

MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
OCTOBER 15, 2020

Members Present: Wolf, Christ, Brandt, Farrell, Pempus

Presence Noted: Andrew Bemer, Law Director
Raymond Reich, Building Commissioner
Kate Straub, Planning and Zoning Coordinator

Council Members Present: Christina Morris, At-Large Council Member

Mr. Pempus opened the October 15, 2020 Virtual Meeting of the Board of Zoning and Building Appeals at 6:00 p.m. via ZOOM. Mr. Pempus said he was asked by the Building Commissioner to mention that the Zoning Code and its regulations are different than the Ohio Building Code regulations and even though a project may receive a variance from the Zoning Code, it must also be constructed in accordance with the Building Code.

1. CARLEEN NOAR – 19558 Riverwood Ave. – PUBLIC HEARING – Variance to construct a two-story addition with a 4’ – 11” side yard setback vs. 6.25’ side yard setback required (Section 1153.07). Ms. Karen DiBenedetto, General Contractor, is present to discuss the variance request.

The applicant was sworn in by Chairman Pempus. Ms. DiBenedetto explained that the 4’ – 11” side yard setback will enable them to continue the addition along the same line as the existing house. The neighbor, Judith Garvey, wrote a letter to say that she has no objections. Mr. Pempus said that this Board is very sympathetic to this type of side setback request. In addition, there is a driveway between the addition and the house to the east. Mr. Farrell confirmed that this project will go before the Design Board because they are adding a vinyl sided addition onto a brick house. It was confirmed that the Design Board will review the addition. Mr. Farrell said he has no issue with the variance request because they are continuing the current setback and it appears that they have to do that to make the plan work.

Mr. Christ said he agrees with Mr. Farrell but he does not think that the east elevation will be correct because they are showing that the rake line of the existing roof will remain. It was confirmed that the Building Department will look at the plan to verify Mr. Christ’s concern. He asked what the full length of the existing side elevation is and Ms. DiBenedetto responded that it is 38.67’ and they are adding 16’ off of the back. He said that because the neighbor’s driveway is adjacent to the long wall plane and not the neighbor’s house, he is not as concerned about maintaining the same non-conforming setback on that side.

Mr. Brandt said that he thinks the Design Board may ask them to hold the addition back a little bit because of the fact that the addition is siding and the house is brick, which makes for an awkward transition on the same plane.

Mr. Wolf said that he has no problem with the variance request for the addition. In reviewing the application, he thought that the plans are fantastic in a lot of ways but he always appreciates the full elevations and floor plans and not just the portion of them that they intend to build. That information helps him to understand the context. He also likes to see the adjacent dwellings and driveways on the site plan.

Mr. Christ moved to close the public hearing. Mr. Brandt seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test aloud. Regarding special conditions or circumstances that exist, Mr. Christ said that the existing house is currently set back this distance and the owner wants to maintain that distance. This will be reviewed by the Design and Construction Board of Review. Whether the property in question will yield a reasonable return does not apply in this case. He does not believe that the variance is substantial because it is matching the existing and it is very close to the minimum setback in order to make the addition work. The essential character of the neighborhood will not be altered because of this proposal, and the adjacent properties will not suffer substantial detriment because of this project. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be the case. There are no special circumstances that exist as a result of the actions of the owner. He said that it is not possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties.

Mr. Christ moved to grant a variance to Carleen Noar, 19558 Riverwood Ave., to construct a two-story addition with a 4' – 11" side yard setback vs. 6.25' side yard setback required. The applicant has indicated the practical difficulties. This is matching the existing side of the house and this is a reasonable solution. The addition will be reviewed by the Design and Construction Board of Review. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

2. TOM AND LYNN TOMASULA – 19838 Beachcliff Blvd. – PUBLIC HEARING – Variance to construct a pergola with a 1’ – 4” side yard setback vs. 7’ side yard setback required (Section 1153.15(g)(1), a Variance to construct a pergola with a 2’ – 5” rear yard setback vs. 7’ rear yard setback required (Section 1153.15(g)(1); a Variance to locate an air conditioner condenser 8’ from the side property line vs. 10’ side yard setback required (Section 1153.15(k)(1). Ms. Lynn Tomasula, homeowner, is present with the project designer, Sabrena Schweyer.

