

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
FEBRUARY 19, 2020

MEMBERS PRESENT:	Denver Brooker Dennis Porcelli Liza Wolf Thomas Zych	Chair
MEMBERS ABSENT	Ben Hoen	Vice-Chair
STAFF PRESENT:	Karen Knittel Alix Nouredine Pam Roessner Richard Wong	City Planner Assistant Law Director Assistant Law Director Planning Director

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time a quorum was present.

ELECTION OF OFFICERS

Mr. Zych stated that once a year the Board of Zoning Appeals holds election of officers for two positions, Chair and Vice-Chair. Ms. Wolf nominated Thomas Zych as Chair. There were no more nominations. Ms. Wolf moved to close nominations for Chair. Mr. Porcelli seconded the motion and the motion passed. With the nominations for Chair closed, Mr. Zych called for the vote to elect the nominee, Thomas Zych, as Chair. Mr. Zych was elected as Chair of Board of Zoning Appeals.

Mr. Zych requested nominations for Vice-Chair. Ms. Wolf nominated Ben Hoen as Vice-Chair. With no other nominations for Vice-Chair, Ms. Wolf moved to close nominations. Mr. Porcelli seconded the motion; the motion was approved. With nominations closed, Mr. Zych called for the vote on the nomination of Mr. Hoes as Vice-Chair of the Board of Zoning Appeals. Mr. Hoen was elected as Vice-Chair of the Board of Zoning Appeals.

APPROVAL OF THE MINUTES OF THE DECEMBER 18, 2019 PUBLIC HEARING

Mr. Brooker moved to approve the minutes. Mr. Porcelli seconded the motion, and the motion was approved.

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

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

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

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

PUBLIC HEARING February 19, 2020

Mr. Zych stated that each of the cases before the BZA has multiple variances for the Board to consider. For efficiency purposes but to preserve the public record, there will be a single public hearing for each case. Once that hearing is closed, the Board will then consider each of the requested variances separately with a separate vote.

CALENDAR NO. 3492

Dan Siegel, dba Integrity Realty Group, 2235 Overlook Dr. & 2345-61 Euclid Heights Blvd., MF-3 Multi-Family, requests variances (a) to Code Section 1123.08 to permit spacing between building 1 & existing house to be less than 54' minimum required; (b) to Code Section 1123.08 to permit spacing between building 2 & existing house to be less than 54' minimum required; (c) to Code Section 1123.08 to permit spacing between building 1 & existing apartment building to be less than 60' minimum required; (d) Code Section 1161.11(c) to permit drive aisle to be

wider than 24' maximum permitted; (e) to Code Section 1123.07(c)(1) to permit building 3 to have rear yard setback less than minimum 15' required.

All those wishing to testify were sworn in by Mr. Nouredine.

With no objections, the staff report dated February 13, 2020, was entered into the record.

Ms. Knittel stated that one written letter of support for this project was received from Future Heights and that each of the BZA members has been given a copy. With no objection, this letter was entered into the record.

Using a PowerPoint presentation, Ms. Knittel reviewed her staff report as follows:

CONTEXT: The site is on the north side of Euclid Heights Boulevard at the intersection of Overlook Road. It is zoned MF-3 Multiple-Family.

North: are apartments and homes along Herrick Mews, zoned MF-3 Multiple-Family

South: across Euclid Heights Blvd. is the S-2 Mixed-Use zoned site of the Top of the Hill development and Buckingham condominiums,

West: is the CWRU campus, zoned MF-3 Multiple-Family

East: is Margaret Wagner House senior apartments, zoned MF-3 Multiple-Family

HISTORY: There are two parcels, both of which are in the Euclid Heights Historic District. The Overlook parcel once held the Eels estate, which included a mansion, garden structures, and a stone wall. The mansion was demolished in 1973 for construction of the apartment building; the stone wall and some garden structures remain. The house and carriage house at 2345-61 Euclid Heights date to 1909. The house was converted to two housing units in the 1950s and, in 1971 (Cal. No. 713), a variance was granted to add a housing unit on the carriage house's first floor with the condition that no windows were added on the north or east side of the building and those facades were to be covered with brick. The owner of the apartment building has recently acquired the house and carriage house parcels.

PROJECT DESCRIPTION: The applicant proposes to rehabilitate the existing house into 3 apartment units (currently 2 units), create 3 apartment units in the carriage house (currently 2 units), and maintain 45 apartments in the apartment building. Apartments are permitted in the MF-3 Multiple-Family zoning district. In addition, based upon comments from Herrick Mews residents, the applicant is keeping the garage located between the carriage house and the proposed new apartment building (Building 3).

In addition, three new buildings are proposed with 4- to 5-bedroom dwelling units the applicant refers to as "townhomes." These have shared living space and will be rented out by the room and, therefore, fall into the Zoning Code definition of a boarding house/lodging house, which is conditionally permitted in the MF-3 zoning district. Each dwelling with a kitchen is considered a unit and 14 boarding house units (with 58 bedrooms total) are proposed. A boarding house/lodging house is defined as "*a building occupied for, or arranged, intended or designed to be occupied for rooming, or rooming and boarding for compensation by not less than four persons by prearrangement for definite periods of not less than one week...*"

The applicant proposes to provide 92 on-site parking spaces for the development. Code requires one parking space for each apartment unit and one parking space for each bedroom in a boarding house unit. At the February 12, 2020, Planning Commission meeting, the applicant asked for a conditionally permitted reduction to the parking requirement to provide 42 enclosed and 50 surface parking spaces (27 enclosed, 84 surface spaces required) based on the assertion that a lesser number of spaces is appropriate and consistent with the regulations.

FACTS

- This site is zoned MF-3 Multiple-Family.
- Section 1123.01(c) Purpose states that the *MF-3 District is established to provide very high-density developments of approximately fifty-eight (58) dwelling units per gross acre.*
- The Master Plan Future Land Use Map shows this area as being attached or multi-family housing including a range of higher-density options including townhouses and apartment buildings.
- At their February 12, 2020 meeting, the Planning Commission approved the lot subdivision joining the three parcels into one parcel was approved. The Planning Commission also approved with conditions:
 - A reduction in parking to permit 42 enclosed spaces and 50 surface parking spaces (27 enclosed, 84 surface spaces required); and
 - A Conditional Use Permit for the boarding house use.
- This parcel is a code-conforming MF-3 parcel in terms of area as it is 106,077 square feet and the minimum square footage of a development area in the MF-3 Multiple-Family Zoning district is 20,000 square feet (Section 1123.06(b)).
- Code Section 1123.06(e) minimum lot frontage is 60'; this site has over 482' of frontage along Euclid Heights Blvd. and over 320' of frontage along Overlook Road.
- The site has two front yards: one along Overlook Road and one along Euclid Heights Boulevard.
- The site is an irregularly shaped parcel.
- The new buildings are located so as to preserve the historic white house and carriage house.
- The proposed development maintains the setback along Euclid Heights Boulevard and will maintain the historic stone wall. A tree preservation and landscape plan is proposed to maintain a dense shade tree canopy in the Euclid Heights Boulevard front yard.
- The rear yard is adjacent to an apartment building and Herrick Mews residential properties.
- Based upon comments from Herrick Mews residents, the applicant altered the initial plans and deleted a second 2-unit apartment building along the north edge of the property

and will instead preserve the 8-car garage that shares its rear wall with the historic stone wall on the property line shared with 1 Herrick Mews.

