

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

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

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

Mr. Pempus opened the July 8, 2021 meeting of the Board of Zoning and Building Appeals at 7:00 p.m. and explained the meeting protocol. He explained 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 by each applicant.

**1. GINA AND JESS WIEDEMER 0 20742 Beachcliff Blvd. – PUBLIC HEARING –
Variance to locate 2 air conditioner condensers in the front yard vs. outdoor
condensers are not permitted in the front yard (Section 1153.15(k)(1)).** Mr. Jess Wiedemer, homeowner, is present to discuss the variance request.

Secretary Christ introduced the variance request that is outlined on the notice, which also names the parties who received it. The applicant was sworn in by Chairman Pempus. Mr. Pempus acknowledged an email that they received on July 7th which was forwarded by Kate Straub that speaks to the fact that the neighbors don't have any concerns about the variance requests. Mr. Wiedemer said that their house was originally designed with a 4' tall stone wall on the east side of the front of the house that sits over 120' from the street to accommodate and screen their air conditioner condensers. The open side of the area faces toward the back of their eastern neighbors' garage. Based on feedback from previous BZA meetings, they are now asking to place only 2 units in this space, which would be 15' from the property line and they will now add a door to screen noise and the view of them. They have spoken to the neighbors on both sides of them and they both no longer have concerns. Mr. Pempus says that he recalls reading something in the submittal about the fact that having two condenser units running at the same time does not double the sound decibel output.

Mr. Farrell asked if they are proposing to use the sound blankets because details about them are included in the packets. Mr. Wiedemer said that if the noise becomes a factor, he will address it with sound blankets. Mr. Pempus said that he has no problem with this proposal. Mr. Christ said he would like to make sure that they understand what is being proposed today that has changed. He said that it appears that 2 units have been moved to a compliant location and do not need variances. If they install a generator, they will place it where it would not require a variance. Mr. Wiedemer said that Mr. Christ is correct.

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

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5 Ayes – 0 Nays

Passed

Mr. Wolf said that some of the other units they see in one of the agenda items discusses the Carrier Performance System where they actually wrap the compressor in sound proofing materials and there is an option to put blankets around the walls of the unit as an additional measure. He advised the applicant to have his installers check with the manufacturer to be sure they have put in what they can in order to quiet the units. Mr. Farrell said that there are a lot of things in the packet that he does not think that the applicant is planning on doing right now. For instance, he said he does not think that the blankets are a definite part of the plan. Mr. Wolf said that he feels that adding the blankets is an easy thing to do around the unit at a later date, but it's not so easy to actually wrap sound proofing around the compressor. Mr. Christ said he would like to confirm that the applicant will put the unit manufactured sound proofing on the condensers and they can add the blankets to the hard surfaces surrounding the units later, if they are required. Mr. Wiedemer said that he is willing to do that if he needs to add the extra protection later. Building Commissioner Reich said that the packet indicates that blankets will be added to each unit in order to reduce the sound.

Mr. Christ applied the practical difficulties test aloud. He wishes to incorporate the minutes from all previous meetings for the full record. The special conditions or circumstances that exist which are peculiar to the land or structure, include the orientation of the property, the fact that it is on the lake, and they provided a wall to screen and accommodate these condensing units. Regarding whether the property in question will yield a reasonable return, he does not believe that is impacted here. Mr. Christ does not believe that this will substantially alter the essential character of the neighborhood because the wall is screening the units and they are providing more sound screening so that the sound will not reach the street. The variances would 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. Special conditions or circumstances do exist as a result of the actions of the owner, but the wall is being provided to remedy that. He said that regarding whether it is possible to obviate the property owner's predicament feasibly through some method other than a variance, Mr. Christ said that he does not believe that they can. He believes that the granting of the variance will observe the spirit and intent of the Code and substantial justice will be done by granting the variances. He said that the granting of the variance will not confer any special privilege on the applicant. He thinks that the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties. Mr. Farrell, Mr. Wright and Mr. Wolf said that they agree with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Gina and Jess Wiedemer, 20742 Beachcliff Blvd., to locate two air conditioner condensers in the front yard vs. outdoor condensers are not permitted in the front yard (Section 1153.15(k)(1)). The applicants have indicated their practical difficulties and they provided testimony relative to these that is included in the

record. The units will be screened from the street with the appropriate wall. Mr. Wright seconded.

5 Ayes – 0 Nays
GRANTED

4. SHANNON PERKINS – 21372 Stratford Ave. – PUBLIC HEARING – Variance to locate an air conditioner condenser in the side yard with a 3.5' side yard setback vs. 10' side yard setback required (Section 115315(k)). Mrs. Shannon Perkins, homeowner, came forward with Anthony Latina and Darla Kurtz of Latina Design Build to present the variance request.

Secretary Christ introduced the variance request that is outlined on the notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Pempus acknowledged that the Board received a total of two emails. The first was received on July 7, 2021 from the neighbor expressing her objection to the variance request. An email was forwarded to the Board on July 8, 2021 from Anthony Latino with some information to help clarify the request. The neighbor submitted a 2-page letter and accompanying photographs and asked that it be read into the record but he is not going to read it because the Board members all received the information.

Mr. Latina began by saying he submitted an additional site plan to reflect the actual distance of the condensers from the neighbor's home is 26'. The condensers will be closer to her garage in the back yard than to her house. The units will have a sound blanket installed and the owner will place a decorative fence and landscaping around the condensers to screen them from view and to block noise. He explained that there used to be a shrub line along that property line that was discovered to be on his client's property so they were removed. He said that once everything is complete and the side yard is landscaped, he doesn't think the neighbor will see or hear them because of the distance from her house and the sound blankets they will install on them.

Mr. Pempus asked if they received the letter written by the neighbor. Ms. Kurtz responded that there were false comments made in the letter and they think that she is now being difficult because she didn't want the shrubs removed. The neighbor agreed to the condenser being on the side of the house before the hedges were removed. The hedges needed to be removed so that the bricklayer could set up the scaffolding to apply the brick to the side of the garage addition. Mrs. Perkins said that she got the opportunity to read the email and she thinks that a lot of the information is false. She did go to her house and ask her if she minded if they put the condenser on the side of the home and she said she had no problem with that. However, in her letter, she said that I told her we were placing them there. When Mrs. Perkins discovered that the bushes would have to come down in order for the mason to complete the work, she conveyed to her contractors that she thought the neighbor would be upset because she really likes the hedge, so she offered to replace it. The neighbor objected to that so Mrs. Perkins had a boundary survey done because all she had at that time was a mortgage location survey which does not accurately reflect the

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boundary lines. The neighbor did not believe and would not honor the boundary survey but did not have plans to get a survey herself. She said that it is difficult for her to read the letter because it is not necessarily accurate, but it's one opinion versus another.

Mr. Wright asked about what type of landscaping they plan to install and whether it would be the same height as what was removed. Mrs. Perkins said that they are going to hire someone to come out and look at the property and make recommendations regarding landscaping, so she does not know at this point what they will look like. However, in the meantime, they will fully encase the units with a fence so they will be completely out of sight. She is unsure what type of landscaping will be placed around it. They won't be moving in until August, so they will worry about landscaping next year with the help of a landscape architect.

Mr. Farrell said that people often times say that they can't put the units behind the house because they will be outside of windows or because of patios but that doesn't seem like it's the case here. He wonders why they can't just put them around the corner on the back of the garage. Mr. Latina responded that this is a garage addition with a concrete slab, so they ran the lines before dry walling the basement portion. They would have to run all of the lines on the outside of the walls if they locate the units behind the garage. Their HVAC people told them that they need to locate the units on the outside walls and not on the interior of the garage but he doesn't know the reason for that. Mr. Farrell said that these things come before the Board often and, unfortunately, the Ordinance requires them to be 10' away from the property line but some people are locating patios in their back yard. I don't see that to be the case here, so there is no reason why the unit can't go behind the house. It appears that there is only about 10' to the back of the garage so he doesn't see that as a problem.

Mr. Wolf said that he thinks landscaping should be part of the application or at least an intent or a condition. However, they are not entrusting that landscaping is going to be done at some future date because there needs to be some commitment. He expects that an applicant would provide some basis for why a compliant location doesn't work in the back of the garage but he does not see that here. By locating it where they are proposing, it seems to him the applicants are putting more burden on the adjoining property owner rather than on themselves. The ordinance has not changed and it should be determined whether or not a variance is required at the time the permit is submitted.

Discussion was had relating to where the previous condenser was located, and it was determined it was located in the rear of the home. Because they added the addition with a porch, they cannot go back in that location. Mr. Pempus said that this Board has issues with property owners doing something that creates the need for a variance. Mr. Christ said that Item "G" on the variance application addresses that issue. Notwithstanding whether the neighbor approves or disapproves, this Board looks at these relative to the City's Code and future neighbors. He added that this location is closer to the neighbor's garage but is facing toward their backyard space so that space is affected by where they are locating

these units. There is nothing preventing these from being installed behind the garage other than the fact that they didn't plan for it. He said that landscaping of the units is required and it is not an option.

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 whether special conditions or circumstances exist which are peculiar to the land or structure, Mr. Christ said that he does not believe that there are any special conditions or circumstances in this case. Regarding whether the property in question will yield a reasonable return, he does not believe that is affected here. He does think that the variance request is substantial and that it is not the minimum necessary because there are other locations that would conform to the Code. Mr. Christ does not believe that this will create a substantial alteration to the essential character of the neighborhood because of the required screening. The variances would 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. Whether there are special conditions or circumstances that exist as a result of the actions of the owner, he believes that this need has been created by the owners' addition and not taking into account where the condensers would be located at the time of the original submission. Regarding whether it is possible to obviate the property owner's predicament feasibly through some method other than a variance, Mr. Christ said that he believes it can be. He believes that the granting of the variance would not observe the spirit and intent of the Code for the aforementioned reasons. He said that the granting of the variance will confer a special privilege on the applicant. He thinks that the literal interpretation of the provisions of this Code would not deprive the applicant of rights commonly enjoyed by other properties. The other Board members said that they agree with Mr. Christ's analysis of the practical difficulties.

Mr. Christ move to grant a variance to Shannon Perkins, 21372 Stratford Ave., to locate an air conditioner condenser in the side yard with a 3.4' side yard setback vs. 10' side yard setback required. The applicant has indicated the practical difficulties with locating the condensers. Mr. Wright seconded.

0 Ayes – 5 Nays (Wright, Farrell, Wolf, Christ Pempus)
DENIED

3. MIKE & SHARON SPOONER – 20354 Westhaven Ln. – PUBLIC HEARING – Variance to construct a 396 sq. ft. pavilion vs. 250 sq. ft. maximum permitted (Section 1153.15(g)(3); a Variance to construct a pavilion with a height of 12' – 6" vs. 12' maximum height permitted (Section 1153.15(g)(1)); and a Variance to construct an

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outdoor fireplace with a chimney height of 14' – 6" vs. 12' maximum height permitted (Section 1153.15(g)(1)). Mr. Mike Spooner, homeowner, came forward with Nick Yarham, the contractor for the project, to discuss the variance request.

Secretary Christ introduced the variance requests outlined on the notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Spooner explained that they would like to extend their patio and also provide a covered pavilion in order to expand their outdoor living space. The style of the pavilion will mirror the style of their home. They would like to extend the time they can enjoy the outdoor seasons and this structure will help them to do that. He explained that the height variance is necessary based on the square footage variance and their desire to match the existing house and patio. The existing home has a 5/12 pitch and they would like to match that. The square footage of the pavilion request is driven by the fact that they want the columns and posts of the pavilion to match the posts on their existing patio, which are 2' x 2'. If those posts are placed inside the 250 sq. ft. requirement, it constricts the living space inside the pavilion to the point where they cannot place the furniture that they are looking for in there, which includes a table and chairs. Their request amounts to an additional 2' on each side in order to create a more livable space. The fireplace height is driven by the height of the peak of the roof of the structure, which requires the chimney to be 2' taller than that. They feel this is a reasonable request and they certainly have the space in their backyard to accommodate it. They submitted letters from neighbors who say that they don't have an objection.

Mr. Yarham said that if this were under the height limit of the Code, then it would be a very odd looking structure. They are trying to match the architectural details of the home with this pavilion and it will easily fit into the neighborhood because of the size of the yard, especially since Linden Park is behind them. Mr. Pempus said he would like to acknowledge that the applicants' large sized back yard lends itself to having a larger structure. Building Commissioner Reich confirmed that the chimney height must be 2' higher than the peak of the structure.

Mr. Wolf asked the applicant for the reason why he would not reconfigure the existing patio and put this structure over that space. Mr. Spooner responded that they looked at that and they would really like a separate structure that mirrors the style of the house. The family room and patio were designed 6 years ago when they didn't have the pavilion structure in their plans and reconfiguring it would be a much larger project. Mr. Wolf said that there are some very unique conditions that apply to this lot and this structure fits just fine. Mr. Wright said that if they came before this Board with a more traditional sized lots, it may be objectionable to go beyond the 250 sq. ft.

Mr. Farrell said he agrees with the comments and the height is not a substantial difference. The structure is compatible with the size of the lot and the adjacency to the park, he does not see those things as objectionable. Mr. Christ thanked the applicant for providing a furniture layout which clearly shows how they are planning to use the structure. He asked

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whether they have intentions of enclosing the structure and Mr. Spooner responded that they will not be enclosing the structure.

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

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test aloud. Regarding whether special conditions or circumstances exist which are peculiar to the land or structure involved, Mr. Christ said that this is a very large lot adjacent to a park, so it is a minimal size for this lot. Regarding whether the property in question will yield a reasonable return, he does not believe that is impacted here. Regarding whether the variance is substantial and the minimum necessary, Mr. Christ said that this request is not substantial and is the minimum necessary. Mr. Christ does not believe that the essential character of the neighborhood will be substantially altered. The variances would 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 conditions or circumstances that exist as a result of the actions of the owner. He said that regarding whether it is possible to obviate the property owner's predicament feasibly through some method other than a variance, Mr. Christ said that he does not think that it is. Mr. Christ said he believes that the spirit and intent of the Code would be observed by granting the variances. He does not believe that the granting of the variances will confer any special privilege on the applicant. He thinks that the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties. The other Board members said that they agree with Mr. Christ's analysis of the practical difficulties.

Mr. Christ moved to grant a variance to Mike and Sharon Spooner, 20354 Westhaven Ln. to construct a 396 sq. ft. pavilion vs. 250 sq. ft. maximum permitted. The applicant has indicated the practical difficulties with providing a sufficient additional covered space for outdoor recreation and enjoyment. Mr. Wright seconded.

5 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a variance to Mike and Sharon Spooner, 20354 Westhaven Ln. to construct a pavilion with a height of 12' – 6" vs. 12' maximum height permitted. This is a very minimal request and they have indicated that they are matching the architecture of the existing house, which causes the need for the additional 6 inches in height. Mr. Wright seconded.

5 Ayes – 0 Nays
GRANTED

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Mr. Christ moved to grant a variance to Mike and Sharon Spooner, 20354 Westhaven Ln. to construct an outdoor fireplace with a chimney height of 14' - 6" vs. 12' maximum height permitted. The applicant has indicated the practical difficulties with providing the proper clearance for the chimney above the roof of the pavilion structure. Mr. Wright seconded.

5 Ayes – 0 Nays
GRANTED

4. LAWRENCE MOSCA – 19775 Battersea Blvd – PUBLIC HEARING – Variance to construct a new detached tandem style garage with an 18" side yard setback vs. any increase in the building area must be located in the interior of the lot and away from the lot lines. Mr. Lawrence Mosca, homeowner, came forward with John D'Amico of The Great Garage Company, the contractor for the project. Also present is Mr. Joseph Ptack, neighbor at 19760 Lake Rd. whose property abuts the applicant's property.

Secretary Christ introduced the variance requests outlined on the notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Chairman Pempus said that they received 4 emails regarding this project and he would like to acknowledge all of them. The emails are regarding a tree located on the applicant's property and the neighbor, Aileen Fitzgerald, most recently wrote that if the construction of the garage does not impact the health of the tree, then she does not object. Mr. Ptack said that Ms. Fitzgerald owns a townhome at 19650 Lake Rd., which is next to his property. Ms. Fitzgerald's property abuts the subject garage. There is also an email from David Arendec, who is the City Arborist saying that the tree is in pretty good health for its age with the exception of a few dead branches.

Mr. D'Amico explained that they would like to build a 14' wide x 34' deep garage in the exact same location as the existing 14' wide x 20' deep garage. With the way the property is situated with the grade going up, as well as the size of the tree directly to the east of this garage, it is not possible to make the garage any wider, but they are able to make it deeper. This will allow the applicant to put one car on a lift so that there is still room for two more cars in a garage with a smaller footprint than what is required for a true tandem 2-car garage, which would be 40' of depth.

Mr. Ptak, the neighbor on Lake Rd., said that he has a concern about the fact that there is a home with a garage at the corner of Kensington and Lake Rd. that is being used as a lawnmower repair shop and there is 15 to 20 lawnmowers on that property between the garage and the brick wall that is along the front. He said that when Mr. Mosca moved in they immediately noticed that he has somewhat of a workshop in the garage. His concern is that the tandem garage would enlarge the workshop area inside of it and that there would be more noise because of that. Mr. Mosca said that he is a home hobbyist and he builds breadboxes and things like that. He will not be doing any more of that type of thing than he is already doing. Mr. Wolf said that there is a noise ordinance that is in place that must be adhered to. Mr. Ptak said that if that is the case, then he is satisfied. He added that he

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does not have an issue with the tree and he will take the word of the arborist that it is not an issue. The garage will be on the same footprint, so it shouldn't affect the tree at all.

Discussion was had relating to whether the garage needs to have a foundation and Building Commissioner Reich said that he will be in touch with the contractor about the Code. He added that because they are extending the garage so far forward and a great deal closer to the neighbor's house, they determined it would need a variance. Mr. Wolf said that this tandem style arrangement actually ends up giving the applicant more usable yard space but it ends up being a very long length of wall for the neighbor. He asked if there are any plans to landscape that side of the garage. Mr. Mosca said that there is a row of hedges along the entire length of the garage and continues to where it would shield the enlarged portion of the garage. Mr. Mosca handed two letters from neighbors in support of the garage.

Mr. Farrell said that he is glad this requires a variance but that he cannot vote for this because it will be an affront to the adjacent neighbor. This is an industrial sized building and he does not see it fitting into a residential neighborhood because it is a 34' long blank wall that is 10' tall up against an adjacent property. He asked if the applicant can simply add a carport and Mr. Mosca said that if he adds a carport then he would have to remove the tree. Mr. Wolf said that there are a lot of things to balance in this instance, such as a smaller yard and this arrangement creates a more usable yard. This could be landscaped with trellises with vegetation growing on them for opportunities to soften it.

Mr. Wright said that the applicant stated that there is existing landscaping that would cover the entire length of this garage. He appreciates that the applicant has a small lot and is trying to solve a problem. He also owns a classic car that he must store off of his property and he thinks this is a decent solution. He suggested that they add a window to enhance the side elevation and to bring in more natural light but Building Commissioner Reich said that windows are not allowed on the side elevation when it is located within 3' of the property line. Mr. Christ said that if they were going to remain 5' off of the property line, then it would not require a variance. He asked if this will go to the Design Board for their review and Building Commissioner Reich said that they could send it to Design Board. Mr. D'Amico said that they could add a pair of shutters to that side which would be closed to give it a better appearance and this would match the shutters on the house and Mr. Pempus said he likes that idea.

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

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test aloud. Regarding whether special conditions or circumstances exist which are peculiar to the land or structure involved, Mr. Christ said that this is a narrow lot with existing trees and vegetation and the existing structure is in this location on the property. Regarding whether the property in question

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will yield a reasonable return, he does not believe that is impacted here. Regarding whether the variance is substantial and the minimum necessary, Mr. Christ said that the applicants have indicated the practical difficulties with the narrow lot and maintaining the existing garage footprint and adding on to it in the front. Mr. Christ does not believe that the essential character of the neighborhood will be substantially altered and whether adjoining properties would suffer substantial detriment, he believes this might be a point of difference between some of the Board members and is something each Board member is taking into account. The variances would 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 conditions or circumstances that exist as a result of the actions of the owner. He said that regarding whether it is possible to obviate the property owner's predicament feasibly through some method other than a variance, Mr. Christ said that since this is the location of the existing garage, it would be difficult to obviate this without granting some degree of a variance. Mr. Christ said he believes that the spirit and intent of the Code would be observed by granting the variances. He does not believe that the granting of the variances will confer any special privilege on the applicant. He thinks that the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties. Mr. Pempus said he has nothing to add to Mr. Christ's analysis. Mr. Farrell does not agree because he thinks it will affect the character of the neighborhood and the adjoining property and he believes that there are other ways to accommodate at least two cars.

Mr. Christ moved to grant a variance to Lawrence Mosca, 19755 Battersea Blvd. to construct a new detached tandem style garage with an 18" side yard setback vs. any increase in the building area must be located in the interior of the lot and away from the lot lines. The applicant has indicated the practical difficulties with providing a garage that will be sufficient to store his current vehicles in a reasonable manner and this is an existing setback that is being extended. Mr. Wright seconded.

4 Ayes – 1 Nay (Farrell)

GRANTED

5. BRETT & JULIE ANDRESS – 21140 Beachwood Dr. – PUBLIC HEARING – Variance to construct a new detached garage with a height of 19' vs. 16' maximum height permitted for detached garages (Section 1153.09(b)); a Variance to construct a detached garage with a 2' rear yard setback vs. 5' rear yard setback required (Section 1153.15(b)(1); and a Variance to construct a detached garage with 30% lot coverage vs. 28% maximum lot coverage by building permitted (Section 1153.05(c)(3)). Mr. Brett Andress, homeowner, came forward with John D'Amico of The Great Garage Company, contractor.

Secretary Christ introduced the variance requests outlined on the notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr.

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D'Amico said that they will locate the new garage along the existing side setback line and increase the size of the garage depth by 2' and place it 2' from the rear property line. The current garage sits 4' from the rear property line. The garage door size will be increased to allow more width to get a car in and out more easily. Regarding the lot coverage, the previous homeowner put a large addition on the house and used up all available lot coverage, which is causing the need for a variance for 30% lot coverage in order to add the 24' x 22' garage. The height of the garage will accommodate storage on the second story. There will be a 10/12 pitch on the roof to provide full clearance and there will be a full walk-up set of steps for ease of maneuvering them while carrying items to store. The dormers on both sides further open up the second story space and makes for a handsome garage. The existing house is very tall and this will fit with it nicely. The railroad tracks are behind them and the neighbor to the right of them has a fairly tall garage as well and that neighbor, along with the neighbor to the west, provided a letter. Mr. Andress added that when they bought the house, the garage was not updated and they have two larger cars. He and his wife both work at home now and a new baby arrived during Covid, so they are forced to find additional space for storage. In response to Mr. Pempus' question, he thinks 2' is enough room along the back of the garage to maintain it. Mr. D'Amico submitted three letters from neighbors for the file.

Mr. Pempus said that the lot is 50' wide, which may make a difference here. Mr. Wolf said that there are other garages they have seen recently that have exceeded allowable heights. Because of the size of the lot, the proximity of the houses on the lot and the adjacent lots, he was comfortable voting in favor of those variances. This one feels like it's too much for this lot. What the Codes are trying to create to the extent that we can, is a more open area at the back of our dwellings, and this situation feels like a bit too much. However, he did say that the packets were prepared very well and he had all of the information in front of him in order to make a decision. Mr. D'Amico said that this garage would be about 30' away from the neighbor to the east and about 26' away from the neighbor to the west.

Building Commissioner Reich said that he has been working toward developing new language that helps to reduce the massing and the height of garages because of so many recent applications for height variance requests. The Building Department is getting calls from neighbors saying that people are using these for offices, ping pong play areas, and turning the storage area into habitable spaces. Law Director Bemer said that with the second story of garages being accessed by full staircases it is causing these to go over the maximum square footage for garages of 600 sq. ft. Mr. Wolf said that what Mr. Bemer is referring to is more of an enforcement issue and not a reason for him to want to deny a fixed staircase being constructed in a garage. Mr. D'Amico said that there are no storm sewers or sanitary lines being installed to serve the garage.

A point was made relating to the definition of garage that states that it is to be used for vehicle storage. Mr. Christ said he wonders whether a use variance should be required for the storage area above. He asked for details from the contractor in order to clarify the height request because he wants to see about limiting the height to 18', which the Board

seems to find acceptable. The advantage in this situation is that this backs up to the railroad tracks, however this design does look like a carriage house.

Mr. Farrell said that they started allowing 19' tall garages years ago to provide a reasonable amount of storage and there weren't fixed stairs in them or the massive dormers on them that multiples the 19' height to become too massive of a structure. He can understand a 19' tall ridge height but to include the 19' high dormers is going beyond what he thinks is reasonable and allowable by a variance to our Code. Mr. Wright agreed with Mr. Farrell and said he understands the need for more storage. Without the two dormers, it is closer to the appearance of what a garage actually is. He is not sure why they need the 10/12 pitch. Mr. D'Amico said that it gives the full stand-up room on the second floor. Mr. Christ asked what the height is from the floor to the collar tie. Mr. D'Amico said that the collar ties are at 8' 1-1/4", and Mr. Christ said that it is a lot more height than they need. He said that if they were at 7', then the height could be brought down to 18', since the use of the second story is supposed to be for incidental storage. Mr. Farrell said he objects to the dormers and Mr. Wright agreed and said he also objects to the 8' height to the collar ties to be consistent with a more standard garage look and not a carriage house. Mr. Christ said that they used to see dormers on the garages to provide space for a window, such as a doghouse dormer, but they are becoming massive now. Mr. D'Amico said that they could change it to a reverse gable and put 2 smaller doghouse dormers or a shed roof dormer on the front side.

Mr. Pempus asked the applicants if they are willing to come back with the revised drawings. The applicants requested the Board to table this item and they will come back with a different design.

Mr. Christ moved to table this item for a period of up to 60 days. Mr. Wright seconded.

5 Ayes – 0 Nays
TABLED

6. CHRIS AND MEG SCHMUCKER – 19100 Story Rd. – PUBLIC HEARING – Variance to modify an existing 6' privacy fence to a 6' board-on-board fence in the side yard (between the front wall and back wall of the house – west side) vs. In the side yard, the maximum fence height shall be 5' (Section 1153.15(j)(2)); a Variance to retain or modify an existing fence to be 6' board-on-board fence in the rear yard (behind the back wall of the house – perimeter and small portion on east side) vs. any portion of a fence in the rear yard over 5' in height shall be constructed of materials that are 50% transparent when viewed perpendicular to the fence (Section 1153.15(j)(3)); and a Variance to retain a 6' privacy fence in the rear yard (adjacent to an existing pool – west side) vs. privacy fences are not permitted in the setback established for the principal building (8' setback required). Section 1153.15(j)(7)A.
Chris and Meg Schmucker, homeowners, came forward to present the variance request.

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Secretary Christ introduced the variance requests outlined on the notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Pempus said they received 3 emails and photographs from surrounding property owners who have asked that the applicants be allowed to keep the fence and, in fact, they would prefer for it to be higher than it is.

Ms. Schmucker said that they purchased their home about 2 years ago and the yard and the inside of the house were a mess. There is an existing in-ground pool that has a chain link fence around it and there was lattice that was attached to the chain link fence. There were large trees that provided privacy for them around the pool. They have 4 abutting neighbors and all of their garages are right around them so they were looking to define their property with a fence. They had a survey done to determine property lines. She said that the neighbors to the west of them have not been friendly from the time she went over and introduced herself with her two children. The trees that they own on the west side of the property were removed by the neighbors and the police have been called by those neighbors and by the applicant for different reasons. The fence was installed in 2020 and all of the neighbors wanted it to be 6' tall. The reason for the privacy fence is obviously because of the pool and noise that it causes and the fact that the pool is situated higher than grade. Mr. Schmucker explained the grading of the yard and the fact that the pool is elevated and they had trees that provided privacy that were removed by the neighbors.

Law Director Bemer stopped the conversation saying that since this matter is in the Rocky River Municipal Court due to the fence violation, the court case set for August 17th must be settled before the variance request can be heard. He said he is instructing the Board to table this until the criminal process has been completed. Law Director Bemer said that there was a miscommunication within the Building Department and he takes responsibility for that.

Mr. Pempus said that they will take the advice of the Law Director to wait until litigation is completed before this Board goes any further.

Mr. Christ moved to table the proceedings until the completion of the Court case. Mr. Wright seconded.

5 Ayes – 0 Nays – 1 abstain (Wolf)
TABLED

The meeting adjourned at 9:15 p.m.

Eric Pempus, Chairman

Richard Christ, Secretary

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