

MINUTES OF MEETING  
BOARD OF ZONING AND BUILDING APPEALS  
MAY 9, 2019

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

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

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Mr. Pempus opened the May 9, 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 He announced that the third item on the agenda, Jennifer and Steven Glass, 21620 Avalon Dr., has been withdrawn from the agenda and will not be heard tonight. In addition, the fourth item on the agenda, Jason Krish, 2334 Valley View Dr., will be heard as the last item on the agenda for reasons Mr. Pempus said he will explain later.

**1. MARK SHELDON – 20670 Morewood Pkwy. – PUBLIC HEARING – Variance to construct a second story addition with a 3’ side yard setback vs. 6.25’ side yard setback required (Section 1153.07(f)A).** Mark Sheldon, homeowner, 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 was sworn in. Mr. Pempus said that the Board members have had the opportunity to visit the property and they have all reviewed the answers to the practical difficulties questions. The plans are very clear that they are not getting any closer to the property line and they just want to add a second story on an existing first floor. He added that the neighbor’s driveway is adjacent to the structure at that point, which insulates the situation. Mr. Sheldon said that they spoke with some neighbors to let them know what they want to do, and the adjacent neighbor most affected gave a written statement, saying that she is fine with the idea. Her only concern was that her bedroom faces his house and the second floor bathroom window will look into her bedroom. He handed the letter to Chairman Pempus, saying that he drafted the letter and his neighbor signed it. Mr. Pempus asked him to read the letter for the record, which he did.

Mr. Christ asked about the type of window that they will install since the neighbor expressed a concern. Mr. Sheldon said that he cannot imagine that they would ever open the shade on their bathroom window. Mr. Farrell said that there is a window on the front of the second story bathroom addition, and asked if the applicant needs two windows in the bathroom. Mr. Sheldon responded that he will speak with his architect about that. Mr. Farrell said that if it is not an issue for the neighbor, then he is not bothered by it.

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

5 Ayes – 0 Nays  
Passed

Mr. Christ moved to grant a variance to Mark Sheldon, 20670 Morewood Pkwy., to construct a second story addition with a 3' side yard setback vs. 6.25' side yard setback required. The applicant has indicated the practical difficulties. They are exactly matching the footprint of the existing first floor, and this is a minimal addition. Mr. Brandt seconded.

5 Ayes – 0 Nays  
GRANTED

**2. MATTHEW AND DANIELLE DILLON – 20624 Erie Rd. – PUBLIC HEARING – Variance to construct an ornamental fence with a 1' setback in the corner side yard vs. 5' setback required (Section 1153.15(j)(4)) and a Variance to construct a 48" tall fence in the corner side yard vs. 42" maximum height permitted in the corner side yard (Section 1153.15(j)(4)).** Mrs. Danielle Dillon, homeowner, came forward to present the variance requests.

Mr. Christ read the meeting notice, which includes the names of the parties who received it. The applicant was sworn in. Mrs. Dillon began by explaining that they love their neighborhood and the foot traffic that passes their house, but there are a lot of dog walkers who allow their dogs to urinate on the bushes along the sidewalk, which kills them. They have already replaced three of the bushes. They installed a temporary plastic fence to see if it would deter the dogs from urinating on the bushes and it has been successful. They are hoping to install a permanent decorative, ornamental fence in front of the bushes that will also serve to enclose their back yard for their small children. Mr. Pempus said he typically does not like fences in front yards, but he feels that this is a situation where they need a fence. This style of fence becomes invisible because it is black and ornamental, and he sees no problem with this request.

Mr. Christ asked the applicant if she knows where the property line is relative to where she would like to install the fence. Building Commissioner Reich said that the right of way includes one foot onto the applicant's property and the applicant said she intends to install the fence 1' from the sidewalk. Relating to the reason why she needs a taller fence, the applicant said that the extra few inches in height will deter her children from climbing the fence. Mr. Christ said that since they are proposing an open, ornamental fence, he is not troubled by the extra height being requested. Mr. Farrell agreed that because of the style of fence, he does not have an issue with the extra 6 inches in height.

