from the residential building line of the use to the street and six (6) feet in height from such residential building line to the rear of the residential use or residential district property line;

  (7) An automobile service station or car wash may be combined with a gasoline station provided the minimum lot area shall be no less than 30,000 and the regulations for each use are maintained.

- The Planning Commission approved a lot joining, reduction in parking from the required 32 parking spaces to 26 parking spaces and a revised conditional use permit in August 2016 for this expansion. The site plan shows 29 spaces.
- The Architectural Board of Review approved the project in September 2017.
- The Master Plan Future Land Use Map shows this section of South Taylor Road as attached or multi-family which includes a range of high-density options including townhouses and apartments.

If the Board of Zoning Appeals finds that all seven (7) criteria are demonstrated by clear and convincing evidence to prove an unnecessary hardship and thus approves the expansion of a nonconforming use pursuant to Section 1173.01(a) to occupy a greater area of land, the variance request then will be considered by the Board of Zoning Appeals.

Again, Masterworks has gone through a 3 year long process in terms of planning this expansion. The process was founded on the need to remain operational throughout the construction process. The expansion from 2 bays to 8 bays is needed for economic growth and stability. The applicant has determined that the current building is not viable to continue to serve current and future customers. The applicant is present and can address their statement of hardship and answer any questions should you have any.

Mr. Zych asked the applicant or his representative to come to the microphone.

Boruch Taub, 1789 South Taylor Road and Alex Pesta, City Architecture, 14590 Superior Road, came forward.

Mr. Zych stated that the Board has received an application dated June 14, 2018, signed by Mr. Taub. He asked if content was true and correct to the best of his knowledge.

Mr. Taub stated that it was.

Mr. Zych stated that hearing no objection, the application for both parts of Calendar Number 3460 is entered into the record. He then reminded the applicant that the Board must consider each of the 7 factors so that anything he could add that helps the Board on any of those is appreciated.

Mr. Taub stated that regarding the property not being put to an economically viable Use, the property has been an auto repair shop since before most of the homes in that neighborhood. It was built in 1932 as a gas station with a lubratorium. It's current use is the best use of the property. There are other retail establishments along Taylor Road, but there are a lot of vacancies in many of the commercial buildings. Building additional storefronts or office space, which is in abundance along the Taylor Road-Cain Park Village business district, would probably be a waste of funding. The property, with its traditional use as automotive repair, would require much more strict standards in terms of soil cleanliness. For the record, this is an environmentally clean property. We had a limited phase 2 study done this past year and phase 1 was done the previous year and complete remediation of the property done in 1991. However all those were done to the standards for automotive use. They were not done to standards for residential use or for other retail use.

Ms. Rothenberg asked the applicant if he could speak to whether the current use, if it is not expanded, is economically viable.

Mr. Taub stated that it would leave a lot of economic viability untapped if we did not expand. We have become very popular and we simply cannot handle the additional business. This is a good problem to have. It's good for Cleveland

Heights and it is bringing people into our business district. People are actually leaving their cars with us and walking to Burger King or the library. Masterworks is located in a sea of grass, asphalt and gravel. This is an entire corner with great economic viability. We can employ 7 additional full time personnel and probably triple the total income of the building, so continuing as a 2 bay operation would not be the best use of the property.

Regarding the hardship not being created by the actions of the applicant, he stated that he tries to run a good business and having a large following and needing more space may be his fault but he was doing the best that he could to bring business to Cleveland Heights.

Regarding whether the granting of the variance will not adversely affect the rights of adjacent property owners or residents, he stated that he has had multiple conversations with the neighbors directly to the east and to the north. They know he has a track 9 year record of keeping a very neat property, well maintained landscaping wise. Conditional to the use of the property was to increase the landscape setback to 15 feet as the code requires along South Taylor and Bendemeer Roads, which has been done. We have maintained what we feel is very attractive landscaping over the years. We are striving to improve the way that corner looks. If there is any trash or debris blown into the lot, he will pick it up. No one has ever voiced any concerns, whether is regarding noise, landscaping or condition of the property which has been kept nice.

Mr. Taub could not see how granting the variance would adversely affect the public health, safety or general welfare. He pointed out that although this is a commercial district, there are not very many commercial establishments in the area. There is this business and the veterinary clinic, several schools and a number of synagogues, but in terms this being a commercial district, we are not out of line and is consistent with the general spirit and intent of the Zoning Code.

Regarding whether the expansion sought is the minimum which will afford relief to the applicant. One might wonder why go from 2 bays to 8 bays. Why not to 4 or 6 bays. The answer is that industry specific studies show that the most optimum size of the facility is actually in multiples of 8. We could go into discussion about management practices for automotive facilities but it has a lot to do with the number of personnel inside the building. Typically 8 bays is the minimum size shop being built today.

