

**MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
DECEMBER 8, 2021**

Members Present: Farrell, Harpster, Wright, Christ, Pempus

Presence Noted: Michael O'Shea, Assistant Law Director
Raymond Reich, Building Commissioner

Councilmembers Present: James Moran, City Council President

Mr. Pempus opened the December 8, 2021 meeting of the Board of Zoning and Building Appeals at 6:00 p.m. and explained the meeting protocol. He explained that they are missing one Board member for the beginning of this meeting, so until Board member Wright arrives, they must get 3 of the 4 members' votes in the affirmative for a variance to be approved. He said that all of the Board members have had an opportunity to visit each of the sites and review the variance applications and the other information submitted by each applicant.

1. Approval of the Minutes of the November 4, 2021 Board of Zoning and Building Appeals meeting. Mr. Farrell moved to approve the minutes as presented. Mr. Wright seconded.

4 Ayes – 0 Nays – 1 Abstain (Harpster)
Passed

Since Board Member Wright was not in attendance at the start of the meeting, the first item was moved to later in the agenda. Board member Wright arrived just after the introduction of the first item.

2. PETE & ANNA COZZONE – 21330 Erie Rd. – PUBLIC HEARING – Variance to construct a second story addition with 4' – 10" side yard setback vs. 5.625' side yard setback required (Section 1153.07(f)(1)A., and a Variance to construct a detached garage with a height of 17' – 9" vs. 15' maximum height permitted for detached garages (Section 1153.09(b)). Ms. Jill Brandt, Architect, came forward with homeowner Peter Cozzone, to discuss the variance requests.

Board Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mrs. Brandt began by explaining that the applicants are constructing a second floor addition and the existing house has a 4.8' side setback. They would like to enlarge the non-conforming setback by adding the second story up along the same side wall. This will provide a small office addition and an expansion to the smallest existing bedroom. Materials will match the existing and this will add more character and will look like it is a good fit to the house. Mrs. Brandt explained that the existing garage is rather small and has a 6.2' door height, which makes it difficult to get cars in there. The existing flat roof is in need of repair anyway, so they are planning to rebuild the garage to the existing northwest corner and they will expand the footprint a little, as well as add a pitched roof. The pitched roof will provide a small amount of storage in the second floor of the garage. The house has very limited storage and they are requesting a minimal amount of storage to suit their needs in the garage. There will be a pull-down staircase, a light fixture

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and an outlet on the second floor. The second story will not contain habitable space and the height of the garage they are requesting is 17 – 9”.

Chairman Pempus explained that the Board has seen garage variances come before them lately that are requesting more and more height. As a result, the Boards and Commissions, together with City Council Members were invited to a very informative meeting and discussion was had relating to the height of garages. When he left that meeting, he had the understanding that the current Code would be revised to 16' because of the need for a taller garage door height. However, the Code was not changed and they are still looking at a maximum height of 15' for garages. Mr. Pempus said that City Council and others are concerned about the possibility that these garages could become some type of a secondary rental property in an R-1 zoning district.

Mrs. Brandt explained that she was not able to attend the meeting Mr. Pempus is referring to because her daughter had an event at school that evening. As she recalls, the initial proposal for that meeting was for a maximum height of 18' for garages and said that this proposal is for a minimal height difference and assured the Board that it will not be a livable space because it will only have a 6' standing height on the second floor. The property immediately adjacent to this one received a variance for the garage height of 20'. Mr. Cozzone requested that the Board allow the consideration of precedent that has been set with the neighbors.

Mr. Farrell said that the point the Chairman was trying to make is that 15' still applies to this garage. The Board said that they now feel they have been given some direction that they should not be giving these variances that allow a building to go above 16'. He said that this Board doesn't necessarily go by precedent because they look at every single request individually. He said that this Board feels they have been told to stop allowing garages that are much above 15'. Discussion was had relating to the height of the doors and the overall height of the garage and the applicant agreed to lower the garage height. Mrs. Brandt said that they would be adjusting the pitch to one that doesn't match the house. The applicants agreed to come back with modifications to the garage height.

Mr. Christ moved to close the public hearing relating to the side yard setback variance for the second story addition. Mr. Farrell seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ reviewed the practical difficulties factors aloud. Regarding special circumstances that exist that are peculiar, he said that this is an existing condition. He does not think that the question regarding whether this property will yield a reasonable return without the variance applies in this case. He feels that this variance request is not substantial and is the minimum necessary. He said that since this is an existing condition, this would not substantially alter the character. This variance would not adversely affect delivery of government services and he does not feel that the property owner purchased this property with knowledge of the zoning

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restriction. He does not feel that special circumstances exist as a result of actions of the owner and he does not believe that the property owner's predicament can be obviated through some method other than a variance. He thinks that the spirit and intent of the zoning ordinances would be observed. He said that the granting of this variance would not infer any special privilege on this applicant and a literal interpretation of the provisions would deprive the applicant of rights commonly enjoyed by others. The other Board members agreed with Mr. Christ's interpretation.

