

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES
June 26, 2024**

MEMBERS PRESENT

Ben Hoen	Vice Chair
Graig Kluge	
Gayle Lewin	
Elchanan Stern	
Thomas Zych	Chair

STAFF PRESENT

Karen Knittel	Assistant Planning Director
H. Lee Crumrine	Assistant Law Director
Xavier Yozwiak	Planner / Zoning Inspector

CALL TO ORDER

The meeting was called to order at 7:00 p.m.

APPROVAL OF THE MINUTES

Mr. Hoen motioned to approve the Minutes of May 15, 2024, the motion was seconded and then 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 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. 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 character of his or her property. Personal difficulties, personal hardships, or inconveniences are not relevant to the Board's determination.

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

In addition, The Board is considering the expansion of non-conforming use. In making its decision of whether to approve an expansion of a non-conforming use, the Board will examine all the criteria set forth in the Zoning Code in Section 1115.07(e)(2). The burden is upon the applicant to demonstrate all seven (7) criteria by clear and convincing evidence. The evidence must show that the denial of the expansion of the non-conforming use will result in unnecessary hardship. Clear and convincing evidence means that all evidence is more likely than not to be true. The applicant must demonstrate circumstances unique to the physical character of his or her property. Personal difficulties, personal hardships, or inconveniences are not relevant to the Board's determination.

PUBLIC HEARING

Cal. No. 3581 R. Pietro, The Alcazar, 2450 Derbyshire Rd., "MF-2" Multiple-Family, requests variance

- A. to Code Section 1123.06 (a) & (c) to permit 141 units with maximum land area per dwelling unit to be less than 1,750 minimum and more than 25 units per acre;
- B. to Section 1123.10 to permit 63 dwelling units to be less than minimum 500 square feet required by code;
- C. to Section 1123.11 to permit the building to be taller than maximum 45 feet; and
- D. to Section 1161.03(a)(4) to permit 20 additional dwelling units (total of 141 dwelling units) with existing onsite parking of 43 spaces when the minimum parking required is 141 spaces.

Assistant Law Director Crumrine swore in all who intended to speak.

After hearing no objections, the staff report dated June 21, 2024, was entered into the record.

There was also an email and memorandum submitted by resident Marie-Rose Andriadi objected to the requests for variances in Cal. No. 3581. It was entered into the record.

Ms. Knittel reviewed the staff report using a Power Point Presentation.

Mr. Zych asked about the height and density of the nearby Ascent building [12301 Cedar Rd], and if the density was comparable to the Alcazar.

Ms. Knittel said that she believes the Ascent is nine (9) stories tall. She believed the density is greater than the Alcazar or at least comparable.

Mr. Zych asked if there were any other questions at this time for staff.

Mr. Hoen asked if the project has been reviewed by the Landmark Commission.

Ms. Knittel said that the project is scheduled to go the Landmark Commission the following week, and that approval from them was a condition for the variances being discussed.

Mr. Zych asked if the building has ever been a code conforming building.

Ms. Knittel explained that the building was constructed before the first zoning code in Cleveland Heights and has likely been a non-conforming building since then.

Daniel Caja (Address: 1429 Ester Lakewood, Ohio) went to the podium representing Dimit Architects.

Mr. Caja confirmed that an application of practical, difficulty was submitted and to the best of his knowledge, the application was true and correct. Therefore, hearing no objection, the information was entered into the record.

Mr. Caja explained the difficulties associated with the project, first addressing the lot area and parking. The building occupies most of the existing parcel. Adding parking would require demolishing additional buildings, or acquiring land, which would be a detriment to the historic nature of the property. The current parking is also not fully utilized, and most tenants use bikes, rideshare or public transit as their primary means of transit. Building residents have access to twenty off-site parking spots at the Accent garage too.

For the building height variances, Mr. Caja said the fifth floor of the Alcazar would not be allowed in current rules. The addition would match existing heights and setbacks to capture additional rent without being a detriment to the community. Mr. Caja then showed a series of renderings of the Alcazar with the proposed addition.

On the unit size, Mr. Caja explained that the smaller unit size was needed because of state historic tax credit requirements. Mr. Caja also clarified that there are nine units on the proposed penthouse level and that the 141 total units in the building is the correct number.