That being the end of the applicant's presentation, Mr. Zych opened the public hearing.

There being no one who wished to testify regarding this application, the public hearing was closed.

Mr. Zych noted that this was not the first automotive repair shop the Board has dealt with and we have received evidence of economic viability. No business is an island and there are other repair shops with which he must compete. We have heard economic requirements of a certain scale of business and the minimum capabilities needed in todays' world in order to continue to be a viable, competitive business. He then asked for a motion.

Mr. Hoen moved to grant the use variances to Masterworks Automotive, 1789 S. Taylor Rd., 'C2' Local Retail District, requests expansion of nonconforming use to occupy a greater land by expanding their building per Nonconforming Uses Code Section 1173.01 after reviewing the application and other submissions and hearing the evidence under oath the Board finds and concludes that A) the property cannot be put to any economic viability without the expansion as alluded to in the testimony and the discussion. This is a business that is growing. This is good for Cleveland Heights and the neighborhood. There are other competing automotive shops in the area which have expanded to this extent and we have granted such variances to those other automotive shops and therefore the property could not be put to any economic viability considering growth, therefore the use variance should be granted. B) The expansion requested stems from a condition which is unique to this property. The expansion of the existing use is unique to this property as it is currently used as an auto repair shop and therefore the use remains the same it will just be an expansion of the existing use variance already in existence. C) The hardship condition is not created by the applicant. The use variance was there before the applicant came to own the property. D) The granting of the expansion will not adversely affect the rights of adjacent property owners or residents. Certainly the residents are in support of this. We have heard no objection to this use expansion. The residents have significant buffers between their properties and this property which will remain, therefore not affecting their rights. E) The granting of the expansion will not adversely affect the public health, safety or general welfare. There has been no evidence given to suggest that it would. F) The expansion will be consistent with the spirit and intent of the zoning code. The automotive repair business is a permitted use in this district. There are other automotive repair shops in the district, as such the spirit and intent of the zoning code will be upheld if this use variance is granted. G) The expansion sought is the minimum necessary, the evidence presented by testimony is that the tied into the economic viability explanation is that the expansion to this 8 bay model is what is necessary in todays' professional environment for the automotive mechanic use. Based on the evidence given I move that we grant the expansion of the nonconforming use.

Ms. Wolf seconded the motion which carried 5-0. The expansion of the non-conforming use was granted.

CALENDAR NO. 3460:

Masterworks Automotive, 1789 S. Taylor Rd., 'C2' Local Retail District requests a variance to Code sections 1131.08 (a)(2) to permit parking & drive aisle in front of building along S. Taylor Rd. (not permitted), 1131.075 to permit no windows along Bendemeer Rd (minimum 60% glazing req'd.), 1153.05(u)(6) to permit buffer depth of 5'2" to 6'4" (min. 10' req'd.) and a 6' tall fence (brick wall req'd) along property line shared with 3485 Bendemeer Rd, and 1153.053(u)(5) to permit overhead wiring (underground wiring req'd.)

Mr. Zych stated that the staff report dated June 14, 2018 has already been accepted as part of the record.

Ms. Knittel stated that there already was discussion about content and context so we won't go back over that unless there are questions. She referred to the site plan indicating where each variance is located, stating then we can continue on with considerations.

Facts

- The site is a code conforming commercial property as it is approximately 28,336 square feet and is approximately 184' wide at the building line. Code requires a minimum of 10,000 square feet and 70' width at the building line.
- This is a corner lot at South Taylor Road and Bendemeer Road.
- Currently the site has two curb cuts, one along South Taylor Road and one from Bendemeer. The new site plan keeps one curb cut on each street but moves the curb cuts further from the intersection.
- Drive lanes and parking are necessary for an auto repair service.
- The proposed parking lot is as far from single-family properties as possible.
- The applicant has met with neighbors to discuss this project.
- The applicant is requesting a wood fence along the property line shared with 3485 Bendemeer due to the neighbor's preference of a fence over a wall.
- 3465 Bendemeer, a single family house, is zoned 'C2' local retail.
- The current site has overhead wiring.
- The 111'-long façade facing South Taylor Road has 73% glazing when 60% is required. The overall design has a rectangular shaped plan with two solid walls and two walls with ample windows. Staff could not recall any automotive service building with a high proportion of windows on multiple sides.
- Planning Commission reviewed and approved a new conditional use permit for this expanded use in August 2016.
- The Architectural Board of Appeals approved this design at their September 19, 2017 meeting.
- A building permit was issued to the project on June 1, 2018. This permit was issued in error as zoning approval had not occurred.