- At their February 4, 2020 meeting, the ABR conducted a preliminary review of the plan. ABR Chair Melissa Fliegel stated that she had no concerns from a general massing standpoint.
- The Building Separation Plan dated February 7, 2020, shows the spacing of the buildings. Code Section 1123.08 regulates Building Arrangement and Spacing of Multiple Buildings on a Lot. Code-required spacing of walls facing each other is based on the wall length and height of a building. *The following variances are required:*
 - (a) Code Section 1123.08 to permit spacing between Building 1 and the existing house to be less than a required 54' minimum. This site plan shows the distance to vary from 26' to 39'6½";
 - (a) Code Section 1123.08 to permit spacing between Building 2 and the existing house to be less than a required 54' minimum. This site plan shows the distance between buildings to be 20'2"; and
 - (b) Code Section 1123.08 to permit spacing between Building 1 and the existing apartment building to be less than a required 60' minimum. This site plan shows the distances between the buildings to be from 29' to 44'6.5".
- The Zoning Plan (Revised) dated February 4, 2020, requires a variance to Code Section 1123.07(c)(1) to permit Building 3 to be located from the rear property line less than the minimum 15' required. The building will be 5' from the rear property line shared with Overlook Arms apartments. The Overlook Arms apartments' garage and parking is directly behind the proposed Building 3. *Variance required.*
- All units' sizes are code-conforming. The townhouses range are from 1600 square feet to 1874 square feet and the apartments are from 765 square feet to 1,200 square feet. Code Section 1123.10 requires a minimum floor area of 1,250 square feet for townhouses and 500 square feet for multi-family dwellings.
- The Zoning Plan (Revised) dated Feb. 4, 2020, requires a variance to Code Section 1161.119(c) to permit the drive aisle to be wider than the maximum 24' permitted by code. The site plan shows that the drive aisle expands to more than 24' in three places: in front of the existing garage the drive aisle becomes 28'3"; between the existing apartment building and proposed Building 1, the drive aisle is 25'5"; and between Building 1 and Building 3 the drive aisle is 24'2. *Variance required*
- The applicant has been working with the Cleveland Heights Fire Department to assure that their emergency vehicles can navigate the development site.
- The Ohio Fire Code requires a fire lane (fire apparatus access road) through the property and the lane must be at least 20'-wide.
- The site plan titled, "AAAHTO SU 30 Turning Radius Plan (Revised)", dated Feb 4, 2020, illustrates the turning radius required by an emergency vehicle.

- The Police Chief and Fire Inspector have reviewed the plans and have no concerns except making sure adequate lighting is provided for safety and that addresses are visible to emergency personnel.
- During our review process, the applicant re-aligned Building 2 to provide a minimum of 20' for the fire lane that will run between this building and the existing carriage house.
- Building 2's re-alignment resulted in a larger landscaping area along the east property line shared with Margaret Wagner House.
- The Tree Preservation Plan prepared by Davey Resource Group recommends that certain trees be removed due to the species or condition.
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If approved, conditions may include:

1. Variance 3492(a) is to permit the spacing between Building 1 and the existing house to vary from 26' to 39'6.5" as shown on the Building Separation Plan Revised dated Feb. 7, 2020;
2. Variance 3492(b) is to permit the spacing between Building 2 and the existing house to be 20'2" as shown on the Building Separation Plan Revised dated Feb. 7, 2020;
3. Variance 3492(c) to permit spacing between Building 1 and the existing apartment building to be 29' to 44'6.5" as shown on the Building Separation Plan Revised dated February 7, 2020;
4. Variance 3492(d) to permit a portion of the drive aisle to be wider than the 24' permitted as shown on the Zoning Plan Revised dated February 4, 2020.
5. Variance 3492(e) to permit Building 3 to have a rear yard setback of 5' as shown of the Zoning Plan Revised dated February 4, 2020.
6. Approval of the Architectural Board of Review;
7. Prior to issuance of a building permit, the applicant shall obtain approval from the Public Works Director that adequate utilities, access roads, grading/drainage are provided and that the Stormwater Management Plan complies with Code Chapter 1335;
8. Prior to issuance of a building permit, receipt of the Planning Director approval of plans for landscaping, screening, tree preservation, tree protection, parking (bicycle and vehicle), and site lighting;
9. Requirement to maintain the historic white house, carriage house, and stone wall; and
10. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel stated that the applicant was present and prepared to review the statement of practical difficulty. Mr. Zych asked the applicant to come forward and give his name and address.

Dan Siegel, 23245 Commerce Park, Beachwood and Ted Singer, Dimit Architects, 14414 Detroit Avenue, Suite 306, Lakewood, came to the microphone and both confirmed that they did take the oath.

Mr. Zych stated that they have a variance application dated January 8, 2020, to which is stapled a statement of practical difficulty. He asked the applicant whether to the best of his knowledge the

content of the application was true and correct. Mr. Seigel answered affirmatively. Without objections, the application and statement of practical difficulty were entered into the record.

Dan Siegel stated that originally, they were excited to acquire the additional parcels with the two buildings to develop the site and knowing that the parcels were zoned for very high density and knowing the demand in the market place, they wanted to build a high-density project which would include tearing down the historic buildings. Subsequently, they met with the City and the neighbors and they showed a lot of interest in maintaining the historic buildings. The challenges were the location of the historic buildings which made it very difficult to build around them which is why we are here to request these variances. Mr. Seigel stated this is a high-end project that is coming and that it is a student housing project. He stated the conditional use permit for a boarding house was required because these are 4-bedroom apartments and if you go above 3 non-related persons in an apartment it is classified as a boarding house. Mr. Seigel stated this is a luxury student housing project, very well located for its needs and the project is trying to maintain the historic character of the neighborhood and this is why the variances are being requested.

