

MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
APRIL 11, 2019

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

Presence Noted: Raymond Reich, Building Commissioner
Andrew Bemer, Law Director
James Moran, City Council President

Mr. Pempus opened the April 11, 2019 meeting of the Board of Zoning and Building Appeals at 7:00 p.m. in Council Chambers of Rocky River City Hall. He announced that the last item on the agenda, Jason Krish, 2334 Valley View Dr., has been withdrawn from the agenda and will not be heard tonight.

1. MASON AND AMY OATEY – 21213 Aberdeen Rd. – PUBLIC HEARING – Variance to locate two air conditioner condensers in the side yard 2’ – 10.5” from the side property line vs. 10’ side yard setback required (Section 1153.15(k)(1)). Mr. Brennan Ricketts, Project Manager for Oster Services and Mason Oatey, Homeowner, came forward to present the variance request. Present in opposition of the variance request is next door neighbor, Bruce Hyland, 21243 Aberdeen Rd.

Mr. Christ read the meeting notice, which includes the names of the parties who received it. The parties were sworn in. Mr. Pempus said that he recalls that Mr. Hyland testified at previous meetings that he is a Professional Engineer. Mr. Hyland responded that he is an Engineer, but he is not a certified Professional Engineer. He is not licensed in Ohio as a P.E., but he has an Engineering degree.

Mr. Ricketts explained the new information he submitted, which includes the specs on two higher efficiency condensers that are even quieter than the condensers Mr. Oatey had previously purchased. They will install compressor blankets inside of each unit, and install a 4’ tall fence around both of the units. In addition, a company will install exterior sound deadening blankets on the fence. The units will be significantly quieter than they were proposing the last time they were before this Board. The manufacturer does not provide exact decibel reduction statistics, but a reduction of 25% has been proposed. With all of the data they have, the louder unit which is rated at 73 decibels can end up being as quiet as 51 decibels. He also researched how much the decibel level increases with two units. For instance, two 50 decibel units sitting side by side, would only increase the sound level by 3 decibels, or 53 decibels in that case. His research was found on the internet from sound engineers from Columbia College. Mr. Ricketts said that the additional cost for the HVAC units, contractor’s installation cost, the landscaping contractor for the fencing add up to \$4,520. His client decided to go to the extra cost to satisfy the neighbor’s concerns as well as this Board’s concerns.

Mr. Hyland provided photos showing the view from the windows in two bedrooms of his house to the area where the units will be installed. There are headboards directly against

the wall adjacent to the side property line in both bedrooms, and there is no physical way to rearrange the bedrooms because of the positioning of the hallway and closets. The houses are 30' tall and only 14' apart. When someone at the last meeting mentioned an echo chamber or a canyon, they were right because there is nowhere for the sound to go. The sound will rise above the 4' fence and move up toward the bedrooms of his house. He said that he measured the decibel level of the sound from his neighbor's furnace exhaust fans and they are at 50 to 53 decibel. That furnace fan wakes them up all of the time in the winter. The ordinance covers the sound level and the location, and he thinks that they are looking for a significant variance. There is no guarantee that any of the sound measures his neighbor is proposing will make it any better. Further, he has not yet gotten an estimate on what it will cost him to retrofit his own house to deaden noise, such as new windows and insulation so that they can be able to sleep because of the air conditioning units. His wife suffers from sleep deprivation because she is constantly woken up by the furnace exhaust noise. Because there will be 2 units, they will each be separately controlled, so they both will not be starting at the same time. The condensers will each kick on separately and the noise upon start up is very loud. He said that there are other options on the applicants' property to locate the condensers. He added that his neighbor offered to locate the units somewhere in the rear yard (pointing to a location on the site plan) and he thinks that would be a great idea because the units would not be between the houses and there is an existing fence and large arborvitae to deaden the sound.

Mr. Ricketts said that they would not have proposed to locate the condensers where the neighbor said they did because that location would block the only access to the back yard to maintain the property with a lawnmower. The driveway side will not work because there is not enough room to accommodate the condensers and the units would be 1' into the driveway where his vehicles pass. More discussion was had between the parties about proposed locations for the units where the neighbor would be satisfied. Regarding the location that the neighbor said the applicant offered to locate the condensers at the last meeting, the applicant responded that he would have to take a look at that location to be sure it would actually work, but he is willing to explore that option.