Mr. Zych asked if there were questions from the Board for Mr. Caja.

Ms. Lewin asked Mr. Caja about a sentence in the Statement of Practical Difficulty that said there are currently vacant units at the property that cannot be renovated because of parking requirements. After Mr. Caja's response, Ms. Lewin redirected the question to Ms. Knittel and she suggested that the applicant intended to say that there are units in the building that they could not be legally rented out after being renovated because they need the parking variance for the additional units

Ms. Lewin expressed concerns about the building being having less than 50% of the required parking spaces and asked Mr. Caja if a parking study had been completed. Ms. Lewin noted that a parking study was completed as part of the Ascent

Mr. Caja said he was unaware of a parking study being completed and added that he thought ownership would be open to conducted one or exploring other parking options, similar to the Ascent parking agreement they have.

Mr. Caja responded to another question from Ms. Lewin saying he did not know what percentage of parking spaces are currently rented.

Mr. Caja responded to a question from Mr. Hoen and said that none of the two-bedroom apartment units have been rented in the year that the ownership has had the building.

Mr. Caja said that there a both students and non-students living in the building.

Mr. Zych asked if the rental market for the building could also include older adults for whom life circumstances make a one-bedroom or studio unit attractive.

Mr. Caja confirmed that it does.

Responding to a question to Mr. Hoen, Mr. Caja clarifies the height of the existing roof of the building and the proposed addition.

Responding to Ms. Lewin, Mr. Caja explained the visibility of the roof of the proposed addition and how its design was informed by feedback from the State Historic Board.

Mr. Zych invited the public comment.

Ms. Marie-Rose Andriadi, who is a resident of the building east of the Alcazar (2472 Derbyshire), walked the Board through her main objections in her email about the proposed addition to the building.

No other members of the public commented on the proposed project.

Mr. Caja addressed a few of Ms. Andriadi's objections, explaining that the common areas in the building would be restored and become amenities. He explained that opening them up to the public as a restaurant or event space would likely make the parking issue worse. Mr. Caja also said that the previous renovation on the property was only conducted on nine units. The other units are in "pretty bad shape," he added.

Mr. Zych asked if trends in real estate and the layouts of apartments in new buildings puts pressure on Alcazar to renovate.

Mr. Caja agreed that the opening of a new structure puts the owners of nearby, older buildings at a detriment. However, in reference to the nearby Ascent building, Mr. Caja added that the Alcazar ownership views its market differently; he explained that The Alcazar is more middle market than Ascent.

Mr. Zych closes the public hearing, and reaffirms the purposes and powers of the Board. He then describes the different options for the motions, either splitting them up or doing them all at once and invites other board members to introduce a motion.

A. to Code Section 1123.06 (a) & (c) to permit 141 units with maximum land area per dwelling unit to be less than 1,750 minimum and more than 25 units per acre;

B. to Section 1123.10 to permit 63 dwelling units to be less than minimum 500 square feet required by code;

Ms. Lewin stated that she would divide the variances up into different motions stating that she would combine Variances A and B together into one motion and C and D could be considered individually. She explained that variances A and B are tied together because the number of units will ultimately determine the units per acre."

Ms. Lewin stated that regarding Calendar No. 3581 R. Pietro, The Alcazar, 2450 Derbyshire Road, she moved to grant the application for a variance with conditions to

- A.** to Code Section 1123.06 (a) & (c) to permit 141 units with maximum land area per dwelling unit to be less than 1,750 minimum and more than 25 units per acre;
- B.** to Section 1123.10 to permit 63 dwelling units to be less than minimum 500 square feet required by code;

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

- The special conditions and circumstances that exist which are peculiar to this land/structure which are generally not applicable to other land/structures in this same zoning district is that 2450 Derbyshire Rd is a historic property that has gone through various use cases over the years where smaller dwelling units were standard and there are a number of existing dwelling units that are below 500 square feet; and more people are looking for smaller or studio apartments and this is a trend that going into the future;
- The essential character of the neighborhood would not be substantially altered as a result of these variances because they are internal changes and do not change the exterior of the building;
- The variances would not adversely affect the delivery of governmental services because they are not impacting the exterior of the building;
- The applicant's predicament cannot be resolved through a method other than a variance because the building site is an existing historic property that is limited in size; and
- Granting the variance will not confer any special privilege that is denied by this regulation to other land/structures/buildings in the same district because dwelling units to be less than 500 square feet have been approved in the past.