Ted Singer stated that he would briefly review the statement of practical difficulty. He stated he would begin with the three building spacing variances which in which the statement of practical difficulty applies to all three variances. There are multiple existing structures on the site which is creating the situation whereby the site would not be developable without removing those existing structures. This is the primary difficulty of the proposed project. The special circumstances of this property are those historic structures within this historic district.

Mr. Singer stated that based on the existing floor area ratio of the existing structures on-site, they are only at about 40% of what would be allowed by the MF-3 zoning. The only way to come close to the highest and best use based on the zoning is to add floor area to the site, based on the configurations of the existing buildings, there is no way to add new buildings to the site that are spaced far enough apart from one another to meet the zoning requirement.

Mr. Singer stated that the variance is insubstantial as the separation of the buildings on-site will not have an impact on adjacent properties. He stated that the new construction will maintain the scale of the historic structures, rather than a larger-scale redevelopment of the site.

Mr. Singer stated that this proposal maintains the essential character of the neighborhood by placing the new structures on the site in such a fashion that it maintains the historic buildings. Conversely, if the redevelopment were to be done by demolition, a much taller, more massive structure would potentially be less in character with the neighborhood, especially the Herrick Mews historic properties, but this would be permitted by the zoning.

Mr. Singer stated that the building separation distances will not have a significant impact on government services.

Mr. Singer stated that the applicant was not aware of the limitations of the zoning based on the

high-density zoning which led the applicant to believe the site could be developed and be in keeping with the zoning code. The initial concept was to demolish the historic buildings and build a new, denser, much larger structure.

None of the conditions are the result of actions taken by the owner.

There is no other remedy to develop the site and maintain the historic buildings other than for a variance for the spacing of the buildings.

The intent of the zoning for the site is high-density multi-family and this project is creating this.

Mr. Singer then addressed the practical difficulty concerning the width of the drive aisle. He stated that the site configuration is based entirely on providing the necessary turning radius for the emergency vehicles. He stated that there are no other options other than to provide this necessary access.

Mr. Singer addressed the rear yard setback practical difficulty by stating that in developing this site there is an existing nonconforming setback of the garage which is built up to the rear property line. The location of this structure is the result of the need to maintain site access for emergency vehicles, provide the necessary parking required for the project, and provide the required setback from Euclid Heights Boulevard. This location is also a pinch-point due to the irregular shape of the parcel. Again, based on the MF-3 zoning, the desire is to develop the site in such a way to maximize and create the highest and best use of the site while maintaining the existing buildings.

The character of this building is similar to the Herrick Mews carriage houses so it is in keeping with the character of the neighborhood. The location of this building will not have a negative impact on government services.

Mr. Zych asked if others wished to testify.

Mary Lane Sullivan, 1 Herrick Mews came to the microphone and confirmed that she had taken the oath.

Ms. Sullivan stated that she lives immediately next door to the planned construction site, in a historic 1890s carriage house located at #1 Herrick Mews, Cleveland Heights. Her husband, John Sullivan and she have lived there for at least sixty years, since 1960 in her case, and since the 1950s in his case. They love their home and the neighborhood.

Ms. Sullivan stated that their house looks directly at the site, from a few feet away. Mr. Siegel has been very kind to us, consulting us from the summer until now, but they oppose the proposed variances. She stated that it would be inconsistent with the character of the neighborhood, and would reduce the quality of life for them, as the immediate neighbors, to allow such high density at this site.

Ms. Sullivan called attention to a few statements in the variance request which seem incorrect:

1. "Allowing the reduction in separation between buildings will not impact any of the adjacent buildings." She stated that when the current handful of student residents have beer parties, they hear them in their quiet neighborhood. Having twenty times as many students in that space will impact their lives. The noise comes and goes in seasons.
2. "The proposed project is similar to the scale of Herrick Mews (Overlook Rd. Carriage House District)." She stated that this is plainly untrue-these boarding houses for many students would be massively more dense than the handful of single-family homes on generous plots of land in that district.
3. "a reasonable number of tenants will not have a vehicle/need a vehicle for a parking space." She stated that they doubt this is true – they have seen Overlook Road become heavily used for student parking over the past twenty years as student parking needs have increased, and they expect that if this construction has inadequate parking, the neighborhood will suffer in normal times, let alone when students have visitors, parties, and so forth.

Ms. Sullivan concluded that for these and other reasons, she asks that the BZA do not allow this variance that would reduce the historic character of the residential area in which it is located, particularly their house which is next door. She thanked the Board for their consideration.

No others were wishing to testify. The public hearing was closed.

Ms. Wolf asked where the garbage trucks would access the property. Mr. Singer replied that the existing dumpsters and access to them would be maintained. He showed where they are currently located off of Overlook, behind a low wall with gates stating that they are proposing some additional screening.

Mr. Porcelli stated that the distance between Building 2 and the existing structure where the drive width is 20 feet and asked if there was any consideration for protecting the structures from cars that may veer off the road perhaps during winter conditions. Mr. Singer stated that they could consider some bollards to protect the structures but that the width is fairly generous and that traffic will not be two-way very often. He explained that the 20' is to maintain the necessary emergency vehicle access.

Mr. Porcelli asked about access for delivery trucks and if there were designated spaces for them to stop to make deliveries. Mr. Singer responded that they have not designated a space for parcel delivery but that there are ample locations within the site that could be utilized.

Mr. Brooker stated that upon acquiring the site they initially intended to develop the site and demolish the existing historic buildings. He asked if when they studied this if they were able to achieve a development of size and density that would not have required any zoning variances. Mr. Siegel responded that upon purchasing the property, they had asked Ted's firm to do some

massing studies. Mr. Singer stated that they could get a larger project on the site if they had removed the historic structures and located more of a bar building fronting Euclid Heights Blvd. which would have been far enough from the existing apartment building. Mr. Siegel added that he thought they could go up to ten stories on this site. Mr. Siegel stated that the proposed site plan is an accommodation of the historic structures on the site and maintain the character, nature of the neighborhood.

Mr. Zych reminded each of the five variances would be considered separately. The first three variances have to do with the same issue, which is the spacing of buildings. The motion on the first variance would include everything we normally do on these motions and if you would like when considering variance b and c you could incorporate the practical difficulty stated on the grounds of the previous motion because it pertains to the same issue, however it must be made clear that you are doing that.

