

MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
DECEMBER 10, 2020

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

Presence Noted: Andrew Bemer, Law Director
Raymond Reich, Building Commissioner
Kate Straub, Planning and Zoning Coordinator
Christina Morris, At-Large Council Member

Mr. Pempus opened the December 10, 2020 Virtual Meeting of the Board of Zoning and Building Appeals at 6:00 p.m. via ZOOM and explained the meeting protocol. He said that all of the Board members have had the opportunity to visit each of the sites and review the variance applications and other information submitted associated with the agenda.

1. ANDREW DRELLISHAK -21799 Avalon Dr. –PUBLIC HEARING – Variance to construct a covered patio with a 49’ front setback (on Parklawn Dr.) vs. 60’ front setback required (Section 1153.13(c)). Ms. Susan Zala, Architect, is in attendance to present the variance request.

Secretary Christ introduced the variance requests that are outlined on the notice. The parties were sworn in by Chairman Pempus. Ms. Zala explained that there is really no other place to put this porch and since it is a corner lot, there are two front yards. If this were on an interior lot, then it would be located in the side yard. The structure would be on an angle along the Parklawn frontage, with the closest point at the 49’ setback and the farthest point at 53’ – 9”. If this was actually looked at as a side yard, then the encroachment would only be about 1’. Some of the neighbors wrote letters of support and Mr. Pempus said that they have a document from 3 different people who are adjacent to the property expressing support for the project.

Mr. Pempus complimented the drawings and the design of the proposed structure and said he thinks it will fit in nicely with the design of the existing home. Mr. Farrell said he agrees that this will work out well and he would like to point out that this space cannot be enclosed in the future without another variance. Mr. Brandt agreed that the drawings are nice and this is an odd property being on the corner, which causes 2 front setbacks. He said that this property has gone through many proposed iterations of improvements and he feels that this one is the most sensitive, small scale improvements to the parcel and he has no issue with it. Mr. Christ said that there is really no room anywhere else on the property for this structure because of the layout of the house in relation to setback lines. He asked that the Building Department to review the handrail on the walkout portion on the second floor for Building Code compliance.

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 applicant has indicated the configuration of the front yards on two sides and the limited back yard contribute to this being the most logical area for the structure. 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 and the applicants have indicated that this would be a very minimal variance if it were a side yard. The essential character of the neighborhood will not be altered because of this proposal, and this variance 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 because this is an existing house on a corner lot with two existing front setbacks. He said that it is not possible to obviate the property owner's predicament feasibly through some method other than a variance because of the setback requirements for this property. 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 Andrew Drellishak, 21799 Avalon Dr., to construct a covered patio with a walk-out second story deck with a 49' front setback (on Parklawn Dr.) vs. 60' front setback required. The applicant has indicated the practical difficulties and as stated in the practical difficulties test, this is a reasonable solution with minimal impact. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

2. AMY NATSIS – 22552 Rivergate Dr. – PUBLIC HEARING – Variance to retain a detached storage shed in the side yard vs. detached accessory buildings are permitted in the rear yard only (Section 1153.15(c)) and a Variance to retain a detached storage shed in the side yard with a 1' side yard setback vs. 8' side yard setback required (Section 1153.07(f)(1)A.) Ms. Amy Natsis Kafantaris, Homeowner, is in attendance to present her variance requests. Also present is Mr. Sam Shaia, rental property owner at 22530 Rivergate Dr., located next to the shed.

Secretary Christ introduced the variance requests that are outlined on the notice. The applicant was sworn in by Chairman Pempus. Mr. Pempus said that they have all had the opportunity to visit the property and that the applicant submitted five letters of support for her variance requests from the neighbors. The applicant explained that her husband built a shed and she was not aware that she needed a building permit to construct it. She is not sure who complained about her shed.