Mr. Christ moved to grant a variance to Peter and Anna Cozzzone, 21330 Erie Rd., to construct a second story addition with a 4' – 10" side yard setback vs. 5.625' side yard setback required. The applicant has indicated the practical difficulties. This is an existing setback that will be maintained and it is a reasonable solution.

5 Ayes – 0 Nays
GRANTED

Mr. Christ moved to table the variance for garage height so the plans can be revised per the discussion. Mr. Farrell seconded.

5 Ayes – 0 Nays
Tabled

3. DAVID & TINA UIBLE – 20025 Beachcliff Blvd. – PUBLIC HEARING – Variance to construct a garage addition and entry porch and foyer with a 27' front setback (on Cornwall Rd.) vs. 25' front setback required (Section 1153.07(a)), and a Variance to construct a garage addition with an 11' rear yard setback vs. 25' rear yard setback required (Section 1153.07(2)). Mr. and Mrs. David and Tina Uible, Homeowners, came forward with Jill Brandt, Architect and Mark Norris, 356 Cornwall Rd., Attorney for Mr. and Mrs. Uible.

Board Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mrs. Brandt explained that the applicants would like to build a first floor master suite so they can be comfortable and safe in their home into the coming years. They are proposing to convert the existing garage and some addition space to be the first floor master with a garage in the front. They are also adding a new entry porch. This project requires a 27' front setback on Cornwall Rd. and an 11' rear yard setback to the south. This is a corner lot with a 35' setback requirement on Cornwall Rd. They have 26 letters of support from neighbors and many of the neighbors are at this meeting. Mrs. Brandt said that there is no strong existing setback line and all of the houses don't perfectly line up along Cornwall. There are some that are close to 27', with a couple setback to 29', 34' which is helpful to keep in mind in terms of what the impact of that is. Mrs. Brandt said that she included a little more site context showing where the addition will be relative to the neighbor's house and the site is staked to demonstrate that. There is almost 28' between this projecting variance element and the neighboring house. Mrs. Brandt said that their existing

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backyard is 19.5% of their total lot and directed their attention to the area summary she provided. The proposal they are presenting reduces the backyard space to 18% of the lot. If they were to push the addition back an additional 3' as was suggested at the last meeting, it would reduce the backyard space to 16.7% of the lot, which will have a substantial impact. Mrs. Brandt said that her own lot is an example of a typical lot in Rocky River and her backyard encompasses 35% of her entire property. She feels it is asking a lot of the applicants to require they reduce their backyard space to 16.7%. Mrs. Brandt explained the steps they have taken to explore ways of providing a first floor master suite and the various reasons why those options were not practical, including preparing a project cost estimate for each of these options, which has been provided to the Board for their reference. She explained some of the aesthetic elements of detail they will be using, including matching the existing materials, in an effort to maintain the character of the home and also bring the scale of the addition down. She showed examples of other front facing garages in the neighborhood and explained that the answer to Item "K" on the application, which asks whether they are denying the rights of the homeowner a privilege that is commonly enjoyed by others and she believes the answer to that question is, yes. The nature of the lot and the 35' required setback on Cornwall is significant, and they feel the 27' setback they are requesting is comparable to the rest of the street. The design and the character are comparable to the neighborhood, and there is a real need demonstrated by the applicants for a first floor master.

Mr. David Uible said he would like to emphasize that the two things that are important to them are the fact that he will be 80 on his next birthday and Mrs. Uible will be 78. He has had a hip replacement and two knee operations and those things will catch up to him. They really want the downstairs bedroom so that they can stay in Rocky River and in their neighborhood. In addition, the option they are presenting reflects the fact that they very much want to maintain as much backyard private space as they can. The reduction of their backyard space that they are proposing will still allow them to enjoy their backyard.

Attorney Mark Norris said he believes the Board now has enough context but said that he would like to speak to the law. He provided a brief history of the timeline of the Uible's request and said it has been pending for 8 months now. They have incorporated some of the Board's suggestions into their design and they are asking for reconsideration. He said that the Board did not opine on what variance might be acceptable or what the term "too much" meant before they tabled the variance request. He said that the additional construction costs to abide by the suggestions of the Board certainly reflects the practical difficulties of their request, which is all they are required to prove by law. They showed good faith by reducing the variance request by 5'. He said the standard is not whether or not a member of the Board would prefer that a garage be moved closer to the street. He said that the applicants have shown practical difficulty both in their lot and in their structure.