If granted the variance shall have the following conditions:

1. Variance Cal. No. 3581 is granted to
 - A. To Code Section 1121.23(a) and (c) to permit 141 units to be 360.54 square feet of land area per dwelling unit, or 120.5 dwelling units per acre;
 - B. To Code Section 1123.10 to permit 63 dwelling units to be less than

minimum 500 square feet required by code as shown on the drawings submitted to BZA;

2. Any exterior changes shall require the Approval of the Architectural Board of Review and Landmark Commission;
3. Receipt of a Building Permit; and
4. Complete construction within 24 months of the effective date of this variance.

The motion is seconded and passes 5-0.

D. to Section 1161.03(a)(4) to permit 20 additional dwelling units (total of 141 dwelling units) with existing onsite parking of 43 spaces when the minimum parking required is 141 spaces.

Ms. Lewin stated that regarding Calendar No. 3581 R. Pietro, The Alcazar, 2450 Derbyshire Road, she moved to deny the application for a Variance D to permit additional dwelling units with the total number of dwelling units being 141 with existing onsite parking of 43 spaces when the code would require 141 onsite parking spaces. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that the applicant did not demonstrate by a preponderance of evidence that the literal enforcement of the zoning code would result in a practical difficulty.

Ms. Lewin stated the applicant did not prove that special conditions and circumstances exist which are peculiar to this land/structure involved which are not generally applicable to other land/structures in the same zoning district, to the contrary, the evidence demonstrated that special circumstances do not exist in that they are looking to add additional tenants to a space that is already overcapacity, and that's very similar to every other building in that neighborhood.

Ms. Lewin stated the applicant did not prove that the property in question will not yield a reasonable return without the variance, rather there was evidence that a reasonable return/beneficial use was possible because they bought the property a year ago knowing what the number of parking spaces were, knowing what the number of tenants or the number of units were, and they haven't shown that that has been a hinderance to them being able to make the property useful and beneficial.

Ms. Lewin stated the applicant did not prove that the variance is insubstantial and is the minimum necessary to make possible the reasonable use of land/structure, but instead the evidence showed that the variance was substantial and/or not that a smaller variance was discussed but increasing the number of tenants without a

significance increase in the number of parking, and so by increasing the number of units without substantially increasing the number of parking spaces, that's not insubstantial, because those additional tenants might need somewhere to park and that is going to have a big impact on the community and the neighborhood and have a substantial impact on the surrounding community."

Ms. Lewin stated the applicant failed to prove that the essential character of the neighborhood would not be substantially altered as a result of the variance in such that that number of additional people without additional parking being provided will very likely be detrimental to the neighborhood."

Mr. Hoen seconded the motion. During discussion of the motion, Mr. Hoen said his reason was that with the variance, units would ultimately become dorms for college students.

Mr. Zych said that he was aware of college student who lived in apartments with vehicles and without vehicles. There are a lot of college students in Cleveland Heights, Ohio. I don't see them as a problem and I see them living in apartments that aren't dormitories. I've lived in both dormitories and apartments myself. He added that it had been his experience that there are grown adults for whom life circumstances make a studio or a 1-bedroom apartment attractive. He stated that he did not have evidence as to whether or not Alcazar is or will be renting to college students. He said that due to Cleveland Heights close proximity to college campuses, there are a lot of college students in Cleveland Heights.

Mr. Zych stated that he has heard concerns about parking every single time someone wants to make an improvement to a neighborhood. I do appreciate - People were terrified by Ascent. People were worried about everything else that's come up in that area. He stated that he knows it is serious, and that he does not discount anyone's apprehensions, but that he was trying to keep them in perspective."