Mr. Christ asked the neighbor if he would still prefer that the sound blankets and fencing be used if they put it at the back corner as is being suggested. Mr. Hyland said that he would like the fence but it would not be mandatory, but he would think that the applicants would want the sound deadening blankets on the condensers for their own enjoyment. Mr. Christ asked whether they can make a proposal to vote on the variance requests that are before them as option "A", and if that does not pass then they could vote on the proposed location as option "B" but with no extra sound deadening measures. Mr. Oatey said that he is confused about the location they are discussing and would like to have it clarified.

Mr. Brandt said that he does not feel he has enough information to make a judgement because he would like to see what the design issue are for the space between the two buildings. He suggested the applicant engage the architect to show scaled drawings with details of both buildings along that side of the house, by showing what rooms are on which

floors, where the fences and gates are, they could solve that problem first. He is not comfortable voting on any location that cannot be exactly identified on a drawing that is not to scale.

Law Director Bemer said that Mr. Brandt has a good point, and asked the Board members if they agree with him. Mr. Pempus said that he would like to see this resolved tonight and make it work in the location that the neighbor would be happy with and that the property owner is amenable to, so that everybody is satisfied.

Mr. Oatey asked Mr. Hyland if he would work with him to come up with a location that works for both of them. Mr. Hyland said that if it will not be located in one of the two places he would be satisfied with, then they will have to work it out later and come back. It was then determined through a site plan on which Mr. Hyland pointed to the exact location he is referring to as satisfactory, is actually not satisfactory to the applicant.

Mr. Pempus suggested that they vote on this variance as presented because they cannot reach agreement on an alternate location tonight. If the variance is denied then a move to locate them anywhere on the property would be significant enough to be able to come back for a different variance without waiting for a full year. Mr. Farrell said that he cannot vote to grant a variance where they are being proposed because he has to sympathize with the neighbor. The only variance he could vote for would be a location behind the back wall of the house, but in the side setback. Mr. Oatey said that they have built a patio adjacent to that location. Mr. Wolf said that the best forum to work this out would be out in the yard between the applicant and the neighbor.

Mr. Christ said that perhaps they can put forth 3 different options in a tiered fashion so that if the first option doesn't pass, then they vote on the second option and vote then on the third option if the second one fails. Law Director Bemer said that it is the applicant that would have to identify the different location options and then the neighbor can indicate if he is in agreement. Each of the options must be articulated and then there can be a vote.

Mr. Oatey again asked Mr. Hyland if he would agree to try to work it out together on the properties. Mr. Hyland said he agrees to do that but that if the condensers are placed anywhere that noise would reflect from the house, then the sound deadening measures will have to be installed. This current proposal is the only proposal that was ever put forward by the applicant. He assured Mr. Oatey that he is a reasonable person, but he just wants to be able to sleep.

Discussion was had about whether the applicant should withdraw the application and Law Director Bemer said that it should be tabled if they intend to come back with another option. Mr. Brandt urged the two parties to each be ready to compromise on location and sound deadening options depending on the location they can agree on. Mr. Wolf said he would like to comment that a 20 to 23 decibel reduction is huge, and that 10 decibels is essentially halving the sound. He said that sound does not drop that much by moving the

source a distance of just 10'. In addition, air conditioners don't run all night long or as often as they do in the heat of a summer day and he just wants the parties to keep those things in mind. Discussion was had about the applicants' presentation that the sound deadening could result in a 25% reduction in decibel level versus the resultant sound reduction of 25 decibels. It was determined that a 25% sound reduction will not lessen the decibel level from 73 decibels down to 51 decibels as was presented. A 25% sound reduction will go from 73 decibels down to 70 decibels.

Mr. Christ moved to table the variance request for Mason and Amy Oatey, 21213 Aberdeen Rd., to locate two air conditioner condensers in the side yard 2' – 10" from the side property line vs. 10' side yard setback required. Mr. Brandt seconded.

