

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
January 19, 2022**

MEMBERS PRESENT:

Benjamin Hoen	Vice Chair
Dennis Porcelli	
Thomas Zych	Chair
Liz Wolf	
Melissa Fliegel	
Graig Kluge	

STAFF PRESENT:

Karen Knittel	Assistant Planning Director
Pamala Roessner	Assistant Law Director
Eric Zamft	Planning Director
Christy Lee	Recording Secretary

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present. Mr. Zych went on to express this evening there will be an election of officers, the election of Board Chair and Vice-Chair. Mr. Zych opened the floor for nominations.

Melissa Fliegel nominated Mr. Zych for Board Chair.

Mr. Porcelli motioned to close the nominations and accept Mr. Zych as nominee for Board Chair, this motion was second by Ms. Fliegel.

Motioned carried 5-0.

Motioned carried and Thomas Zych was elected Board Chair.

Mr. Zych now requested a nomination for Vice-Chair of the Board of Zoning Appeals.

Ms. Wolf nominated Mr. Benjamin Hoen for Vice-Chair of the Board of Zoning Appeals.

Mr. Zych asked for a motion to close the nominations.

Mr. Porcelli motioned to close the nomination and accept Mr. Hoen as nominee for the Board of Zoning Appeals Vice-Chair, this motion was second by Ms. Fliegel.

Motioned carried 5-0

Motioned was carried and Benjamin Hoen was elected Vice-Chair of the Board of Zoning Appeals.

APPROVAL OF THE MINUTES

The minutes for the December 14, 2021 meeting will be available for approval at the January 2022 meeting.

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 a 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

Ms. Knittel and the applicants were sworn in by Ms. Roessner.

Mr. Zych asked that the staff report dated January 14, 2022, be entered into the record, hearing no objection it shall be entered.

Karen Knittel PowerPoint Presentation was as follows:

Cal. No. 3535 B. & J. Miller, 1618 Rydalmount Rd., A Single-Family, requests a variance to
A. Sect. 1121.12(a)(2) to permit new garage/workshop to be setback less than 5' min. required side yard setback;
B. Sect. 1121.12(d)(1) to permit garage/workshop rear yard coverage to be greater than max. 20%; & to
C. Sect. 1121.12(e)(2) to permit garage floor area to be greater than max. area permitted.

Karen Knittel PowerPoint Presentation was as follows:

This case was continued from the December 2021 BZA Meeting to allow the applicant to have his property surveyed. The applicant has not been able to have the survey completed and is requesting the case to be continued to the February 2022 BZA meeting.

Mr. Zych asked if there was a motion on the floor to grant the continuance for **Cal. No. 3535 B. & J. Miller, 1618 Rydalmount Rd.,**

Mr. Hoen motioned for a continuance for **Cal. No. 3535 B. & J. Miller, 1618 Rydalmount Rd.,** to further be continued to the February 2022 Board of Zoning Appeals Meeting.

Mr. Porcelli seconded the motion for a continuance, motion carried 6-0.

Ms. Knittel and the applicants were sworn in by Ms. Roessner.

Mr. Zych asked that the staff report dated January 12, 2022, be entered into the record, hearing no objection it shall be entered.

Karen Knittel PowerPoint Presentation was as follows:

Cal. No. 3537 J. Epstein & M. Gawry, 2584 Shaker Rd., 'A' Single-Fam., bldg. patio, & gravel patio & walk requests variances to Sect. 1121.12(d)(5) to permit total rear yard coverage to be greater than max. 60% permitted & Sect. 1121.12(a)(5) to permit rear yd. gravel walkway to be less than min. 3' required from the south side property line.

Context:

2584 is a single-family house located in an 'A' Single-Family district. The properties surrounding it are all residential houses located in an 'A' Single-Family district.

The Master Plan Future Land Use Map shows this area as continuing to be detached single-family houses.

Project:

The applicant is proposing to create a gravel patio area beside their garage and to add a gravel sidewalk in the rear yard adjacent to the property line. The gravel areas would be edged with cobblestone.

Facts

- This is a nonconforming parcel in terms of the minimum square footage of the lot. This parcel is 50 feet wide and is 6,400 square feet in area. Code Section 1121.06 states that in an 'A' Single-family district the minimum lot width is 50 feet at the building line and has a minimum of 7,500 square feet in area.
- Code Section 1121.12(d)(5) permits the rear yard to have a maximum coverage by buildings and structures of 60%
- The applicant's rear yard is 2893.54 square feet; the maximum 60% coverage would be 1736 square feet.
- The applicant's total rear yard coverage would be 1954 square feet; 67.5% coverage of the rear yard.
- There is an existing fence along the south side property line.
- The applicant is proposing a gravel walk along a patio that leads to a gate. Approximately 8' of this walk would be adjacent to the existing fence along the property line.

The applicant has submitted a Statement of Practical Difficulty with their application and it is attached to this staff report.

If approved, conditions may include:

1. Cal. No. 3537 (a) variance to Section 1121.12(d)(5) to permit total rear yard coverage to be 67.5%, as shown on the site plan submitted with this variance application;
2. Cal No. 3537(b) variance to Section 1121.12(a)(5) to permit rear yd. gravel walkway to be 0' from the from south side property line as shown on the site plan submitted with this variance application.
3. Approval by the Architectural Board of Review
4. Receipt of a Building Permit; and
5. Complete construction within 24 months of the effective date of this variance.