The vote was taken and the motion to deny the variance passed. (4-1)

C. to Section 1123.11 to permit the building to be taller than maximum 45 feet

Mr. Hoen stated that regarding Calendar No. 3581 R. Pietro, The Alcazar, 2450 Derbyshire Road, he moved to grant the application for a variance with conditions to Section 1123.11 to permit the building to be taller than maximum 45 feet. After reviewing the application and other submissions, hearing the evidence under oath,

the Board finds and concludes that the practical difficulty is the same as was discussed in variances A and B:

- The special conditions and circumstances that exist which are peculiar to this land/structure which are generally not applicable to other land/structures in this same zoning district is that 2450 Derbyshire Rd is a historic property and the addition building height will match the height of a portion of the existing building;
- The essential character of the neighborhood would not be substantially altered as a result of these variances;
- The variances would not adversely affect the delivery of governmental services; and
- The applicant's predicament cannot be resolved through a method other than a variance.

If granted the variance shall have the following conditions:

1. Variance Cal. No. 3581 is granted to
C. To Code Section 1123.11 to permit the building to be taller than the maximum 45 feet as shown on the drawings submitted to BZA;
2. Any exterior changes shall require the Approval of the Architectural Board of Review and Landmark Commission;
3. Receipt of a Building Permit; and
4. Complete construction within 24 months of the effective date of this variance.

The motion is seconded. The motion was approved (4-1).

Ms. Lewin recused herself before the presentation for Cal. No. 3583 S. Boehlen, 14298 Superior Road. The Board still has quorum (4 members).

Mr. Kluge stated that the applicant, Ms. Boehlen, was the real estate agent for two of his houses, "two years and three years ago," respectively. Mr. Kluge said that he has not had a business relationship with Ms. Boehlen since then and that their prior business relationship would not affect his judgement on the case. No members of the Board or Counsel objected to Mr. Kluge continuing to participate as a Board member for the case.

Cal. No. 3583 S. Boehlen, 14298 Superior Road 'A' Single-Family

A. Requests approval to permit the carriage house footprint to be expanded by a 555 square foot two-car attached garage per Nonconforming Use Code Section 1173.01(a)

B. Requests variance to Section 1121.12(a)(2) to permit a garage addition to the accessory carriage house building to be less than the minimum 5

feet from rear property line and to Section 1121.12(d)(1) to permit the accessory carriage house building to cover more than the maximum 20% of the rear yard.

Staff reviewed the staff presentation using a PowerPoint presentation.

Mr. Zych asked a series of questions about the shape of the garage, if the driveway involves driving on the other parcel, and if the parcels could be sold separately in the future.

Ms. Knittel confirmed that the existing driveway extends across a separate parcel and that the two parcels could be sold separately in the future. Ms. Knittel suggests that the Ms. Boehlen could better speak about the parking situation. Ms. Knittel also mentions that previous BZA decisions have made it a condition of their approval that two separate parcels are joined together.

Responded to a question from Mr. Hoen, Ms. Knittel explains that Cal. No. 3583 is not a use variance, that the non-conforming carriage house can continue, but that expanding it requires Board approval.

Ms. Lewin presents the applicant's statements and highlights several unique aspects of the property. At one point an attempt was made to convert the carriage house into two units. The access each of the living spaces in the carriage house requires going outside the building. The garage addition was placed to preserve the existing brick driveway and trees on the property. A separate garage cannot be built on the vacant parcels because it would be a secondary structure without a primary structure. The applicant lives on the property and does not intend on selling one of the parcels. There are three garages that are near the carriage house that all have similar setbacks.

Ms. Boehlen added that the garage was placed to avoid cutting down the large pine tree and other side lot variances.

Mr. Zych asked where the residents in the primary building would park if the vacant parcel is sold.

Ms. Boehlen and Ms. Lewin explained that there is no other parking for the residents in primary building than the area on the vacant parcel. New parking would need to be created, Ms. Lewin said. "Conceivably" there is a code-conforming solution to build more parking on the primary lot if the vacant lot was sold, Ms. Knittel said, but that would require cutting down trees. Ms. Lewin said that if the

vacant parcel was sold that there are other challenging, "but not unreasonable," options to maintaining access to the garage, such as an easement.

There were no other questions from the Board to the applicant.

Tim Burdick (1763 Radnor Rd) asked about deed restrictions that limited the vacant parcel from being developed. After finding out that the carriage house was only going to be one unit, Mr. Burdick said enthusiastically, "all my objections are gone, go for it."