Mr. Shaia, property owner next door, was sworn in by Chairman Pempus. He explained that he was not aware that a shed would be built next door and he does not like the way it looks. He thinks it looks bad and it is located very close to his property, which is why he put out an alert regarding the shed. He never received notice from the City that the shed was being constructed. The applicant responded that the house next door is a rental and she has not seen Mr. Shaia the owner of it, in years. There were windows on that side of his house years ago, but they are no longer there so the shed cannot be seen. The side yard has not been taken care of and she is not sure why he would be opposed to the shed unless it is for personal reasons. Mr. Shaia said that the shed just looks ugly and he has spent a lot of money on his home to dress it up with new roof, siding, windows, driveway and landscaping. His tenants have been there for years and they love it. He just wants to keep the neighborhood looking nice, but he said that this shed located right next to his house looks hideous.

Mr. Pempus said that the shed is 13' – 7" from the house next door and the applicant responded that the shed is 20' – 3" from the neighbor's house at the other corner of it. She purchased the home in 2004 and nobody has ever been in that side yard. She put landscaping down the entire property line to separate herself as a live-in homeowner from the rental people he puts in there. She is shocked that Mr. Shaia is saying what he is saying when he doesn't even come to the property. Mr. Shaia said that he does go to the property and the applicant has just not seen him. He has a very good relationship with his tenants but the tenants feel intimidated by the applicant and her husband.

Mr. Pempus said that from the answers to the questions, he gathers that the shed provides a screen for the applicant and the applicant confirmed that, adding that there is landscaping to screen also. Mr. Wolf said that Mr. Pempus explained at the beginning that they would like to focus on the variance requests, which would be things such as setbacks and appearance. Whether neighbors are renters or not or behaviors of neighbors are not zoning matters for this Board to consider. He said that this is intended to provide a cover for a scooter and an enclosure for trash cans. Ms. Kafantaris said that she will also store her garden tools in the shed. She feels that the shed looks like the side elevation of the neighbor's house, with the plain beige siding.

Mr. Farrell said that he is not going to comment on the appearance of the shed because he does not think he has to. The ordinance is clear and this is a pretty clear violation and he does not think he can vote to approve it. Mr. Pempus agreed with Mr. Farrell and said that it is not even close to the code requirements.

Mr. Wolf said that they need to consider whether the storage of garden items and the scooter could be accomplished in other ways that would be more code compliant. He thinks of sheds he has seen that have been located against walls of houses or garages, but they are narrower than this one and can be more cosmetic than this and fit in better with the dwelling. However, he is aware that in those cases, more storage would have to be

supplemented somewhere else on the property because garbage storage does not need to be this big.

Mr. Brandt said that there is ample room in the rear yard because it flares out so wide. There are unlimited options to place the shed in the rear yard, which works against the argument of why it should be located on the side of the house. In addition, a 1' side yard setback is customarily not acceptable to this Board for sheds, garages, or anything. He has a hard time supporting the retaining of this shed based on what he has seen and heard.

Mr. Pempus said that many times this Board tries to work out compromises or modification of a project, but the shed is already constructed. He asked the applicant if she would like the Board to vote on the requests. Ms. Kafantaris said that she would absolutely like Board to vote on the requests, and added that if she would have known these rules, then she would have reported the shed that was built at 22530 that can visibly be seen from the street, which is ok. Mr. Shaia said that he got a permit for that shed and it is legal. The applicant said that it can be seen from the street, and that she feels this is prejudice.

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 as has been pointed out by other members of the Board, the geometry of the land actually lends itself to many locations for a shed to be located on the property that would meet the Code. Whether the property in question will yield a reasonable return, he believes there can be a reasonable return even if the variance is not granted. He believes that the variance is substantial and that it is not the minimum necessary. He believes that the essential character of the neighborhood will be substantially altered. Whether this variance will adversely affect the delivery of governmental services was not discussed by the Board members, but this location would limit fire and rescue access. Regarding whether the property owner purchased the property with knowledge of the zoning restrictions, he does not believe that applies to this. The actions of the owner in building this structure without a building permit or a variance, speaks to the fact that special circumstances exist as a result of the actions of the owner. Whether it is possible to obviate the property owner's predicament feasibly through some method other than a variance, there are multiple ways to solve the owner's need for storage on this property. The spirit and intent of the Code would not be observed by granting a variance and he believes that the granting of this variance will confer special privileges on the applicant. He does not believe that a 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 Amy Natsis, 22552 Rivergate Dr., to retain a detached storage shed in the side yard vs. detached accessory buildings are permitted in the rear yard only. The applicant has indicated the practical difficulties. Mr. Farrell seconded.

0 Ayes – 5 Nays
DENIED

Mr. Christ moved to grant a variance to Amy Natsis, 22552 Rivergate Dr., to retain a detached storage shed in the side yard with a 1' side yard setback vs. 8' side yard setback required. The applicant has indicated the practical difficulties. Mr. Farrell seconded.

0 Ayes – 5 Nays
DENIED

3. GREGG MYLETT – 19800 Frazier Dr. – PUBLIC HEARING – Variance to construct a second curb cut for a circular driveway on a 75' wide lot vs. minimum lot width of 90' required for two curb cuts (Section 1187.31(d)(1)) and a Variance to construct a second curb cut for a circular driveway on a lot with a 46' front setback vs. 50' minimum front setback required for two curb cuts (Section 1187.31(d)(2)). Mr. David Maddux, Architect, is present with Homeowner, Gregg Mylett and General Contractor, Tom Ferry.

Secretary Christ announced the variance requests that are outlined on the notice. The applicant was sworn in by Chairman Pempus. Mr. Maddux explained that they have been before this board before relating to this new house and it is turning out beautifully. Rather than having a traditional 20' wide driveway to the garage with a turnaround parking pad, they are hoping to install a circular driveway with two 10' wide drives, create a landscape island in the middle that would allow the homeowners to back out of the garage and pull into the street head first. There is a good amount of landscape buffering on both sides of this property. This driveway will be made of granite, cobblestone border with a herringbone brick driveway field pattern, which will be beautiful in its own right and not just appear like a sea of concrete in the front. They have designed the landscaped island so that it minimizes the impact of the amount of driveway in the front of the house.

Mr. Maddux explained that they want to be able to have room to park a car in front of one of the garage doors and still be able to circulate around it. What they are presenting is the minimum amount to be able to achieve that. He shared the screen so the Board could see the elevations that illustrate the relationship of the adjacent homes, and a view of the front elevation from the street. The pavement will be screened by taxus bushes and annuals, and a marker for the address will be placed in the island. Regarding the front setback, they were requested by this Board to bring the house 4' closer to the street to minimize the rear setback issues they were presenting. The 46' is only to the front of the garage and much of the house sits further back, as does the third bay. This design will not be out of character

and it will be a beautiful approach to the house. The width of the lot prevented them from having a side entry garage and the only option was to face it toward the front. The screening in the island helps to minimize the impact of the front facing garage doors.

Mr. Wolf asked if the driveway width or the radius could be made tighter and Mr. Maddux said that this is the minimum amount of pavement that can be proposed. The geometry of the driveway is at the minimum it can be to function the way it is intended to. They have pulled the island back 4' from where it was initially, and they feel like this 30' run from face of stone to face of lawn is the minimum so that when an 18' car is parked 1' off of the garage door, there will be about 9' to drive past that car.

Mr. Brandt questioned the number of variances this house has had, and Mr. Maddux said that they minimized their rear variance by moving it forward, which cause the need for a front setback variance, so those two were tied together. They also had variances for air conditioner condensers in the side yard. Mr. Brandt said he is surprised by the fact that they are using the variance to extend the house 4' into the front setback as a reason to then require another variance for the driveway. He is disappointed that they are just seeing this now, given the fact that they were here more than once for other variances. He wishes this would have been in front of this Board as a complete comprehensive package, rather than piecemeal. Mr. Maddux said that they brought in a landscape architect who is brilliant and does great work after the initial building permits were issued and the review was complete.

Mr. Wolf said that he understands where Mr. Brandt is coming from and agrees because there have been some situations where the homeowner came back to request variances for setbacks when the homeowner created that condition. Mr. Maddux said that there is actually no limit to how much paving is permitted in the front yard in the Code. Mr. Christ said that the Code reads that a driveway is permitted in front of the garage doors and any other portion of paving that is relevant to parking cars or turning around must be located toward the side property line and cannot be in front of the house.

Mr. Christ said that he is not troubled by the 46' front setback and he agrees it would be nice if this Board had all variance requests reviewed at one time. He appreciates all of the discussions relative to the landscaping and the way it looks. He said that he calculated the amount of solid scape that is proposed to be in the front of the house and it is 56% of the front yard. He said that on a 75' wide lot, this is equivalent to the driveway being 42' wide and he considers that to be excessive. He said that as soon as you propose a second curb cut and a circular driveway, an enormous area of the yard is being taken up, which is the reason why the Code requires a 90' wide lot to do that. As you walk by this house on either side of the street, you will see very nice paving, but a lot of it, and in his opinion it is excessive.

Mr. Farrell said that he agrees with the sensitivity toward excessive pavement but in spite of that, in some ways he like what they are proposing because they are meeting the

sidewalk with just 10' wide driveway and they have the opportunity with the island to hide a lot of the driveway from view. He also understands the idea that they are trying to circulate their cars around each other. He is in favor of this proposal.

Mr. Pempus said that it looks like he and Mr. Farrell are in favor of this proposal and asked if the applicants would feel more comfortable coming back with revisions. Mr. Brandt said he is not opposed to the design but he is simply frustrated because they are back here again for another variance request and this property will probably have more variances than any other parcel in Rocky River at the end of this. Mr. Wolf said that he is in the same mindset as Mr. Brandt and he is usually the one that objects to large amounts of pavement, but he is landing in a different place with this proposal than he normally would.

Mr. Mylett, the property owner, said he would like to contribute to the conversation and Chairman Pempus swore Mr. Mylett in. Mr. Mylett said that he grew up 8 doors away from this house and currently lives 4 houses from this one, so he has lived in the neighborhood for about 50 years. He is very conscious of how a house fits in and they are putting a lot of thought into how it will look because he knows all his neighbors. The house to the east is heavily landscaped which is very nice, and they will add a buffer to the north and to the west. In his opinion, a circular driveway of the quality that he is proposing would look nicer than a concrete driveway that is permitted. Mr. Ferry added that there are some safety considerations with trying to back out of the driveway onto Frazier Dr.

Mr. Christ said that what is driving his objection is the proposal for 60' wide paving that is in front of the house and the two garage doors, which in his mind is excessive on a 75' wide lot. He agrees that the appearance is nice, but he is just looking at the magnitude.

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 applicant has indicated his opinions regarding the fact that this is a narrower lot and the front loaded garages are driving the need for this along with the traffic on Frazier Dr. Mr. Christ believes that the property in question will yield a reasonable return without the variance. The applicant is making the argument that the variance is not substantial and Mr. Christ gave his reasons for why it is substantial. The essential character of the neighborhood will not be altered and the evaluation between the landscaping and the amount of paving proposed is what is being considered. This variance 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. It has been mentioned today that the configuration of the house is lending itself to the special circumstances. Whether it

is possible to obviate the property owner's predicament feasibly through some method other than a variance, he believes that the original drawings had a solution that works without the need for variances but the issue that needs to be evaluated is that of backing up onto Frazier Dr. to exit the property. Whether the spirit and intent of the Code would be observed by granting a variance, Mr. Christ believes that answer is in the evaluation that the Board will make. Whether the granting of this variance will confer any special privilege on the applicant will be reflected in the decision of this Board. 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 he does not believe that it would, but there may be other opinions of Board members regarding this.

Mr. Christ moved to grant a variance to Gregg Mylett, 19800 Frazier Dr., to construct a second curb cut for a circular driveway on a 75' wide lot vs. minimum lot width of 90' required for two curb cuts. The applicant has indicated the practical difficulties and this is the solution that they have proposed. Mr. Farrell seconded.

4 Ayes – 1 Nay (Christ)
GRANTED

Mr. Christ moved to grant a variance to Gregg Mylett, 19800 Frazier Dr., to construct a second curb cut for a circular driveway on a lot with a 46' front setback vs. 50' minimum front setback required for two curb cuts. The applicant has indicated the practical difficulties and this is tied to the original variance request at the direction of the Board and is a reasonable solution. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

The meeting adjourned at 7:15 p.m.

Eric Pempus, Chairman

Richard Christ, Secretary

Date: _____