The applicant was sworn in by Chairman Pempus. Chairman Pempus said that the Board members have all had the opportunity to visit the site. Ms. Tomasula said that she is trying to create an inviting outdoor space and the pergola is an integral part of it and that it will act as a screen from the neighbor’s garage that is very close. Their backyard is very small and it angles to a point in the back. The patio they installed when they first moved in gets a lot of sun and they need a shade structure above it. The pergola is too close to the property lines if it is installed over the existing patio. She has the agreement of her next door neighbor for this plan. The air conditioner will be moved to the side yard and the neighbors do not have an issue with that either and wrote a letter stating that.

Mr. Pempus said that he can understand about the need for shade at the patio and as a screening of the view of the neighbor’s garage, but his first reaction is that this is a very small property and he felt a little uncomfortable about building a big structure in this small space. Mr. Farrell said he understands Mr. Pempus’ statement but he does not think the pergola is oversized. It is what they see very often in that it is just the corners of the structure that are projecting into the setbacks and he does not really have an issue with it.

Mr. Christ asked if they intend to enclose this structure with any sides or even screens and Ms. Tomasula said that they do not intend to enclose it in any way. Ms. Schweyer said that they wanted to keep this pergola as simple and minimal as possible so that it will disappear under the plants that will be covering it. It will create a visual barrier between the back yard and the neighbor’s garage and be a focal point in the backyard and an amenity to the community around it as well as to the home. Mr. Wolf agrees with Mr. Christ and he would like to see that it is limited to this open structure and the homeowner should be required to come back if they were to wish to enclose the sides or the roof. It was determined that the air conditioner will be screened by the existing fence and additional landscaping and the City can help determine if sound screening is necessary based on the decibel level of the condenser.

Mr. Brandt said he is fine with this pergola and agrees that any future enclosure would be a new issue that should be addressed by the Building Department and this Board. The air conditioner is opposite a driveway and it is tucked in behind a gate and extra screening.

Mr. Christ thanked the applicant for a very thorough application and supporting documentation.

Mr. Christ moved to close the public hearing. Mr. Farrell seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test aloud. Regarding special conditions or circumstances that exist, Mr. Christ said that the configuration of the rear yard and the limited lot area in the back of the property are special conditions. Whether the property in question will yield a reasonable return does not apply in this case. He does not believe that the variance is substantial because only portions of the pergola are in the setback due to the way it is oriented, and the air conditioner is only slightly closer than the required setback, which almost meets the Code. The essential character of the neighborhood will not be altered because of this proposal, and the adjacent properties will not suffer substantial detriment because of this project. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be the case. There are no special circumstances that exist as a result of the actions of the owner. He said that it is not possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties. Mr. Christ said that he has summarized both the pergola and the air conditioner in these statements.

Mr. Christ moved to grant a variance to Tom and Lynn Tomasula, 19838 Beachcliff Blvd., to construct a pergola with a 1' – 4" side yard setback vs. 7' side yard setback required. The applicant has indicated the practical difficulties due to the configuration of the rear yard. The pergola will be constructed as indicated on the drawings and the sides and the roof will remain open. Any change toward enclosing the structure will have to be brought back to this Board for approval. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a variance to Tom and Lynn Tomasula, 19838 Beachcliff Blvd., to construct a pergola with a 2' – 5" rear yard setback vs. 7' side yard setback required. The applicant has indicated the practical difficulties due to the configuration of the rear yard. The pergola will be constructed as indicated on the drawings and the sides and the roof will remain open. Any change toward enclosing the structure will have to be brought back to this Board for approval. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a variance to Tom and Lynn Tomasula, 19838 Beachcliff Blvd., to locate an air conditioner condenser 8' from the side property line vs. 10' side yard setback required. The applicant has indicated the practical difficulties. This is a minimum decrease from the required setback and the unit will be screened. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

3. COURTNEY REGO – 21318 Erie Rd. – PUBLIC HEARING – Variance to construct a detached garage with a 1' side yard setback vs. 5' side yard setback required (Section 1153.15(b)(1)) and a Variance to construct a detached garage with a height of 19' vs. 15' maximum height permitted for detached garages (Section 1153.09(b)) Mr. Courtney Rego, homeowner, is present for the variance requests. Also present is Diane Lockard, 21365 Beachwood Dr.

Chairman Pempus summarized the variance requests and swore the parties in. Mr. Rego clarified that they don't need a variance for lot coverage anymore because they reduced the size of the addition they will build. He is only here for the variances for his garage. He explained that he has submitted entirely new plans since the last meeting. He intends to build a garage that is identical to one that was approved for variances. The side yard setback of the new garage will be 1.8' even though the notice says it will have a 1' setback.

Ms. Diane Lockard, the rear yard neighbor said that she is here in opposition to the 19' height of the garage like she did at the last meeting. She said that the drawings have changed in footprint and they have added a dormer to the garage now. She said she has walked around the neighborhood and the proposed garage does not fit in with the neighborhood and it seems extremely tall. She feels like with the addition of the dormer to the garage, she will feel like she is looking at a commercial property rather than a residential property. The garage will be twice as high as her garage and the lots are fairly small. This garage will be a detriment to her property and what she has to look at. Mr. Rego said that the second story will not have habitable space and there will not be plumbing up there. The space will strictly be used for storage which they need more of because there is not a lot of storage space in the garage.

Mr. Christ pointed out that two garages have been submitted and it was clarified that the plans on the 8.5" x 11" paper are the ones for this garage. Mr. Farrell's concern is that the door height will be 8' tall and the height inside the car park space will be 10' when the standard height is about 8' – 6" for the interior space. Those things and the steeper pitched roof, cause him to think that the applicant may be asking for too much. Mr. Rego explained why he wants an 8' tall door. He said that they redesigned the garage so that the roof pitch more closely matches their house and he will be getting an SUV, which his wife

owns now, and they would like a garage to accommodate things they will be carrying on top of their SUVs.

Mr. Wolf said that most people remove the load from the top of their SUV before they enter the garage with it and he is not sure garages necessarily need to accommodate things that people carry on top of their car. He too is trying to understand why the extra door height and the extra first floor ceiling height are needed.

Mr. Brandt said that if the inside clear dimension was not 10', then they would not need a 19' tall garage. If the eave line were brought down then the actual height would be decreased, and it would make sense. Mr. Rego responded that they went to their neighbor's house who lives 3 doors down and saw their garage which they received variances for regarding the larger footprint. They also got a 19' height variance and the dormer is exactly the same as the garage they are proposing.

Chairman Pempus asked Mr. Rego how he would like to proceed because he thinks the Board members have some problems with this proposal. Mr. Christ said that it is interesting that sometimes only 1 or 1.5' can make such a visual change to a structure. More discussion was had relating to Mr. Farrell's concern about the reasons why the height request may be too much. He is also concerned about the massing now because of the dormer that was added since the last meeting. It was noted in conversation that sometimes it is not critical for the Board that the pitch of the roof match the pitch of the house. Mr. Brandt added that this may be appropriate for this garage to be reviewed by the Design Board for the design elements they are discussing that are related to the height, including the dormer. Mr. Rego said that they redesigned the garage after the last meeting because the Board wanted the pitch to match the house. He took pictures of the exact garage his neighbor has that received variances and they drew the plans to match theirs. The extra room for storage is greatly needed.

Mr. Christ said that the gutters are 2' higher because of the 10' clearance on the inside of the garage, which has more of an impact on the neighbors than the pitch of the roof has. He thinks that at least removing 1' from the height of the walls, he could bring the overall height down. Mr. Farrell asked the neighbor if she would feel differently if the pitch of the roof was turned by 90 degrees, and Ms. Lockard said she just doesn't understand why the garage needs to be so high. More discussion was had relating to Mr. Farrell's and Mr. Christ's concerns. Mr. Christ is more concerned about the wall height and thinks they can take some height of the garage out by reducing that. Mr. Wolf said he thinks it is possible to lower the height of the interior space of the garage, which is the floor of the attic space and still have adequate storage space. Mr. Brandt said that he did a little research and the mechanism above the door of a garage needs about a 12" clearance, which would mean a 9' ceiling height for the interior of the garage space. He would like the Design Board to consider the design of the garage and take a look at the dormer at the same time they look at the addition to the house. Mr. Christ agreed and said that he thinks that is a reasonable

middle ground. Mr. Wolf agreed and said he would also like the Design Board to weigh in on the dormer design.

Mr. Rego agreed to revise the request for the overall height of the garage to be 18'. Chairman Pempus asked the Law Director what would be considered a "substantial change" if the variance request were denied. Law Director Bemer said the applicant must return with a 10% or greater reduction in dimensions of a plan in order to comply with requirement for a substantial change if a variance is denied.

Mr. Christ moved to close the public hearing. Mr. Brandt seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test aloud for the first variance request. Regarding special conditions or circumstances that exist, Mr. Christ said that the existing garage will be maintained at the 1.8' side setback and it is a reasonable situation. Whether the property in question will yield a reasonable return does not apply in this case. He does not believe that the variance is substantial because this is the existing setback. The essential character of the neighborhood will not be altered because of this proposal, and the adjacent properties will not suffer substantial detriment because of this project. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be the case. There are no special circumstances that exist as a result of the actions of the owner. He said that it is not possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties.

Mr. Christ moved to grant a variance to Courtney Rego, 21318 Erie Rd., to construct a detached garage with a 1.8' side yard setback vs 5' side yard setback required. The applicant has indicated the practical difficulties and this is matching the existing garage. Mr. Brandt seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ applied the practical difficulties test aloud for the second variance request. He said that there are no special circumstances that exist. Mr. Christ does not believe that the property in question will yield a reasonable return without the variance. Whether the variance is substantial is the biggest point of contention relative to the use of attic space for storage. The essential character of the neighborhood may not be significantly changed or

the appearance won't be altered because of this proposal, and the adjacent properties will not suffer substantial detriment because of this project. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be the case. There are no special circumstances that exist as a result of the actions of the owner. He said that it is not possible to obviate the property owner's predicament feasibly through some method other than a variance but the question is what amount of variance is necessary for adequate storage. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties. Mr. Farrell said that he disagrees with the answer Mr. Christ gave to whether the property would yield a reasonable return without the variance. He believes that the property would yield a reasonable return without the variance and Mr. Christ said he would like to change his answer he just gave because he agrees with Mr. Farrell on that point.

Mr. Christ moved to grant a variance to Courtney Rego, 21318 Erie Rd., to construct a detached garage with a height of 18' vs. 15' maximum height permitted for detached garages. The applicant has indicated the practical difficulty with obtaining storage in his garage. The area above will be non-habitable and only power and lighting will be provided. There will be no water or sanitary to the upper level and the garage will go to the Design Board for review relative to the appearance of the proposed height of the walls and the dormer. Mr. Brandt seconded.

4 Ayes – 1 Nay (Farrell)
GRANTED

2. ERIC LEWIS – 2673 Carmen Dr. – PUBLIC HEARING – Variance to retain a play structure with a deck height of 7' – 8" vs. no detached deck or horizontal surface shall exceed 3' in height (Section 1153.15(g)(1)), and a Variance to retain a play structure with a total under roof area of 103 sq. ft. vs. The part of a play structure that is under roof shall not be greater than 50 sq. ft. (Section 1153.15(g)(2)). Mr. Eric Lewis, property owner, is in attendance to discuss the variance requests.

Mr. Pempus reminded Mr. Lewis that he is still under oath. Mr. Lewis explained how he has revised the play structure plans. He agreed to cut the existing structure in half and will move it further to the north by moving the monkey bars to the south end (fence side), which moves the entire structure an additional 4' away from the fence and provides an 11' setback of the deck from the fence. Mr. Pempus said that Mr. Farrell was the most vocal about what he would like to see at the last meeting and asked him if this is consistent with what he suggested. Mr. Farrell clarified the dimensions listed on his colored site plan with

Mr. Lewis. Mr. Lewis said that the changes he made moves the upper deck another 4' to the north by moving the monkey bars to the end.

Mr. Farrell said that this is more of an acceptable play structure in his view and it is a good solution. Mr. Christ said that the 12' dimension relative to the maximum height has been met. He has also met the setback requirement of 7' and the platform area is now 11' from the property line. Regarding the decking portion of 3', he said that if the decking is related to the activity portions of the slides and climbing wall, he can understand where the 3' is not going to adequately provide that. The swings, discs, slides and rock climbing and the gym bars are explicitly allowed within the Code. There is a 50 sq. ft. limit, and there is a question as to whether that applies to a covered roof area or to the deck area for the other facilities with the portion below is for this Board to weigh. He does not believe that the maximum of 250 sq. ft. in area is being challenged by this structure. He said he would like to see what the Board thinks about this.

Mr. Brandt said that if the 7' setback to the actual structure then it should at least be acknowledged that the base of the rock wall itself is closer than 7'. Mr. Farrell said he does not believe that is an issue.

Mr. Pempus said that Mr. Lewis has made substantial compromises and taken a lot of suggestions to heart. He is willing to grant both variance requests tonight. Mr. Farrell and Mr. Brandt said that they are ready to vote on this.

Mr. Christ moved to close the public hearing. Mr. Farrell seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test aloud for the first variance request regarding deck height. He said that there are no special circumstances to the land that exist, but there are for the structure in that the deck area is necessary for usage of the slide and the rock wall. Mr. Christ does not think that whether the property in question will yield a reasonable return without the variance applies in this case. Whether the variance is substantial and the minimum necessary, he believes that it is the minimal necessary in order to get the height to a slide and to the rock wall. The essential character of the neighborhood will not be significantly altered, he does not believe that the height is substantial because it will be in conformance with the maximum height for a play structure. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that applies. There are no special circumstances that exist as a result of the actions of the owner. He said that it is not possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer

any special privilege on the applicant. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties. Mr. Christ said that he thinks that the applicant needs to look at the height of this structure in relation to the power lines to make sure he clarifies with the power company to clarify that this is distanced sufficiently from their right-of-way and easements.

Mr. Christ moved to grant a variance to Eric Lewis, 2673 Carmen Dr., to retain a play structure with a deck height of 7' – 8" vs. no detached deck or horizontal surface shall exceed 3' in height. The applicant will not enclose any of the areas that are included in this structure. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ applied the practical difficulties test aloud to the second variance request for the total under roof area. Regarding special conditions or circumstances that exist, Mr. Christ said that he does not believe that there are any existing special circumstances. Whether the property in question will yield a reasonable return does not apply in this case. Whether the variance is substantial and the minimum necessary to make possible the reasonable use of the land or structures is part of the determination of the Board. Whether the essential character of the neighborhood will be altered because of this proposal, and whether the adjacent properties will suffer substantial detriment as a result of the variances are also part of this Board's decision. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be applicable. There are no special circumstances that exist as a result of the actions of the owner. He said that it is also part of this Board's evaluation regarding whether it is possible to obviate the property owner's predicament feasibly through some method other than a variance. Whether the spirit and intent of the Code would be observed by granting a variance and whether granting of this variance will confer any special privilege on the applicant, as well as whether the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties are all part of this Board's determination.

Mr. Christ moved to grant a variance to Eric Lewis, 2673 Carmen Dr., to retain a play structure with a total under roof area of 103 sq. ft. vs. the part of the play structure that is under roof shall not be greater than 50 sq. ft. The applicant has indicated the practical difficulties with providing this play structure and that is for the Board to decide. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

5. GEORGE WHARTON – 3829 Carol Blvd. – PUBLIC HEARING – Variance to construct a 216 sq. ft. storage/pool equipment shed vs. 120 sq. ft. maximum gross floor area permitted for accessory buildings (Section 1143.15(c)); A variance to construct a storage/pool equipment shed with a height of 11’ – 6” vs. 10’ maximum height permitted for accessory buildings (Section 1153.09(b)); and a Variance to construct a storage/pol equipment shed with a 3’ rear yard setback vs. 5’ rear yard setback required (Section 1153.15(b)(1)). Mr. George Wharton, homeowner, is present to discuss the variance request.

Chairman Pempus summarized the variance requests and swore the applicant in. He announced that he would like to disclose that he knows the applicant from attending Little League games when their children were young but he does not feel the need to recuse himself. There were no objections to the Chairman’s disclosure.

Mr. Pempus said that when he visited the site, he was struck by the fact that the applicant’s back yard is so large and the proposal for the pool storage structure does not seem too impactful because of that. Mr. Wharton said that they were originally going to put the pool equipment up close to the house but his wife thought that was a bad idea. Since they have a need for more storage space in the house anyway, they decided that they would build this structure to hide the pool equipment and provide the needed extra storage space since they don’t have a basement. He explained that the enclosed square footage is only half of what is being requested because the other half is an open overhang to provide shade while they sit at the pool.

Mr. Christ asked about the structure that appears to be on the Fairview Park property and Mr. Wharton said he is correct that it is located in Fairview Park. In addition, Mr. Christ asked if there is a limit on the number of accessory structures allowed on a lot because there is a pavilion structure also in this back yard. Ms. Straub responded that the Code permits 2 accessory “buildings” and only one can be a storage shed. The pavilion structure is not considered an accessory “building” because it is not fully enclosed. Mr. Christ questioned the fence that is being proposed and it was determined to be Code compliant which is the reason it is not before them. Regarding whether there is a restriction about “climbable” fences around a pool in the Building Code, Building Commissioner Reich said that he will look into that.