Mr. Norris went through each of the practical difficulty factors listed in Section 1133.17(c)(1)A. thru K. of the Code aloud. The discussion that was had amongst the applicants' representatives and the Board was determined to be sufficient to account for the Board's review and consideration of the practical difficulties for the record.

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Mr. Wright said that he heard something tonight that he hadn't heard in the previous meetings regarding these variance requests. He is not aware of setbacks on every corner lot in the City, but when he sees a front yard setback of 50', he looks at it from analyzing his own property where his setback is 40'. He said that the deep front setback requirements create something unique. He is convinced by the contribution of the backyard useable space analysis that to only have less than 20% of their private property available for their most private backyard use that a practical difficulty does exist. Mr. Christ said that he sees Beachcliff as the street that the City considers a Boulevard and Cornwall as a secondary street, with a lesser impact on that front setback. He believes they will be enhancing the landscaping on the side of the garage to lessen the impact of the addition, which he sees as sufficient. Mr. Farrell said that he appreciates the applicant showing them the feelings of the neighborhood, which he thinks is important to consider. He thinks that there are better ways to do this but he is glad they made this Board more knowledgeable of the way the neighbors feel.

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

5 Ayes – 0 Nays

Passed

Mr. Christ said that while most of the discussion has been regarding the Cornwall Rd. setback, the record will reflect in the very beginning that they discussed the rear yard setback seeming more like a side yard setback based on the way the houses are situated. Accordingly, this Board looks at encroaching into the rear yard setback as not impactful.

Mr. Christ moved to grant a variance to David and Tina Uible, 20025 Beachcliff Blvd., to construct a garage addition and entry porch and foyer with a 27' front setback (on Cornwall Rd.) vs. 35' front setback required. The applicants have indicated the practical difficulties, this Board has reviewed the area variance factors together with the applicants contained in the Code and this is a reasonable solution. Mr. Wright seconded.

4 Ayes – 1 Nay (Pempus)

GRANTED

Mr. Christ moved to grant a variance to David and Tina Uible, 20225 Beachcliff Blvd., to construct a garage addition and entry porch and foyer with an 11' rear yard setback vs. 25' rear yard setback required. This is a technical requirement based on the frontage being on Beachcliff Blvd., but the house also fronts on Cornwall Rd. and this is a side yard to the adjacent property. As such, anything greater than 8' is a considered a reasonable solution based on the configuration of the homes on the lots. Mr. Wright seconded.

5 Ayes – 0 Nays

GRANTED

4. THE KRUEGER GROUP – PPN 303-26-005 – Vacant Lot Next to 22591 Center Ridge Rd. – PUBLIC HEARING – Variance to construct a multi-family apartment development with 6 one-bedroom units with a minimum of 595 sq. ft. vs. Minimum of 750 sq . ft. gross floor area required for one-bedroom units (Section 1157.07(f)(1)A.), A Variance to construct a multi-family apartment development with 36 storage units vs. 54 storage units required (Section 1157.19(a)), and a Variance to construct a multi-family apartment development with 110 total parking spaces vs. 122 total parking spaces required (Section 1187.09(a)(3)). Mr. Jack Doheny and Bobbie Krueger of the Krueger Group, came forward to discuss the variance requests.

Board Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Pempus complimented the applicant on the quality of the submission and said that it appears the Planning Commission left no stone unturned in their review of this project. Mr. Doheny thanked Mr. Pempus and explained that the intent is to construct a 54-unit multi-family apartment development on Center Ridge Rd. They have been through many Planning Commission and Design Board meetings and revisions were made to address comments along the way and feel they have arrived at a diversified offering for potential clients including six studio one-bedroom units that are smaller than the minimum floor area of 750 sq. ft. that is required by Code. Regarding parking, based on the applicants' experience and from feasibility studies they have performed, they have determined that the code requirement of two spaces per unit for one-bedroom units is way over parked. Regarding storage space, they have studied that as well and since their 2-bedroom apartments are actually 90 sq. ft. larger than the minimum requirement by Code, they believe there will be additional storage available within each 2-bedroom unit. They also find that the actual storage units that are offered in their properties do not get used as often by the tenants. Mr. Christ asked if there is any intent to try to provide some sort of cabinetry inside the 2-bedroom units to act as storage space and Mr. Doheny said that they naturally have larger closets in the 2-bedroom units that can be used for storage.

Mr. Pempus said that they have a letter of support from the resident in the single family farmhouse next door. Mr. Harpster said that his thought is that the applicants knew from the start that they have 110 parking spots, so they could have reduced the number of dwelling units to 48 units, and then they could increase the size of the 6 undersized units since this is a new build. He would have designed it with the parking in mind first, and then work from there to accommodate the Code requirements. Mr. Krueger said that they purchased the property in August of 2020 and they were before the Planning Commission to determine the perfect unit mix and that is how they landed on 54 units from an economic and viability standpoint. He said Mr. Harpster makes a good point, but to reduce the unit could would cause it to not be a viable project for them.

Mr. Christ said that he thinks the reason for the shortage of square footage for the 1-bedroom unit is because our code does not recognize a studio or efficiency sized apartment but he believes that the Planning Commission has acknowledged that that is a type of unit that the applicant sees as being very valuable and worthwhile to the City. Mr. Krueger described the

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market studies that they performed and said that studio or junior one-bedroom units are the biggest drivers across the board in their multi-family properties. They analyze what the market is demanding and that is how they come up with what type of units they provide. Mr. Christ said that the minutes from all of the Planning Commission meetings that were provided encompass all of the answers to questions that this Board would inherently consider with the variances. He said he would like to include the minutes of the Planning Commission as part of their rationale when looking at these variances.

Mr. Wright said that the numbers for the smallest units is not the smallest unit that he has seen proposed in other markets and it doesn't concern him. Regarding the storage, he said he would like to leave that up to the discussion had by Planning Commission. Regarding the parking, he said that other major cities are doing away with parking requirements as a way to be proactive because they are seeing cars disappear in favor of other transportation options. He asked if there will be electrical charging stations and Mr. Krueger said that there will be charging stations provided in the garage.

Mr. Farrell asked about reducing the size of storage units to provide more and Mr. Krueger said that they could provide cages that are half the size if it became necessary. Mr. Farrell said that the applicants study the trends and they would know best what the requirements for their products are. He said that the landscaping plan is quite extensive and Mr. Krueger said that they will install the landscaping as shown.

Mr. James Moran, City Council President, came forward to thank the Krueger Group who did a wonderful job presenting to the Planning Commission as well as to the neighbors. He received a lot of calls from the residents and he assured them that this is a quality project. There are a lot of good things about this project and the Planning Commission did a thorough review of it. He urged the applicants to be sensitive to the fact that there are some people who have been in the surrounding properties for a long time and to be sure that they screen lights, and provide fencing as is being proposed.

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

5 Ayes – 0 Nays

Passed

Mr. Christ said that regarding this Board's review of the area variance factors, the Planning Commission has reviewed them and considered the area variance requirements within their reviews. Since their final minutes are incorporated herein, Mr. Christ would like to recognize and incorporate the Planning Commission's analysis into this Board's analysis. The other Board members agreed with Mr. Christ.

Mr. Christ moved to grant a variance to The Krueger Group, PPN 303-26-005, Vacant Lot Next to 22591 Center Ridge Rd. to construct a multi-family apartment development with 6 one-bedroom units with a minimum of 595 sq. ft. of gross floor area vs. Minimum of 750 sq.

ft. gross floor area required for one-bedroom units. The Rocky River Code does not recognize such smaller units that meet this requirement. The Planning Commission has reviewed this and this Board determines that this is a reasonable solution. Mr. Wright seconded.

4 Ayes – 1 Nay (Harpster)
GRANTED

Mr. Christ moved to grant a variance to The Krueger Group, PPN 303-26-005, Vacant Lot Next to 22591 Center Ridge Rd. to construct a multi-family apartment development with 36 storage units vs. 54 storage units required for the same reasons. Mr. Wright seconded.

4 Ayes – 1 Nay (Harpster)
GRANTED

Mr. Christ moved to grant a variance to The Krueger Group, PPN 303-26-005, Vacant Lot Next to 22591 Center Ridge Rd. to construct a multi-family apartment development with 110 total parking spaces vs. 122 total parking spaces required for the same reasons. Mr. Wright seconded.

4 Ayes – 1 Nay (Harpster)
GRANTED

5. SHANNON POLK – 19618 Beachcliff Blvd. – PUBLIC HEARING – To construct a garage addition with an 8.5' rear yard setback vs. 25' rear yard setback required (Section 1153.07(f)(2)); a Variance to construct an outdoor courtyard with a 25' – 5 ¼" front setback (on Buckingham Rd.) vs. 30' front setback required (Section 1153.07(a)).
Mr. Mark Reinhold, Architect, came forward with Shannon Polk, homeowner, to explain the variance requests.

Board Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Reinhold explained that the applicants have an existing false 2-car garage, so they want to use the existing garage as a 1-car garage with a little bit of added interior space, and then add a usable garage to the north. He said that this is a rear yard based on the Rocky River definition, but they are holding the setback request to 8.6'. There is an existing fireplace and courtyard that is to the northeast and they are extending that line so they are not getting any closer to Buckingham. The courtyard will be more accessible while being made to be slightly more formal but it will be located in the setback area.

The Board members agreed that this is a nice project and this fits in well. Mr. Christ suggested that they reduce the concrete between the entrance and the existing garage, now that they don't need 2 doors there and Mr. Reinhold agreed to do that.

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

5 Ayes – 0 Nays
Passed

Mr. Christ reviewed the area variance factors aloud and the Board members are in agreement with his analysis.

Mr. Christ moved to grant a variance to Shannon Polk, 19618 Beachcliff Blvd. to construct a garage addition with an 8.5' rear yard setback vs. 25' rear yard setback required. There is an existing non-functional 2-car garage and this will resolve that to provide a usable garage to accommodate 2 cars with minimal impact to the neighbors. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a variance to Shannon Polk, 19618 Beachcliff Blvd. to construct an outdoor courtyard with 25' 5 1/4" front setback (on Buckingham Rd.) vs. 30' front setback required. The applicant has indicated their practical difficulties and this is merely adding to the existing courtyard within the same setback. Mr. Wright seconded.

5 Ayes – 0 Nays
GRANTED

6. JARED AND AVERY HASSON – 240 Argyle Rd. – PUBLIC HEARING – Variance to construct a garage extension with a 25.63' front setback (on Argyle Rd.) vs. 35' front setback required (Section 1153.07(a)) and a Variance to construct a garage extension with a 7.86' rear yard setback vs. 25' rear yard setback required (Section 1153.07(f)(2)).
Mr. Mark Reinhold, Architect, came forward with Homeowner, Avery Hasson to present the variance request.

Board Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Reinhold explained that this is also a corner lot with an established setback on Argyle Rd. of 35'. The applicants are coming from an existing house on Frazier Dr. where they are unable to park inside the garage. They want to make sure they have enough room for cars as well as the things that come along with raising a family. The 25' deep garage will allow for bikes and mowers, etc. He said that this is the most extreme example of non-public space on a lot that he has ever worked with. The side yard and the defined rear yard are quite tight. He said that they feel like they will have enough driveway space for guests to park in front of the driveway. The existing garage is deep but they want to add interior space for a playroom/homework room for their growing family as they remodel the interior.

Mr. Pempus said that he is in favor of this because it has a softer impact. Mr. Christ said that he thinks the difficulty here is the fact that there is essentially zero usable back yard, so everything they are trying to do must happen within the house. Providing the ancillary spaces

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on the interior would have to be built to the side and there is no space to do it in the back. He said that they softened the appearance of this with the reversal of the roof structure so it is less of a visual impact and it helps provide some play upon the front wall.

Mr. Farrell said that there is essentially no back yard in this situation, and he sees that as the practical difficulty which is why he can vote for this. Mr. Wright agreed and said the fact that there is no back yard is the driving practical difficulty. The Board agrees that this is a huge lot but there are very deep setback requirements in the front yards due to it being on the corner.

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

5 Ayes – 0 Nays
Passed

The Board agreed that the special conditions and circumstances that exist which are peculiar is based on the setbacks along the 2 streetscapes and the lack of utilizable space for additions to the back and side yards.

Mr. Christ moved to grant a variance to Jared and Avery Hasson, 240 Argyle Rd., to construct a garage extension with a 25.63' front setback (on Argyle Rd.), vs. 35' front setback required. The applicants have indicated the practical difficulties and this is a reasonable solution and they have minimized and accentuated it so it blends in with the front elevation. Mr. Wright seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ moved to grant a variance to Jared and Avery Hasson, 240 Argyle Rd., to construct a garage extension with a 7.86' rear yard setback vs. 25' rear yard setback required for the same reasons and with the understanding that this yard is actually a side yard to an adjacent house as opposed to a rear yard because it is situated on a corner. Mr. Wright seconded.

5 Ayes – 0 Nays
Passed

The meeting adjourned at 8:55 p.m.

Eric Pempus, Chairman

Patrick Farrell, Vice Chairman

Date: _____