The applicant and the applicant representative were sworn in by Ms. Roessner.

Jonathan Epstein 2584 Shaker Road, Cleveland Heights, Ohio 44118.

Jay Szabo 2072 Kingston Road, Cleveland Heights, Ohio 44118.

Mr. Zych Asked Mr. Epstein if the application dated December 1, 2021, and submitted December 14, 2021, and to the best of his knowledge agree that the contents of the application are true and correct.

Mr. Epstein responded "Yes".

Mr. Zych asked that the application be entered into the record, hearing no objection it shall be entered.

Mr. Szabo went on to state and clarify the particular difficulty and the need for a variance. Mr. Szabo added that there's a current issue with the property and its accumulation of water. And to make these areas more functional the need for permeable gravel would help reduce the standing water. Mr. Szabo mentioned that the resident has added a garden to the property to assist with water flow in addition to redesigning the patio. He went on to say that this project would allow for better access to the home from the side entry and reduce the standing water and mud.

Mr. Epstein concurred with Mr. Szabo. Adding that drainage has been an ongoing issue on the property, and he feels that this project would improve the functional use of the entire area while eliminating the water and drainage problem.

Mr. Zych interjected that there are two variances that are before the Board of Zoning Appeals regarding this project one being the rear yard coverage, he went on to state that it seems that the focus is on the location of the gravel walkway to be less than the minimum 3-foot requirement for the south property. He asked for clarification on the gravel location.

Mr. Szabo stated that they need to have access to the side yard. That there's a 3-foot difference in distance between the corner of the house and the property line. He added that they are also replacing the current fence but the additional spacing is needed to make a connection from the patio to the side of the house for complete access.

Mr. Zych asked if there were any other questions for the applicant.

Mr. Porcelli asked if there was a plan to add any drainage to the yard and if there was any drainage in the front driveway.

Mr. Szabo responded 'absolutely' and he went on to specify the location of the drainage and its placement as well as the regrading. Mr. Epstein interjected that there is drainage in the front driveway.

Mr. Porcelli asked had there been consideration to possibly extending the current drain line into the lawn area.

Mr. Szabo interjected that according to the contractor that will install the drainage system there isn't enough drop between the area in the backyard to effectively tie in with the drain in the front of the garage.

Mr. Zych asked if there were any additional questions for the applicant or the applicant's representative.

Ms. Wolf asked for clarification on the path that this requesting the variance there is a gate that can't be moved, and therefore that is why you're creating the new path in this particular location between the corner of the house and the property line.

Mr. Szabo responded "Yes" and he went on to explain that there are only 3 feet between the corner of the house and the property line.

Mr. Zych asked if there were any additional questions for the applicant or the applicant's representative. Mr. Zych asked if there were any questions or comments from the public. He then went on to close the public hearing there were no additional questions from staff, he asked if there was a motion on the floor.

Ms. Wolf motioned approval regarding **Cal. No. 3537 J. Epstein & M. Gawry, 2584 Shaker Rd., 'A' Single-Fam., bldg. patio, & gravel patio & walk** requests variances to Sect. 1121.12(d)(5) to permit total rear yard coverage to be greater than max. 60% permitted & Sect. 1121.12(a)(5) to permit rear yd. gravel walkway to be less than min. 3' required from the south side property line. After reviewing the application and hearing the evidence under oath the Board finds and concludes that special conditions and circumstances do exist which are peculiar to the land structure involved. This is a non-conforming lot. It's a smaller lot and there is mud excessive moisture and drainage issues in the backyard, which will be addressed by creating the gravel patio and the back of the property and the property will not yield a reasonable return without the variance. The yard has not been useable due to drainage issues. The variance is insubstantial and is the minimum necessary use of the land structure again it is a small non-conforming lot with drainage issues and the gravel area will address those issues. The essential character of the neighborhood would not be substantially altered as a result of the variance. This is in the backyard and the back yard is fenced and it will not affect the character of the neighborhood. The variance would not adversely affect the delivery of government services. The property owners testified that they purchased the property without knowledge of the zoning restriction. The following special condition circumstances exist that are not a result of the actions of the applicant, the drainage issues again are not due to something that the applicant created. The applicant's predicament cannot be resolved through a method other than a variance as described by the representative of the owner of the home this is the best way to address this issue. If granted the variance should have the following Conditions:

1. Cal. No. 3537 (a) variance to Section 1121.12(d)(5) to permit total rear yard coverage to be 67.5%, as shown on the site plan submitted with this variance application;
2. Cal No. 3537(b) variance to Section 1121.12(a)(5) to permit rear yd. gravel walkway to be 0' from the from south side property line as shown on the site plan submitted with this variance application.
3. Approval by the Architectural Board of Review
4. Receipt of a Building Permit; and
5. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen second the motion it was carried 5-0.

Ms. Wolf motioned approval regarding **Cal. No. 3537 J. Epstein & M. Gawry, 2584 Shaker Rd., 'A' Single-Fam., Sect. 1121.12(a)(5)** to permit rear yd. gravel walkway to be less than min. 3' required from the south side property line. The special circumstances that exist in including a gate that can't be moved the pathway that is the only way to access the rear yard. The pathway, again they have issues with the drainage location. The variance is insubstantial this again is the only way to access the backyard, this will not affect the essential character of the neighborhood, it will not affect the governmental services,

property owner testified that he purchased the property without knowledge of the zoning restriction. If granted to variance should have the following conditions

1. Cal. No. 3537 (a) variance to Section 1121.12(d)(5) to permit total rear yard coverage to be 67.5%, as shown on the site plan submitted with this variance application;
2. Cal No. 3537(b) variance to Section 1121.12(a)(5) to permit rear yd. gravel walkway to be 0' from the from south side property line as shown on the site plan submitted with this variance application.
3. Approval by the Architectural Board of Review
4. Receipt of a Building Permit; and
5. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen second the motion it was carried 5-0.

Mr. Zych asked that the staff report dated January 14, 2022, be entered into the record, hearing no objection it shall be entered.

Karen Knittel PowerPoint Presentation was as follows:

Cal. No 3539 Flaherty & Collins, CEDAR LEE MEADOWBROOK DEVELOPMENT (PPN 687-06-009 -013, 687-06-088 – 687-06-096, 687-08-001)

A. Cedar-Lee site, 1320 Cedar Rd. & 2223 Lee Rd. requests the following variances:

- 1) Sect. 1131.14(f) to permit front yd. on Cedar Rd. to be greater than max. 10' permitted;
- 2) Sect. 1131.14(g)(4) to permit less than ½ of each building face on the bldg.'s top floor to be setback at least 8' on the Cedar Rd. face of the bldg.;
- 3) Sect. 1166.05(b) to have less than 10' landscaped yd. along Cedar Rd.

B. Meadowbrook site, 2223 Lee Rd. requests the following variances:

- 1) Sect. 1131.14(f) to permit front yd. on Lee Rd. to be greater than max. 10' permitted;
- 2) Sect. 1131.14(f) to permit rear yd. abutting 3216 Tullamore Rd. to be less than the 20'min. required;
- 3) Sect. 1131.14(g)(4) to permit less than ½ of each building face on the bldg.'s top floor to be setback at least 8' on the Tullamore Rd. face of the bldg.;
- 4) Sect. 1131.075(a) to have less than 60% windows along the Tullamore Rd. street frontage; &
- 5) Sect. 1166.05(b) to have less than 10' landscaped yd. along Tullamore Rd. & Lee Rd.

Context:

The Cedar-Lee-Meadowbrook Project Site currently is bounded by Cedar Road to the north, Meadowbrook Boulevard to the south, the Lee Road commercial properties to the west, and residential properties to the east (the "Project Site"). For purposes of this Staff Report, the portion of the site north of Tullamore Road is referred to as the "Cedar-Lee site" with the building on this site is referred to as the "Cedar-Lee Building" on the site plans and "Building #1" in the Statement of Practical Difficulty. The portion of the project south of Tullamore Road is referred to as the "Meadowbrook site" and the building on this site is referred to as the "Meadowbrook Building" on the site plans and a "Building #2" in the Statement of Practical Difficulty.

The property is zoned 'C2-X' Multiple-Use. The adjacent commercial properties along Lee and Cedar Roads are zoned 'C2-X' Multiple-Use. Across Cedar Road to the north is the Cleveland Heights-University Heights High School, zoned 'S2' Mixed-Use. To the east and north of Tullamore Road, the residential property is zoned 'A' Single-Family and the properties to the south of Tullamore with Tullamore addresses are zoned 'A' Single-Family. The apartment buildings to the east with Meadowbrook Blvd. addresses are zoned 'MF2' Multiple-Family. South, across Meadowbrook Blvd., the commercial property is zoned 'C-2X' Multiple-Use.

The purpose of the 'C2-X' Multiple-Use District is to provide standards for the continued operation of mixed-use neighborhoods and to provide for dense, mixed uses along thoroughfares, and to concentrate mixed-use buildings to promote and encourage activity. Parking and driveways are generally located so as not to disrupt pedestrian activity.

The adopted 2017 City of Cleveland Heights Master Plan Future Land Use Map shows this area as Mixed-Use Commercial & Retail that is described as being a walkable building with upper-floor residential or office.

The overall Project Site is approximately 4.80 acres and currently consists of surface and covered parking areas, vacant commercial buildings, and vacant land. The site is currently owned by the City of Cleveland Heights. Mixed-use commercial/residential redevelopment of this site has been a long pursued goal of the City, dating back to the initial environmental cleanup of the site in 2006. After the 2020 Request for Proposal/Qualifications (RFP/RFQ) process, the City entered into a development agreement with Flaherty & Collins Properties (the "Applicant"). Flaherty & Collins Properties is working with local architectural and site planning consultants, City Architecture.

Proposed Project:

The Applicant proposes to construct 2 new mixed-use buildings containing 206 residential units, along with maintaining the existing 377-space parking garage. The mixed-use buildings will have non-residential spaces on the first floor, including retail, live/work units, and amenity space, with residential units above (the "Proposed Project").

The Cedar-Lee site is proposed to have a mixed-use building facing Cedar Road. The building is proposed to be 4 stories tall and includes the development's outdoor swimming pool along an interior courtyard area of the 'C' shaped building.

The Meadowbrook site is proposed to have a mixed-use building that faces both Lee Road and Tullamore Road. The building is generally proposed to be 4 stories tall, with the last portion of the building on Tullamore Road adjacent to the single-family residential neighborhood stepped back to 2 stories. The Meadowbrook corner is proposed to be a public green space/park. The Meadowbrook building is proposed to include a private interior courtyard for residents only.

The Project Site is proposed to maintain a north-south access drive, approximately parallel with Lee Road. This access drive is proposed to continue to provide the Lee Road commercial properties access to the rear of their properties that includes dumpsters and outdoor dining areas. This access drive is proposed to also provide access to drop-off and pick-up areas for the new

Cedar-Lee building. Some existing and new parking spaces are proposed to be provided along the access drive for public use.

Facts – Zoning

- The C2-X District conditionally permits public green spaces/parks (Sect. 1131.14(b); Planning Commission approval is required. As part of its conditional use permit review, the Planning Commission will be able to establish the permitted building setback from Meadowbrook Road for the proposed Meadowbrook Building (Building #2) (Sect. 1131.14(f) note b).
- The C2-X District conditionally permits live-work units (Sect. 1131.14(b); Planning Commission approval is required. As part of its conditional use review, the Planning Commission will be able to establish the permitted building setback from Tullamore Road for the proposed Meadowbrook Building (Building #2) (Sect. 1131.14(f) note b).
- The proposed project conforms to Section 1131.14 (C2-X Multiple-Use District Regulations), except for the following:

Cedar-Lee Building (Building #1)

- Sect. 1131.14(f) – Yard requirements state that the front yard minimum is 0 feet and the front yard maximum is 10 feet. The Dimensioned Site Plan shows the proposed Cedar-Lee Building (Building #1) front yard along Cedar Road is a maximum of 15 feet 11 inches. (VARIANCE REQUIRED)
- Sect. 1131.14(g)(4) – Height regulations state that when a building exceeds 45 feet in height, at least one-half of each building face on the building's top floor shall be set back at least 8 feet from the building's setback at street level. Portions of the proposed Cedar-Lee Building (Building #1) height are 49 feet 1 inch and the building does not have the top floor set back 8 feet from the building's setback at street level. (VARIANCE REQUIRED)

Meadowbrook Building (Building #2)

- Sect. 1131.14(f) – Yard requirements state that the front yard minimum is 0 feet and the front yard maximum is 10 feet. The Dimensioned Site Plan shows the proposed Meadowbrook-Lee Building (Building #2) front yard along Lee Road is a maximum of 16 feet 5 inches. (VARIANCE REQUIRED)
- Sect. 1131.12(f) – Yard requirements state that the rear yard abutting an AA, A, or B District shall be a minimum of 20 feet. The Meadowbrook-Lee Building's (Building #2) rear yard abuts 3216 Tullamore, zoned A Single-Family is proposed to be 7 feet. (VARIANCE REQUIRED)
- Sect. 1131.14(g)(4) – Height regulations state that when a building exceeds 45 feet in height, at least one-half of each building face on the building's top floor shall be set back at least 8 feet from the building's

setback at street level. The proposed Meadowbrook Building (Building #2) is 50 feet 6 inches and does not have the top floor set back 8 feet from the building's setback at street level. (VARIANCE REQUIRED)

- Note that Section 1131.14 C2-X Multiple Use District regulation footnote (a) states that “For the purpose of measuring front and corner-side yards in the C2-X Districts, the yard shall be measured from the “built-to” line, which shall be a line running along the inner edge of the existing public sidewalk.” However, this footnote is only applied to the corner-side yard abutting an AA, A and B District, even though the language and the intent is as a general C2-X definition of front and corner-side yards.
- The proposed project conforms to the Commercial and Mixed-Use District Design Standards except for the following:
 - Sect 1131.075(a) Commercial and Mixed-Use District Design Standards require that a wall facing a public street must provide windows at least 60% of its lineal frontage at street level. These windows shall provide views to allow people to see and be seen for passive security and to encourage pedestrian activity and district vitality. The Tullamore side of the proposed Meadowbrook Building (Building #2) will have 52.3% of the building's lineal frontage as windows. (VARIANCE REQUIRED)
- The proposed project conforms to Section 1165.05 Sustainable Regulations for Large-Scale Residential Developments. Note that Large Scale Developments are reviewed and approved by the Planning Commission.
- The proposed project must comply with Section 1165.07 Exterior Lighting Requirements. Lighting details have not been provided at this time, the final lighting plan requires the review of the Zoning Administrator and may result in the need for additional variances.
- The proposed project must with Chapter 1166 Landscape Requirements. The proposed development meets or exceeds the requirements of this section, with the following exceptions:
 - Sect. 1166.05(b) requires that where a multi-family dwelling of four (4) or more dwelling units, a mixed-use development, or a commercial or other non-residential use maintains a front or corner side yard of ten (10) feet or more, a landscape yard a minimum of ten (10) feet in width must be installed in compliance with section 1166.05(b) (1), (2), and (3). A portion of the front yard of the proposed Meadowbrook-Lee Building along Tullamore Road will be 16 feet 5 inches to 21 feet 7inches as shown on the Dimension Site Plan. Also, a portion of the front yard of the proposed Meadowbrook-Lee Building along Lee Rd. and turning the corner along Tullamore Rd. will be 16 feet 5 inches as shown on the Dimensioned Site Plan. The applicant proposes no landscape yard along Lee Road, (VARIANCE REQUIRED)