Mr. Christ moved to close the public hearing. Mr. Brandt seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test aloud. Regarding whether special conditions or circumstances exist, Mr. Christ said that the property is larger and longer than many properties and there is an adjacent parcel under the same ownership but it located in

Fairview Park. Whether the property will yield a reasonable return does not apply in this case. Whether the variance is substantial and the minimum necessary to make possible the reasonable use of the land or structures, Mr. Christ said that since this is relative to the setback against the adjacent property in Fairview Park, it is reasonable and with the area of the enclosed portion of the structure versus the open portion, it is not substantial and is the minimum necessary to serve two uses. The essential character of the neighborhood will not be altered because of this proposal, and the adjacent properties will not suffer substantial detriment as a result of the variances. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be applicable. There are no special circumstances that exist as a result of the actions of the owner. He does not think that it is possible to obviate the property owner's predicament feasibly through some method other than a variance. The spirit and intent of the Code would be observed by granting a variance and the granting of this variance will not confer any special privilege on the applicant. He said that the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties.

Mr. Christ moved to grant a variance to George Wharton, 3829 Carol Blvd., to construct a 216 sq. ft. storage/pool equipment shed vs. 120 sq. ft. maximum gross floor area permitted for accessory buildings. The portion that is shown as open shall remain open and not be enclosed. The applicant has indicated the practical difficulties with providing multi-function uses with this structure. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a variance to George Wharton, 3829 Carol Blvd., to construct a storage/pool equipment shed with a height of 11' – 6" vs. 10' maximum height permitted for accessory buildings. The applicant has indicated the practical difficulties with providing the additional height to combine these two buildings into one structure and provide room for the equipment and this is a reasonable solution. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a variance to George Wharton, 3829 Carol Blvd., to construct a storage/pool equipment shed with a 3' rear yard setback vs. 5' rear yard setback required. The adjacent property that this abuts is a portion of the owner's property, however, that portion is located in Fairview Park. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

6. MICHAEL SWALLOW – 169 Kensington Oval – PUBLIC HEARING – To widen a driveway to 24' wide vs. Driveways shall not be greater than 20' in width (Section 1187.31(d)) Mr. Michael Swallow, homeowner, is present to explain the variance request.

Chairman Pempus summarized the variance request and swore the applicant in. Mr. Swallow explained that the portion of gravel on his existing driveway was a dirt path the previous homeowner used to access the backyard. He explained how they turned the stairs that are on the right for better access to the backyard. They are now ready to remove the gravel and install a driveway because the majority of the work in the backyard is complete.

Mr. Brandt said he is wondering how the aprons will work and how the tree lawn will come into play where they meet. Mr. Swallow responded that he and his neighbor agree that they want curb and a grass triangle to separate the two aprons so that they don't touch each other. He said that he will plant Boxwood hedges along the wall in the required setback next to the wall. Their neighbor's existing wall creates somewhat of a challenge as they pull out of their driveway.

Mr. Wolf said he has concerns about the area of impervious surfaces that we are constructing in the City. He wonders if the applicant considered constructing the driveway at the sidewalk to 20' and a bigger pad near the steps that allows them to make the connection to the steps. Mr. Swallow said that the stairs on the left hand side are on the edge of the driveway going into the garage and there is no wiggle room on that side. He said that the extra 2' on the left hand side would not provide the ability to open a car door for 4' because the steps are there. In addition, the driveway sits on an incline and is only 40' deep and it makes it difficult to maneuver if there are 2 cars in the driveway because there is not enough space. It is a combination of visibility, safety and convenience.

Mr. Christ said that it does not look like they are using the garage for 2 vehicles and Mr. Swallow responded that they cannot get 2 vehicles into the garage because of the storage they need and because the garage door is too small. He said that the neighborhood has had 3 cars hit in the past 12 months while backing out of their driveways. He added that the neighbor next door has a driveway go right up to the wall and it is not set back 3'.

Mr. Brandt said that a 16' wide door seems to be reasonable for a 2-car garage. He said that a solution may be to leave the apron and driveway the way it is and bring it out to 24' wide further up the driveway so they have the opportunity for a little more greenspace and not 48' of driveway width there. Mr. Swallow responded that there is no way to get 2 cars into their garage because the set of stairs gives him no maneuverability of the cars. He said that the apron has to be replaced because it is in bad shape. Regarding green space, he thinks the Boxwood bushes they will plant will be beautiful. He has 4 children and the goal is not to have to park the cars in the street, and not to have to do the morning car shuffle that people have to do with a driveway that only accommodates a single car. Mr. Wolf asked if they could park 4 cars in the driveway if it were 20' wide. Mr. Swallow said

that you wouldn't be able to open the car door at the top of the driveway closest to the steps and you couldn't open a door sufficiently with car next to it being so close.

Mr. Pempus said that he agrees with this proposal because it makes a lot of sense to him. Mr. Christ said that 24' is three car widths at 8' wide each. He thinks the width of it is excessive and he is trying to understand why they need the driveway between the stairs and the sidewalk to be 16' wide from the middle of the garage door. Mr. Swallow explained his reasoning and said he does not agree that it is an excessive request.

Mr. Brandt held up a drawing to represent keeping the driveway at its current width at the driveway and then gradually increasing the width until it reaches 24' wide will give them the ability to pull a car in and get out of the way of the garage to get a vehicle in and out without worrying about a car that is off to the right. This would allow there to be more green space out at the street. Mr. Christ said that what Mr. Brandt is suggesting may not need a variance and Ms. Straub agreed that the driveway design Mr. Brandt showed would be permitted without the need for a variance. Mr. Swallow said that he wants to be able to have 2 cars park on the right side and still be able to maneuver the cars on the left side. His goal is to have 4 cars be able to park in the driveway.

Mr. Farrell said that the fact that there is 3' of greenspace along the property line is not a problem. Mr. Pempus said that there are many suggestions and it sounds like the applicant would like to have the driveway the way he has proposed. Mr. Christ said that he is fine to vote but he does not feel that he has sufficient information in front him. Mr. Wolf said that he agrees with Mr. Christ in that more information such as a drawing showing where the stairs on the left are located and even the dimensions of cars would be helpful to the applicant in proving his point regarding the need for the variance.

Mr. Pempus moved to close the public hearing. Mr. Farrell seconded.

4 Ayes – 1 Nay (Christ)
Passed

Mr. Christ applied the practical difficulties test aloud. Regarding whether special conditions or circumstances exist, Mr. Christ said that there are some peculiarities between the steps, the garage, and the wall. Whether the property will yield a reasonable return does not apply in this case. Whether the variance is substantial and the minimum necessary to make possible the reasonable use of the land or structures, Mr. Christ said that this proposal is substantial and he does not believe that it is the minimum necessary to remedy the situation. The essential character of the neighborhood will be altered because of this proposal, and the adjacent properties will suffer substantial detriment as a result of the variances because the excessive width of the driveways here will damage the character of the neighborhood. This will not adversely affect the delivery of governmental services. Regarding whether the property owner purchased the property with knowledge of the

zoning restrictions, he does not believe that to be applicable. There are no special circumstances that exist as a result of the actions of the owner, other than the fact that the existing stairs and stairs to the right do impact what the applicant is trying to achieve. He thinks that it is possible to obviate the property owner's predicament feasibly through some method other than a variance because he is not sure that a variance is even required. Whether the spirit and intent of the Code would be observed by granting a variance and whether the granting of this variance will confer any special privilege on the applicant is the decision that this Board will make. Whether the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties, Mr. Christ said that point is also part of the decision that this Board will make.

Building Commissioner Reich said that if the variance fails, then the applicant can reduce the width of the driveway to 20' where it meets the right of way and still provide the parking spaces on the right toward the property line as you move up the driveway.

Mr. Swallow said that he would like the Board to vote on the variance request because he is in a hurry to get the driveway done soon. Mr. Christ said that he would like the Building Department to confirm that they will evaluate the location of the driveway and the parking of cars and how it may affect the structural stability of the retaining wall because of the close proximity of the cars that will park near it.

Mr. Farrell moved to grant a variance to Michael Swallow, 169 Kensington Oval, to widen a driveway to 24' wide vs. Driveways shall not be greater than 20' in width. Mr. Pempus seconded.

2 Ayes – 3 Nays (Wolf, Brandt, Christ)

DENIED

The meeting adjourned at 8:20 p.m.

Eric Pempus, Chairman

Richard Christ, Secretary

Date: _____