

MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
AUGUST 10, 2023

Members Present: Farrell, Christ, Martinez, Harpster
Presence Noted: Raymond Reich, Building Commissioner
Steven Dever, Assistant Law Director
Kate Straub, Planning and Zoning Coordinator
Council Member Present: Jeanne Gallagher, Ward 3

Mr. Farrell opened the August 10, 2023 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.

Mr. Christ moved to approve the Board of Zoning and Building Appeals meeting minutes from July 13, 2023. Mrs. Martinez seconded.

4 Ayes – 0 Nays
Passed

1. RICK & JONI MIHELIC – 313 Riverdale Dr. – PUBLIC HEARING – Renewal Variance to construct a 2-story garage addition with a 10’ front setback (on Riverdale Dr.) vs. 25’ front setback required (Section 1153.07(a)); and a Renewal Variance: To construct a 2-story garage addition with a 1’ – 1” side yard setback vs. 5’ side yard setback required (Section 1153.07(f)(1)A.) Mrs. Jill Brandt, Architect, came forward with property owner, Rick Mihelic to discuss the variance requests.

Secretary Christ introduced the variance request and Mr. Farrell swore the applicants in. Mrs. Brandt explained the details of the addition they are planning to build along the steep slope of the property, which will include a new garage on the Riverdale level with some living space above and below it. They received variances for this exact project last year and nothing has changed with the plans since then. They have had structural engineers involved and the retaining walls are designed so that there is minimal disturbance to the street side. She explained other details of the project. Mr. Mihelic said that they will go through with the improvements despite the fact that the house is for sale. Ms. Straub said that the Fire Department has reviewed the project at a neighbor’s request, and they have no issues.

Discussion was had relating to location of the retaining walls, which was discussed at the first meeting for this project and Mrs. Brandt said that they can look at the suggestion they discussed. Mr. Harpster said that he agrees with Mr. Farrell that the parking is of concern when guests come over. Mr. Mihelic said that they have community parking farther down on Riverdale and there is street parking a couple of houses over from them. Mrs. Martinez asked if they looked at shifting the garage over to comply with the 5’ side setback. Mrs. Brandt said that this location is designed to maximize and align with what is existing on the ground floor plan, the stairs, and the existing roof line. Mrs. Brandt gave other reasons why the addition must be where they are proposing to locate it due to the existing conditions of the house. She approached Mrs. Martinez to further explain a point she was trying to make. Mr. Farrell said that shifting the addition could be done but since they went through this discussion a year ago, he will not pursue it. Mr. Christ said that he wants to confirm that there were no other changes made that were outside whatever scope was discussed last time. Mrs. Brandt

confirmed that the plans are the same. Mr. Christ said he would like to incorporate the previous minutes and review of practical difficulties into this record.

There being no further discussion, Mr. Christ moved to close the public hearing. Mr. Harpster seconded.

4 Ayes – 0 Nays
Passed

Since the previous minutes reflected the practical difficulty review, Mr. Christ said that he will rely on those, other than to elaborate that this is obviously a very challenging site and a challenging existing structure.

Mr. Christ moved to grant a variance to Rick & Joni Mihelic, 313 Riverdale Dr., for a renewal Variance to construct a 2-story garage addition with a 10' front setback (on Riverdale Dr.) vs. 25' front setback required. The applicants have indicated the practical difficulties and this has been reviewed and approved in a previous session. Mr. Harpster seconded.

4 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a renewal variance to Rick & Joni Mihelic, 313 Riverdale Dr., to construct a 2-story garage addition with a 1' – 1" side yard setback vs. 5' side yard setback required for the same reasons. Mr. Harpster seconded.

4 Ayes – 0 Nays
GRANTED

2. CHRIS & KATE HORNE – 22105 Lake Rd. – PUBLIC HEARING – Variance to construct a second curb cut for a circular driveway on a lot that is 70' wide vs. at least 90' lot width required for a second curb cut. Mr. Matthew Yedlick of CJY Construction, came forward with Chris Horne, homeowner, to discuss the variance request.

Secretary Christ introduced the variance request and Mr. Farrell swore the applicant in. Mr. Yedlick said that this is an extensive project with interior remodeling and exterior renovation. They would like a U-shaped driveway because of the safety issue they described in the application. They are on busy Lake Rd. sort of on the top of a hill as you approach from the west. Now that he has been on and off of the site, he can appreciate the reasons why they need this driveway. Backing out of the driveway presents a blind zone. They can have a maximum of 4 cars in their driveway, but no way for them to turn around so they would have to back out of the driveway. When they have more than 4 cars over, the guests have to park in the busy street. When someone is parked in the existing turn-around, then other cars are forced to back out onto Lake Rd.