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

5 Ayes – 0 Nays  
Passed

Mr. Christ moved to grant a variance to Matthew and Danielle Dillon, 20624 Erie Rd., to construct an ornamental fence with a 1' setback in the corner side yard vs. 5' setback

required. The applicant has indicated the practical difficulties with providing a minimal protection for the landscaping that they are using to create a back yard on a corner lot. Mr. Farrell seconded.

5 Ayes – 0 Nays  
GRANTED

Mr. Christ moved to grant a variance to Matthew and Danielle Dillon, 20624 Erie Rd. to construct a 48” tall fence in the corner side yard vs. 42” maximum height permitted in the corner side yard, for the same reasons, with the added reason being that they are using the fence to safely enclose their children in the back yard. Mr. Farrell seconded.

5 Ayes – 0 Nays  
GRANTED

**4. MARK CONZELMANN – 371 Northcliff Dr. – Variance to construct an in-ground swimming pool in the side yard vs. private swimming pools are permitted in the rear yard only (Section 1153.15(6)).** Mr. Mark Conzelmann, homeowner, came forward to present the variance request. Also present in support of the variance request is the next door neighbor, William Miller, residing at 357 Northcliff Dr.

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 had the opportunity to look at the property and review the answers to the practical difficulties questions on the variance application. Mr. Conzelmann said that they own a corner lot and the way the Code is written, Northcliff Dr. is their front yard. Unfortunately, they do not have any back yard space, and this is the most reasonable side yard location for a swimming pool. Mr. Miller said that he is in attendance in support of the applicant’s variance request. The proposed location and configuration of the pool is perfectly fine with him. Mr. Christ said he would like to verify that the pool will not encroach into the Northcliff Dr. setback and Ms. Straub confirmed that the pool is not in the front setback. Mr. Christ said that this is the perfect example of a corner lot configuration that leads the applicant to his practical difficulties because there is no other solution due to the shape of his lot.

Mr. Pempus said that when he first saw the request, he was not in support of it and said that the applicant will have to convince him that this location is a good option. Mr. Conzelmann said that they have no other options that would not be a front yard location on the Avalon Dr. side and they have no rear yard. This location keeps them in the side yard and out of the front yard.

Mr. Wolf asked what the pool fencing requirements are and Mr. Conzelmann explained that the fence will go around the perimeter of the pool and the Arborvitae will wrap the yard over to the front of the house, so that the pool will be completely screened. There will also be an automatic cover on the pool with a lock on it. Building Commissioner Reich said that there is a 48” height requirement for fencing and the fence in the proposed

location around the pool does not require a variance. A brief discussion was had regarding whether the way the pool is situated within the arborvitae area is the best way to situate it. It was determined that the proposed location will have the least effect on the neighbor. Mr. Conzelmann said that they looked at different ways to configure the pool in this space and this is the configuration that works the best and does not encroach into any setbacks. He pointed to the windows on his house where the pool can be seen clearly.

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

5 Ayes – 0 Nays  
Passed

Mr. Christ moved to grant a variance to Mark Conzelmann, 371 Northcliff Dr., to construct an in-ground swimming pool in the side yard vs. private swimming pools are permitted in the rear yard only. The applicant has indicated the practical difficulties with finding a location within the unusually shaped property to locate a swimming pool and this is the only reasonable location on the property. Mr. Farrell seconded.

4 Ayes – 1 Nay (Pempus)  
GRANTED

**6. NATHAN ZAREMBA – 2054 Lakeview Ave. (PPN 304-10-013) – PUBLIC HEARING – Variance to construct a new single-family residence with an attached garage with a 13’ rear yard setback vs. 25’ rear yard setback required (Section 1153.07(f)(2)).** Mr. Nathan Zaremba, property owner and contractor, 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 was sworn in. Mr. Pempus said that the Board members had the opportunity to visit the property and review the variance application. He said that one of the answers to the questioned labeled (h) is that the lot size presents challenges for a home with an attached garage, and he agrees that this is a tight site. He asked if the applicant spoke to any of the neighbors and Mr. Zaremba said that he did not have a chance to talk to any of them. They were previously approved for a design with a detached garage without the need for variances, but these buyers are requesting an attached garage. A detached garage could have a 5’ side setback and a 5’ rear yard setback, which is actually closer than what they are proposing with the attached garage. The buyer is a young family with small children and they have another child on the way. They would like an open floor plan as well as the security and safety of an attached garage because the husband frequently travels. They have worked with several different configurations maintaining a full front porch, with open kitchen, living and dining rooms, as well as a first floor laundry room and a powder room. In their effort to get a 20’ wide attached garage, they will be able to have a small portion of green space with a deck or patio area. The proposed garage has a smaller architectural scale than the previously approved detached garage, which was 25’ or 27’

wide at only 5' from the property lines. The reality is that all of the clientele that would be able to afford this house prefer an attached garage. That means that the first floor becomes problematic when they attempt to meet the 25' rear yard setback.

Mr. Pempus said that it appears that the home lines up with the adjacent homes to the north and the south and he asked if they considered moving the house closer to the street. Mr. Zaremba said that he did not consider it because of his experience with the importance of maintaining the line of frontages. He said that the garage cannot be front loaded because it is aesthetically unpleasing to the front elevation. In addition, the width of the lot is narrow and would only allow for a small front porch. The present design gives the presence of a full porch on the front elevation and the garage and garage door are very well concealed behind the house. Mr. Wolf agreed that because of the single story porch and the second story is behind that porch, he thinks they could potentially push it forward. Mr. Zaremba said that many communities allow them to encroach into the building line with an open porch. He said that it appears that the neighbor's deck is more forward than where they are proposing to be and if they could slide their open porch forward by 6', then it is certainly something they would consider.

Mr. Farrell said that this came before them for variances for a lot split and he recalls saying that they hoped they would not come back needing variances to build on the properties. He likes the fact that the front elevation would present itself without a garage. He asked if the family understands and accepts the fact that there is no back yard on this property. Mr. Zaremba responded that the community offers a lot of parks and amenities for them to enjoy, and that they are comfortable with what is being presented for daily living on the property.

Mr. Wolf asked if they explored an option for an attached garage in a tandem configuration, with one car parked behind the other. Mr. Zaremba said that the option Mr. Wolf is presenting is not a convenient option. Mr. Wolf said that the long length of building troubles him along the garage side of the proposal.

Mr. Brandt said that he agrees with Mr. Farrell in that seeing this as part of a lot split he is surprised to see a variance request. At the time the lot was split, the meets and bounds were known. He said that there is more concrete than house in this plan, and to have no backyard in this neighborhood of small properties seems unusual to him. He would have trouble supporting this as presented and some of the suggestions being made, such as sliding it forward so that the porch is beyond the front setback line, brings more promise of some back yard space. He would like to see the result of moving this forward on the lot, understanding that there would be the need for an additional variance.

Mrs. Straub of the Building Department said that an uncovered/unroofed entrance platform can extend 5' into the front setback and the fact that this porch has a roof over it, prevents that from being allowed without a variance. The uncovered front steps in this instance can extend 5' into the front setback, but the porch cannot.

Mr. Christ said that since the front porch is 6' wide, if they slid the house forward a distance of 6', they would increase the rear yard setback from just 13' to 19'. He said that 19' is a much better back yard for a resident's use.

Mr. Pempus asked if Mr. Zaremba is willing to revise the plan. Mr. Farrell said that he is not sure the answer is to move it forward because he would need to go look at the property again. Mr. Wolf said that if they return with the need for a front yard variance, he would like a better site plan with the setbacks of the adjacent buildings labeled. He generally looks for within 20% of the prevailing front yard setback. Mr. Brandt said that a front load garage would take a different massing for the first floor. There would be a lot of space behind that front load garage to provide all of the amenities, but it would require a different entry porch.

Mr. Pempus said that he prefers to see more back yard for this family, so he would like to see another option. Mr. Christ agreed and said that he would be troubled by a zero-landscaped backyard because there would only be 13' available behind the garage. He asked if they looked at angling the parking into a garage that is placed to the side where the driveway is. He is not sure whether something like that would fit. Mr. Zaremba said he does not think that suggestion is an option. Mr. Christ said he is more amenable to moving the porch forward by 6' and looking at 2 variances than he is to the plan that is before them.

Discussion was had regarding whether they should vote because they may get the 3 votes they need for the current variance to pass or whether they should table this item. The applicant asked the Board to go forward with a vote after they discussed what would constitute a substantial change in plans if the variance request is denied tonight.

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

5 Ayes – 0 Nays  
Passed

Mr. Christ moved to grant a variance to Nathan Zaremba, 2054 Lakeview Ave. (PPN 304-10-013) to construct a new single-family residence with an attached garage with a 13' rear yard setback vs. 25' rear yard setback required. The applicant has indicated his practical difficulties. Mr. Farrell seconded.

2 Ayes – 3 Nays (Wolf, Brandt, Christ)  
DENIED

Mr. Pempus said that he moved the following item to the end of the agenda because he must recuse himself. One of the major objections to this project that was received is from an attorney by the name of Benjamin Farah. He and Mr. Farah shared a law office for a

few years. They continue to have a good working relationship and he often refers potential clients to Mr. Farah. He does not think he can give the appearance of being objective for this matter and the applicant must get three out of four votes in his favor rather than the usual four out of five votes. The applicant chose to go forward with 4 Board members and Mr. Pempus excused himself from the meeting.

**4. JASON KRISH – 2334 VALLEY VIEW DR. – PUBLIC HEARING – Variance to construct a two-story garage addition with a 5.71’ side yard setback vs. 8’ side yard setback required (Section 1153.07(1)A), and a Variance to construct a single story addition with a 5’ side yard setback vs. 8’ side yard setback required (Section 1153.07(1)A).** Mr. and Mrs. Jason and Nicole Krish came forward with Michael DeMarco, Architect. Also present in opposition to the variance requests are Mr. and Mrs. Doug and Debbie Clark, next door neighbors to the south, residing at 2346 Valley View Dr.

Mr. Christ read the meeting notice, which includes the names of the parties who received it. The parties were sworn in. Mrs. Krish began by explaining that the way the garage is situated on the property is not safe when there are kids running around in the back yard, and the 3-point turn makes it difficult to pull into the existing garage. Since the neighbor constructed a fence, it is virtually impossible to get their cars back there anyway. If they simply put the garage doors on the front of the existing garage, there will be too much concrete in the front yard. Mr. Krish said that the current garage is not a full 2-car garage and is not usable at its current size. Regarding the second variance request, Mr. DeMarco explained that the original plan had the addition on the north side along the same line of the existing sun porch that they will remove, but they increased that setback to 5’ to eliminate the need for fire separation with the adjoining property so close. They are proposing only a sidewalk on the south side of the garage and the rest of that side yard will be grass. Mr. Farrell asked if they are proposing to leave the curb cut where it is and Mr. DeMarco responded that their plan is to align the new front loading garage with the existing curb cut. The majority of the driveway will be shifted to the north to align with the new garage door and it will meet the existing apron at the street. There are various reasons why they may not want to shift the curb cut.

The garage the applicant is proposing is 22’ wide, which Mr. Farrell said is not excessive. He said that they are calling for an 18’ wide garage door when 16’ is standard. Mr. Krish said that a 16’ wide door is fine with him. Mr. Farrell asked why they cannot move the wall over 2’ since the garage doors will be 16’ wide. Mr. Krish explained that they have approximately 2’ of stairs that come out into the garage from the house that cannot be removed without losing access to his basement if they need to move things in and out of it.

It was determined through discussion that the Board’s drawing that represents the north side of the house where the second variance request is located has an inaccurate dimension labeled, but the site plan before them is correct.

Mr. Wolf asked if they considered locating the floor space they will accomplish with the second story addition portion that is shown above the garage over onto the top of the kitchen addition that is to the north. That solution would leave only a single story garage on the south side. Mr. DeMarco explained that they never considered doing it that way because of the existing third floor dormers that were recently added by the homeowners and the existing windows on the back of the residence, which they would like to leave in place. Mr. Farrell said that he had the same idea that Mr. Wolf put forward because of the greater impact of a variance for a 2-story addition. He thinks they should consider putting the rooms over the first story on the north side. Mrs. Krish said that there are multiple homes on the street that have additions above the garages. Mr. Farrell said that a 2-story addition can have a large impact on the amount of light and air for the neighbor. Mrs. Krish said that the neighbor is closer to the property line than they will be and Mr. Farrell responded that those things are already built and they have an opportunity to do things in such a way here that won't affect the neighbors in a negative way. Mr. DeMarco responded that the "legacy" lots in this area do not fit the current zoning code.

Mr. Christ asked about the possibility of offsetting the second floor piece on the south side and actually meeting the 8' requirement just for the second story. Mr. DeMarco said that it would shift the way the upper gable looks. Mrs. Krish said that she would just want to be sure that the upper window would look proportional.

Mr. Clark said that they are present because they have a few concerns about this request. They feel that the request is substantial and it would reduce the distance between the physical structures to 11'. He showed a drawing he made that he said depicts how much space would be left after the addition. He said that the applicant currently has a 2-car garage and the existing footprint could be refitted with a front entry door and driveway without any variance required. Mr. Farrell asked how big the existing garage is and Mr. DeMarco responded that it is just over 18' wide in the front and the wall on the back is the same as the wall of the house. Mr. Krish gave the inside dimensions and took away for the stairs that are inside of the garage and said that the distance to pull in is only 15' – 6". The current garage door is 15' wide.

Mr. Clark said that there is currently a 9.3' side setback from the current property line to the garage, so his neighbor could widen his garage by another 1.5' and not require a variance. He said that the variance request is also about allowing the homeowner to build a 34' deep, 22.5' high, two-story structure that would sit only 11' from their home. A significant portion of their interior living space is on the north side of their home, which is demonstrated in the photos he submitted, and they have a concern about the setback for the 2-story structure. The addition will negatively impact their privacy and quality of life, as well as their access to light, air and view. It could also potentially impact the resale value of their home because the properties are already so close together. They are not opposed to his neighbor adding onto his home, and are not opposed to an addition as long as they adhere to the Rocky River Ordinance for at least an 8' setback. He said that the standard garage in their neighborhood of older homes is 20' x 20' and that is also the size of his own

garage. If this Board would allow the neighbor to have a 20' wide garage, then it would require less than a 1' variance to accommodate that and they would be fine with it. Mr. Farrell said that he was hoping to be able to come to a compromise so that the applicant can have a usable garage with a minimal variance.

Mr. Farrell said that he is concerned about the piecemeal manner that the applicant is adding onto this house. Back when they remodeled the attic space into a bedroom, he wonders why they wouldn't do all of this at that time. Mrs. Krish said that their son was ill at that time, which prevented this work from being at the forefront of their focus.

