

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES
February 19, 2025**

MEMBERS PRESENT

Benjamin Hoen	Vice Chair
Graig Kluge	
Gayle Lewin	
Elchanan Stern	
Liza Wolf	

STAFF PRESENT

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

CALL TO ORDER

The meeting was called to order at 7:01 p.m.

APPROVAL OF THE MINUTES

Mr. Stern noted that the last line of the minutes should say that Mr. Hoen was elected as Vice Chair. Mr. Stern motioned to approve the Minutes of January 15, 2025 as corrected. Mr. Kluge seconded the motion. The minutes were approved with no objections. Ms. Lewin and Ms. Wolf abstained from the vote.

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

Mr. Hoen 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.

PUBLIC HEARING

Cal. No. 3596 J. & M. Berger, 3543 Shannon Rd., "A" Single-Family, requests variance:

- A. to Code Section 1121.08 to permit an addition to be less than 30 feet from the rear property line;
- B. to Code Section 1121.12(a)(8) to permit a sidewalk to be less than 3 feet from the rear property line;
- C. to Code Section 1121.12(b): to permit a porch to extend more than 6 feet into the required corner side yard; and
- D. to Code Section 1121.12(c)(3): to permit the maximum coverage of the corner side yard to be greater than 30 percent.

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

After hearing no objections, the staff report dated February 14, 2025, was entered into the record.

Ms. Wolf and Ms. Lewin recused themselves from the case.

Mr. Yozwiak reviewed the staff report using a PowerPoint Presentation.

Mr. Yozwiak confirmed to Mr. Hoen that Code Section 1121.12(b) does not limit of how far a porch can extended into a the required rear yard.

Mr. Jacob Berger (3543 Shannon Rd.) came forward to describe his statement of practical difficulty.

Mr. Hoen entered Mr. Berger's application into the record.

Mr. Berger said that the project was a modest addition and was simply attaching an existing garage. He added that the bay windows make the width of the porch necessary to be usable. He said that the practical difficulty is the shape of the house and lot, which leaves little green space and makes the garage not usable.

Mr. Stern stated that regarding Cal. No. 3596 J. & M. Berger, 3543 Shannon Rd., he moved to grant the application for a variance with conditions:

- A. to Code Section 1121.08 to permit an addition to be less than 30 feet from the rear property line;
- B. to Code Section 1121.12(a)(8) to permit a sidewalk to be less than 3 feet from the rear property line;
- C. to Code Section 1121.12(b): to permit a porch to extend more than 6 feet into the required corner side yard; and
- D. to Code Section 1121.12(c)(3): to permit the maximum coverage of the corner side yard to be greater than 30 percent.

After reviewing the application and other submissions, hearing the 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 lot is already not code-conforming in terms of rear-yard setback, driveway setback, and corner side yard and rear-yard coverage;
- The applicant's predicament feasibly cannot be resolved through a method other than a variance, as the applicant noted, the existing garage is not usable, the current greenspace is not functional, and there is virtually nothing the applicant can do to alter that which would not trigger the need for a variance;
- The property in question will not yield a reasonable return without the variance as this project is a benefit not only to the property owner but also to future property owners to expand the home in a way that makes it usable for larger families;
- The essential character of the neighborhood would not be substantially altered as a result of the variance as was noted that there are a number of homes that have a similar look, have attached garages, and the project does not seem to be anything out of the ordinary;
- The variance would not adversely affect the delivery of government services; and
- The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district because the request is reasonable and allow the homeowner to use the property as they would like.

If granted, the variance shall have the following conditions:

1. Calendar No. 3596 is granted to:
 - A. to Code Section 1121.08 to permit an addition to be 7 feet from the rear property line as shown on the drawings submitted to BZA;
 - B. to Code Section 1121.12(a)(8) to permit a sidewalk to be 0 feet from the rear property line as shown on the drawings submitted to BZA;
 - C. to Code Section 1121.12(b): to permit a porch to extend 13 feet into the required corner side yard as shown on the drawings submitted to BZA; and
 - D. to Code Section 1121.12(c)(3): to permit the coverage of the corner side yard to be 38 percent as shown on the drawings submitted to BZA.
2. The proposed landscaped areas shown in the drawings submitted to BZA and not included in the yard coverage calculations shall be maintained as landscaped areas;
3. Approval of the Planning Commission;
4. Approval of the Architectural Board of Review;
5. Receipt of a Building Permit; and
6. Complete construction within 24 months of the effective date of this variance.

Mr. Kluge seconded the motion. The motion carried unanimously (3-0).

Cal. No. 3593 V. & C. DiTrolino, 2524 Arlington Rd., “AA” Single-Family, requests variance to Code Section 1121.12(f) to permit three (3) detached accessory buildings when two (2) detached accessory buildings is the maximum.

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

After hearing no objections, the staff report dated February 14, 2025, was entered into the record.

Mr. Yozwiak reviewed the staff report using a PowerPoint Presentation.

Mr. Hoen entered three public comments into the record. The comments were Leslie Marting (2513 Marlboro Rd, dated January 7, 2025), Josefita Fehn (2532 Arlington Rd, dated February 19, 2025), and Jeffrey Fehn (2532 Arlington Rd, dated February 19, 2025). All comments were against granting the variance.

Ms. Lewin asked if a variance was granted for the setback of the pavilion and if there were permits for pavilion or existing storage shed. Mr. Yozwiak said that the pavilion was permitted but that there were no variances granted. He added that the three-foot distance to the property line was based on measurements from the County Auditor’s aerial images and that the distance could actually be further. Mr. Yozwiak also said that the existing storage shed did not require a building permit because it was less than 200 square feet.

Ms. Wolf questioned if the proposed storage shed was considered permanent. Mr. Yozwiak said that it was a gray area in the code, but that the applicant intended to keep the proposed shed up indefinitely which indicates that it is more permanent. Ms. Knittel added that the zoning code

does not make a distinction between permanent and temporary buildings, but that there was a distinction in the building code. Ms. Wolf asked if a children's playhouse could be considered a building in the zoning code. Ms. Knittel said that it was possible and added that the Board could disagree with the determination of staff that the proposed storage shed was a building.

Mr. Vincent DiTrollo (2524 Arlington Rd.) came forward to describe his statement of practical difficulty.

Mr. Hoen entered Mr. DiTrollo's application into the record.

Mr. DiTrollo said that they had cars got damaged by acorns, so they parked their cars in the garage for protection. He said that additional storage space was needed for gardening items because of the cars in the garage.

Mr. DiTrollo confirmed to Ms. Wolf that he was unaware of the code around the number of detached accessory buildings when he purchased the proposed storage shed. He added that he did not realize the pavilion counted as an accessory building.

Mr. Yozwiak confirmed to Ms. Wolf that if the two sheds were connected that it would be code-conforming. Mr. DiTrollo said to Ms. Wolf that he was open to connecting the two sheds and that it was possible on the left side but that the location of the shed at the rear of the property is for convenience.

Mrs. Cynthia DiTrollo (2524 Arlington Rd.) said that connecting the sheds on the right side would be a challenge because the property slopes behind it.

Ms. Lewin asked if there had been any conversations with neighbors about the variance request and the concerns about neighborhood character. Mr. DiTrollo said that there were no conversations about the variance request. He added that conversations with the neighbors at 2532 Arlington Rd are confrontational which made discussing the variance request challenging. He stated that the pavilion was reviewed by the Architectural Board of Review and there were no objections during that process. He also said that he had never talked to the neighbor at 2513 Marlboro Rd.

Mr. Yozwiak showed Ms. Wolf the location of the three neighbors who submitted complaints. Ms. Wolf asked if there was a photo of the view of the proposed storage shed from the rear of the property at 2513 Marlboro Rd, which Mr. Yozwiak said he did not have. Ms. Wolf added that it seemed like the proposed storage shed was obscured by a fence and plantings, which Mr. Yozwiak said was accurate.

Mr. Yozwiak and Mr. DiTrollo confirmed to Ms. Lewin that the proposed storage shed is completely blocked from the street and that the only accessory building that is partly visible is the pavilion.

Mr. Yozwiak confirmed to Mr. Kluge that the existing storage shed could be expanded in a code-conforming way.

Mr. Yozwiak confirmed to Ms. Wolf that the pavilion is separated from the house and that if the roof of the pavilion to the house was connected to the house it would not be considered an accessory building.

Mr. DiTrollo responded to Mr. Hoen and Ms. Wolf and explained that the proposed storage shed was easier to construct than expanding the existing storage shed.

Ms. Knittel confirmed to Mr. Hoen that the Board has continued cases in the past for applicants to consider other options. Mr. DiTrollo said he was open to continuing the case.

Mr. Jeffrey Fehn (2532 Arlington Rd.) said his issues with the proposed storage shed is that it did not match the house, in terms of materials or roofline. He said that his preferred solution would be to remove the existing storage shed or move it to the rear of the property next to the proposed storage shed. He claimed that the fence put up between 2510 and 2524 Arlington Rd was because of the condition of the yard at 2524 Arlington Rd.

Mr. Hoen reiterated to Mr. Fehn that the variance request is related to only the proposed storage shed.

Mr. DiTrollo explained that the neighbors at 2510 Arlington Rd put up their fence because they have dogs. Mr. DiTrollo added that they offered to share the cost. He also said that he would like to continue to the case to work on a possible solution.

Ms. Lewin motioned to continue Cal. No. 3593 V. & C. DiTrollo, 2524 Arlington Rd until the applicant decided to return to the Board. Mr. Stern seconded the motion. The motion carried unanimously (5-0).

OLD BUSINESS

Cal. No. 3539 Flaherty & Collins, CEDAR LEE MEADOWBROOK DEVELOPMENT, 1320's Cedar Rd. & 2223 Lee Rd., "C2-X" Multiple-Use, to consider extension of time to complete the project per Code Section 1115.07(j).

Ms. Knittel explained that the extension request was related to the fire and investigation that needs to be completed before the property can be demolished or reconstructed.

Ms. Lewin asked if the extension could be granted to exclude the part of the property that was unaffected by the fire. Ms. Knittel said that it was not possible because the unaffected part of the property will be needed for staging during construction.

Ms. Wolf motioned to extend the time to complete Cal. No. 3539 Flaherty & Collins, CEDAR LEE MEADOWBROOK DEVELOPMENT, 1320's Cedar Rd. & 2223 Lee Rd. for forty-eight (48) months due to the unplanned fire that destroyed the entire building on Cedar Rd. Ms. Lewin seconded the motion. The motion carried unanimously (5-0).

NEW BUSINESS

Ms. Knittel mentioned that City Council approved changes to the zoning code on February 18, 2025. The changes will be in effect during the next BZA meeting (March 19, 2025). The approved legislation changes the quorum requirement for BZA decisions from three to four members.

Mr. Yozwiak stated the next BZA meeting will have five cases.

The meeting was adjourned at 8:12 p.m.



Benjamin Hoen, Vice Chair



Xavier Yozwiak, Secretary