Mr. Harpster said that there is a utility pole where they want to add the curb cut and Mr. Yedlick said this project will clear the utility pole, and acknowledged that they will be close to it. Mr. Harpster said that only the first car in the circular drive can pull out and the rest of them would have to back out anyway. He suggested they make the existing turn-around pad a little bit bigger. He thinks there are some other opportunities to accomplish what they are looking for rather than having so much concrete. Mr. Yedlick said that this family of 5 is a growing family and there will be more vehicles in the driveway. Mr. Harpster said he would like to see them put a little more effort into enhancing the turn-around on the west side.

Mr. Farrell asked whether they would have to widen that driveway to achieve what they are trying to do. If that's the case, there would be as much concrete, but it would be in a different place. Mr. Yedlick said that the existing garage is a single car width and they could construct a 20' wide driveway going all of the way to the garage and that's what they will do if this is not successful. Either way there will be a lot of concrete there and the landscaping and improvements to the front will be very attractive.

Mr. Christ said he thinks that there is no way around a lot of concrete here and understands the safety issue on Lake Rd. because he has seen way too many close calls there. He feels they need what they are asking for to get cars out head first. He suggested they work through how they will park cars on this proposed driveway so they don't have to back out. He said they might find that a 20' wide driveway gives them more room to turn around and head out and they should study that.

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

4 Ayes - 0 Nays
Passed

Mr. Christ reviewed the practical difficulties test aloud. Regarding whether special conditions or circumstances exist which are peculiar to the land or structure involved, he said that the applicant has indicated their practical difficulties relative to Lake Rd. being such a heavily traveled road in addition to the blind spot that applies to this area. This is a strong indicator of a variance requirement. Regarding whether the property in question will yield a reasonable return, Mr. Christ said he does not think that applies in this case other than this will enhance the return. He does not believe this variance is substantial and believes that it is the minimum necessary to provide both parking and exiting ability. The essential character of the neighborhood will be altered but they will provide additional landscaping to help minimize the impact. The delivery of government services will not be adversely affected. Whether the owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be the case. He does not believe that the predicament feasibly can be obviated through a method other than a variance. He believes that the spirit and intent of the Code will be observed, and substantial justice will be done by granting the variance without conferring any special privilege on the applicant. He believes that a literal interpretation of the provisions of the Code will deprive the applicant of rights commonly enjoyed by other properties. The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Chris and Kate Horne, 22105 Lake Rd., to construct a second curb cut for a circular driveway on a lot that is 70' wide vs. at least 90' lot width is required for a second curb cut. The applicant has indicated their practical difficulty with providing a safe and reasonable entrance and exit to this property. They will evaluate this relative to their usage of the property before it is installed. Mrs. Martinez seconded.

3 Ayes – 1 Nay (Harpster)
GRANTED

3. KEVIN PATNO – 20545 Morewood Pkwy. – PUBLIC HEARING – Variance to construct a detached garage with a height of 17' vs. 15' maximum height permitted for garages (Section 1153.09(b)). Mr. Kevin Patno, Homeowner, came forward with Steve Mazzoni of Godfather Garages.

Secretary Christ introduced the variance and Mr. Farrell swore the parties in. Mr. Patno said that he lives in a 1930's house with small closets and virtually no storage. It is on a small lot so the only direction to go is up. They have had 2 children since they purchased the home and the space in their home is limited. Their existing garage has a flat roof and they thought the best way to remedy their storage situation would be to build up. Their lot butts up to an apartment building that is not very attractive, and he would like the additional height to provide some privacy from the apartment elevation compared to his. The garage door will be 7' tall but they would prefer an 8' tall garage door.

Mr. Farrell explained that this Board had a meeting a couple of years ago with City Council, Planning Commission and Building Department members because the ordinance says 15' and this Board had a habit of granting variances that were much higher than even 17'. The City would then get complaints from the neighbors of those people who don't want this big/tall of a garage so close to their property. They met to see if they wanted to change the ordinance to allow taller garages, then this Board would listen to their guidance. The ordinance was not changed and because the maximum height is still at 15', they took that as a notice that they don't want garages much taller than 15'. Since that meeting, this Board has been granting variances up to about 16', which is the rule he is going by. He said that by making this roof pitch an 8/12 pitch, that would solve the issue here. He added that, as one member of the Board, he is not willing to go beyond 16' tall.

Mr. Harpster said he agrees with Mr. Farrell and he feels that he would be willing to approve a maximum of 16'. Mr. Patno said that there are only trees behind the garage so it won't obstruct any views by going taller. It needs to be a functional space, so the 9/12 pitch gives them 8' of space so they can move around. It won't be a finished space and it will just be for storage, but it needs to be functional, and they would like to be able to move around more freely because it will be their primary source for storage. Mr. Harpster said that he has a 12' tall garage and he stores things up above the garage door. Three of his neighbors have built garages that meet the Code and they look good and they are functional 2-car garages.

Ms. Martinez said that she would like to disclose that she knows the applicant and the builder because her daughter goes to school with the owner's son and the builder constructed her garage, but she believes she can be impartial in this matter. She questions the 9/12 pitch and whether the purpose is to get the highest pitch and Mr. Patno said that it is purely for the high pitch and an 8/12 would make him rethink the project. Regarding the 17' height, she asked if that is measured from grade and the contractor said that it is measured from the slab.

The accuracy of the numbers was discussed. The 8' measurement is from the top of the ceiling joist to the top of the ridge outside. Mr. Christ said that on sheet SK-1, they show 8' from the floor slab to the underside of their framing. They are allowing 1' for the floor structure, but it is not shown. Ms. Straub said she asked the contractor to label the headroom on the second floor. Mr. Farrell said that they will not have 8' clearance to walk down the center of the second story. Mr. Patno said that is even more reason why he does not want it to go with a lower height. Mr. Christ said that there are a lot of things they can do with the way they construct it that will increase the functional headroom.

Mr. Christ said that the result of that meeting they had regarding garage heights indicated that the maximum height would stay at 15'. However, it is still this Board's job to evaluate what they are looking at and they have to examine the practicalities. This is not supposed to be a habitable space by Code, and everyone comes in and says they want to create storage. They have been allowing closer to 16', and it is adequate even for kayak storage. The contractor replied that there is nobody behind him, next to him is a giant addition, and there is a smaller lot on the other side. He said this garage will not bother anybody. Mr. Farrell said that they do take variances case by case, but the actual use of the space for storage can be accommodated by a 16' tall garage. It also allows him to stay within his own personal parameters of what is acceptable while still staying close to what the ordinance allows.

Mr. Patno asked if they would please take consider to accoun that their view of the building behind them in the winter is not attractive and all of the trees behind them lose their leaves. There is tar on the side of the building behind them and it is visually disruptive. The more height he can get for his garage, the less of that building he will see, especially from his kitchen window. Storage need and having their sight line of that building blocked are the two main motivations. Mr. Farrell said that there is not much physical difference in height between 16' and 17'.

Ms. Martinez asked if they would consider changing the footprint of the garage and whether they could go wider in one direction, which would give them more usable space. Mr. Patno said that he will lose his yard because he is already going 4' wider than the existing garage and he doesn't have much more yard to lose. Ms. Martinez said that if they are concerned about screening the neighbor, then they would be better off turning the ridgeline 90 degrees. Mr. Patno said doing that does not provide the same curb appeal. Mr. Christ said that one of the things that Ms. Martinez is suggesting would make it longer and not wider. He said that in previous years, one of the Board members would draw the triangles so they could see that there was very little differential at the very top that only affected the height with the 1' difference the applicant is insisting on.

Mr. Reich said that the right side and left side elevations show two different lengths, one measures 23' and one measures 24'. Mr. Christ asked what the dimensions of the side of the garage to the property line is accurate and whether they will verify that because it was very difficult to tell where the existing garage is in relation to property lines. The applicant said that they are keeping the garage on the same footprint as the existing garage. He said that there are more than 5 garages that are greater than 15' tall, so the variance has been granted in their neighborhood before.

Mr. Christ said that they can vote on the 17' that is being requested but it may or may not pass. Discussion was had about this request being turned down versus going forward with a vote on the 16' in height. The applicant said that he would like the Board to vote on a height of 16'.

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

4 Ayes – 0 Nays
Passed

Mr. Christ reviewed the practical difficulties test aloud. Regarding whether special conditions or circumstances exist which are peculiar to the land or structure involved, he said that the applicant has indicated the practical difficulties, he has noted the minimal impact with the neighbors since there is a different use group behind him and it is only next to 1 neighbor. Regarding whether the property in question will yield a reasonable return, Mr. Christ said he does not think that applies in this case. Whether this variance is substantial and is the minimum necessary, Mr. Christ said that point is central to their evaluation. The essential character of the neighborhood will not be altered, and the delivery of government services will not be adversely affected. Whether the owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be the case. He does not believe that the predicament feasibly can be obviated through a method other than a variance. He believes that the spirit and intent of the Code will be observed and substantial justice will be done by granting the variance and it will not confer any special privilege on the applicant. He believes that a literal interpretation of the provisions of the Code will deprive the applicant of rights commonly enjoyed by other properties. The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Kevin Patno, 20545 Morewood Pkwy., to construct a detached garage with a height of 16', which is reduced from the requested 17' height vs. 15' maximum height permitted for garages. The applicant has indicated the practical difficulties with providing additional storage within his property and with screening the view from the property behind him. Mr. Harpster seconded.

3 Ayes – 1 Nay (Harpster)
GRANTED

4. NICHOLAS COMELLA – 20689 Beachcliff Blvd. – PUBLIC HEARING – Variance to construct a garage addition with a 4’ – 9” side yard setback vs. 8’ side yard setback required (Section 1153.07(f)(1)A) and a Variance to construct a garage addition with a 5’ – 7” rear yard setback vs. 25’ rear yard setback required (Section 1153.07(f)(2)). Mr. Joe Meyers, Architect, came forward with Nicholas Comella, homeowner.

Secretary Christ introduced the variance and Mr. Farrell swore the parties in. Mr. Meyers said that there is a very small 20’ x 20’ garage on the back of the house with a non-conforming rear yard setback. Their desire is to move the garage back from where it currently stands, which would be in line with the other garages on the street. He said that a detached garage can come up to within 5’ of the property line, but his clients want to attach it for convenience. They have room on the side of the house for a garage that gives them space by stepping the garage out by 2’ and the neighbor to the west submitted a letter that states they are fine with the proposal. There is also a letter from the neighbor behind them that he is fine with the proposed rear setback. There is a thick group of trees in the back. Mr. Comella said that they showed the plans to their abutting neighbors and none of them had an issue with this. One of the neighbors to the rear is elderly and he has not heard back from him. He said that this will enable him to build a master suite in the existing garage. Mr. Farrell said he thinks it looks good architecturally and asked a few questions regarding the dimensions of the garage.

Mr. Farrell said their job is to look for ways to minimize the variances and he is wondering about the extra 2’ that they are moving toward the west. He is wondering if that is necessary. Mr. Comella said the bump-out gives them more space for the first floor of the garage, but they also tried to taper it in so it’s not so obtrusive to their neighbors by just being a straight, very long, 2-story building next to them. The second floor is in alignment with the existing setback and the very back of it has a side 6’ – 9” setback.

Mr. Harpster asked where the air conditioning condenser will be placed. Mr. Comella said that they will be installing a mini-split systems in the master bedroom and the third floor and they need to talk about where they will be placed. They currently have no air conditioning. He was advised that they are required to be 10’ from the side property line. Mr. Farrell said that the area between them and the west neighbor would not be a good spot because it is so narrow.

Mr. Christ pointed out that there is a power line running down the property line in the back and cautioned them about that because it could be a safety issue with the window right there. He asked if they explored putting this on the opposite side in the rear and still attaching to the house. This would give them a straight-in garage and a usable back yard and he sees this idea as a possibility. Mr. Meyers said that they have explored that suggestion, but it does not work with the existing structure. They are fine with not having much of a backyard.

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

4 Ayes – 0 Nays
Passed

Mr. Christ reviewed the practical difficulties test aloud. Regarding whether special conditions or circumstances exist which are peculiar to the land or structure involved, he said that the applicant has indicated the practical difficulties with the existing configuration of the lots and the existing size and the location of the house which are creating a special condition and circumstance. Regarding whether the property in question will yield a reasonable return, Mr. Christ said they have indicated that, to bring this house closer to current desirable usages, the garage and house need to be updated. Regarding whether this variance is substantial and is the minimum necessary, Mr. Christ said that point is central to what the applicant is indicating and what the Board is considering in their evaluation. The essential character of the neighborhood will not be substantially altered, and the delivery of government services will not be adversely affected. Whether the owner purchased the property with knowledge of the zoning restrictions, he does not believe that to be the case. He does not believe that the predicament feasibly can be obviated through a method other than a variance since the existing is already grandfathered in with non-conforming setbacks. He believes that the spirit and intent of the Code will be observed, and substantial justice will be done by granting the variance. It will not confer any special privilege on the applicant. He believes that a literal interpretation of the provisions of the Code will deprive the applicant of rights commonly enjoyed by other properties. The other Board members agreed with Mr. Christ's assessment.

Mr. Christ moved to grant a variance to Nicholas Comella, 20689 Beachcliff Blvd., to construct a garage addition with a 4' – 9" side yard setback vs. 8' side yard setback required. The applicant has indicated the practical difficulties and the requested setback applies only to the first story garage as the second story is maintaining the existing side yard setback. This is a reasonable solution to provide more storage space as well as turning radius to access the garage. Mr. Harpster second.

4 Ayes – 0 Nays
GRANTED

Mr. Christ moved to grant a variance to Nicholas Comella, 20689 Beachcliff Blvd., to construct a garage addition with a 5' – 7" rear yard setback vs. 25' rear yard setback required. The applicant has indicated their practical difficulties. The existing setback is already non-conforming and in order to provide adequate garage width for a 2-car garage, this is a reasonable solution. Mr. Harpster seconded.

4 Ayes – 0 Nays
GRANTED

Patrick Farrell, Vice Chairman

Richard Christ, Secretary

Date: _____