If approved, conditions should include:

1. The MasterWorks nonconforming use shall continue to be regulated by all auto repair zoning codes.
2. Planning Director approval of landscape plan required by the Planning Commission Conditional Use Permit; and
3. Complete construction within 18 months of the effective date of this variance.

Mr. Pesta stated, referring to the site plan, that it was the nature of the business automotive repair business that you need to have access along the front of the building in order to access the overhead doors to the service bays. We would like to go over why the building is sited where it is. This is like building a boat in your basement. This is Phase 1 and after the new bays are in place, the wall separating the existing configuration will come down. For Mr. Taub's business to stay in operation we need to maintain vehicular access as well. That is one of the main reasons for the drive aisle and parking to be located between the building and the right-of-way along South Taylor Road. Along the rear of the property to the east, the buffers requested are 5'.2" to 6'.4" instead of 4'.9" to 3'.7" . We are providing a 5 foot minimum landscape buffer and a wooden fence in lieu of the masonry or brick wall, which is preferred by the neighbor. The neighbor has written a letter of support which is in the Board's packet and have recently asked Mr. Taub to rebuild a similar fence to what is there now. So instead of having it 6 feet consistently along the property line shared with 3485 Bendemeer Road, it will step down as the fence gets closer to the front corner of the building. Regarding the request not to have glazing along the Bendemeer façade, it is simply a matter of how the interior of the building will function. They need a space for wall storage, a space for privacy and security. If you imagine a service bay that has to be a certain height on the interior regardless, so we have created a mezzanine level that is over the front house, that contains the office and customer waiting area and additional storage. By the time you install shelving and floor structure in there there really isn't an opportunity for windows along the Bendemeer façade, but we are providing a landscaped area that will be well maintained.

Mr. Zych opened the public hearing. As no one from the public wished to testify, the public hearing was closed.

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

Mr. Hoen moved to grant MasterWorks Automotive, 1789 S. Taylor Rd., 'C2' Local Retail District requests a variance to Code sections 1131.08 (a)(2) to permit parking & drive aisle in front of building along S. Taylor Rd. where it is not permitted, 1131.075 to permit no windows along Bendemeer Rd where a minimum of 60% glazing is required, 1153.05(u)(6) to permit buffer depth of 5'2" to 6'4" where a minimum of 10' is required and a 6' tall fence where a brick wall is required

along property line shared with 3485 Bendemeer Rd, and 1153.053(u)(5) to permit overhead wiring where underground wiring is required, after reviewing the application and other submissions, hearing the evidence under oath the Board finds and concludes there is undue hardship here. To permit parking and drive aisle in front of building along S. Taylor Rd. is necessary because this is an automotive business and therefore in order to have a viable automotive business cars must be able to get in and out of the location without blocking the other traffic along the roads; to permit no windows along Bendemeer Road, the nature of this business, an automotive business, requires a structure without windows as was described in the testimony and therefore it would be a hardship to put windows there; to permit buffer depth of 5'2" to 6'4" (min. 10' req'd.)given the nature of the expansion this would be the minimum necessary to finish the project. The neighbors have not given evidence that this would adversely affect their properties. This is a unique property as it is on the corner of a busy intersection and a residential neighborhood. So there are commercial neighbors to one side and residential neighbors to the other and it seems that this business has the reputation of being a good neighbor throughout the years and therefore there is no reason to believe a larger buffer would be necessary between the business and the neighbors, absent any testimony to the contrary. To permit the 6 foot all fence the special circumstance is that the neighbor has actually requested this particular fencing therefor we would like to grant that request to the neighbor. We would not to impose on them a code-conforming larger structure than what they feel is good for the aesthetics of the neighborhood. To permit overhead wiring where underground wiring is required the conditions exist at this property where underground wiring is not possible therefor they would have to keep the existing overhead wiring. They would not be creating new overhead wiring. The applicant's predicament cannot be resolved through any method other than a variance as discussed the spirit and intent of the zoning requires that this variance be granted because this is a conforming use of this property in a commercial district. The business has grown as alluded to in the prior matter. The viability of this business requires that it expand as has been granted to other similar auto repair business in the neighborhood. If this variance is granted the variance should include the following conditions:

1. The MasterWorks nonconforming use shall continue to be regulated by all auto repair zoning codes;
2. Planning Director approval of landscape plan required by the Planning Commission Conditional Use Permit; and
3. Complete construction within 18 months of the effective date of this variance.

Mr. Gilliam seconded the motion which carried 5-0. All variances were granted.

OLD BUSINESS

NEW BUSINESS

Mr. Wong stated that in an effort to fill city hall with as many architects as possible, City Council has appointed Denver Brooker as a new Board member and Dennis Porcelli as an alternate.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 9:17 p.m.

Respectfully Submitted,

Thomas Zych, Vice Chair

Vesta A. Gates, Secretary