5 Ayes – 0 Nays
Tabled

2. JAMES RICHARDSON – 21210 Kenwood Ave. – Variance to locate an air conditioner condensers in the side yard 4' from the side property line vs. 10' side yard setback required (Section 1153.15(k)(1)). Mr. Jeremy Tinney of Stack Heating and Cooling came forward to present the variance request.

Mr. Christ read the meeting notice, which includes the names of the parties who received it. The applicant's representative was sworn in. Mr. Pempus said that the Board had the opportunity to visit the property and review the application with attachments. Mr. Tinney explained that the homeowners will be doing a great deal of landscaping and the side of the house is the best place to locate the condenser so that it does not interrupt their plans. The neighbors have no issue with the location because there is plenty of distance between the unit and their home, and that a driveway also separates them. The homeowner is planning to remove the fence along the left side of the house because it is in poor condition and they will landscape around the condenser so it will not be seen by the neighbor. The condenser will also be fully screened from view from the right-of-way.

Mr. Farrell asked for the dimension from the front of the house to the unit and Mr. Tinney said that there is an electrical box approximately 7' in from the front of the house and they need to be 3' from that. They have the option of installing the condenser 3' toward the back of the property rather than toward the front. Mr. Farrell asked why the condenser cannot be placed behind the house and Mr. Tinney responded that there is a brick sidewalk behind the house. He said that it is too far of the run for the condenser lines and the whole back of the house is on a slab. He said that the lines will run from the third floor of the house down to the basement because the house has steam heat. Mr. Tinney said that the condenser would be over 25' feet from the neighbor's house if located where proposed. Mr. Farrell said that the neighbor has a small patio and a couple of chairs on the side where the proposed location is and said that moving the condenser further toward the back yard would be better.

Mr. Christ said that he was not as troubled with this location because of all of the use being on the other side of the house, and all of the space that is on the proposed location side. However, he was bothered by it being located right at the front corner. Mr. Tinney said that it will be no problem for them to shift the condenser more toward the back of the house. Mr. Christ suggested that they move the condenser 3' back from the electric meter because it won't be located where their yard opens up. The Board agreed that they should speak with the neighbor about the exact location along the side elevation and Mr. Tinney agreed to do that. Mr. Brandt agreed that the condenser should be located a minimum of 3' behind the electric meter along that elevation as was suggested.

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

5 Ayes – 0 Nays
Passed

Mr. Christ moved to grant a variance to James Richardson, 21210 Kenwood Ave., to locate an air conditioner condenser in the side yard 4' from the side property line vs. 10' side yard setback required. Applicant has indicated the practical difficulties and the unit shall be located a minimum of 3' behind the electric meter and he should consult with the neighbor to verify that it is the best location for them as well. Mr. Wolf seconded.

5 Ayes – 0 Nays
GRANTED

3. JENNELLE GENTILE & ERIC COHEN – 19704 Riverwood Ave. – PUBLIC HEARING – Variance to construct a 2-story addition with a 2.5' side yard setback vs. 5.625' side yard setback required (Section 1153.07(1)(A)) and a Variance to construct a 2-story addition with 34.25% lot coverage vs. 28% maximum lot coverage permitted (Section 1153.05(3)). Mr. and Mrs. Eric and Jennelle Cohen, Homeowners, came forward with Mr. Darin Smith, Smartland Construction, to present the variance requests.

Mr. Christ read the meeting notice, which includes the names of the parties who received it. The parties were sworn in. Mr. Pempus said that they have the Design and Construction Board of Review's comments from their review and they said that the project is sensitive to the existing house and there is nothing negative about their review. There is also a letter from a neighbor named Grimaldi, which is in support of the variance requests.

Mr. Smith began by explaining that they did not realize they needed variances until after the Design and Construction Board of Review's approval. The addition will maintain the existing non-conforming setback on the right side of the house because they will extend the addition along the same line of the house.

Mr. Smith passed out a larger site plan that he said gives greater detail of this site compared to surrounding sites, as well as the structures that occupy them. He said that in order to

comply with the side setback, it would cut up the first floor design in the kitchen, and the roof structure on that side would need to be adjusted. As proposed, they will maintain the lower slope roof for a certain distance and then the second story begins.

Regarding lot coverage, the applicant said he calculated a lesser lot coverage variance than 34.25%. Mr. Christ said that the written statement does not match the notice as far as the lot coverage percentage. Building Commissioner Reich said that his number for lot coverage was 35%. Ms. Straub of the Building Department said that anything covered with a roof should be calculated in the lot coverage percentage. There is a cantilever at the second story, which also counts toward lot coverage. The Cuyahoga County GIS website gives the calculations of the footprint and an actual outline of the foundation of the home and that is what was used to calculate existing lot coverage.

Mr. Christ said that both the setback and lot coverage are concerning to him. The proposal is to extend the non-conforming 2.5' setback for a 2-story piece and not just a single story for a distance of 50'. He is also concerned about the mass that creates. He said that the lot coverage number is much larger than they would normally ever consider. Mr. Cohen said that the letter they received was from their neighbor who lives 2 doors down and their next door neighbor along that property line has no problem with the variance request because they have discussed it many times. Mr. Christ responded that there are a lot of factors to consider when looking at requests, such as police and fire department access, the potential of a fence being constructed along the line, etc. The neighbor is there today, but the neighbor may not be there tomorrow. If the neighbor were to build 5' off their property line, then one or both of you would have to fireproof the buildings.

Mr. Farrell said he is troubled that he hears it came to light after the project was designed that they were not aware of the minimum setbacks and the maximum lot coverage requirements were. When designing a project, that information should be right up front from the beginning, and he advised the architect to keep that in mind for the future. He might be able to vote yes for both of the variances because he thinks the design is nice and it fits well with the existing house, so he has no fears that it would change the character of the neighborhood. He agrees that there could be some issue if a fence were to go up, but he is sure that fences are currently constructed 2.5' from houses in the City. He does not see anything in the interior space that is substantially oversized, so he does not really have a problem with the requests.

Mr. Brandt used his math and he thinks they are proposing 31.4% lot coverage, which is less than what was called out on the notices. If he looks at this with his calculation, he is not troubled by this proposal. He lives further down on Riverwood Ave. and they did an addition that is similar to this a few years ago. He does question the setback and many times they look for relief on it when a 2-story addition is added as opposed to continuing along the line with a single story addition. However, he understands that to bring the addition in at that point would have to be a substantial amount and it could be difficult to

do with the design of the interior as is being proposed. He agrees with Mr. Farrell in that he is not troubled by either of the requests.

Mr. Wolf said that if the request is for 34% and was a solid 2-stories piece everywhere, he would feel differently about this. He wonders what they would have to do to step it in two or three feet. He thinks that it may cause bigger problems on the new family room wall on the first floor and part of the kitchen. More discussion was had relating to what could be done to alleviate the side yard setback request and how it may affect the roofline and aesthetics. Mr. Christ said he really would like to know the true area percentage they are asking for. The way the addition has been designed, if it is only close to 30%, then he is fine with it. He is looking for a more reasonable dimension for the side setback. Mr. Smith said he ran the numbers and came closer to 31.98% lot coverage and he does not understand how lot coverage was calculated so high.

In response to Ms. Cohen's question about which part of the 2.5' setback concerns Mr. Christ and Mr. Christ responded that changing the porch from 1 story to 2 story along that line is initially a problem for him, but if they did move the house over, then he would look at it in total. Mrs. Cohen said that part of the single story is already existing and will be rebuilt as a single story. The part that will be 2-story will be the full addition in the back. Mr. Christ said that his concern is about the 2-story addition being constructed at the existing 2.5' setback. He is troubled by voting for a lot coverage variance when they don't actually know the number. Mr. Brandt made the suggestion that since the 2-story portion is what is causing concern, then they bring just the 2-story addition to a greater setback because some adjustments could be made to do that. The first floor portion could remain at the 2.5' setback and it would break up the scale of the side elevation by providing articulation along that line.