No other members of the public commented on the proposed project.

A. Requests approval to permit the expansion of the nonconforming carriage house to permit the construction of a 555 square foot two-car attached garage per Nonconforming Use Code Section 1173.01(a)

Mr. Hoen stated that regarding Calendar Number 3583, S. Boehlen, 1426 Superior Rd., he moved to approve the request to permit the expansion of the nonconforming carriage house to permit a 555 square foot two-car attached garage per Nonconforming Code Section 1173.01(a). After reviewing the application and other submissions, hearing evidence under oath, the Board finds and concludes:

- The property cannot be put to any economically viable use under any of the permitted uses in the zoning district as evidenced by the fact that the garage takes up almost the entire first floor of the carriage house and this needs to be reconfigured and space needs to be reallocated for a residence and modern garage.
- The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district, specifically that the historic barn (carriage house) is unique and this historic living area needs upgraded to modern standards.
- The hardship condition is not created by actions of the applicant but rather the condition was a result of the historic nature of the property that existed when purchased by the applicant and there is also a need for the tenant parking.
- The granting of the variance will not adversely affect the rights of adjacent property owners or residents because the existing footprint of the carriage house is small, the carriage house is not near the primary building of adjacent property owners, and the carriage house cannot be seen from the street.

- The granting of the variance will not adversely affect the public health, safety or general welfare because there is no showing that this would occur.
- The variance will be consistent with the general spirit and intent of the Zoning Code because there is no evidence to the contrary.
- The variance sought is the minimum which will afford relief to the applicant, as demonstrated by the fact(s) that the existing carriage house has a small footprint and the expansion and alterations are the least required to create a viable living space in the carriage house.

If granted, the use variance has the following conditions:

1. Approval of all required standard variances
2. Approval of the Architectural Board of Review
3. Receipt of a Building Permit
4. Complete construction within 24 months of the effective date of this variance.

Mr. Stern seconds the motion. The motion carries 4-0.

B. Requests variance to Section 1121.12(a)(2) to permit a garage addition to the accessory carriage house building to be less than the minimum 5 feet from rear property line and to Section 1121.12(d)(1) to permit the accessory carriage house building to cover more than the maximum 20% of the rear yard.

Mr. Hoen motioned to approve a variance to Section 1121.12(a)(2) to permit a garage addition to the accessory carriage house building to be less than the minimum five (5) feet from the rear property line and to Section 1121.12(d)(1) to permit the accessory carriage house building to cover more than the maximum 20% of the rear yard. After reviewing the application and other submissions, hearing evidence under oath, the Board finds and concludes:

- Special conditions/circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same Zoning District, in particular the carriage house is historic and the two parcels are owned by the same owner; and there is a need to modernize the existing carriage house because of its small footprint and the fact that the garage takes up a large portion of the first floor of the building; and the expansion needs to occur where its proposed because of a mature tree on the other side of the carriage house and there is no other place to put tenant parking.
- The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as demonstrated by the fact(s) that

the code permits 20% coverage by an accessory structure and the variance is for 21.5% coverage by an accessory structure

- The variance would not adversely affect the delivery of government services such as water sewer and trash pickup.
- The applicant's predicament feasibly cannot be resolved through a method other than a variance.

Variance Cal. No. 3583 is granted to:

1. To Code Section 1121.12(a)(2) to permit the attached garage rear yard setback to range from 2.86 feet to 3.99 feet from the rear property line as shown on the site plan submitted to BZA; and to Code Section 1121.12(d)(1) to permit the accessory carriage house building to cover 21.5% of the rear yard as shown on the site plan submitted to BZA.
2. Approval of the Architectural Board of Review:
3. Receipt of a Building Permit; and
4. Complete construction within 24 months of the effective date of this variance.

Mr. Kluge seconds the motion. The motion carries 4-0.

OLD BUSINESS

Ms. Knittel says there is no old business.

NEW BUSINESS

Ms. Knittel reminds the Board about the meeting schedule for July and that there will be at least two cases on the agenda.

The meeting is adjourned at 9:13 PM.



Thomas Zych, Chair

Karen Knittel, Secretary