Mr. Brooker stated that regarding **Calendar Number 3492a**, Dan Siegel, dba Integrity Realty Group, 2235 Overlook Dr. and 2345-2362 Euclid Heights Blvd., he moved with conditions to approve the application for the variance to Section 1123.08 to permit the spacing of Building 1 and the existing house to be less than the 54' minimum required. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions and circumstances exist which are peculiar to this property, specifically, the zoning for this property permits a higher density project than is being proposed and the zoning would also generally allow the demolition of the existing historic structures;
- The property in question will not yield a reasonable return without demolishing the historic structures which is not desired by the community;
- The variance is insubstantial as there is less impact to the adjacent structures than there would be if someone had created a higher density, zoning compliant project;
- The essential character of the neighborhood would not be substantially altered as a result of this variance as the new buildings are on scale with the existing character of the neighborhood and with the buildings on-site;
- The variance does not adversely affect the delivery of government services; and
- The spirit and intent behind the zoning requirements would be observed and substantial justice done by granting this variance because the intent of the MF-3 District is a higher density development and this sensitively designed project chooses to maintain historic structures and create a lower density development than what might otherwise be possible.

If granted, the variance should have the following conditions:

1. Variance 3492a is to permit the spacing between Building 1 and the existing house to vary from 26' to 39'6.5" as shown on the Building Separation Plan Revised dated Feb. 7, 2020;
2. Approval of the Architectural Board of Review;
3. Prior to issuance of a building permit, the applicant shall obtain approval from the Public Works Director that adequate utilities, access roads, grading/drainage are provided and that the Stormwater Management Plan complies with Code Chapter 1335;
4. Prior to issuance of a building permit, receipt of Planning Director approval of plans for landscaping, screening, tree preservation, tree protection, parking (bicycle and vehicle), and site lighting;
5. Requirement to maintain the historic white house, carriage house, and stone wall; and
6. Complete construction within 24 months of the effective date of this variance.

Ms. Wolf seconded the motion; the motion was approved (4-0).

Mr. Zych stated that he wanted to restate that the Board of Zoning Appeals is not in control of the zoning, and what is permitted by the zoning is permitted by the zoning and we do not restrict uses that are permitted by the zoning. This is a MF-3 district and so the permitted density is a factor of the zoning code and that is what a MF-3 district can be in terms of density in this.

Mr. Brooker stated he was prepared to make motions for variances b and c. Mr. Zych stated that in making the motion, the grounds from variance could be incorporated into the motions so that each of them does not to be stated again.

Mr. Brooker stated that regarding **Calendar Number 3492b**, Dan Siegel, dba Integrity Realty Group, 2235 Overlook Dr. and 2345-2362 Euclid Heights Blvd., he moved with conditions to approve the application for the variance to Section 1123.08 to permit the spacing of Building 2 and the existing house to be less than the 54' minimum required. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that the grounds stated in the previous motion apply to this variance, all of the same statements.

If granted, the variance should have the following conditions:

1. Variance 3492b is to permit the spacing between Building 2 and the existing house to be 20'2" as shown on the Building Separation Plan Revised dated Feb. 7, 2020;
2. Approval of the Architectural Board of Review;
3. Prior to issuance of a building permit, the applicant shall obtain approval from the Public Works Director that adequate utilities, access roads, grading/drainage are provided and that the Stormwater Management Plan complies with Code Chapter 1335;
4. Prior to issuance of a building permit, receipt of Planning Director approval of plans for landscaping, screening, tree preservation, tree protection, parking (bicycle and vehicle), and site lighting;

5. Requirement to maintain the historic white house, carriage house, and stone wall; and
6. Complete construction within 24 months of the effective date of this variance.

Ms. Wolf seconded the motion; the motion was approved (4-0).

Mr. Brooker stated that regarding **Calendar Number 3492c**, Dan Siegel, dba Integrity Realty Group, 2235 Overlook Dr. and 2345-2362 Euclid Heights Blvd., he moved with conditions to approve the application for the variance to Section 1123.08 to permit the spacing of Building 1 and the existing apartment building to be less than the 60' minimum required. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that the same reasoning and grounds stated in the previous motion apply to this variance, all of the same statements.

If granted, the variance should have the following conditions:

1. Variance 3492c is to permit the spacing between Building 1 and the existing apartment building to vary from 29' to 44'6.5" as shown on the Building Separation Plan Revised dated Feb. 7, 2020;
2. Approval of the Architectural Board of Review;
3. Prior to issuance of a building permit, the applicant shall obtain approval from the Public Works Director that adequate utilities, access roads, grading/drainage are provided and that the Stormwater Management Plan complies with Code Chapter 1335;
4. Prior to issuance of a building permit, receipt of Planning Director approval of plans for landscaping, screening, tree preservation, tree protection, parking (bicycle and vehicle), and site lighting;
5. Requirement to maintain the historic white house, carriage house, and stone wall; and
6. Complete construction within 24 months of the effective date of this variance.

Ms. Wolf seconded the motion; the motion was approved (4-0).

Mr. Brooker stated that regarding **Calendar Number 3492(d)**, Dan Siegel, dba Integrity Realty Group, 2235 Overlook Dr. and 2345-62 Euclid Heights Blvd., he moved to grant with conditions the application for the variance to Section 1161.11(c) to permit the drive aisle to be wider than 24' maximum permitted. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions and circumstances exist which are peculiar to this property, specifically where the proposed access road is over 24' wide, it is the result of meeting criteria for emergency vehicles and the nature of the drive including the dimensions are a result of maintaining the historic buildings on the site and the locations of the new buildings;
- The variance is insubstantial and is the minimum necessary to make the reasonable use of the land and structure as is demonstrated by the fact that it allows emergency vehicles access through the site;

- The character of the neighborhood would not be substantially altered as a result of this variance as the circulation drive is internal to the site; and
- The variance would not adversely affect the delivery of government services, it actually does the opposite.

If granted, the variance should have the following conditions:

1. Variance 3492d is to permit a portion of the drive aisle to be wider than the 24' permitted as shown on the Zoning Plan Revised dated February 4, 2020;
2. Approval of the Architectural Board of Review;
3. Prior to issuance of a building permit, the applicant shall obtain approval from the Public Works Director that adequate utilities, access roads, grading/drainage are provided and that the Stormwater Management Plan complies with Code Chapter 1335;
4. Prior to issuance of a building permit, receipt of Planning Director approval of plans for landscaping, screening, tree preservation, tree protection, parking (bicycle and vehicle), and site lighting;
5. Requirement to maintain the historic white house, carriage house, and stone wall; and
6. Complete construction within 24 months of the effective date of this variance.

Mr. Porcelli seconded the motion; the motion was approved (4-0).

Mr. Brooker stated that regarding **Calendar Number 3492(e)**, Dan Siegel, dba Integrity Realty Group, 2235 Overlook Dr. and 2345-62 Euclid Heights Blvd., he moved to grant with conditions the application for the variance to Section 1123.07(c)(1) to permit Building 3 to have a rear yard setback less than the minimum 15' required. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions and circumstances exist which are peculiar to this property, specifically the proposed location of Building 3 balances reasonable development density and is in keeping with the zoning intentions of the MF-3 District while maintaining site access through the site and maintaining the historic structures on the site.
- The property in question will not yield a reasonable return without the variance as it would require the demolishing of the existing buildings to yield a reasonable development density for the property and be in keeping with the MF-3 Zoning District intent;
- The variance is insubstantial as demonstrated by the fact that the building is in scale with other buildings that are close to the property line, and it is adjacent to parking on the site and across the site and behind the site;
- The essential character of the neighborhood would not be altered as the building is two-stories high, it is the least high building on the site;
- The variance would not adversely affect the delivery of government services; and

- The spirit and intent behind the zoning requirement would be observed by granting the variance because the development adheres to the intent of the MF-3 zoning intention for a higher density development.

If granted, the variance should include the following conditions:

1. Variance 3492e is to permit Building 3 to have a rear yard setback of 5' as shown of the Zoning Plan Revised dated February 4, 2020;
2. Approval of the Architectural Board of Review;
3. Prior to issuance of a building permit, the applicant shall obtain approval from the Public Works Director that adequate utilities, access roads, grading/drainage are provided and that the Stormwater Management Plan complies with Code Chapter 1335;
4. Prior to issuance of a building permit, receipt of Planning Director approval of plans for landscaping, screening, tree preservation, tree protection, parking (bicycle and vehicle), and site lighting;
5. Requirement to maintain the historic white house, carriage house, and stone wall; and
6. Complete construction within 24 months of the effective date of this variance.

Ms. Wolf seconded the motion; the motion was approved (4-0).

CALENDAR. NO. 3493

J-Town Properties, LLC, 2741 Hampshire Rd., MF-3 Multi-Family, proposing to reconfigure existing 7 apartments into 14 one-bed apartments and requests variances (a) to Code Section 1123.06 (a) to permit less land area per unit than required (minimum 750 square feet per unit) and to Code Section 1123.06(c) to permit a greater number of units per acre than code permits (maximum 9 units) and (b) to Code Section 1161.03(a) (4) to permit fewer parking spaces with none enclosed (code requires 7 additional spaces with 4 enclosed).

All those wishing to testify were sworn in by Mr. Nouredine.

With no objections, the staff report dated February 13, 2020, was entered into the record.

Using a PowerPoint presentation, Ms. Knittel reviewed her staff report as follows:

CONTEXT:

The parcel is zoned MF-3 Multiple Family. It is located on Hampshire Rd in the first block west of Coventry Road. It is surrounded by apartment buildings zoned MF-3 Multiple-Family.

ZONING HISTORY:

- In January 1992, Cal. No. 2302 granted a variance to permit more pavement in the rear yard than the 30% permitted and to permit 5 unenclosed parking spaces when the code required 11 parking spaces with 7 enclosed.
- In November 1992, Cal. No. 2393 required the addition of a 17' by 20' landscaped area

to retain the variance granted in Cal. No. 2302.

PROJECT DESCRIPTION:

2741 Hampshire currently is a 7-unit apartment building. There are currently 6 three-bedroom apartments and 1 one-bedroom apartment. The applicant proposes changing the 6 three-bedroom apartments into 12 one-bedroom apartments and proposes adding one additional one-bedroom apartment in the basement. This would result in a 14-unit apartment building. Currently, there are 6 parking spaces on-site and the applicant purchases permits for 8 tenants in a city parking lot.

FACTS:

- The Master Plan Future Land Use Map categorizes this area as Attached or Multi-Family.
- Code Section 1123.01 states the purpose of the MF-3 District is established to provide for very high-density residential development. The standards for the MF-3 District permit the development of approximately 58 dwelling units per acre.
- This is a non-conforming parcel as it is 50' wide and 7,500 square feet in area. Code Section 1123.07 (d) requires a minimum lot width at the building line of 100' and (e) a minimum lot frontage of 60' and (b) a minimum development area of 20,000 square feet.
- Code Section 1123.07 (a) requires a minimum of 750 square feet in land area per dwelling unit. The 7,500 square foot parcel would permit 10 units. The proposed number of units is 14. *Variance Required.*
- Code Section 1123.07(c) provides that the maximum dwelling units per acre is 58. This parcel is .17 acre, so the maximum number of dwelling units permitted by code is 9. The proposed number of units is 14. *Variance Required.*
- Code Section 1123.10(a) states that the minimum floor area for a dwelling unit in the MF-3 Multiple-Family district is 500 square feet. The proposed apartments are code conforming; 3 apartments will be 614 square feet, 3 apartments will be 616 square feet, 3 apartments will be 636 square feet, 3 apartments will be 738 square feet and the 2 basement apartments will be 738 square feet.
- Seventeen of the nineteen Hampshire Road parcels located between Coventry Rd. and Hampshire Lane along the same side of Hampshire as the applicant's apartment (the north side of Hampshire Road) are parcels that are 50' wide by 150' deep with a total area of 7,500. (One parcel is 65' wide and 9,750 square feet in area and one parcel is 50.01' wide with a total land area of 7,501.5 square feet.)
- Fourteen parcels between Hampshire Road and Hampshire Lane have apartment buildings located on them; one parcel is a two-family house; 2 parcels have 6-unit condominiums located on them and one is a parking lot. Of the 14 apartment buildings, there are four 11-unit buildings, 3 7-unit building (including the applicant's), one 8-unit building, four 6-unit buildings, and two 5-unit buildings. One 27-unit apartment building includes both the Hampshire Rd. parcel and the Mayfield Rd. parcel located behind it.
- The proposed renovations do not alter the exterior of the building, the form and use of the building remain the same.

- A 2016 Housing Inspection Department report states that the allowable occupancy for the 3-bedroom apartments at Hampshire is 4 persons and that the basement apartment is allowed to have 2 occupants. Therefore, the current maximum occupancy of 1241 Hampshire Road is 26.
- The January 2020 Certificate of Occupancy for 2741 Hampshire Road shows there are 14 occupants. Housing Code Section 1347.01 Certificate of Occupancy requires that dwelling units must have a Certificate of Occupancy in order to rent or lease the residential structure.
- Housing occupancy limits are based on the total habitable area of a dwelling unit and on the habitable sleeping area.
- Based on the habitable area and sleeping area, the new apartments result in a housing occupancy limit of 22 for the building. The 214 square foot units and 216 square foot units would each have a maximum occupancy of 1, the 636 square foot units and 738 square foot units would each have a maximum occupancy of 2 and the 738 square foot apartments located in the basement would each have a maximum occupancy of 2.
- Code Section to Code Section 1161.03 (a)(4) requires one parking space per new unit with not less than .5 spaces per unit to be enclosed. The proposed plan would require an additional 7 spaces with 4 enclosed. The applicant is not proposing additional on-site parking. *Variance Required.*
- Apartments on Hampshire Rd. were built in th1910s and 1920s, prior to the Zoning Code requiring on-site parking.
- The apartment building was built in 1925.
- 24-hour parking is permitted on the south side of Hampshire Rd. from Hampshire Lane east to Coventry Road.
- There are a number of city-owned surface parking lots in the Coventry neighborhood and the Coventry parking garage where permit parking is secured by renters and/or landlords.

If approved, conditions may include:

1. Variance 3493(a) is granted to allow 14 dwelling units on this 7,500 square foot parcel resulting in the land area per unit being 535.71 square feet and results in the number of apartment units per acre to be 82;
2. Variance 3493(b) is granted to allow 7 additional units with no additional on-site parking spaces;
3. Apartment owner and subsequent owner(s) shall continue to assist tenants with vehicles who cannot park on-site to secure off-street parking;
4. Receipt of a building permit;
5. Planning Director approval of landscape plan for the front and rear yards; and
6. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel stated that the applicant was present and prepared to review the statement of practical difficulty. Mr. Zych asked the applicant and/or their representative to come forward and give his name and address.

Mr. Jim Nabti, 11149 Mayfield Road, Cleveland came to the microphone and stated that he was sworn in. Also, Mr. Roberto Pinedo, 4647 Westminister Drive, Solon, Ohio stated that he was sworn in.

Mr. Zych stated that they have a variance application dated January 8, 2020, to which is stapled a statement of practical difficulty. He asked the applicant whether to the best of his knowledge the content of the application was true and correct. Mr. Nabti answered affirmatively. Without objections, the application and statement of practical difficulty were entered into the record.

Mr. Nabti stated that the predicament they are having is that with all of new University Circle construction that includes smaller, one-bedroom apartments with lots of amenities, the market has been changing and they are finding there is more and more demand for these smaller units and it appears we have competition from our neighbors right next door and in our back yard who have found the same thing, smaller units are in demand. This is what the current market is looking for. The realization of this occurred this past summer when one of these 3-bedroom units was listed and they found that 1 out of every 3 responses from this real estate post was a respondent asking for a one-bedroom apartment, even though we did not have a one-bedroom listed, we had a three-bedroom listed. This shows the demand for the smaller units, they were cold calling to see if there was a smaller unit to rent.

Mr. Nabti stated that these three-bedroom units are not renting nearly as well mainly because there are three bedrooms but only one bathroom. Most of our market is graduate students, nursing students, resident doctors who are here for a couple of years and then leave and they do not want to share a bathroom with other people. This is our challenge. Most of our other buildings are two-bedroom units which are renting very well.

Mr. Nabti began reviewing his statement of practical difficulty stating that factor a is what he was just addressing. Factor A concerns a lot of what I just went through. Special conditions and circumstances are all based on the market, the market is changing and we have to be able to adjust to that. These older 1920s buildings simply are not what the market is demanding. Factor B concerns reasonable return, we are not one of the big rental agencies, vacancies are extremely expensive. In order to minimize the vacancies and making sure these apartment units that are not in demand are not vacant, we have had to drop our rents. This has been the only way to get these units to rent. Factor C asks whether the variance is insubstantial. University Circle construction is booming, it is all small units packed with amenities. Even the big rental companies, like Integrity, have come to the same conclusion that they need smaller units that are up to date. 1920s apartments are simply not what people are looking for and big 3-bedroom shared spaces are not what they are looking for. Factor D the character of the neighborhood. Architecturally there is no change to the exterior of the building, so that will not change. It was also noted that although there would be more units, there are fewer bedrooms and this will result in the occupancy being less and so the density will be lower. The load on the neighborhood will be less. This leads right into Factor E, lower density, fewer residents should not affect government services. Factor F, it was a different market when the property was purchased. Anyone who has been to University Circle has seen how much it has changed in just a couple of

years. Factor G concerns whether the special conditions or circumstances were a result of the actions of the owner. The market is the reason for this request. Factor H asks if this could be done with a method other than the variance. Increasing the number of units requires a variance, there is no other way. In regards to the parking variance, we do acquire city-lot parking passes for all of our residents so without the land to expand our parking, this has been a very good option for us. and the residents seem to be very happy with the city-lot parking. Factor I asks about the spirit and intent behind the zoning. Zoning requirements are concerned about the density and since we will be decreasing the number of residents, I believe that we are in keeping with the spirit of the zoning. Factor J asks if any special privileges would be conferred due to this request, the apartment sizes are very similar to the one-bedrooms in the neighborhood and to the units being developed by Integrity to accommodate this new market demand.

Mr. Zych asked that anyone wishing to testify on this matter come forward.

Dan Siegel, 23425 Commerce Park, Beachwood, Ohio came to the microphone and stated that he was sworn in. He stated that he was here for the first case and noticed this request on the agenda. Mr. Siegel stated that he owns a good percentage of the apartment buildings on Hampshire Road. He said that he owns a few buildings with this same floor plan and everything Mr. Nabti said is correct. He stated that his three-bedrooms with one bath, similar to this case's floor plan, cannot be given away. He explained that people do not want to rent a three-bedroom and one bath anymore and that is why he is developing the Overlook project where each bedroom has its own bathroom. Also, typically a three-bedroom like this would have three occupants so switching this to two bedrooms would reduce the number of tenants and the parking demand would drop as well. What they are proposing is a major investment, these are old buildings and the investments they would be making into this building would be an upgrade to the neighborhood.

Ms. Wolf noted that the staff presentation stated that the last occupancy permit showed that there were 14 occupants and she asked if this was because of the difficulties in renting. Mr. Nabti responded that this was correct, that they are renting to whoever they can to fill the units.

Ms. Wolf asked how long the applicant has owned the building. Mr. Nabti responded that it has been approximately five years.

Ms. Wolf asked if he has seen a decrease in occupancy over the past five years. Mr. Nabti stated that yes but he noted that part of the reason for this is that they have been doing significant updates like adding laundry and adding dishwashers which increases the rent and that they are not getting interest from the budget seeking undergraduates anymore. He said they may have had four people in an apartment like this but they want to stay closer to campus.

Ms. Wolf asked if there have been issues with a resident not having a parking space and whether the 8 parking passes purchased is sufficient. Mr. Nabti said that they purchase many more parking passes because they own a few buildings in the area and that they distribute the parking passes to tenants where needed. He stated that they have never had an issue of running out of the parking passes, that they like to keep a few extras.

Ms. Wolf stated that regarding **Calendar Number 3493(a)**, J-Town Properties, LLC, 2741 Hampshire Road, she moved to grant with conditions the application for the variance to Section 1123.06(a) to permit less land area per unit than the required when the code requires a minimum of 750 square feet per unit and to Code Section 1123.06(c) to permit the number of apartment units per acre to be greater than 58. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special circumstance and conditions exist which are peculiar to this property, specifically creating the additional private apartments will not alter the number of occupants in the building;
- The property in question will not yield a reasonable return without the variance because shared living is no longer desirable making it difficult to lease the current spaces and increasing the units will not add to the occupancy of the building;
- The variance is insubstantial and the minimum necessary to make reasonable use of the structure as is demonstrated by the market demand for private living;
- The essential character of the neighborhood would not be substantially altered as a result of this variance as no changes will be made to the exterior of the building;
- The variance would not adversely affect the delivery of government services as the exterior of the building will not change and the same services would be provided;
- Special conditions and circumstances exist that are not a result of the action of the applicant as times have started changing and shared living is no longer as marketable because people want private living;
- The applicant's predicament cannot be resolved without a variance because, in order to increase the number of units, a variance is needed; and
- The spirit and intent behind the zoning requirements would be observed and substantial justice done by granting the variance as the increased number of units will result in decreasing the number of occupants in the building.

If granted the variance should include the following conditions:

1. Variance 3493(a) is granted to allow 14 dwelling units on this 7,500 square foot parcel resulting in the land area per unit being 535.71 square feet and resulting in the number of apartment units per acre being 82;
2. Receipt of a building permit;
3. Planning Director approval of a landscape plan for the front and rear yards; and
4. Complete construction within 18 months of the effective date of this variance.

Mr. Porcelli seconded the motion; the motion was approved (4-0).

Ms. Wolf stated that regarding **Calendar Number 3493(b)**, J-Town Properties, LLC, 2741 Hampshire Road, she moved to grant with conditions the application for the variance to Code section 1161.03(a)(4) to permit fewer parking spaces with none enclosed (code requires 7 additional spaces with 4 enclosed). After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions and circumstances exist which are peculiar to this property is demonstrated by the fact that the occupancy will actually be reduced and the parcel cannot accommodate more parking on-site as there is not enough space to create more parking;
- The property in question will not yield a reasonable return without a variance as shared living is not marketable and private units will be easier to market and rent;
- The essential character of the neighborhood would not be substantially altered as no exterior changes will be made to the building;
- The variance would not adversely affect the delivery of government services as there will be no change to those services;
- The following special conditions and circumstances exist that are not a result of actions of the applicant as change is necessary to make this building marketable and make it easier to lease;
- The applicant's predicament feasibly cannot be resolved through a method other than a variance as there simply is no space on the site to add more parking;
- The spirit and intent behind the zoning requirements would be observed and substantial justice done by granting the variance because the number of bedrooms will decrease which will result in less occupants in this building; and
- The granting of this variance will not confer on the applicant any special privilege as there are many developments in the area that are incorporating the same type of living.

If granted the variance should include the following conditions:

1. Variance 3493b is granted to allow 7 additional units with no additional on-site parking spaces;
2. Apartment owner and subsequent owner(s) shall continue to assist tenants with vehicles who cannot park on-site to secure off-street parking;
3. Receipt of a building permit;
4. Planning Director approval of landscape plan for the front and rear yards; and
5. Complete construction within 18 months of the effective date of this variance.

Mr. Porcelli seconded the motion; the motion was approved (4-0).

CALENDAR. NO. 3494

Case Western Reserve University, 2315 Murray Hill Rd., MF-3 Multi-Family, proposing expanding the existing building, requests variances (a) to Code Section 1123.07(a) to permit the front yard setback to be less than 30' minimum required and (b) to Code Section 1165.03(g)(1) to permit building to be located on more than one parcel (not permitted).

Mr. Zych stated that law firm to which he is a partner, Thompson Hine, represents Case Western Reserve University and has for some time. He stated that he determined that he needed to recuse himself from this case. With no objection, he would remain in the back of the room as

he would rejoin the Board after this case. There were no objections, Mr. Zych moved to the back of the room.

As the BZA Vice-Chair was not present a Chair Pro Tem needed to be elected to conduct this portion of the meeting. Ms. Wolf nominated herself as Chair Pro Tem. Assistant Director of Law Mr. Nouredine stated no second was required. Mr. Porcelli moved to close nominations; Mr. Brooker seconded the motion. The motion passed (3-0). Mr. Nouredine stated that the Board would now consider electing Ms. Wolf as Chair Pro Tem; this was approved (3-0).

All those wishing to testify were sworn in by Mr. Nouredine.
With no objections, the staff report dated February 13, 2020, was entered into the record.

Using a PowerPoint presentation, Ms. Knittel reviewed her staff report as follows:
CONTEXT: The property is located on the CWRU campus. It is zoned MF-3 Multiple-Family. Colleges and universities are conditionally permitted on MR-3 zoning districts. Fribley Commons dining facility is located in Cleveland on its border with Cleveland Heights and is surrounded by college dormitories. Just south of the building, in Cleveland Heights, is an outdoor dining area, a driveway to several parking spaces, and dormitories.

HISTORY: The building was built in Cleveland in 1964. We have no record of approvals for adjacent site work in Cleveland Heights.

PROJECT DESCRIPTION: Case Western Reserve University proposes to expand and reorient the Fribley Commons dining facility by adding onto three sides of the building. The southward expansion will be in Cleveland Heights and the current outdoor dining area will be replaced by a loading zone. A landscape buffer is proposed to buffer the loading zone from the adjacent southerly driveway adjacent to the dormitories. Variances are required to permit the front yard to be 2'6" where the code requires a minimum of 30' and to permit this building to be located on two parcels.

FACTS:

- This parcel is part of the Case Western Reserve University Campus.
- CWRU Master Plan shows the continued operation of the dining hall and the dormitories to the south.
- The irregularly shaped parcel is a code conforming parcel as it has 357' of frontage and is 70,376 square feet in area; Code 1123.06(b) requires a minimum development area of 20,000 square feet and Code Section 1123.06(e) requires a minimum lot frontage of 60' and Code Section 1123.06(d) requires a minimum lot width of 100' at the building line.
- Tippet House is on the Cleveland Heights parcel to the south of Fribley Commons.
- Colleges and University uses are conditionally permitted in the MF-3 Multiple-Family District.

- Cleveland Heights Planning Commission reviewed this plan and approved a conditional use permit for the expansion to Fribley Commons dining facility at their February 12, 2020 meeting.
- The current building is located on the south property line.
- The proposed addition on the south side of the building extends the building 5' into the Cleveland Heights parcel.
- County Engineer has informed us that the parcels cannot be joined as they are in different municipalities.
- Zoning Code Section 1165.03 (g)(1) states that every building shall be on one lot only. The applicant is proposing an addition to an existing building located at the parcel line. This addition will result in the building extending 5' into the Cleveland Heights parcel. *Variance required.*
- Due to this site being located in two municipalities, the applicant is working with both cities for needed approvals.
- The design has been approved by the Little Italy Historic District Commission.
- Cleveland Heights ABR approved the design at their February 4, 2020 meeting.
- Currently, Fribley Commons located entirely in Cleveland has a front yard setback that varies from 28.58' to 33.93'.
- Zoning Code Section 1123.07 (a) requires a minimum 30' front yard in a Multi-Family District; this proposed building will have a front yard of 2'6". *Variance required.*

If approved, conditions may include:

1. Variance 3494(a) is granted to allow the front yard to be 2'6" as shown on the site plan submitted with the BZA variance application;
2. Variance 3494(b) is granted is to allow the building to be located on more than one parcel as shown on the site plan submitted with the BZA variance application;
3. Receipt of a building permit;
4. Planning Director approval of a landscape plan for the property within the City of Cleveland Heights; and
5. Complete construction within 18 months of the effective date of this variance

Ms. Knittel stated that the applicant was present and prepared to review the statement of practical difficulty.

Ms. Wolf asked the applicant to come forward and give his name and address.

Joanne Brown, 10620 Cedar Avenue, Cleveland Ohio came to the microphone and stated that she had been sworn in. Ms. Wolf confirmed with the applicant that the application dated, January 8, 2020, was true and correct. With no objection, the application and statement of practical difficulty was entered into the record.

Ms. Brown reviewed the statement of practical difficulty stating that Factor A considers special

conditions and circumstances. She stated that the uniqueness of this is that the property is located within two municipal jurisdictions, the City of Cleveland as well as the City of Cleveland Heights. County Engineer has stated that it is prohibitive to consolidate the parcels. The existing structure has been occupied on the site since the 1960s. Factor B addresses how the property in question would not yield a reasonable return without the variance. The reason for the renovation and expansion of this facility is to accommodate the increased undergraduate student population. She explained that not upgrading the facility would render the facility unable to service the new student load and that this would be detrimental to the mission of Case Western Reserve University. Factor C, the variance to Section 1123.07(a) is insubstantial as the frontage opens onto an existing roadway. Emergency access is not compromised and is readily accessible. The variance is minimal and a majority of the adjacent land is owned by CWRU. Also, the variance to Section 1165.03(g)(1) is insubstantial as it is a situation that has existed since the 1960s; that is there have been two parcels in this section of the campus. The side yard setback of 2'6" is the minimum necessary for the addition of one structural bay. Factor D considers the impact on the character of the neighborhood; we feel that this project will improve the neighborhood. The utility head house element will be demolished opening up this area for green space and a new entry to the facility. The relocation of the loading and receiving services will be eliminating traffic congestion on Murray Hill. Factor E, the new location of the loading and receiving area will be better for street and traffic circulation and there is a minimal amount of Cleveland Heights governmental services delivered to this site. Factor F, the property was developed over 50 years ago with different zoning regulations. Factor G, the property is located in two municipalities is a special circumstance and condition that does exist that was not the result of the owner's action. Factor H this predicament cannot be resolved without a variance as the properties cannot be joined. Factor I the substantial justice will be done by granting the variance as it will continue to support CWRU's growth and value to the community and students, Factor J, the granting of these variances will not confer any special privileges due to the uniqueness of the parcels being located in two municipalities and the front yard setback reduction will situate the building to engage with the pedestrian and urban fabric of this neighborhood and campus community.

The public hearing was closed.

Mr. Porcelli stated that regarding **Calendar Number 3494(a)**, Case Western Reserve University, 2315 Murray Hill Rd., he moved to grant with conditions the application for the variance to Section 1123.07(a) to permit the front yard setback to be less than the 30' minimum required. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

- Special conditions and circumstances exist which are peculiar to this area, specifically this site is very unique as the University surrounds this parcel and the providing of services to the students is a necessary part of the University's mission;
- The property will not yield a reasonable return without the variance as the building renovation is needed in order to provide the services required;
- The variance is insubstantial as to its impact on the land and structure;

- The essential character of the neighborhood would not be substantially altered as a result of the variance it would be improved;
- The variance would not adversely affect the delivery of government services and would improve conditions by taking deliveries off of Murray Hill Road;
- The applicant's predicament feasibly cannot be resolved through a means other than a variance;
- The spirit and intent of the zoning requirements would be observed; and
- The granting of the variance will not confer on the applicant any special privilege.

If granted, the variance should have the following conditions:

1. Variance 3494a is granted to allow the front yard to be 2'6" as shown on the site plan submitted with the BZA variance application;
2. Receipt of a building permit;
3. Planning Director approval of a landscape plan for the property within the City of Cleveland Heights; and
4. Complete construction within 24 months of the effective date of this variance.

Mr. Brooker seconded the motion.

Mr. Brooker asked to amend the motion to include:

- The primary special condition is that the existing building abuts a municipal division line and the resulting building is going to be located in two cities leading to some variances conditions that exist here;

Also, Ms. Brown did ask that condition 5 be modified to provide up to 24 months to complete construction rather than the 18 months suggested in the staff report. All BZA members agreed to make this change.

Ms. Wolf called for the vote on the motion with the above amendments; the motion was approved (3-0).

Mr. Porcelli stated that regarding **Calendar Number 3494(b)**, Case Western Reserve University, 2315 Murray Hill Rd., he moved to grant with condition the application for the variance to Section 1165.03(g) (1) to permit a building to be located on more than one parcel where the code does not permit this. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that this is a very unique circumstance where the building straddles the municipal boundary between Cleveland and Cleveland Heights. All of the factors found in Calendar Number 3439(a) also apply to this variance and should be included.

If granted, the variance should have the following conditions:

1. Variance 3494b is granted to allow the building to be located on more than one parcel as

- shown on the site plan submitted with the BZA variance application;
2. Receipt of a building permit;
 3. Planning Director approval of a landscape plan for the property within the City of Cleveland Heights; and
 4. Complete construction within 24 months of the effective date of this variance.

Mr. Brooker seconded the motion; the motion was approved (3-0).

Mr. Zych rejoined the BZA and resumed his position as Chair.

Mr. Zych thanked the BZA members for their work. Mr. Zych thanked city staff for being helpful as the proceeding this evening were complex.

OLD BUSINESS

There was no old business to report.

NEW BUSINESS

Ms. Knittel state that there would be a March BZA meeting as she had received 3 variance applications.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 9:03 p.m.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary

