

**CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING**

April 19, 2023

<b>MEMBERS PRESENT:</b>	Ben Hoen Gayle Lewin Graig Kluge Liza Wolf Thomas Zych	Vice Chair     Chair
<b>STAFF PRESENT:</b>	William Hannah Karen Knittel Christy Lee	Law Director Assistant Planning Director Recording Secretary

**CALL TO ORDER**

The meeting was called to order at 7:03 pm.

**APPROVAL OF THE MINUTES**

Ben Hoen motioned to approve both the March 15, 2023 Minutes, the motion was seconded and the Minutes were 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, and certain formalities must be followed as if this were a court of law. Anyone who wishes to speak about a case will be placed under oath first. For each case, City staff will make a presentation and then each applicant will present his or her case stating the 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 outlined 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. The 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 characteristics of his or her property. Personal difficulties, hardships, or inconveniences are irrelevant to the Board's determination.

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

## PUBLIC HEARING

Staff Report Date April 11, 2023, was entered into the record.

William Hannah swore in all applicants and staff.

Mr. Zych mentioned that there was a letter submitted on February 20, 2023, by Jayme Schwartzbergh of 3246 East Scarborough Road in support of this project. And was entered into the record.

Karen Knittel reviewed the staff report using a PowerPoint presentation:

**Cal. No. 3560 K. Zehnder, 3240 E. Scarborough Rd.**, “A” Single-Family, requests variance to Sect. 1121.12(a)(10) to permit the air conditioning condenser to be less than the minimum of five (5) feet from the east side property line.

### **Context:**

The property is located on the south side of East Scarborough Road in the block between Lee Road and South Taylor Road. The property is surrounded by single-family houses all zoned “A” single-family.

The Master Plan future land use map shows this area as continuing to be used for single-family houses.

### **Project:**

Unaware of the zoning code, the applicant installed a new air conditioning compressor 2'2" from the east property line where the code requires the air conditioning machinery to be a minimum of 5 feet from the property line.

Facts:

- This is a code-conforming property in terms of width and area as it is 50 feet wide and is 8,250 square feet. A code-conforming lot is a minimum of 50 feet wide and has a minimum of 7,500 square feet. (Section 1121.06)
- Code Section 1121.12(a)(10) permits air conditioning machinery in the rear and side yards, but not in the required side yard.
- Code Section 1121.08 defines the required side yard to be 5 feet deep; requiring the principal use to be setback a minimum of 5 feet.
- The applicant's house is sited on the parcel so that it is closer to the east property line.
- The applicant's driveway is to the west of the house.
- There is an established perennial garden along the west side of the house.
- There are shrubs along the east property line where the air conditioning unit is located that screen the unit from 3246 E. Scarborough Rd, however screening from the street is needed and should be a condition of approval.
- The neighbor most impacted at 3246 East Scarborough Road has written a letter supporting the location of the air conditioning unit;

If approved, conditions should include:

1. Variance 3560 is granted to permit the air conditioning condenser to be located 2'2" from the east property line as shown on the site plan, submitted with the BZA application.
2. Submit a screening plan to the zoning administrator for approval and maintain required screening to keep the machinery from being viewed from the street and neighbors;
3. Receipt of a Building Permit; and
4. Complete screening and condenser installation within 6 months of the effective date of this variance.
- 5.

Ms. Knittel concluded that the applicant was present and prepared to briefly review their project and statement of practical difficulty.

Mr. Zych asked if there were any questions for Ms. Knittel at this time, Mr. Zych went on to ask Ms. Knittel if there was any representation to show that there would be any difficulty in placing the unit on the other side of the house.

Ms. Knittel referred back to her PowerPoint showing the current placement of the air condition unit in relation to the other side of the home. Pointing out that there is a garden area currently on the other side of the home. Which also is where the driveway is located.

Kelly Zehnder, 3240 E. Scarborough Rd affirmed the oath.

Mr. Zych stated that an application was submitted on March 12, 2023, and to the best of Mrs. Zehnder's knowledge was this application true and correct, Mrs. Zehnder stated "Yes" and therefore the application was placed in the record.

Kelly Zehnder stated that the current placement of the air conditioner is the best position for being concealed from view of the street, she also mentioned that based upon how the home was built and the placement of the furnace as well as air ducts this was the best option without having to have the heating and air system rerouted throughout the property at an additional cost.

Mr. Hoen asked if there was a professional that came to the house to assess the options for placement.

Kelly Zehnder replied that she was unaware that would be the best location for the air conditioning unit; however, when the contractor looked at the furnace and air duct system placement placing the unit on that side of the home would save the hassle of rerouting the air ducts.

Mr. Hoen interjected that he can understand why the unit was placed in that location especially if they were going to have additional work on the home to reroute the air system.

Ms. Wolf asked if the unit was placed on the other side would a variance still be needed, is there enough space on the opposite for the unit? Ms. Wolf also wanted to know if the unit is placed that close to the driveway causing any restrictions on entering and exiting.

Ms. Knittel referred back to her PowerPoint showing the property and stated the concern about placing the unit on the other side existing garden because the driveway is there it would be more than five feet from the property line. However, would be rather or not if it destroyed the existing garden which adds value to the home. Ms. Knittel stated that the Zoning Code doesn't speak

directly to the placement of an air conditioning unit near a driveway, however, there may be some difficulty moving in and out of the driveway during winter if the air conditioning unit was placed too close to the driveway.

Mr. Zych asked if there was anyone from the audience that wish to speak, there was none, therefore he opened the floor for a motion.

Ms. Wolf made a motion stating that regarding variance **Cal. No. 3560 K. Zehnder, 3240 E. Scarborough Rd.**, "A" Single-Family, requests variance to Sect. 1121.12(a)(10) to permit the air conditioning condenser to be less than the minimum of five (5) feet from the east side property line. After reviewing the application and other submissions, and hearing the evidence under oath, the Board finds and concludes that special conditions/circumstances exist which would prevent the unit to be placed on the other side of the home which would not require a variance. There is currently an existing Perumal bed that would be affected by placing the unit on that side of the home. In addition, the unit could likely be damaged being that close to the driveway. The added air conditioner produces will provide a reasonable return, removing the air conditioner would cause and affect financial distress to the homeowner. The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land structure as demonstrated by the fact that there really is no other place for the air conditioner unit to be placed. The essential character of the neighborhood would not be substantially altered as a result of the variance as seen in the pictures it is covered by brush and a fence. The variance would not adversely affect the delivery of government services. The following special conditions/circumstances exist that are not a result of the actions of the applicant such as the Perumal bed and the location of the driveway to the side of the home. If granted, the variance shall have the following conditions:

1. Variance 3560 is granted to permit the air conditioning condenser to be located 2'2" from the east property line as shown on the site plan, submitted with the BZA application.
2. Submit a screening plan to the zoning administrator for approval and maintain required screening to keep the machinery from being viewed from the street and neighbors;
3. Receipt of a Building Permit; and
4. Complete screening and condenser installation within 6 months of the effective date of this variance.

Mr. Hoen Second the motion, **motion was carried 5-0.**

Mr. Graig Klung made the Board, Staff, and the Public aware that he has used Mr. Reilly's company in the past however his decision would not be hindered by that.

Mr. Hannah swore in those who wished to speak regarding this case.

Staff Report Date April 11, 2023, was entered into the record

Karen Knittel's PowerPoint Presentation was as follows:

**Cal. No. 3562 F. & M. Reilly, 3085 Fairmount Blvd.**, “AA” and “A” Single-Family, request variance to Sections 1121.11 & 1165.03(a) to permit more than one principal building (house) on a parcel and to Section 1121.08 min. yard requirements for principal use to establish front, side & rear yard setbacks.

**Context:**

3085 Fairmount Boulevard is an unusual property as it is shaped approximately like a capital “L” and has street frontage along both Fairmount Boulevard and Guilford Road, but is not a corner property. Also, the portion of the parcel between Fairmount Boulevard parcels is zoned “AA” Single-Family while the rear of the property with Guilford Road frontage is zoned “A” Single-Family.

The properties along Fairmount Boulevard are single-family houses zoned “AA” Single-Family. The parcels along Guilford Road are zoned “A” Single-Family and are single-family houses.

**Project:** The applicant proposes constructing a second house on the parcel. The house would use the existing Guilford Road driveway and use the existing garage addition for parking.

**Facts:**

- This parcel is located in two zoning districts. The portion of the parcel located between Fairmount Boulevard parcels is zoned “AA” single-family and the portion of the parcel with frontage along Guilford Road is zoned “A” single-family.
- The detached garage/carriage house is located on both the portion of the parcel located between Fairmount Boulevard parcels and on the portion of the parcel that has Guilford Road frontage.
- The parcel has driveway access to both Fairmount Boulevard and Guilford Road.
- Code Section 1121.06 area and width regulations establish the minimum lot width and area per zoning district as follows:
  - In the “AA” Single-Family District the minimum lot size is 15,000 square feet and the minimum width is 100 feet;
  - In the “A” Single-Family District the minimum lot size is 7,500 square feet and the minimum width is 50 feet.
- The parcel has 110 feet of frontage along Fairmount Boulevard and 80 feet of frontage along Guilford Road. The parcel exceeds the minimum lot width requirement for both zoning districts.
- The parcel has 51,556 square feet in area. The parcel exceeds the minimum square footage requirement for both districts. The building code does not permit buildings to cross property lines, also zoning code section 1165.03(g)(1) requires every building to be on one lot only.
- The existing house is setback approximately 50 feet from the portion of the parcel with access to Guilford Road;
- 3085 Fairmount Blvd. is in the National Register of Historic Places Fairmount Boulevard District;
- The garage/carriage house and addition are built on both the portion of the property with Fairmount Boulevard access and on the property with Guilford Road access
- The garage/carriage house has an addition added more than 30 years ago that makes it

- impractical to attempt to subdivide the parcel.
- Code Section 1121.11 and Code Section 1165.03 (a) state that there shall be no more than one single-family dwelling/principal building on a zoning lot. (variance required)
  - The proposed house is sited behind the existing garage and parking area.
  - The trees located in front of the garage and parking area along Guilford Road will remain,
  - As this would be a second principal building the required setbacks need to be established.
    - The proposed location of the house shows the back of the house being 30' from the easternmost parcel line shared with 2632 Wellington Road. If the Guilford portion of the parcel were a separate lot, this would be defined as the rear property line.
    - The proposed location of the house is setback 10 feet from the north property line shared with 2611 Guilford Road and is setback 19 feet from the south property line and the location of where the zoning changes from "A" Single-Family to "AA" Single-Family.
    - The proposed house is set back behind an existing stand of trees along Guilford Road. The front of the proposed house is approximately 155 feet from Guilford. This setback is greater than the front yard setbacks of houses along Guilford Road. Zoning Code Section 1121.08 states that the minimum front yard setback is 25 feet in an "A" Single-Family District or the required front yard is established by the established setbacks on blocks built-up blocks.

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

If approved, conditions should include:

1. Variance 3562 is granted to permit the construction of a second house/principal building on this parcel as shown on the site plan dated March 14, 2023, submitted with the BZA application and to establish the following yard requirements for the new principal structure:
  - the front yard shall be a minimum of 155 feet from the Guilford Road right-of-way to the front of the house;
  - the side yard setback from the north property line shard with 2611 Guilford Road shall be a minimum of 10 feet;
  - the south side yard setback established from a line connecting the southern property lines of the portion of the parcel with access to Guilford Road shall be a minimum of 19 feet (this line is shared with the existing house; and
  - the rear yard setback for the new principal house shall be a minimum of 30 feet from the eastern property line shared with 2632 Wellington Road.
2. Approval of the Architectural Board of Review;
3. Approval of a landscape plan including a tree preservation plan detailing conformance with Code Section 1166.11 by the Zoning Administrator;
4. Receipt of required building permit(s); and
5. Complete construction within 24 months of the effective date of this variance.

Mr. Zych asked if there are questions for staff.

Ms. Lewin inquired if they already have a garage or a carriage house.

Ms. Knittel "Yes" It is a carriage house garage, so there is a garage that has also a carriage house at 3085 Fairmount Blvd. But then there also is an addition to that structure which is just a garage.

Ms. Lewin asked for clarification on the difference between accessory and primary structures.

Ms. Knittel responded that in a residential single-family district the principal structure that is permitted is the house or in the two-family district it would be the two-family house. She stated that an accessory structure would be a garage, we consider carriage houses to be accessory structures that have been "Grandfathered" into the zoning code.

Ms. Lewin so the City of Cleveland Heights doesn't allow new carriage houses.

Ms. Knittel replied that this is correct.

Ms. Wolf asked if the property had ever been separate lots. She asked if the Gilford parking part of the parcel were to be separated from the Fairmount property and if the dimensions would be that of a code-conforming lot.

Ms. Knittel said she had no evidence that these had ever been two separate parcels. She stated that it appears that these could be separate code-conforming parcels, however, it may be difficult in that the garage is built over what would appear to be the Fairmount Blvd. rear property line and there is a driveway to the garage from Guilford Road.

Mr. Zych asked whether the "A" Single-Family or "AA" Single Family restricts the nature of development to a single-family dwelling as the norm.

Ms. Knittel replied that is correct and that we were looking at Sections 1121.11 and 1165.03(a).

Mr. Hoen asked regarding the second variance request, if for decision's sake if these were separate parcels and it was a vacant lot, and they were going to build a house on the vacant lot would this second variance be needed?

Ms. Knittel responded, that the issue is the definition of yards in our zoning code. The zoning code presumes that all parcels are rectangular and so this is all considered a rear yard and so the unusual shape of this parcel results in the land behind the Fairmount Boulevard house being considered the rear yard to the Fairmount Blvd. house (principal structure). This is why when constructing a principle structure facing Guilford Rd., we thought it was necessary to establish the yard requirements for that structure.

Mr. Hoen commented that the variance is essentially recalibrating the site by making the front setback of Gilford instead of off Fairmount.

Ms. Knittel responded that this was correct.

Ms. Wolf asked if part of the issue was that the garage/ carriage house is historic and they don't want to take it down as it is part of a historic district.

Ms. Knittel replied that this was correct.

Mr. Zych asked for the applicant to come forward at this time.

Don Plunkett 2451 Stratford Rd affirmed the oath, Mr. Plunkett went on to say that he works for Studio One Design Group.

Mr. Zych stated that there was an application submitted on March 19, 2023, and to the best of your knowledge is true and correct, and if it shall be entered into the record.

Mr. Plunkett replied that was correct. Mr. Plunkett went on to describe the proposed project at 3085 Fairmount. He stated that the challenge with this property is the additional parcel located in the back where we plan to try and save as many trees as possible. He went on to say that they will prepare a landscaping plan to bring forth to the Board for further review. Mr. Plunkett described the idea of placing an additional residence onto the property, bringing additional value and appeal to the complete design layout. He went on to mention that there isn't a lot that can be done with the main house and the 30-foot setback and even if you were able to build on that it would very difficult. Mr. Plunkett reviewed what they will do with the current structures on the property such as the garage. Pointing out the opening to these structures are not very large one being a single car opening and the other being a double garage door at 13 feet wide. Adding the reason behind a carport is to unload and load vehicles. One idea was to attach it to the garage however, after further review and its being on the historic location possibly we should leave this structure as is. He explained that great detail was put into place in the new house to ensure that they followed all setback guidelines. Mr. Plunkett stated that really isn't a clear way to break up the parcel.

Mr. Zych asked what is the reason behind wanting two homes and how is this a practical difficulty.

Mr. Mike Reilly gave his address as 1423 Blackmore Rd in Forest Hill and he affirmed the oath. Mr. Reilly said that he had acquired this property. He said that he and his wife had been in their current home for over 30 years in Forest Hill, and decided to look for a home in the Gilford Wellington area. Mr. Reilly stated that the idea was to either find a home or a vacant lot and then they found the property at, 3085 Fairmount Blvd and began to rehab the property. He mentioned how they started to cut down and remove as well as preserve some trees on the property. Mr. Reilly, went back to his original plan of looking for a vacant lot because they are looking to build to their personal preference which would be to have a first floor, master suite, landscaping, patio, greenhouse for his cooking, and house that would work best for his family. Mr. Reilly stated that the plan would be to still keep the main house, he mentioned that his neighbors in Forest Hill are aware that they have purchased many homes within the area and have maintained all of them in great condition. Mr. Reilly again stated they are looking to renovate the mansion on this property and then build a connecting house. He said they would

selectively rent the mansion on a two to three-month bases to individuals. He explained that they would be living on the property right next door. Mr. Reilly confirmed that this was always the plan when they purchase this property. He went on to say how the outer structure of the house has improved as well as the landscape. He spoke of adding onto the carriage which was original to the property when it was built in 1913. The plan is to make the new structure fit with the design concept of the original property plan.

Mr. Zych thanked Mr. Reilly, Mr. Zych explained to Mr. Reilly that the Board of Zoning Appeals doesn't grant variances to people but to properties. It runs with the forever so he appreciated Mr. Reilly's desire concerning the property. However, the mansion is or shortly will be fully livable and he asked if one could live in that mansion.

Mr. Reilly responded that this was correct.

Mr. Zych went on to say that he is still having difficulty seeing or understanding the practical difficulty of this project.

Ms. Lewin asked if, in the statement of practical difficulty, it was said that this parcel was zoned for single-family residential. She said that as an established property owner in the city and a landlord, it seems that the intention in purchasing this property was to build or have a second principal structure on the property. She commented that with a person who has the background and knowledge that you have, it seems to be that you would have known that you're not allowed to have two principal structures on a property.

Mr. Reilly interjected stating that his intention was long term that they would build on the vacant lot, but we were going to purchase that lot either way. Because this was such a special house and we just couldn't pass up the opportunity to make this our own.

Ms. Lewin asked Ms. Knittel for examples of other similar properties as this that have multiple structures on one parcel.

Ms. Knittel stated that was a statement made by the applicant therefore they would have the answer.

Don Plunkett's 2451 Stratford Rd residence is 3041 Fairfax which is a corner lot and has two addresses and has been that way since the purchase of the home in 2009. And that is one example where there is a garage with an apartment above it, which is my office.

Mr. Zych so in other words it doesn't have a kitchen.

Mr. Plunkett interjected stating that it has a kitchen and bathroom with a shower.

Ms. Knittel asked if this is considered a carriage house.

Mr. Plunkett responded that was correct.

Ms. Lewin asked whether there were any known properties in the city that had multiple structures on one parcel.

Mr. Reilly stated that there is a property located on the corner of Fairfax and that property is new with two different families living on the property.

Ms. Lewin asked Ms., Knittel if she is aware of any property such as the one Mr. Reilly is trying to establish here in the City of Cleveland Heights.

Ms. Knittel replied that she doesn't recall having had or knowing of any other properties requesting this particular variance.

Mr. Hoen stated that a lot of discussion has centered around this so-called addition of the carriage house without having a survey not knowing exactly where the property line is and it would appear that the carriage house would be a Fairmount parcel absent historic landmark restriction why is there such a issue with taking that down the garage to be able to accomplish what you are trying to accomplish. Given the testimony that that garage itself doesn't fit the modern living standards of a modern garage. He asked if there is a historic preservation reason for wanting to keep the structure instead of just removing the structure. He commented that if you took down the structure and potentially split the lot we wouldn't be having this conversation.

Ms. Lewin asked if he was speaking about the entire garage/carriage house or just the annex.

Mr. Hoen replied that he was asking about the entire structure because this is what's causing the concern over a proposed lot split.

Mr. Reilly stated that he is 99.9% sure that it's original to the house. He also mentioned that the idea of removing the annex would make this project easier.

Mr. Zych wanted to clarify that there was an original carriage house and then an addition to the carriage house.

Mr. Reilly replied that it has always been one structure.

Ms. Knittel interjected stating that due to all the drawings saying "addition", she presumed that it was an addition to the carriage house because of how the drawing was labeled.

Mr. Hoen asked if there was a restriction on having the whole carriage house removed.

Mr. Reilly responded that he did not know and that he had never thought about it and that he wouldn't want to either.

Ms. Knittel stated that this is a National Registered District and this is a house located in this national registered district it is not a local landmark. So, it doesn't go to the Landmark Commission.

Mr. Zych is “correct” but there is someone who governs national historic landmark property, so the question is do we know whether or not if there is another step to go through?

Ms. Knittel so this is a contributing building in a district it’s not a national property itself, but she does not know the complete detail regarding Nation Historically Registered Districts and their guidelines.

Graig Klung so this is all one parcel, and in my understanding in doing lot splits, it’s based upon you splitting any portion of the Guilford parcel as you see fit so could split off a portion that goes above and around the garage/carriage house and still maintain the Fairmount parcel and have a new Guilford parcel without removing anything on the property. Mr. Klung stated that this may result in a variance for a minor setback versus a two-primary residence on one parcel.

Mr. Reilly stated that would work better for him.

Mr. Zych stated that this is a body of limited jurisdiction none of the members are elected, therefore they don’t have the power to change the zoning code and important but limited power that is to grant variances where there is a showing of a particular difficulty and applicant are not allowed to comply with something that I or someone else in the district/ city has to comply with. As you know we grant variances, where variance would effectively but an actual change to the zoning code because I could foresee others coming with similar requests. My personal out of view is there is a challenge in doing so because it begins to look as if the Board of Zoning Appeals is taking on the power to actually change the zoning code. And that is the hesitancy at the moment.

Mr. Reilly stated that it sounds as though they can do the workaround on the lot which would work better for all.

Mr. Zych so that it would then make sense to continue the case. He asked at this time was there anyone from the public who would like to speak at this time. He then asked for a motion.

**Mr. Hoen motioned for a continuance Cal. No. 3562 F. & M. Reilly, 3085 Fairmount Blvd., “AA” and “A” Single-Family, request variance to Sections 1121.11 & 1165.03(a) to permit more than one principal building (house) on a parcel and to Section 1121.08 min. yard requirements for principal use to establish front, side & rear yard setbacks. The motion was seconded by Ms. Wolf, motioned passed 5-0.**

**Old Business** – There was no old business

**New Business** - There currently are a few applicants that the staff is working with so there could be a meeting in May.

**Adjournment** – The meeting adjourned at 8:12 pm.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary