

MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
OCTOBER 9, 2025

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

Presence Noted: Steven Dever, Assistant Law Director
Ray Reich, Building Commissioner
Michael O'Shea, Law Director

The Board of Zoning and Building Appeals has two variance standards that they use to evaluate every variance request. Depending on the variances requested, it is either an (Use) Unnecessary Hardship Standard or (Area) Practical Difficulties Standard. Each standard has a specific set of questions that the applicants must answer, and the Board must consider when looking at each request. The Secretary, or acting Secretary, will read through these questions and answer them to the best of their ability. The Board Members can agree with the evaluation of the Secretary or can give their own opinion to be considered.

In the case of the October 9, 2025, meeting, every variance that was voted on used the (Area) Practical Difficulties Standard. The questions for the (Area) Practical Difficulties Standard are as follows:

- A. Describe what special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other land or structures in the same zoning district (i.e., exceptional irregularity, narrowness, shallowness or steepness of the lot; or proximity to non-conforming and inharmonious uses, structures or conditions).
- B. Explain whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance (discuss use limitations without the variance).
- C. Explain whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures (demonstrate how much the variance request deviates from Code requirements, i.e., coverage is 1 or 2% above Code, or setback is 1 or 2 feet less than Code requirement).
- D. Explain whether the essential character of the neighborhood would be substantially altered and whether adjoining properties would suffer substantial detriment as a result of the variance (discuss the increase of value, use, and aesthetic appeal for both your property and adjoining properties, together with any negative impact to adjoining properties).
- E. Explain whether the variance would adversely affect the delivery of governmental services, such as water, sewer, or trash pickup.
- F. Explain whether the property owner purchased the property with knowledge of the zoning restrictions.
- G. Explain whether special conditions or circumstances exist as a result of actions of the owner.
- H. Explain whether the property owner's predicament feasibly can be obviated through some method other than a variance (why other means and methods of property improvements or enhancements would not suffice).
- I. Explain whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance (discuss the positive impact of your improvement on your property and on the surrounding neighborhood).

- J. Explain whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.
- K. Explain whether a literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Code.

As the Secretary reads these Practical Difficulties for the variance requests, the letters for the questions will be referenced. Refer to the letters listed above during their evaluation of the Practical Difficulties.

Mr. Farrell opened the October 9th meeting of the Board of Zoning and Building Appeals at 7:00 p.m. He explained the meeting protocol and said that the Board has had the opportunity to visit the sites and review the applications. He said that anyone who is present and interested in any of the agenda items should come forward when the item is called so they can be sworn in if they wish to speak. Item number 15 has been withdrawn for anyone present for that item. The Board is also going to change the order of the meeting; they will do the residential items first, and items 3, 6, and 9 will be moved to the end of the agenda. Mr. Farrell said the Board will also go into executive session at the end of the meeting, after all of the agenda items.

Mr. Wright moved to approve the Board of Zoning and Building Appeals meeting minutes from August 20, 2025, as presented. Mr. Christ seconded.

4 Ayes – 1 Abstain (Harpster)
APPROVED

Mr. Wright moved to approve the Board of Zoning and Building Appeals meeting minutes from September 11, 2025, as presented. Mr. Christ seconded.

4 Ayes – 1 Abstain (Harpster)
APPROVED

Mr. O'Shea said item number 3 is residential, so it can stay where it is on the agenda. Mr. Dever will only be at the meeting for a limited time; Mr. O'Shea will cover the rest.

1. Magnificat – 20770 Hilliard Blvd – PUBLIC HEARING –

Variance: To retain and expand an 8' ornamental fence vs the 6' that is permitted. Per Section: 1151.13 (3).

Mr. Christ introduced the variance request, and Mr. Farrell swore in Mike Supler, New Vista Enterprises, and Keith Wagner, Magnificat. There is an existing 8' tall fence around the athletic fields that was installed in 2018. The fence was on record for the permit, but there was no variance granted for it. Mr. Reich clarified that it was part of a Planning Commission submission for the concession stand, and administratively, it had never come before this Board before it was approved. The fence currently runs along the parking lot, and they want to continue it west to

east and then have it terminate into the tennis courts' fence. Mr. Farrell said it was well within the property; it is not close to any property lines.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. This is a school facility with multiple sports facilities, and this is a security and safety issue to enclose this adequately to limit unwanted access.
- B. He does not believe that will apply.
- C. The applicant has indicated that this is the fence that they designed and are installing. This is a reasonable minimum.
- D. He doesn't believe that it will, especially since most of this fence is already installed.
- E. He doesn't believe that it will; they have access gates to the fields in case of an emergency.
- F. He does not believe that will apply.
- G. Only in regard to the location of their new facilities and the expansion of the sports and greenhouse fields.
- H. He does not believe that it can.
- I. He believes it would.
- J. He does not believe that it would be, as this is a school facility, and this is a reasonable usage for that.
- K. He believes it would.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Magnificat High School, 20770 Hilliard Blvd, to retain and expand an 8' ornamental fence vs the 6' that is permitted. Per Section: 1151.13 (3). The applicant has indicated the practical difficulties with providing an enclosure, and this is a safety and security fence. This will encompass all of the playing fields and their exterior facilities. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

2. Jerry Hammerschmidt – 20244 Detroit Rd – PUBLIC HEARING –

Variance: To demolish a garage and construct 3 unenclosed parking spaces vs the 3 enclosed spaces that are required. Per Schedule: 1187.09(3).

Variance: To demolish a garage and construct parking along both side property lines, vs the 10-foot side setback that is permitted. Per Schedule: 1157.11 (2).

Variance: To construct a trash enclosure within the parking setback vs trash enclosures shall comply with the minimum parking setback. Per Section: 1157.19 (b).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Tim Flury, representing the homeowner. Mr. Flury said there is an existing garage that is over 100 years old and in poor condition. Want to demolish it, and the code requires a garage. The property is surrounded by

Local Business and Public Facility districts. Mr. Flury said if they were to construct a new garage, due to the size constraints of the property, they would need variances. It would also force people to back up onto Detroit Road as they leave the property. Mr. Flury said they went to the Planning Commission in August, and they wanted the plans to be tweaked to what the Board is seeing now. There are 6 striped parking spaces and a turnaround area. Vegetation in the rear corner of the yard will be maintained now; before, it could not be accessed with the garage there. Mr. Flury said the trash currently sits without an enclosure, so it will now meet that standard. However, the only place to put it would be within the parking setback.

Mr. Harpster asked how many units there are. Mr. Flury said there are 3, that's why they wanted to get the 6 spaces that are required. Mrs. Martinez said it is a challenging site and seems to be the minimum necessary to make it all fit and work together. Mr. Christ asked why they can't build another garage; the current one is there, so there must be enough space. Mr. Flury said they would still need to back out onto Detroit Road; there is not enough space to turn around. Mr. Christ disagrees. Mr. Flury said that with the garage and people parking there is no space to turn around, it gets really tight, especially if it is not a compact car. Mr. Christ thinks there should be garages; these are residences. Mr. Flury said they went to the Planning Commission meeting in both August and September, and went through having a garage or not. The Commission agreed with the condition of the lot; this is the best solution. Mr. Christ believes there is enough space for a garage. He asked about what the Planning Commission reviewed. Mr. Flury said the plan that is in front of them. They made the necessary revisions between August and September based on the Commission's comments. Mr. Christ said there is 22'-10" between the garage and the porch, and there will be 22'-3" with parking spaces, which he thinks is adequate space to turn around in. Mr. Wright said that if they were to put a garage in that space, he doubts they could get 4 parking spaces. He has no issue with it because they will be providing more parking this way, rather than if they had a garage. Mr. Harpster agreed with Mr. Wright's comments. Mr. Farrell said that the properties that surround it are commercial and have parking lots and no garages, so this wouldn't be out of place.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud in the affirmation of what he believes the majority would want, and he will object:

- A. The applicant has indicated that the adjacent properties are commercial; thus, these residences can have commercial surface parking.
- B. The applicant is indicating that a new garage is costly, and he is trying to limit the costs.
- C. The applicant has indicated that the spaces are small, and this is the minimum necessary to provide the needed maneuverability.
- D. The applicant has indicated that he does not believe that it will, and the Board agrees with that.
- E. He does not believe that it will, and they will be providing an enhanced trash pickup.
- F. He does not believe that applies.
- G. He does not believe that applies.
- H. The applicant has indicated that it cannot, due to limited space.

- I.** The applicant has indicated that it would be, and the Board agrees.
- J.** He believes that the Board does not believe that it would.
- K.** Since these are commercial properties that have no parking enclosure requirements, the Board is looking at it as it would.

The other Board members agreed with Mr. Christ's assessment. Mr. Christ said his objections would be in the earlier discussion.

Mr. Christ moved to grant a variance to Jerry Hammerschmidt, 20244 Detroit Rd, to demolish a garage and construct 3 unenclosed parking spaces vs the 3 enclosed spaces that are required. Per Schedule: 1187.09(3). The applicant has indicated their practical difficulties with providing the space, and the Board agrees with the approach. Mr. Wright seconded.

4 Ayes – 1 Nays (Christ)
APPROVED

Mr. Christ moved to grant a variance to Jerry Hammerschmidt, 20244 Detroit Rd, to demolish a garage and construct parking along both side property lines vs the 10-foot side setback that is permitted. Per Schedule: 1157.11 (2). For the same reasons as the first variance. Mr. Wright seconded.

4 Ayes – 1 Nays (Christ)
APPROVED

Mr. Christ moved to grant a variance to Jerry Hammerschmidt, 20244 Detroit Rd, to construct a trash enclosure within the parking setback vs trash enclosures shall comply with the minimum parking setback. Per Section: 1157.19 (b). For the same reasons as the first variance. Mr. Wright seconded.

4 Ayes – 1 Nays (Christ)
APPROVED

3. David Hein – 21298 Endsley Ave – PUBLIC HEARING –

Variance: To install a generator with sound deadening 7'-9" from the side property line vs. the 10' that is permitted. Per Section: 1153.15 (k)(2).

Mr. Christ introduced the variance request, and Mr. Farrell swore in David Hein, the homeowner. Mr. Farrell wanted to know what had changed from the last submission. Mr. Hein has included the stone wall, the plantings, the enclosure that comes with it, and the additional enclosure (Zombie Box) that can be added to mitigate the sound. At the previous meeting, there was a discussion about the sound reading at 4' versus what is labeled in the stat sheet. Mr. Hein provided that equation. It turns out that at 7.8' the noise level is 73 decibels. Mr. Hein said adding the sandstone will absorb a good percentage of that sound, anywhere between 10 and 20 decibels. Mr. Hein said the additional enclosure can reduce the noise by up to 50 percent, according to the company's literature. The top of the generator and the additional enclosure will be below the top of the wall completely. Mr. Farrell asked if he was going to do the additional enclosure, the Zombie Box. Mr. Hein said he will because he doesn't want the generator to be loud either. He wants it as quiet as possible. Mr. Farrell asked if the landscaping he added was

included in any of the noise calculations. Mr. Hein said they were not. Based on his calculations and research, he believes that it would be 50 decibels, much lower than the code requirements.

Mr. Farrell asked Mr. Reich about the Building Department doing decibel readings. Mr. Reich said that decibel readings are included with every final inspection; so, yes, this will have a decibel reading. Mr. Harpster asked what the requirements were. Mr. Reich said 70 decibels at the property line or 15 feet, whichever is greater. So, in this case, that would be the property line. Mr. Harpster went out to the property today, and it is 7.8' to the house, not the generator. There is the width of the generator that needs to be accounted for, and the location of the exhaust, since that is where the greatest amount of noise comes from. Mr. Hein said there is a muffler that comes with the generator, and the Zombie Box provides a secondary muffler to abate that sound. Mr. Harpster said the original submission had 4.3' from the property line, would that be a more accurate measurement? Mr. Hein said that is correct, that would be from the front of the generator to the property line. Mr. Harpster asked how long the generator needs to run for maintenance. Mr. Hein said that in the stat sheet, the generator runs for 16 seconds a week and 20 minutes once a year. Mr. O'Shea said the equivalence to 50 decibels would be light traffic, a quiet office, soft rainfall, a dishwasher, a quiet conversation, typing on a keyboard, and maybe even whispering. Mr. Harpster said if he is knocking the sound down by half, then he has to be getting pretty close to the sound requirements.

Mr. Farrell asked if the variance was written correctly, the 7'-9" or is it 4'-3". Mr. Hein said the 4'-3" is from the front of the generator. The 7'-9" is from the house to the property line. Mr. O'Shea said that it is reflected in the minutes, the 4'-3", it shouldn't be an issue. Mr. Christ said it is improperly noticed. Mr. O'Shea said he does not believe so, not substantially at least. Mr. O'Shea asked if there were any objections from the neighbors. Mr. Farrell said no; the most affected neighbor and the neighbor down the street wrote a letter in favor. Mr. Farrell is willing to accept Mr. O'Shea's opinion. Mr. O'Shea said to make a motion to amend the agenda item.

Mrs. Martinez wanted to confirm that the top of the generator and the Zombie Box are below the top of the wall, and the proposed landscaping is evergreen. Mr. Hein said that is correct for both. Mr. Wright said the distance does not concern him. His concern is the information that was provided because generators are typically between 60 and 100 decibels, and this says it is less than that. The sandstone and the Zombie Box are a buffer, so he believes that this will be very quiet. Much quieter than anything that has come before this Board in the past.

Mr. Christ said he disagrees with the notice being amendable. This is a 50% change from what was noticed, which, to him, is significant. Mr. O'Shea said it is a clerical mistake. Mr. Christ said he does not believe that is a clerical mistake; it was in the applicant's application. Mr. Christ asked who made the decibel calculations. Mr. Hein said they were determined using the equation provided, which was all generated by AI. Mr. Christ asked if they are here tonight and if they can testify. Mr. Hein asked if he should pull the AI software up. Mr. Christ said he is being difficult because there was no data provided substantiating this. There are no names and no qualifications. Mr. Christ is not willing to accept AI. Mr. Hein said he gave AI the scientific principles to create these calculations, which were provided. Mr. Christ said there is no one here to testify. Mr. Farrell said this is not adding to the discussion. The Building Department will take a decibel reading after it is installed. Mr. Christ said this is not his objection; his objection is the same as the first time, that this generator is between two houses. He will have his windows closed and the

AC on, and the neighbor will have their windows open. Mr. Hein said that neighbor wrote a letter in favor of installing this. Mr. Hein said he is speaking for them when they spoke for themselves. Mr. Christ said he is speaking for the city and for himself. He does not think this is a reasonable change or a reasonable submittal. Mr. Christ said that Mr. Hein's narrative in this submission is that if he were to meet the decibel reading at the property line, he wouldn't do any of the sound deadening. Mr. Hein said that is incorrect, he is willing to do anything necessary to be below the code requirements. Mr. Hein said he is going to install the Zombie Box. Mr. O'Shea said that could be a condition on the motion. Mr. Christ said his objections from the last submission are still valid and should be included. He said the Zombie Box is paramount and is hopeful it will be reduced to 50 decibels. Mr. Christ said if someone came in to testify or show calculations under seal, then he would be willing to accept that.

Mr. Christ said Mr. Hein wrote under 1133.17 (c)(2)B that it would require extensive work to move utilities, and cost is not one of the Board's considerations. Also, Mr. Hein wrote that it would increase the interference with the enjoyment and use of the backyard spaces for several adjacent property owners. Mr. Christ said he does not want to build it where it legally can go because it can go in the backyard. However, he is willing to put it by his neighbor. Mr. Christ said he had a lot more objections, but he stopped there.

Mr. Wright moved to close the public hearing. Mrs. Martinez seconded.

5 Ayes – 0 Nays
Passed

Mr. Farrell moved to amend the variance request; the generator will be installed 4'-3" from the side property line, versus the 7'-9" that was noticed, 10' is permitted. Section: 1153.15 (k)(2). Mr. Wright seconded.

4 Ayes – 1 Nays (Christ)
AMENDED

Mr. Farrell read the practical difficulties factors aloud:

- A. Adequate space and functional access are provided, including land and such, which are already provided. That is the special condition.
- B. He does not believe that will apply.
- C. He does not believe that it is substantial; other members may disagree.
- D. He does not believe so.
- E. He does not believe so.
- F. The applicant has lived there for many years, and was not aware.
- G. The applicant has indicated that he cannot put it in the backyard.
- H. The applicant has indicated there are no other feasible locations.
- I. The generator will be installed in an area where there is existing equipment.
- J. He does not believe so.
- K. He does not believe so.

Mr. Christ disagrees with the answers for A, B, F, H, I, J, and K.

Mr. Wright moved to grant a variance to David Hein, 21298 Endsley Ave, to install a generator with sound deadening 4'-3" from the side property line vs. the 10' that is permitted. Per Section: 1153.15 (k)(2). The applicant has gone through an extensive explanation of why they need this variance. The approval is subject to two conditions: that the Zombie Box be installed, and a decibel reading is performed by the Building Department at the property line during the final inspection. Mr. Harpster seconded.

4 Ayes – 1 Nays (Christ)
APPROVED

4. Jeff and Katie Galla – 20612 Stratford Ave – PUBLIC HEARING –

Variance: To construct a covered deck on the rear of the home, increasing the lot coverage from 30% to 32% vs the 28% that is permitted. Per Schedule: 1153.05 (3).

Mr. Christ introduced the variance request, and Mr. Farrell swore in Tracy Schwark, Brady 3. Mrs. Schwark said it is a 6-foot covered porch off the back of the house. It leaves the required distances between the house and the garage. The existing home is at almost 30% coverage, and they are asking for an additional 2%. Mrs. Schwark said there is no effect on the driveway, and the neighbor is aware of the project. Mr. Christ said the 6 feet is pretty minimal. Is that adequate for the homeowner's purposes? Mrs. Schwark said they wanted to keep it away from the garage, and yes, it is adequate for the purposes.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. The applicant has indicated the practical difficulties with providing a minimal porch and the adjacent garage, and there is a limited amount of space.
- B. They are adding a minimal addition that will add to the value of the property.
- C. The applicant has indicated that this is the minimum necessary and will be providing sufficient space for the purposes of the porch.
- D. He does not believe that it will.
- E. He does not believe that it will.
- F. He does not believe that they did.
- G. He does not believe that they do.
- H. He does not believe that it can.
- I. He believes that it would.
- J. He does not believe that it will.
- K. He believes that it would.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Jeff and Katie Galla, 20612 Stratford Ave, to construct a covered deck on the rear of the home, increasing the lot coverage from 30% to 32% vs the 28% that is permitted. Per Schedule: 1153.05 (3). The applicant has indicated their practical difficulties. The current house area is what is driving this, as the space that is required for the 6-

foot is very minimal. This is a reasonable answer and solution to the addition of a porch. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

5. James Stover – 19505 Frazier Dr – PUBLIC HEARING –

Variance: To retain two air conditioning condensers 5' from the side property line vs the 10' that is permitted. Per Section: 1153.15 (k)(1).

Mr. Christ introduced the variance request, and Mr. Farrell swore in Jeremy Tinney, Stack Heating and Cooling. Mr. Tinney said there is a sidewalk that runs along the rear of the house from the main sidewalk. This limits where they can put the condensers. He did have decibel readings for each air conditioning condenser at the fence, which is below the required 70 decibels. Mr. Reich said the Building Department will verify those readings. Mr. Farrell agreed that there is no better place for these units. Mr. Tinney said a permit was pulled. Mr. Farrell asked if the permit was for this location. There was uncertainty whether this was the approved location in that permit of not.

Mr. Harpster asked if they would assume the fence is the homeowner's property because all of the lines for the condensers are attached to it. Mr. Tinney said that is correct, and the homeowners preferred them on the fence rather than trenched. Mrs. Martinez asked if there were any existing condensers, and if so, where were they. Mr. Tinney said there was no AC in the home. Mr. Christ said it is behind the house and not between the two homes.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. The applicant has located these behind the house and in an offset. The special condition is the configuration of the house and the proximity to the property line.
- B. He does not believe that will apply.
- C. The applicant has located these behind the house, so it is not a substantial variance. Therefore, the minimum necessary.
- D. He does not believe that it will.
- E. He does not believe that it will.
- F. He does not believe that will apply.
- G. He does not believe that will apply.
- H. He does not believe that it reasonably can.
- I. He believes it would.
- J. He does not believe it will.
- K. He believes it would.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to James Stover, 19505 Frazier Dr, to retain two air conditioning condensers 5' from the side property line vs the 10' that is permitted. Per Section: 1153.15 (k)(1). The applicant has indicated the practical difficulties with adding air conditioning to this property. This does occur behind that house and is not visible from the street. This is a reasonable location and a reasonable solution. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

6. Mary Rego – 19986 Beach Cliff Blvd – PUBLIC HEARING –

Variance: To expand an existing 6' lattice fence along the side yard, vs. side yard fences shall have a maximum height of 5'. Per Section: 1153.15 (j)(2).

WITHDRAWN

7. Aysam Saade – 3196 Wooster Rd – PUBLIC HEARING –

Variance: To install an air conditioning condenser 5'-9" from the side property line, vs the 10' that is permitted. Per Section: 1153.15 (k)(1).

Variance: To construct a covered front porch with a front yard setback of 32' vs the 35' as shown on the setback map, City of Rocky River, May 12, 1975. Per Section: 1153.07 (a).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Jimmy Saade, contractor, and Judy Akins-Starr and Gary Starr, 3168 Wooster Rd. Mr. Saade said that with the current placement of the house and adjacent property, this was the most logical location. Behind the house, away from the street, and hidden from both properties due to the fences in the backyard. Mr. Saade said it can't go behind the sunroom. Mr. Farrell asked about the front porch. Mr. Saade said it is 8 feet by 8 feet.

Mr. Harpster asked why the condenser pad could not be moved, if you're looking at the picture, to the right. Mr. Saade said the wall that is too the right is the sunroom, and moving it any closer would interfere with the brick walkway. The sunroom butts up to the house. Mr. Harpster said, looking at the photo, it looks like the condenser could be moved to the right, which would increase the 5'-9". Mr. Saade said he understands his point; they were not trying to push it too close to the walkway. Mrs. Martinez asked if there are existing condensers on the site. Mr. Saade said there is not. Mrs. Martinez also asked about the window in the basement in that corner with the sunroom. She asked if there was an exhaust coming out of that. Mr. Saade said that's the laundry room. Mr. Christ and Mr. Wright had no comments on the condenser. Mr. Christ said the porch is a reasonably small, compact porch that basically matches the door. Mr. Farrell agreed that it is minimal and will add character to the house.

Mrs. Akins-Starr said that it is very difficult to get out of their driveway as it is, without another obstruction. There are a lot of pedestrians who walk through this area. She said it is almost impossible to get back out of the driveway. Mr. Farrell asked if that was mostly because of the street traffic. Mr. Starr said years ago, there was a car turnaround/parking pad approved in front of the house. He said that one space that he agreed to years ago has become more of a parking lot. Mrs. Akins-Starr said you give them an inch; they take a mile. Mr. Reich said they have

actually improved that parking area. Mrs. Akins-Starr and Mr. Starr both said the pavers in the rear yard were recently installed, and they can move the pavers so the condenser pad can be shifted over for the required 10 feet. Mr. Farrell said the lots in this city are very small, and the Board tries to give some leeway as long as the condensers are behind the house. Mr. Farrell is not sure they can get to the 10 feet. He is not sure this will affect them any more or any less if it is moved over a few feet. They can't see it; it is behind a fence. It is also subject to a decibel reading from the Building Department. The Board agreed there is not 10 feet in that space, maybe 8 feet if they hug the sunroom. Mr. Christ said they can't put it too close to the sunroom because these condensers need proper airflow for the refrigerants. Similar to his concern earlier with the generation, being closer to the sunroom will create more sound bouncing off the house rather than dissipating where it is proposed now. Mrs. Akins-Starr and Mr. Starr are against the variances. Mr. Farrell said the concern is with the front porch is more of a concern with the cars in the driveway. Mr. Starr said yes, there are cars parked to the sidewalk sometimes, especially a large truck. Mr. Reich knows what he is talking about; he will ask Mr. Saade to park a lower-profile vehicle closer to the street so it does not obstruct their view backing out of the driveway.

Mr. Starr made a racial remark, and Mr. Farrell stopped him. The Board does not think what they are asking for is unreasonable. Their concerns are not the issues of the Board.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. For the porch, the house is where it is, and this is the existing porch, and they are just covering it. For the air conditioner, there is a sunroom and a corner notch of the house, and this is a reasonable location to place it behind the house.
- B. He does not believe that will apply.
- C. For both, he thinks these are minimal and are not substantial. They are reasonably located.
- D. He does not believe that it will.
- E. He does not believe that it will.
- F. He does not believe that applies.
- G. He does not believe that applies.
- H. For both, he does not think either can.
- I. He believes it would.
- J. He does not believe it will.
- K. He believes it would.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Aysam Saade, 3196 Wooster Rd, to install an air conditioning condenser 5'-9" from the side property line, vs the 10' that is permitted. Per Section: 1153.15 (k)(1). The applicant has indicated the practical difficulties with adding air conditioning and which is located behind the house. It is reasonably located from the property line and would not interfere with the house, and moving it any closer it could. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

Mr. Christ moved to grant a variance to Aysam Saade, 3196 Wooster Rd, to construct a covered front porch with a front yard setback of 32' vs the 35' as shown on the setback map, City of Rocky River, May 12, 1975. Per Section: 1153.07 (a). The applicant has indicated the practical difficulties, and the porch and the house are where they are, and this will cover it. This is a very minimal porch and provides some coverage from the elements. This is a reasonable solution. Mr. seconded.

5 Ayes – 0 Nays
APPROVED

8. Ruth Fortney and Will Akins – 21228 Avalon Dr – PUBLIC HEARING –

Variance: To enclose an existing covered porch that sits completely in the rear yard setback, projecting 14'-2" at its furthest point. This property is adjacent to Lake Erie, and the setback is determined by averaging the rear setbacks of the nearest dwellings on either side of the lot, but shall not be less than 25 feet. Per Schedule: 1153.07 (b).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Matt Ross, architect. Mr. Ross said they are not adding any more square footage. They will be taking an existing screened-in patio and enclosing it, and turning it into a four-season room. There will be a glass NanaWall, and for fall protection, there will be a glass railing. They will not be encroaching on the setback any more than what is already there, and not like their last submittal. The Board had no questions or concerns. Mr. Christ said there are screens already there, and essentially, they are swapping them for windows. There is an argument that this is grandfathered in, but enclosing it technically changes the code. No objections.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. The applicant has indicated that this porch is currently existing and was included in the original construction of this project. It was a two-season room or a three-season room opposed to a four-season room.
- B. He does not believe that will apply. More of a convenience for the owner.
- C. Since this is existing, he does not believe this is substantial and is the minimum necessary to convert an open porch to an enclosed space.
- D. He does not believe that it will.
- E. He does not believe that it will.
- F. He does not believe that applies.
- G. Only that they wish to turn it into a four-season room.
- H. He does not believe that it can.
- I. He believes it would.
- J. He does not believe it will.

K. He believes it would.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Ruth Fortney and Will Akins, 21228 Avalon Dr, to enclose an existing covered porch that sits completely in the rear yard setback, projecting 14'-2" at its furthest point. This property is adjacent to Lake Erie, and the setback is determined by averaging the rear setbacks of the nearest dwellings on either side of the lot, but shall not be less than 25 feet. Per Schedule: 1153.07 (b). The applicant has indicated the practical difficulties with taking an existing porch with corner posts, ceiling, roofing, railing, etc., and just enclosing it with windows to create a four-season room. This is a reasonable modification to this porch and will have minimal, if any, effect on adjacent properties. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

9. Craig Andrews – 20725 Westway Dr – PUBLIC HEARING –

Variance: To construct a detached garage with a gross floor area of 636 square feet vs the 600 square feet that is permitted. Per Section: 1153.15 (c).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Mark Reinhold, architect, and Craig Andrews, homeowner. Mr. Reinhold said it's a garage that is 22 feet by 24 feet, which is not unreasonable. He added some storage to the rear and a covered patio because it would be challenging to add onto the rear of the home. Mr. Reinhold said it's a large backyard. Mr. Farrell wanted clarification that the square footage does not include the porch. Mr. Reich said that is correct, the porch is included in lot coverage, but not gross floor area. Mr. Farrell said the 22 feet by 24 feet is a reasonable size, and the storage in the rear, to him, is a modest request. Mr. Harpster and Mr. Christ agreed that this is a modest request. Accommodating a little more storage in a garage is an improvement over having it outside.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A.** The applicant has indicated that they have a rather sizeable backyard and that they are accommodating in providing for full storage and an attached porch. This is a reasonable accommodation and solution to their desires for additional space.
- B.** He does not believe that will apply, other than producing a better and newer garage.
- C.** He does not believe that it is substantial and is a minimal addition in square footage, and they indicated that they need this space for the use of storage.
- D.** With the way that it is being positioned and located, he does not believe that it will.
- E.** He does not believe that it will.
- F.** He does not believe that will apply.
- G.** He does not believe that they do.
- H.** Since this is so minimal, and the space they are looking for is being accommodated, he believes this cannot be obligated through some other method.

- I. He believes it would.
- J. He does not believe that it will.
- K. He believes it would.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Craig Andrews, 20725 Westway Dr, to construct a detached garage with a gross floor area of 636 square feet vs the 600 square feet that is permitted. Per Section: 1153.15 (c). The applicant has indicated the practical difficulties and have provided a garage to accommodate their storage space and to include their porch so that they can have it located closer to their open area in the back. This is a reasonable solution. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

10. David Keehan – 2121 Valley View Dr – PUBLIC HEARING –

Variance: To construct a front yard garage addition with a front yard setback of 31'-3" vs the 40' as shown on the setback map, City of Rocky River, May 12, 1975. Per Section: 1153.07 (a).

Variance: To construct a screened-in front porch with a side setback of 6' and two window wells with side setbacks of 2' and 1'-11" vs the 8' that would be permitted. Per Schedule 1153.07 (1)(A).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Mark Reinhold, architect; Dave Keehan, homeowner; and Dave and Liz Harmath, 2133 Valley View Dr. Mr. Reinhold said that the second variance, the side setback, has not changed from the first submission. He said the screened porch, based on the architecture, needs to be symmetrical. The existing nonconforming south property line, bringing that out, is a variance. But they are matching what is existing. The window wells are a function of a blended family and the need for bedrooms in the basement. Mr. Reinhold said the previous submission had a 24-foot by 24-foot garage off the front of the house. At the last meeting, they were given a "comfortability zone" of 20% so they reduced as close as they could. Mr. Reinhold said at the last meeting, there was an objection to the room above the garage addition. The room is still there, but it is much smaller and will not be within the front setback. Mr. Christ wanted clarification; the garage needs a front yard setback, and the first floor, because of the grade change, is above the garage, but is setback where it is not within the front setback. Mr. Reinhold said that is correct.

Mr. Farrell asked if it's possible to lower the existing garage floor. Mr. Reinhold said it is a combination of things. A large chunk of that garage will be used to relocate the mechanical units; the HVAC room is labeled on the plans. Mr. Farrell asked if they could lower a portion of the existing garage and push the front of the garage back to where the second floor is shown. Mr. Reinhold said that when he underpins, he was taught to have a bench to prevent it from moving sideways. Thus, the answer is no because the bench that is caused by pushing the face in impedes cars from using this space. Mr. Farrell said there are ways around the bench. Mr. Reinhold said Mr. Farrell is not the one stamping the drawings; he has an obligation to trust what he is stamping. Mr. Farrell said a structural engineer can look at it. Mr. Farrell agrees with the neighbor to the north, who is most affected, that this front-yard variance will impact them

negatively. He is trying to find a solution that will not cause a problem for the neighbors to the north. Mr. Christ said the lowering of the existing garage floor will increase the effective height of that design and would require a greater design. When you go underneath where the existing is, you would need to underpin and provide deeper foundations. Mr. Christ said this has a potentially significant impact on the interior wall that is already there and on the new retaining walls on the outside.

Mr. Harpster wanted to clarify the plans to understand what is being proposed. He said the driveway is going to be pretty steep to be able to access the new garage. Mr. Reinhold agreed. He hasn't calculated it yet, but he has all the grades. Mr. Harpster asked Mr. Farrell if the main issue is the neighbor to the north, and having their view obstructed. Mr. Farrell said the first submission was a story addition in the setback, and the neighbor objected to that. They also wrote a letter in objection to the revised plans. Mr. Farrell said that if he is looking at it right and the drawing is accurate, the garage is not taller than the retaining wall and may not obstruct views. Mr. Reinhold said that from the last meeting, he remembers the Board not having as much of an objection to the garage, but to the story addition. He didn't put the second-story addition in the setback and reduced the size of the garage. Mr. Reinhold said from the last meeting, there was a discussion about a 20% acceptable paradigm. He is coming back with the drawings based on what he heard at the last meeting. No variance on the second story, a reduced variance on the garage, and kept the south end the same because there seemed to be less concern.

Mrs. Martinez said this is an improvement compared to the previous submission. However, she shared the same questions or concerns as other Board members. She wanted to know if there was any way to minimize the size of the first floor/garage floor addition. Mr. Christ said the Board recognizes a functional two-car garage is a standard requirement now. Having a one-car garage restricts property value and hinders resale ability. Trying to accomplish this with the existing house is a positive goal; however, it creates its own problems/issues. Mr. Christ said the road drops off as it continues north, and the homes are getting lower and lower. The property to the south their first floor at grade is at the first floor of the Keehan residences. However, to the north, their property is a full basement level down. Mr. Christ said that is a practical difficulty for the applicant; the topography creates that difficulty. In some ways, they already have it with the basement. Yes, the homeowner to the north is affected; however, there is a retaining wall that is coming out that is 80-90 percent of the height of the garage. Mr. Christ said getting back every bit they can get back is great. He understands what Mr. Farrell is saying, that it is a more challenging process because of what it does internally. They have to underpin the existing wall wherever the house does not exist currently. Mr. Christ said that with the garage, he would think some sort of landscaping, fencing, and/or plantings would be needed between their property and the garage and to the neighbors to the north. Mr. Reinhold agreed. Mr. Christ tried to look at the shadow lines from the garage, in the middle of winter, would be somewhat on the neighbor's property, but not very significantly, nor would it be on their house. In the summer, the shadow lines wouldn't even leave the Keehan's property.

Mrs. Harmath does not support the variance for the garage. The Keehans bought a property that had a garage that did not accommodate their vehicles. Mrs. Harmath said the accommodation of those vehicles should not be at the detriment of the neighbors or the city's zoning codes. Mrs. Harmath said that in the practical difficulties, it says a poorly placed retaining wall impedes vehicle access. She said it seems like that can be rectified by moving the wall, which is part of

the plan. Which does not require a variance. The practical difficulties from the previous submission said the garage was too small in depth, width, and height. Mrs. Harmath said the home was built in 1973, and the builder and homeowner may have had vehicles from that time, which were 218-229 inches long and 79-80 inches wide. A Ford Explorer today has a length of 199 inches and is 79 inches wide. Mrs. Harmath said these are all random numbers, but it is to highlight that this is not a modern problem. It existed when the home was built. Mrs. Harmath sympathizes with the Keehans because they have the same tight garage, but they keep that in mind if they have passengers or when they buy new vehicles. They make that concession because they want to live in this particular neighborhood. Mrs. Harmath said she is not trying to police what car someone drives; her point is that this is not a new problem. It was there in 1973, and it was there when Mr. Keehan bought the property. Any modification to alleviate that problem should not come at a cost to the neighbors. Mr. Farrell asked about the screened-in porch and window wells. Mr. and Mrs. Harmath do not have an issue with either of those.

Mr. Farrell said Mr. Harmath's comments are similar to what the Board has been saying. The Board knows something can be done to the existing garage to eliminate the variance. Mr. Reinhold said there are practical difficulties in doing so. Mr. Farrell is not sure if those are the practical difficulties. It can be done structurally and cosmetically. To him, it seems like it's the cost that is preventing them from doing that. Mr. Reinhold said it's the 16-foot garage door, the eroded corner of the house, and the underpinning of that corner. Mr. Farrell asked what he meant by eroded corner. Mr. Reinhold said if it is half in and half out, he not only has to underpin it, but he also has to take the corner of the existing house and make it align. It's why you turn back a rail, this rail on this end with no corner structurally wants to rack. If you turn the corner enough, the garage is turned and adds structure to that corner. Underpinning it does nothing for the racking. Mr. Farrell said he can reinforce that without returning the rail.

Mr. Keehan said his neighbor to the north already sits behind the garage. The sun goes from east to west, so shadowing will not be an issue. Also, there is a row of hedges, so their view is already obstructed. Mr. Keehan said it will be below the retaining wall, so the southside will not see the garage. Mr. Wright said he is not comfortable with the front setback variance. Mr. Farrell thinks there is another way to achieve their goals. Mr. Christ said he understands what Mr. Reinhold is saying about the return to a wall. It is basically because it is open on the north side, it is a one-story wall, and there is more gravity than it is lateral since there is no soil against it. From a racking standpoint of lateral wind loads and seismic loads, he would assume that this is not a huge seismic situation, particularly for residential. Mr. Christ said that if you go deeper, it becomes it does become more unbraced with height. Mr. Christ said that what Mr. Farrell was saying is that if you underpin it, you can reinforce it under grade. That reinforcement is going to be below any lower level. Mr. Christ said the Board is directed not to consider modest changes in cost, if they have to add 2 feet of paving to make something work that is not unreasonable, but to add 40 feet is different. Mr. Christ said that if he has to go down under an existing structure, that is usually more problematic. Underpinning has more pitfalls and is a more costly solution. Mr. Christ said making something doable versus reasonable is their flexibility as a Board.

Mr. Farrell asked what the height is inside the garage. Mr. Reinhold does not have that information. Mr. Keehan said not much taller than him because of the ductwork that runs through it. Mr. Christ asked if they are lowering the slab going into the garage extension and how they are transitioning. Mr. Reinhold said stairs up. Mr. Farrell said they can vote on this, but

he senses there are other ways to do this. Mr. Reinhold asked if they could split them between the two variances if they are voting. The addition to the garage is the obvious issue. Mr. Farrell said the issue is the 20 feet. At 10 or 11 feet, they do not need a variance because they are within the setback. Mr. Reinhold said they were hoping to add a garage outside of the envelope, not half in. They came back from the previous meeting with these plans that they thought were a compromise. Mr. Farrell said the variances are already separate, so they can vote on them separately. Mr. Harpster asked if they should be voting on the design of this. Mr. Farrell said the design is for someone else to decide, the Board needs to look at how this will affect the neighbors, the practical difficulties, and ways to alleviate the need for a variance. Mr. Christ said the railing above the garage addition could be minimized to lessen its effect on the neighbor, but that is something the Design Review Board would need to look at. Mr. Farrell said this will go to the Design Review Board after this meeting.

Mr. Christ said they could vote on the south side variance and let them think about the north side variance. They might not have to change the design, but at least show a section that indicates how much they would need to drop the floor of the existing garage to get the desired ceiling height. Mr. Christ said if it's substantial, then it's a different story. Mr. Reinhold said to vote on both.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. The topography of this site goes down from the south to the north rather considerably; in fact, across this property changes one full level.
- B. The applicant has stated that there is a negative return on the current configuration of the garage, and to have a functional two-car garage that will work reasonably, this needs to change. That is the Board's evaluation.
- C. The applicant is looking at this as the minimum necessary to provide the garage independent of the existing structure, as it complicates, considerably, the existing modifications and the ability to function within a garage.
- D. He does not believe that it would be, since this is actually a basement. However, again, that is subject to the Board's evaluation.
- E. He does not believe that will apply.
- F. He does not believe that will matter in the Board's evaluation.
- G. He does not believe that will apply. They are trying to modify this home to meet both a modern update and their own needs.
- H. He believes that the applicant has indicated that for the south side, the variances are minor and not significant. For the north side, he believes that the statement is that this is needed by the function of the garage.
- I. He believes that is the crux of the Board's evaluation as to what is reasonable in meeting the spirit and intent.
- J. The Board needs to make that evaluation.
- K. He thinks a literal interpretation could be considered as depriving them of rights. However, to a different degree, and that is a part of the Board's evaluation.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Dave Keehan, 2121 Valley View Dr, to construct a front yard garage addition with a front yard setback of 31'-3" vs the 40' as shown on the setback map, City of Rocky River, May 12, 1975. Per Section: 1153.07 (a). The applicant has indicated the practical difficulties with modernizing a home, and while it was built later than a lot of homes in the city, it is still a 50-year-old building. What is considered a normal residence today may not be what was considered a normal residence back then. The garage they are looking at functions and works for their needs, and this could be considered a reasonable solution. Mr. Wright seconded.

2 Ayes – 3 Nays (Martinez, Wright, Farrell)
DENIED

Mr. Christ moved to grant a variance to Dave Keehan, 2121 Valley View Dr, to construct a screened-in front porch with a side setback of 6' and two window wells with side setbacks of 2' and 1'-11" vs the 8' that would be permitted. Per Schedule 1153.07 (1)(A). The applicant has indicated the practical difficulties with providing the usage of the basement area as habitable space, which is the need for the two window wells. They will be providing a safety cover for the window wells. The screened-in porch is a reasonable extension of the existing setback and is not projecting significantly towards the street. This is a reasonable solution. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

11. Halle Buescher – 2666 Wagar Rd – PUBLIC HEARING –

Variance: To install a side yard fence with 0% transparency vs the 25% transparency that is permitted. Per Section: 1153.15 (j)(2).

Variance: To install a rear yard fence with 0% transparency vs the 25% transparency that is permitted. Per Section: 1153.15 (j)(3).

Variance: To install a corner side yard fence with 0% transparency vs. the ornamental style that is permitted. Per Section: 1153.15 (j)(4).

Variance: To install a corner side yard fence with a height of 60" vs the 42" that is permitted. Per Section: 1153.15 (j)(4).

Variance: To install a corner side yard fence 6" from the property line at its closest vs. the 5' corner side yard setback that is required. Per Section: 1153.15 (j)(4).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Halle Buescher and Ashley Bradley, the homeowners, and Al Buescher, Halle's dad. Mr. Farrell said the neighbor to the west sent a letter to give his strong support. Mr. Buescher said he has sat on a BZA Board for 17 years, so he understands what the Board wants and is looking for. He said his daughter and her partner were well aware of the traffic along Hilliard. They were not aware of the streetlight and the effect it would have on privacy. Mr. Buescher said the streetlight on a similar corner lot to this is unique; he could only find it at the corner of Hilliard and Northview, and that home has a 6-foot privacy fence. Mr. Farrell said that fence is set off the sidewalk somewhat. Mr. Buescher agreed.

Mr. Buescher said he was looking through the code requirements, and the property in question departs significantly from what is recommended. There is a minimum cross street angle of 75 degrees, and this one in particular is 68. Mr. Buescher said if you take that 7-degree difference and take it out of the backyard, that is a 35-foot difference. Mr. Buescher said it is a significant ask; they just don't have the room for the 5-foot setback that is required. The rear property line is 15 feet. Mr. Buescher said they are proposing 6 inches from the property line, which is approximately 2 feet from the sidewalk. Mr. Buescher was not sure if abutting the Public Facilities District allowed for a different fence. Mr. Buescher was also unsure if the side yard terminated at the side of the house on a corner lot; he said his daughter said it goes all the way back. Mr. Reich confirmed that it does. Mr. Buescher said the issue of privacy is that people stop at the light, and three lanes of traffic look directly into the rear yard. The 5-foot setback is essentially a third of their backyard.

Mr. Farrell said in the submission that it said somewhere about a different style of fence. Ms. Buescher said they also looked at a horizontal board-on-board fence, and it was much more costly and required more maintenance than the vinyl fence. Thus, why they went with the vinyl. Mr. Buescher said they chose the 5-foot fence because it is a more reasonable ask. Also, he ran the grade around there, intending to match the height of the existing fence. The existing fence is 4 feet, and the grade drops 8 inches to the sidewalk, so they will actually be 4 feet 8 inches in height. Mr. Buescher said the fence is taller than 5 feet, but they will be cutting it down. Mr. Christ wanted to clarify that they are buying a taller fence and modifying it just so they can have a higher-quality vinyl fence. Mr. Buescher said that is correct.

Mrs. Martinez asked about the transparency of the fence. Mr. Buescher said that when they add transparency to a fence, it is usually wood or steel. Mr. Farrell asked not with vinyl. Mr. Buescher said no. Ms. Bradley said she would be sitting in the living room, and people would wave at her, and when she lets the dog out, people would catcall her. The transparency would help her feel more comfortable. Mr. Christ said that people pulling out of City Hall heading east, their headlights would strobe across their fence.

Mr. Farrell would like to see it off the sidewalk. He would agree that this is a special case, especially with the traffic that lines up there. Mr. Farrell said this needs to come off the sidewalk, and substantial landscaping can go in front of it. He is willing to compromise on the height due to their special conditions, and being within the setback, just not where they are proposing it. He thinks at least 5 feet from the sidewalk to give enough room to soften it, since it is the only one like that on a corner lot in the city. Mr. Farrell said the fence at the corner of Northview is board-on-board, so there is separation from the Boards, but straight on, there is still no transparency. He is willing to compromise on that style. Mr. Farrell asked if there was a problem with the staggered board-on-board fences. Ms. Buescher said they have no problem with it. Mr. Christ was not

Mr. Christ said he is writing down reasons why this is extraordinary. There are visual issues, sound issues, dust and debris, trash, exhausts, night lights, and walkers. In his opinion, there needs to be relief here from the code requirements. To him, the height was acceptable at 5 feet. He thought the privacy fence was legitimate in this location. Mr. Christ said his crux is the distance from the sidewalk. The Board had received a letter from a neighbor with the same concern. Mr. Christ is also concerned about the neighbor to the west backing out of their

driveway, so maybe soften that rear section of the fence. The 5-foot setback may meet the code, but he is not sure he needs to be 5 feet based on the limited amount of space they have. Mr. Farrell said the 5 feet can be from the sidewalk; it doesn't have to be the property line. Mr. Harpster agrees it should be set off the sidewalk; however, to him, a foot opens that space up, so anything more than that would give reprieve to pedestrians. He is not sure they need to be 5 feet from the sidewalk. He is okay with 3 feet from the sidewalk. Mr. Harpster is okay with a privacy fence at 5 feet tall. Mrs. Martinez said she is okay with the height but would like to see the transparency more in keeping with the rest of the city. She would prefer the wood oppose to the white vinyl. Mr. Wright said he has no issue with the first four variances, the property is extremely unique, and he does not believe he has seen a lot like this in his tenure on the Board. Mr. Wright said the setback is his main concern; he would like to see the fence continue the first 24-foot section all the way back.

Mr. Farrell asked Ms. Buescher if she is okay with a board-on-board fence. She agreed that she is. That takes care of all of the 25% transparency variances, so variances 1 and 2 are eliminated. The height they are okay with the 60 inches at a certain distance from the sidewalk. Mr. Christ said he thinks the Board members are okay with 3 feet from the property line. They all agreed. Mr. Farrell said there was talk about the property to the west and to improve sight lines. Mr. Christ said the issue isn't car traffic, it is pedestrian traffic on the sidewalk. Mr. Buescher said they could drop the fence down at that corner.

Mr. Christ moved to close the public hearing. Mrs. Martinez seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ said that for the practical difficulties, they will just include the applicant's answers. He has read them rather closely and believes they are one of the best he has ever read.

The applicants practical difficulties:

- A. Conditions which preclude the reasonable use and enjoyment of my home at 2666 Wagar Road compared to similar corner lots within the district are:
 - 1. Narrowness of the parcel or significant decrease in lot width from front to rear yard lines which significantly compounds the impact of,
 - 2. Immediate proximity to and constant occurrence of stopped traffic at the intersection of Hilliard Blvd., and Wager Road. Although an increase in the amount of moving traffic was observed and expected upon purchasing my home I could not have anticipated the degree of intrusion by occupants of multiple vehicles stopped during each red light occurring every other minute of every day. Upon moving in it immediately became evident that the proximity to such stopped traffic prevents even a minimal amount of privacy any single-family detached lot within the City should be able to provide. Having reviewed the City's fencing regulations as a usual remedy I feel it justified to ask for a complete exception under Section 1153.15(j)(7)(D.), of the City's decorative fencing regulations which would enable me to construct a privacy fence conditioned upon a reasonable fence height, placement and compatible design with my home.

- B. On balance, I believe the Board's approval of my request for a solid privacy fence only stands to benefit the City by addressing the obvious impact imposed upon my parcel and will suggest here that any reasonable person would expect this to be the usual and customary remedy to such condition. Certainly, even the most attractive decorative fence set in accordance to the desired height, setback and transparency requirements along Hilliard Blvd., would not provide the degree of privacy needed.
- C. I consider my request substantial in the general application or strict interpretation of regulations covering transparency to both decorative and privacy fencing within the side yard of a corner lot (1153.15.j.2.). The specifics to my parcel would suggest however that when such regulations were drafted by the City significant irregularities in the shape of corner lots (1109.08.a.), set alongside a major boulevard at less than the desired angle for proper planning of an intersecting street (1109.04.2.) and subjected to the continued effect of a traffic signal either did not exist or if present would be accommodated through the City's own variance process once raised.

I believe my request for no more than a five-foot-high privacy fence within my rear yard varies from those regulations covering such (1153.15.j.2) by asking for its' design to be solid or without the 25% minimum transparency required. I will note that instead of proposing a six-foot high privacy fence with 25% transparency in its design I feel a shorter, solid, privacy fence is more appropriate given the architecture of my home while providing that much more transparency above. Technically, $25\% \text{ of } 72'' = 18''$ or a maximum solid fence height of 54'' instead of the requested 60'' to maintain the imaginary 25% open criteria above.

Regarding the same solid design request to the side yard along Hilliard Blvd., the break in the proposed setback distance from the property line of two feet is my attempt at the following:

1. Implement an aesthetic break to the overall length of the layout,
2. Increased access to and from both rear and side yards, and
3. Maintain the preference to accommodate the existing side-yard evergreen bushes currently providing the only degree of privacy to this side yard.

In review of both side yard fence regulations pertaining specifically to corner lots I will note the variance needed to 1153.15.j.2., in requesting to construct a solid fence at the permitted height but without then 25% transparency required, as well as 1153.15.j.4., requesting to construct the same solid privacy fence up to a height of five feet requiring a variance of an additional 18'' in height, and a one foot variance to the minimum five-foot setback from the side yard line along with omitting the transparency requirement to the proposed fence design.

- D. I do not feel as though the character of the neighborhood would be substantially altered or adjacent properties made to suffer in any material way over this request for the single reason that any reasonable person familiar with the circumstances imposed upon my property would expect to see this type of remedy implemented.
- E. The proposed fence would not interfere with the delivery of governmental services.
- F. The property owner did purchased the property with knowledge of the zoning restrictions as well as those provisions for exceptions by the BZA/Architectural Review Board. The

property owner was confident the unique circumstances surrounding this property would warrant consideration for such a request.

- G. No special conditions exist as a result of actions by the owner.
- H. No other method of improvements or enhancements would achieve the desired outcome to the rear and side yard privacy being sought.
- I. I believe my request is in keeping with the City's interest to promote the health, safety and welfare of residents as it addresses this parcel's current inability to provide even a minimum level of privacy and sufficient area expected of a residential lot within the City.
- J. Granting of this request will provide the homeowner with no special privilege or position beyond that which has been and/or would be provided of any other applicant presented with the same circumstance.
- K. A literal interpretation of the provisions of the City's code would significantly deprive me of seeking a reasonable solution to the negative impacts imposed upon my lot which currently prevents my reasonable use and enjoyment of my home.

Mr. Christ moved to grant a variance to Halle Buescher, 2666 Wagar Rd, to install a corner side yard fence with a height of 60" vs the 42" that is permitted. Per Section: 1153.15 (j)(4). The applicant has indicated their practical difficulties. The Board has discussed this and has reached a reasonable solution that this is a legitimate relief-deserved situation because of the proximity to Wagar and Hilliard. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

Mr. Christ moved to grant a variance to Halle Buescher, 2666 Wagar Rd, to install a corner side yard fence 3' from the sidewalk, so long that it is on the homeowner's property vs. the 5' corner side yard setback that is required. Per Section: 1153.15 (j)(4). Mr. Wright seconded

5 Ayes – 0 Nays
APPROVED

Mr. Christ moved to grant a variance to Halle Buescher, 2666 Wagar Rd, to install a corner side yard fence in a board-on-board style vs. the ornamental style that is permitted. Per Section: 1153.15 (j)(4). Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

12. Kurt Altenburger – 20088 Center Ridge Rd – PUBLIC HEARING –

Variance: To screen HVAC mechanical equipment with a fence vs evergreen plant material that is required. Per Section: 1185.13 (b).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Kurt Altenburger, building owner. Mr. Farrell asked how those units got there. Mr. Altenburger said that when they purchased the property, they were there. He said that the parking lot that is adjacent to these units does not leave enough space for vegetation. Mr. Harpster asked if they were planning to put stones down. Mr. Altenburger said that if not this year, next year, they'll put stone down around

the units and the fence. From his experience, the bushes would have caused issues, being that close to the units, for ventilation and space to work on the units. Mr. Harpster is okay with the fence. Mrs. Martinez asked if they would be maintaining landscaping on the Center Ridge side of the fence. Mr. Altenburger said there would be landscaping on the Center Ridge side of the fence; it wouldn't just be grass. Mrs. Martinez has no issues, nor does Mr. Wright.

Mr. Christ asked where the property line is. Mr. Altenburger said he owns both properties, but the property line is in the middle of the parking space. Mr. Christ asked if the proposed screening is on the property that the units are on. Mr. Altenburger confirmed. Mr. Christ asked if there is any protection for the fences or units from a driver in the neighboring parking lot. Mr. Altenburger said there is not. Mr. Farrell said the driver would be responsible for any damages.

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

5 Ayes – 0 Nays
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. These are previously installed units and are being maintained, and they are providing a visual screening from the parking lot as requested by the city.
- B. He does not believe that will apply.
- C. Since this is to create a better visual, it is not substantial and is the minimum.
- D. This will improve that.
- E. He does not believe that it will.
- F. He does not believe that applies.
- G. He does not believe that they do.
- H. He does not believe that it can.
- I. He believes that it would.
- J. Because of the circumstances and situation of these units and the property, he does not believe it does.
- K. He believes it would, as it would affect the current configuration of parking, units, and property.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Kurt Altenburger, 20088 Center Ridge Rd, to screen HVAC mechanical equipment with a fence vs evergreen plant material that is required. Per Section: 1185.13 (b). The fence is being located per request by the city; it will be painted black or maintained to be compatible with the adjacent building's colors. Mr. Wright seconded.

5 Ayes – 0 Nays
APPROVED

13. Mike Assad – 19640 Center Ridge Rd – PUBLIC HEARING –

Variance: To provide 49 off-street parking spaces vs the 54 off-street parking spaces that are required. Required parking spaces are determined by the nature of Uses and the associated minimum parking requirement set forth in Schedule 1187.09. The 54 required spaces are after the 20% reduction for shared parking. Per Section: 1187.15 (a).

Mr. Christ introduced the variance requests, and Mr. Farrell swore in Forrest Paige, architect; Mike Assad, building owner; and Stephen McAuliffe, Business owner. Mr. O'Shea said, due to the current code violations and prosecution of the owner of the building, the Law Department would prefer, but can't mandate, that they tap the brakes on any application for a variance until those violations are made satisfactory to the Building Department. Mr. O'Shea said that when they issue Building Code violations, and they have been remedied, they dismiss the case. Mr. Reich said the violation is regarding an occupant without occupancy. He said Mr. Assad needs to rectify that through the Planning Commission. Mr. O'Shea asked what the owner has to do to address the violations. Mr. Reich said this variance is the final piece he needs to be able to send them back to the Planning Commission. They need to obtain the variance and then go back to the Planning Commission for final approval, and that would remedy the violations.

Mr. Farrell isn't concerned about the parking situation. Mr. Harpster said that the number of parking spaces that are there is not going to change. He said the calculation per establishment is not needed; just go out there and count every day, and you'll know if there is enough parking. Mr. Assad said that they don't have parking issues because the businesses are open on staggered hours. Mr. Harpster said he agrees with the variance. Mrs. Martinez said she is going to abstain from the discussion as her house is in both photos, and her husband goes to the Jiu-Jitsu gym. Mr. Wright wanted clarification on the parking calculation numbers. Mr. Paige said he has been working with Mr. Minek, and the previous submission, the numbers were incorrect; the numbers in front of the Board are the correct numbers. Mr. Christ said he used to do work for HSB, but that was way back, so he believes he can remain fair and impartial. That being said, he would say that this is a preexisting nonconforming total square footage and total usages that is variable when a tenant changes, which seems to be at odds with the intent of the code. Clearly, the building isn't changing size, and the uses are permitted within the area. He believes that this would travel for new tenants without having to jump through hoops.

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

4 Ayes – 1 Abstain (Martinez)
Passed

Mr. Christ read the practical difficulties factors aloud:

- A. The tenant has changed, but the building square footage has not, and the usages all conform to the code.
- B. He believes that dovetails into A.
- C. The numbers are rather minimal, and this is looked at as preexisting, so it would be acceptable.
- D. All of these are existing buildings, existing storefronts, and existing parking, so it will not change anything.
- E. He does not believe that it will.
- F. He does not believe that will apply.
- G. Having a tenant leave and a tenant come in is not falling on them, other than trying to meet the requirements of the city for occupancy.
- H. He does not believe that it can.
- I. He believes it would.

J. He does not believe that it will.

K. He believes it would.

The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Mike Assad, 19640 Center Ridge Rd, to provide 49 off-street parking spaces vs the 54 off-street parking spaces that are required. Required parking spaces are determined by the nature of Uses and the associated minimum parking requirement set forth in Schedule 1187.09. The 54 required spaces are after the 20% reduction for shared parking. Per Section: 1187.15 (a). The applicant has indicated the practical difficulties, and the Board has reviewed discussions with the Building Department relative to providing occupancy permits, and this is part of that process. This is an existing shopping center, existing square footage, and existing space. This is a reasonable solution. Mr. Wright seconded.

4 Ayes – 1 Abstain (Martinez)

APPROVED

14. Depot Street Development LLC – 19061 Depot St – PUBLIC HEARING –

Variance: To retain a projecting sign 8'-7" above ground level vs the 10' that is permitted. Per Section: 1193.07 (d)(4).

Variance: To retain painted wall signage on the north elevation, vs permanent signs shall be fabricated on and of materials that are of good quality and good durability. Per Section: 1193.17 (b)(9).

Variance: To retain two wall signs on the north elevation vs the one wall sign that is permitted. Per Section: 1193.05 (a).

Variance: To install a fabricated wall sign on the east elevation vs each building frontage shall be entitled to the sign area permitted. Per Section: 1193.05 (a)(2).

Variance: To appeal the final decisions of the Design and Construct Board of Review. Per Section 5.

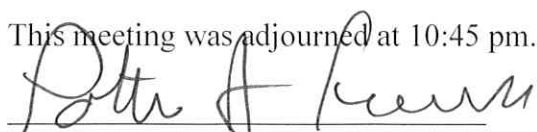
WITHDRAWN

Mr. Farrell moved for the Board to enter into an executive session, pursuant to Ohio Revised Code Section 121.22 (G)(3), for the purpose of consideration of a conference with the Law Director concerning a possible dispute involving pending or imminent court action. Mr. Christ seconded.

5 Ayes – 0 Nays

APPROVED

This meeting was adjourned at 10:45 pm.


Patrick Farrell, Chairman


Richard Christ, Secretary

Date: 10-20-25