Mr. Brandt suggested that they reduce the square footage of the single story addition on the north side of their house in order to meet the required 8' side setback. He said that there is a lot of room in what they are proposing and they should be able to reduce it without having an impact on usability. He is not sure why they are asking for more than what they need in that instance. Regarding the south side of the property, he can really embrace the idea of the applicant wanting to park his cars in the garage. He said that if the idea is to have a second floor laundry room, then the need to be able to get a washer and dryer down into the basement goes away. Mr. Krish said that they would not be able to get anything down into the basement if they eliminated the garage entrance. Mr. Brandt said that the time to get things down into the basement would be while they are doing all of the construction and they can worry about how they will move it out someday in the future. He suggested that maybe the existing half bath could become part of their living room so there could be more width added to the entrance of the basement stairway. He also thinks there is a possibility of moving the floor area of the second story addition that is shown above the garage, over to the addition on the north side, even if it may require a variance to do it. He said that a single story garage structure has less of an impact on the neighbor than a 2-story addition has. He can certainly get behind the applicant's desire for a front load garage, and he is also a fan of not having so much driveway right up against the property line for the benefit of the neighbor's view. Mr. DeMarco responded that the benefit of moving the driveway over half of the length of the property is one of the primary benefits of the plan. He agrees with planting landscape screening between the properties, and added that the peak of the garage currently sits about 16.5' above the grade, and it allows them to see into a couple of windows that are on the south side of the residence. By building it a little higher, the windows would be blocked, and nobody can see into anyone's house. They will have a material change as well, and instead of brick on the new top portion, it would be some sort of batten siding. They are not sure if they will match the existing front dormers with the materials because they want more of a contemporary look.

Mr. Christ said that when he compares a 9' outdoor parking space to what they are asking for here inside of the garage, he cannot really fault the applicant for asking for 20' – 11 7/8" in width. He said that if the lot were not as wide as it is, then the proposed side setback would only be required to be 5' and both of these variance requests would go away. He agrees that they really don't need to encroach into the 8' setback requirement on the north side.

Mr. Farrell said that the piecemeal nature of the way the house has been changed from a stately colonial looking home to the direction it is going now is what concerns him, but he does not think the renderings do justice to what they are planning to do. Mr. DeMarco responded that the drawings are just conceptual. Mr. Farrell is concerned because he does not think that the dormers were a good solution and he is worried about the direction this new proposal is going. Mr. Brandt said he likes the idea of stepping the second story back above the garage because it will break up the scale of the wall.

Mr. Farrell said that he understands neighbor's concerns about windows on the sides of houses, and the importance of light and air getting to them. However, everyone is looking at the sides of their neighbor's houses. Mr. Clark responded that he would be looking at it only 11' away. Mr. Clark said that the applicant can build a 20' x 24' deep garage with the need for less than a 1' variance, and still have storage located at the back of the garage.

Discussion was had about the minimum width of a garage in relation to the width of the interior space of it. Mr. Christ asked Mr. DeMarco what he thinks the minimum width of a garage should be. Mr. DeMarco said that the wider garages are better to maneuver with car doors, etc., and he thinks that 24' would be the minimum comfortable width. Mr. Christ said that he agrees with the 24' number that Mr. DeMarco suggests.

Mr. Farrell asked the applicant if a 21' wide garage would be sufficient. Mr. Brandt said that he would like to put out there that a detached garage could be 5' from the property line, but it was pointed out to him in conversation that it could not be located where the proposed attached garage is.

Mr. Christ suggested that the variance on the north side of the house for the single story addition can be withdrawn and the applicants agreed to withdraw that request. Now they just should consider whether a 5.71' is acceptable and he cannot see how bringing it 1' farther away from the property line would make a substantial difference. He asked if they are willing to soften the side elevation to make it less of an intrusion by pushing the second floor back to the required setback and the applicant said that they can consider it. Mr. Farrell said that he still believes that the second story over the garage could go over the other addition on the north side of the home, which means there is another way to do this. He would also like to see the second story of the garage moved over to meet the setback. Mr. Wolf said that he would like to see how the 2-story addition would fit on the back of the house, as well.

Mr. Clark said that they will be out of town for the next meeting and will not be able to attend. Mr. Farrell said that he thinks the Board is leaning toward allowing at least the garage part to be in the setback. There are 2 options on the table, which are either to allow a second story on the garage that is pulled over to the 8' setback or to construct the second story portion on the back of the house.

Mr. Christ moved to table this item for a period of up to 90 days. Mr. Wolf seconded.

4 Ayes – 0 Nays  
Passed

The meeting adjourned at 8:55 p.m.

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Eric Pempus, Chairman

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Pat Farrell, Vice Chairman

Date: \_\_\_\_\_