More discussion was had relating to the lot coverage and Mr. Brandt said that he is comfortable voting on it. Mr. Wolf said that he is looking more at the plans, and whether it is 31% or 34% is not as concerning because he considers more the mass of the structure. He is fine with it at 34% if that is what it calculates to. Mr. Reich said he stands by the 34% number because he scaled the plans and some of the numbers were missing on the plans. Mr. Brandt said that he would be fine if they voted on lot coverage at 34.25%. If they build to these plans and it actually ends up that these plans are at 32.5 then that works for him. As long as they build to these plans, then he is fine with it.

Mr. Farrell asked why they can't move the first floor in two feet as well as move the second floor in two feet, or move it in starting at the back of the kitchen. Mr. Brandt and Mr. Farrell each drew out a proposal to move a portion of the elevation off of the property line by an additional 2 feet from the kitchen to the back. Mr. Wolf asked Mr. Brandt if he is fine with the plans as proposed and Mr. Brandt said that he is fine with what is being proposed without asking for any adjustment to be made. It was approved by the Design Board and the 2.5' setback will be there in Mr. Farrell's suggestion and his suggestion or the way it is being proposed right now would work for him. Mr. Wolf said that he would

also support the plans as presented. Mr. Pempus said that he would support the plans as presented, as well.

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

4 Ayes – 1 Nay (Christ)
Passed

Mr. Wolf moved to grant a variance to Jennelle Gentile & Eric Cohen, 19704 Riverwood Ave., to construct a 2-story addition with a 2.5' side yard setback vs. 5.625' side yard setback required, as presented and per the points made in the discussion. Mr. Brandt seconded.

3 Ayes – 2 Nays (Farrell, Christ)
GRANTED

Mr. Wolf moved to grant a variance to Jennelle Gentile & Eric Cohen, 19704 Riverwood Ave., to construct a 2-story addition with 34.25% lot coverage vs. 28% maximum lot coverage permitted. The Board discussed the practical difficulties and the bulk and mass of the structure on this lot, as well as other factors. Mr. Brandt seconded.

3 Ayes – 2 Nays (Farrell, Christ)
GRANTED

4. VIRGINIA A. LYNCH – 20735 Westway Dr. – PUBLIC HEARING – Variance to construct a second story addition with a 4.5' side yard setback vs. 6.25' side yard setback required (Section 1153.07(1)A). Ms. Virginia A. Lynch, Homeowner, came forward with Mr. Ted Macosko, Architect, to present the variance request.

Mr. Christ read the meeting notice, which includes the names of the parties who received it. The parties were sworn in. Mr. Macosko began by explaining that the applicant has lived in the house for 25 years and she would like to remain in her home. The addition proposes to add 12' to the rear of the existing house on the first floor, which would extend the existing kitchen with an upstairs laundry room above it. The existing upper floor is just an attic and the plan is to add an entire second story over the existing first floor, plus the addition of the laundry room on the second floor. The plan is for 3 new bedrooms and 2 bathrooms, plus the laundry room on the second floor. The extension of the existing house would require a 21" variance for the side yard setback, but it would go along the same line as the existing home. The look from the front will be modest and traditional, which blends with many houses in the neighborhood. The neighbors on the east and west both have written statements that they do not object to the proposed plan. Those letters were handed to the Board for the record.

Mr. Pempus said that this does not appear to be a complicated design and the side yard setback request is not extreme. Mr. Christ clarified that the application misstates the nature

of the existing setback and he would like to clarify that the existing house has an existing non-conforming setback. He added that he does not have a problem with this request as proposed. Mr. Brandt said that this is a modest proposal for the intended goal and it is well done. Mr. Farrell asked where the air conditioner condenser will be placed. Ms. Lynch said that the condenser will be placed between the back door and the deck that they will construct in the back yard and it will not require a variance.

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

5 Ayes – 0 Nays
Passed

Mr. Christ moved to grant a variance to Virginia A. Lynch, 20735 Westway Dr., to construct a second story addition with a 4.5' side yard setback vs. 6.25' side yard setback required. The applicant has indicated the practical difficulties and this is maintaining the existing setback, which is reasonable. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

5. MARK AND JENNIE KITCHEN – 20421 Lake Rd. – PUBLIC HEARING – Variance to construct a two-story addition with an attached garage with a 3' side yard setback vs. 8' side yard setback required (Section 1153.07(1)A). Mr. Mark Kitchen, Homeowner, came forward with Mr. Ted Macosko, Architect.

Mr. Christ read the meeting notice, which includes the names of the parties who received it. The parties were sworn in. Mr. Pempus said that the Board has visited the property and reviewed the application. Mr. Macosko said that this homeowner loves Rocky River and the neighborhood and added that Mr. Kitchen's grandmother originally owned this house. He is the third generation to occupy this home and he would like to raise his family here, which is why they are proposing this fairly substantial addition. The addition will have a first floor large kitchen and living area and the second floor will have a master bedroom suite. The project also proposes a single story 3-car garage, which requires a variance for the side yard setback. The garage will replace an existing detached garage that has a setback of 2' – 10" setback and the new garage will sit 3' off the side property line. The neighbors have been informed of the project and do not have an objection. Mr. Kitchen said he can provide letters if it is necessary.

Since this is new construction, Mr. Pempus asked why they cannot just comply with the Code. Mr. Macosko said that the lot is narrow and they would like to have a 3-car garage, which is a very reasonable request in today's society. They have pushed the house on the west side to meet the required setback there, and they have made it more narrow compared to the existing house. Doing that does not leave them with much room left for the garage to have an 8' side setback. Trying to maintain the 8' side yard setback would cause them to

lose the third bay or they would lose area from the floorplan of the house. He added that the 3-car garage they are asking for is the minimum size to be able to park 3 cars.

Mr. Wolf said that if this garage was not attached to the house, he wonders how they would look at it since it would be a single story detached garage. In addition, if there were a second story of habitable space he would look at this much differently. Mr. Macosko agreed and said that this proposal is for a single story garage and they are actually improving the existing side setback slightly. They feel that the volume of the garage they are proposing is reasonable compared to what is existing there. Mr. Farrell asked about whether the 600 maximum square footage applies to an attached garage and Mr. Reich said that it does not. However, he is concerned with the need for fire rating since it is so close to the property line.

Mr. Christ said that he is not in favor of 3' for the garage setback. He thinks it can be adjusted to at least a 5' setback and he explained some ways they could achieve that. Mr. Wolf said that the way they maneuver the back yard in order to head forward out of the driveway onto Lake Rd. would become more of a challenge if the setback for the garage increased. Mr. Christ said that he does not see the need to do a 3-point turn as opposed to a 2-point turn is a significant issue. Mr. Macosko said that they worked with the addition in order to increase the garage setback and this is the best plan so as not to need a rear setback variance. It works well, and they do not believe it makes the situation any worse than it is now. They are preserving back yard space for his children. Discussion was had about rotating the garage to bring it off the property line more, and Mr. Macosko said that they considered doing that but it did not work well. Mr. Brandt said that there are ways to obviate this to increase the side yard setback for the garage. Mr. Macosko said that he cannot get any closer to the house, but he thinks that he can get the setback to 4'. Mr. Christ said that 4' would not be enough of a setback for him.

Mr. Wolf said that he thinks that what will happen with cars in the next 5 years will be very different than what cars are today so, personally, he would not build a 3-car garage. However, understanding the Lake Rd. condition, he can get behind this proposal as presented. Supposing they simply broke the connection to the house, he knows that this Board has granted variances for 2' setbacks for detached garages in the past. Mr. Farrell said that they sometimes look for a compromise and this garage and kitchen area could be shifted to the west and it could work. However, he does not think it will make that much difference with how it affects the adjacent property. He is willing to vote for this, but with a little bit of compromise they could come closer to what they are asking for. Mr. Macosko said that he thinks that they could move the garage to a 4' setback.

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

5 Ayes – 0 Nays
Passed

Mr. Farrell moved to grant a variance to Mark and Jennie Kitchen, 20421 Lake Rd., to construct a two-story addition with an attached garage with a MINIMUM 4' side yard setback vs. 8' side yard setback required. Given the practical difficulties, as discussed, this is a reasonable solution. Mr. Wolf seconded.

3 Ayes – 2 Nays (Brandt, Christ)
GRANTED

The meeting adjourned at 9:10 p.m.

Eric Pempus, Chairman

Pat Farrell, Vice Chairman

Date: _____