- Sect. 1166.05(b) requires that where a multi-family dwelling of four (4) or more dwelling units, a mixed-use development, or a commercial or other non-residential use maintains a front or corner side yard of ten (10) feet or more, a landscape yard a minimum of ten (10) feet in width must be installed in compliance with section 1166.05(b) (1), (2), and (3). The proposed Cedar-Lee Building front yard along Cedar Road is a maximum of 15 feet 11 inches as shown on the Dimensioned Site Plan. The applicant proposes a combination of landscape areas that results in an aggregated landscape yard of 8 feet to 9 feet. (VARIANCE REQUIRED)
- Note that the final landscape plan will be submitted for review and approval by the Planning Director.
- The proposed project must conform to Chapter 1161 Off-Street Parking and Loading regulations. The project has 206 units. The project includes the 377-space parking garage as well as surface parking spaces. Required bicycle parking is located on the first floor of each building. The project appears to be code compliant, however, details of the total number of dwelling units in each building have not been provided and will be reviewed as part of the Planning Commission review to assure zoning code compliance.
- Signage will be submitted and reviewed for zoning compliance (Chapter 1163) separately at a later date when tenants are identified.

Facts – Site conditions

- The majority of the current Cedar-Lee site is a surface parking lot and includes 2 buildings along Cedar Road: 13230 and 13234-38 Cedar Rd.
- The existing commercial buildings along Lee Road do not have 10 feet of landscaping in front of them.
- The existing commercial buildings along Cedar Road do not have 10 feet of landscaping in front of them.
- The development site is proposed to maintain the existing parking lot structure, with some of the parking reserved for the new residents and with some public parking available.
- The development site is proposed to maintain the north-south access drive continuing to provide access to the Lee Road commercial properties' rear areas for dumpster access, outdoor patio areas, & rear entry doors.
- The proposed Meadowbrook-Lee site has an elevation change with the lowest elevations being along Lee Road and the highest along the rear property line.
- On the Cedar-Lee Site, the individual parcels currently used as the surface parking lot and the two commercial properties along Cedar Road and parcels currently used as surface parking need to be joined with the parking deck parcel to form one parcel.

Facts - Process

- Four (4) public open houses and workshops were held to gather public comment and inform the project design prior to the start of the formal approval process.

- A parking and traffic study of the district and the development site was commissioned by the City and is in the process of being completed.
- The proposed project provided an informational presentation and discussion at the December 1, 2021 Transportation & Environmental Sustainability Committee meeting.
- The proposed project had a preliminary review by the Planning Commission on December 8, 2021; final plan approval of the development site plan and conditional use permits must be granted by the Planning Commission.
- The proposed project had a preliminary review by the Architectural Board of Appeals on December 21, 2021. Final approval must be given by the Architectural Board of Appeals.
- Any changes that are required by either the Planning Commission or the Architectural Board of Review as part of their review and decision-making on the proposed project will need to be reviewed for zoning compliance. Should any of these changes or conditions not conform to zoning regulations, the Applicant would be required to request additional variances.

The applicant has submitted a Statement of Practical Difficulty with their application and it is attached to this staff report.

Based upon the Applicant's application, the public comment and engagement process, and staff review, the Board of Zoning Appeals (BZA) may consider the following as conditions of granting variances:

Cal. No. 3539A. Cedar-Lee site, 1320's Cedar Rd & 2223 Lee Rd.

- 1a. Variance Cal No. 3539A (1) to Sect. 1131.14(f) is to permit front yd. on Cedar Rd. to be a maximum of 15' 11" as shown on the Dimensioned Site Plan submitted with the BZA application.
- 1b. Variance Cal. No. 3539A (2) to Sect. 1131.14(g)(4) is to permit no upper floor setback along the Cedar Road face of the building.
- 1c. Variance Cal No. 3539 A (3) to Sect. 1166.05(b) is to permit the landscaped yd. along Cedar Rd., to be less than 10' as shown on the Cedar Road Landscaping Buffer drawing submitted with the BZA application.

2. Details of all proposed fences shall be part of the final landscape plan;
3. Approval of a final Landscape Plan by the Planning Director;
4. Approval of a Lighting Plan by the Zoning Administrator;
5. Signage requires a separate review and approval for zoning compliance;
6. Approval of development plan by the Planning Commission;
7. Approval of required lot resubdivision of the Cedar-Lee Site by Planning Commission;
8. Approval of Conditional Use Permits by the Planning Commission;
9. Approval by the Architectural Board of Review;
10. Receipt of building permit(s); and
11. Complete construction within 36 months of the effective date of this variance.

Cal. No. 3539B. Meadowbrook site, 2223 Lee Rd

- 1a. Variance Cal. No. 3539 B(1) Sect. 1131.14(f) to permit front yd. on Lee Rd. to be a

maximum of 16'5" as shown on the Dimensioned Site Plan submitted with the BZA application.

- 1b. Variance Cal. No. 3539 B (2) is to Sect. 1131.14(f) permit the rear yd. abutting 3216 Tullamore to be a minimum of 7' as shown on the Dimensioned Site Plan submitted with the BZA application.
 - 1c. Variance Cal. No. 3539 B(3) to. Sect. 1131.14(g)(4) to permit no upper floor setback along Tullamore Road.
 - 1d. Variance Cal No 3539 B (4) to Sect 1131.075(a) is to permit 52.3% of windows along the Tullamore Road lineal frontage.
 - 1e. Variance Cal. No. 3539B (5) to Sect. 1166.05(b) is to permit less than 10' landscaped yd. along Tullamore Rd. & Lee Rd. permitting no landscape yard along Lee Road and on along the Tullamore Rd. corner, as shown on the Lee Road Landscaping Buffer Setback drawing submitted with the BZA application.
2. Installation of a privacy fence and/or landscaping along the property line shared with 3216 Tullamore Road. This fence detail, along with all proposed fences shall be part of the final landscape plan;
 3. Approval of a final Landscape Plan by the Planning Director;
 4. Approval of a Lighting Plan by the Zoning Administrator;
 5. Signage requires a separate review and approval for zoning compliance;
 6. Approval of development site plan by the Planning Commission;
 7. Approval of Conditional Use Permits by the Planning Commission;
 8. Approval by the Architectural Board of Review;
 9. Receipt of building permit(s); and
 10. Complete construction within 36 months of the effective date of this variance.

Mr. Zych thanked Ms. Knittel for her presentation, he went on to ask if there were any questions from the Board.

Mr. Porcelli asked if the parking garage on the City property, or what is the situation in terms of this development regarding the garage.

Ms. Knittel stated that the garage will become a part of the development.

Mr. Hoen stated he wanted to add to the previous question, and thankfully that there is no variance request for parking. He went on to ask if the large part of the parking garage be dedicated to resident parking and how will that affect patrons' long term. Mr. Hoen went on to ask what is the actual percentage of the utilized parking space for residents.

Ms. Knittel stated that that is a part of the ongoing parking study, which will include parking strategies that are being identified and will be reviewed with the Planning Commission. She said there are 377 spaces and they are proposing 206 residential units. She said those questions can be referred to the applicant for better clarification.

Mr. Porcelli asked if the residential and public be separated within the garage.

Ms. Knittel said those questions should be referred to the applicant.

Mr. Zych asked if there were any other questions for staff, there were none. Mr. Zych moved to the applicant.

The applicants were sworn in by Ms. Roessner.

Brandon Bogan, Bogan Properties 1 Indian Square Ste 3000 Indianapolis, Indiana 46240.

Alex Pesta City Architecture resident of Cleveland Heights, 14590 Superior and my office is located at 12205 Larchmere Blvd.

Mr. Zych stated that there was an application submitted dated January 11, 2022 he asked that this be placed as part of the record. He asked the applicant and their representative that the contents of that application are true and correct and complete to the best of their knowledge.

Mr. Bogan confirmed that they are complete and true.

Mr. Zych without objection they shall be entered into the record, hearing and seeing no objection the report and the application is so entered.

Mr. Bogan thanked staff, he went on to say that along with City Architect and Mr. Pesta they have been working hard to bring this project to light and ensure that the public and staff are knowledgeable of all plans and detail regarding this project.

Mr. Pesta thanked Ms. Knittel for her detailed presentation, Mr. Pesta went on to give a brief overview of each of the variances requested. Mr. Pesta reviewed the practical difficulties for each of the variances requested and why they were needed at this time to move forward with the project. Mr. Pesta referred back to PowerPoint presentation that was given by Ms. Knittel to further expand on the need for each variance. Mr. Pesta went on to expound on the entire site and how it will work together and how the different variances would help bring the development plans together. Mr. Pesta gave details regarding the location and setbacks for certain areas of the property. He gave details regarding the landscaping design, outdoor dining, and how they will maximize curb appeal for the property. Mr. Pesta went on to elaborate on the transition that will be made from the mixed-use district of Lee Road into the residential neighborhood. And how they plan and want the feel of the project to be that of a townhome and not just a commercial space.

Mr. Zych thanked Mr. Pesta and asked if there were any questions for the applicant or the applicant's representative from the Board.

Mr. Hoen asked if the applicant would address some of the parking questions that were presented to Ms. Knittel earlier from the Board, and could there be more clarification regarding units and the required setback for the Meadowbrook building.

Mr. Bogan stated that from their side of the development, they are working to maximize the number of units that are on this property, the target on the development is likely going to be above 220 units. Mr. Bogan added that currently they are at 206 units for the site and they are trying to maximize and maintain the number of units. He added that it's a difficult time for construction and development at the moment. Mr. Bogan stated that they are doing the best they can at the moment and therefore that is the reason for the need for a variance for the Meadowbrook site.

Mr. Pesta interjected that this is a double-loaded corridor, but there's on the backside where the resident courtyard there would be a reduction of about five units and there would still be a need for a room for mechanical space.

Mr. Bogan stated that regarding the parking on this property the city did a great thing creating this parking structure. As of now, it's existing as a public parking space with some ancillary uses. Mr. Bogan went on to state how they will regulate residential parking from commercial parking. He detailed the plan, on how all will be comfortable and have the ability to park without interference from one another.

Ms. Wolf asked for clarification on the parking study, and how much of the garage will be used by business, and based on that is there an exact number of how many parking spaces there will be.

Mr. Bogan the current number of parking spaces in the garage is 377.

Ms. Wolf asked per unit how spaces will be allotted to residents.

Ms. Knittel said the code requires 1 space per resident and there's no parking variance needed.

Ms. Wolf so with that being the case there will still be parking spaces for all.

Mr. Porcelli asked if there will there be parking designated for residents versus the public.

Mr. Bogan responded "Yes".

Ms. Fliegel asked regarding the setback, referring to the diagram that was given to the Board of Zoning Appeals for reference. She stated that the distance between homes on Tullamore is about 11 to 14 feet and asked if it was correct that the plan being proposed will provide a greater distance is that correct.

Mr. Pesta stated "correct".

Mr. Zych asked if there were any other questions from the Board, there were none. He asked Ms. Knittel if there were any questions from the public.

Ms. Knittel stated that there was one member of the public that was online, and she did email a comment. She stated that she can unmute her allow for comment to be heard.

Catherine Osborne stated that she would like to have her comment read by Ms. Knittel.

Ms. Knittel went on to read Ms. Osborne's comment to the Board and the Applicant and the Applicant Representative regarding her support for this project.

Mr. Zych thanked Ms. Osborne and stated that her comment will be placed into the public record. And hearing and seeing no objection it was be entered.

Mr. Zych closed the public hearing and asked if there was a motion on the floor.

Ben Hoen proposed and it was acceptable to the BZA members to do two motions for this project.

Mr. Hoen stated that regarding Calendar No. 3539A Flaherty and Collins, Cedar Lee Site, 1320 Cedar Road and 2223 Lee Road, he moved to grant with conditions the application for the following variances:

- 1) Sect. 1131.14(f) to permit front yd. on Cedar Rd. to be greater than max. 10' permitted;
- 2) Sect. 1131.14(g)(4) to permit less than ½ of each building face on the bldg.'s top floor to be setback at least 8' on the Cedar Rd. face of the bldg.; and
- 3) Sect. 1166.05(b) to have less than 10' landscaped yd. along Cedar Rd.

After reviewing the application and other submissions and hearing the evidence under oath, the Board finds and concludes:

There are special conditions and circumstances that exist which are peculiar to the property that creates a practical difficulty resulting in the front yard being greater than the maximum 10-feet permitted in particular the Cedar Road frontage is inconsistent, due to shifts in the frontage the front yard depth is increased.

There are special conditions and circumstances that exist in particular the maximum height of the building is 49.1-feet which is required in order to provide the ground floor retail space a ceiling height that would be desirable for the prospective businesses that may want to move into the site and for all of the amenities that would be needed to market the residences above that;

There are special conditions and circumstances that exist which are peculiar to the property that creates a practical difficulty for having the required 10-foot landscape yard along Cedar Road in particular as the evidence showed there is a six-foot sidewalk with a six-foot section of landscape and then another six-foot sidewalk, which is a desirable amount of space to promote pedestrian activity which is one of the primary purposes of this project and is needed to protect the landscaping from plows and salt, and this setback is also consistent with other setbacks along Cedar Road and therefore consistent with the overall landscape and sightlines of the commercial district on Cedar-Lee;

The variance is insubstantial as the lines of the project do follow the lines of Cedar Road and would not adversely affect the essential character of the neighborhood;

The height increase above 45 feet is insubstantial as it is a mere 4 feet at the highest point, and it falls within the height range of buildings in the commercial district of the area;

The variance is insubstantial in that there is less than a 10-foot required landscape yard and it is artfully and thoughtfully put together for all the stakeholders and people who are going to use it in the future;

The variances will enhance the character of the neighborhood and will not subtract from the essential character of the neighborhood;

The variances would not adversely affect the delivery of government services;

The applicant's predicament could not feasibly be resolved by any other method other than a variance as was stated as to create a desirable return the maximum height is needed to be 49.1-feet; and

The spirit and intent behind the zoning code is met here as the intent of this project itself is to create the maximum return for the area, and to make it desirable and marketable to prospective commercial use and residential use.

If the variance passes it should have the following conditions:

- 1a. Variance Cal No. 3539A (1) to Sect. 1131.14(f) is to permit the front yard on Cedar Rd. to be a maximum of 15' 11" as shown on the Dimensioned Site Plan submitted with the BZA application.
- 1b. Variance Cal. No. 3539A (2) to Sect. 1131.14(g)(4) is to permit no upper floor setback along the Cedar Road face of the building.
- 1c. Variance Cal No. 3539 A (3) to Sect. 1166.05(b) is to permit the landscaped yd. along Cedar Rd., to be less than 10' as shown on the Cedar Road Landscaping Buffer drawing submitted with the BZA application.
2. Details of all proposed fences shall be part of the final landscape plan;
3. Approval of a final Landscape Plan by the Planning Director;
4. Approval of a Lighting Plan by the Zoning Administrator;
5. Signage requires a separate review and approval for zoning compliance;
6. Approval of development plan by the Planning Commission;
7. Approval of required lot resubdivision of the Cedar-Lee Site by Planning Commission;
8. Approval of Conditional Use Permits by the Planning Commission;
9. Approval by the Architectural Board of Review;
10. Receipt of building permit(s); and
11. Complete construction within 36 months of the effective date of this variance.

Melissa Fliegel second the motion; the motion was approved. 5-0

Mr. Hoen stated regarding Calendar No. 3539B Flaherty and Collins, **Meadowbrook site, 2223 Lee Rd** he moved to grant with conditions the application for the following variances:

- 1) Sect. 1131.14(f) to permit front yd. on Lee Rd. to be greater than max. 10' permitted;
- 2) Sect. 1131.14(f) to permit rear yd. abutting 3216 Tullamore Rd. to be less than the 20' min. required;
- 3) Sect. 1131.14(g)(4) to permit less than ½ of each building face on the bldg.'s top floor to be setback at least 8' on the Tullamore Rd. face of the bldg.;
- 4) Sect. 1131.075(a) to have less than 60% windows along the Tullamore Rd. street frontage; &
- 5) Sect. 1166.05(b) to have less than 10' landscaped yd. along Tullamore Rd. & Lee Rd.

After reviewing the application and other submissions and hearing the evidence under oath, the Board finds and concludes:

Special conditions and circumstances do exist that create a practical difficulty in particularly the right-of-way itself creates a practical difficulty requiring an additional front yard setback on Lee Road in accordance with the plan as presented to the Board and this proposed setback would not be inconsistent with the remainder of the streetscape on Lee Road;

There are special conditions and circumstances that exist that create a practical difficulty resulting in the rear yard having a 7-foot setback where a 20-foot setback is required, as it is impossible to pull that last unit closer to Lee Road to create that 20-foot setback for several reasons: the building acts as a retaining wall, the project itself would virtually be untenable as the unit goal of the project is 220 units and the plans are at 206 units and further reduction of units in

the building results in the reduction of 5 to 6 units in the building, thus making the project 20 units less than the unit goal;

Special conditions and circumstances do exist that create a practical difficulty requiring the height variance in particular the majority of it is conforming, and only a small portion of the project requires this variance;

There are special conditions and circumstances that exist which create a practical difficulty as this is a mixed-use commercial and residential project and in order to make the ground floor live-work residences appealing and live-able, less window space is required along the Tullamore Road frontage, due to the ground floor entrances being similar to a brownstone-type building, therefore they require more privacy;

There are special conditions and circumstances that create a practical difficulty for the landscape requirement as the intent of this plan along Lee road and the corner of Tullamore is to maximize the space for outdoor dining which is a desirable feature of this project, this is a district where there are many dining establishments and in the warm weather months, it is very desirable to have outdoor dining, and therefore to keep with the essential character of this commercial district and neighborhood that additional space in front of the buildings is being set aside for that outdoor dining and ground-floor retail use.

The front set back variance is insubstantial as this would not be inconsistent with the remainder of the streetscape on Lee Road;

The rear yard setback variance is insubstantial, as the actual amount of space between the project and the neighboring house is greater than the amount of space between houses along Tullamore Road and a condition of approval shall include a privacy fence and/or landscaping along the Tullamore residential property line;

The variance to permit less than the required top floor to be setback 8' from the street elevation is insubstantial as the magnitude of this project itself and the majority of it is conforming, and only a small portion of the project requires this variance;

The variance is insubstantial, in that there will be 52.3% windows along Tullamore Road where 60% is required and this small reduction is specifically for the privacy and overall appeal of the live-work residential units;

The character of the neighborhood would not be substantially altered as this project is going to substantially enhance the character of the neighborhood especially for the neighbors along the residential street who will also be able to enjoy much of the open public that is being offered here;

The setback itself is consistent with the essential character of the neighborhood, as the building follows the remainder of the commercial building setbacks in this area and any alteration to that setback would have an adverse impact on the nature of the commercial district and the sightlines and the streetscape of the commercial district;

The essential character of the neighborhood would be affected if this reduced windows for privacy were not permitted, and therefore the essential character of the neighborhood is not going to be adversely affected;

The granting of these variances will not adversely affect the delivery of governmental services;

These variances are necessary and could not have been resolved through a method other than a variance; and

The spirit and intent of the zoning code is not adversely affected and is being observed;

If the variance passes it should have the following conditions:

1a. Variance Cal. No. 3539 B (1) Sect. 1131.14(f) to permit the front yard on Lee Rd. to be a maximum of 16'5" as shown on the Dimensioned Site Plan submitted with the BZA application.

1b. Variance Cal. No. 3539 B (2) is to Sect. 1131.14(f) permit the rear yard abutting 3216 Tullamore to be a minimum of 7' as shown on the Dimensioned Site Plan submitted with the BZA application.

1c. Variance Cal. No. 3539 B (3) to. Sect. 1131.14(g)(4) to permit no upper floor setback along

Tullamore Road.

- 1d. Variance Cal No 3539 B (4) to Sect 1131.075(a) is to permit 52.3% of windows along the Tullamore Road lineal frontage.
- 1e. Variance Cal. No. 3539B (5) to Sect. 1166.05(b) is to permit less than 10' landscaped yd. along Tullamore Rd. & Lee Rd. permitting no landscape yard along Lee Road and on along the Tullamore Rd. corner, as shown on the Lee Road Landscaping Buffer Setback drawing submitted with the BZA application.
2. Installation of a privacy fence and/or landscaping along the property line shared with 3216 Tullamore Road. This fence detail, along with all proposed fences shall be part of the final landscape plan;
3. Approval of a final Landscape Plan by the Planning Director;
4. Approval of a Lighting Plan by the Zoning Administrator;
5. Signage requires a separate review and approval for zoning compliance;
6. Approval of development site plan by the Planning Commission;
7. Approval of Conditional Use Permits by the Planning Commission;
8. Approval by the Architectural Board of Review;
9. Receipt of building permit(s); and
10. Complete construction within 36 months of the effective date of this variance.

Ms. Wolf seconded the motion; the motion passed 5-0.

Mr. Zych thanked all for their work.

There was no old business to report.

There is no new business and Ms. Knittel reported that there will be a couple of cases on the February meeting agenda and that the meeting would be held virtually.

The meeting adjourned at 8:45 p.m.

Respectfully Submitted,


Thomas Zych, Chair


Eric Zamft, Secretary

