

**MINUTES OF BOARD OF ZONING APPEALS
CAUCUS ROOM & VIA ZOOM
CITY OF INDEPENDENCE
February 16, 2023**

New Business:

- 1. 6884 Bradford Circle, Patrick Kmieck** – Requesting a variance to 1165.02 to encroach into the rear building line (not permitted).

The meeting was called to order by Chairman Mark Moreal at 5:31 p.m. and the following responded to Roll Call:

PRESENT: **Mark Moreal, Chairman**
 Councilperson Chris Walchanowicz
 Pasquale Monteleone, Jr.
 Carol Fortlage

ABSENT: **Charles Bredt**

ALSO
PRESENT: **William Doyle, Assistant Law Director**
 Anne Lynch, City Planner
 Michael Gero, Building Official

Chairman Moreal stated good evening and welcome to this evening’s meeting of the Independence Board of Zoning of Appeals, the 16th day of February 2023.

Before we go on, we have some minutes that we need to approve. The December 15, 2022, minutes, did we correct them?

Assistant Law Director Doyle stated well, we tabled them to make the correction because we were waiting to determine whether the audio recording of the meeting reflected certain motions or actions that were not reflected in the minutes. It turns out that the minutes were accurate, there were no other motions or other actions taken by this group that were not reflected in the minutes.

So, we didn’t actually enact the fix at the prior meeting because we needed to determine that first, but now that we know what happened in that meeting we are in a position to correct those minutes now. We have a series of motions here that I actually put together at the last meeting and we tabled it until we satisfied ourselves that everything is reflected. The first thing to do as I mentioned in the last meeting this might be overkill, but this is all designed to make sure it’s crystal clear in what we’re trying to do here.

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A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, Jr., to rescind the December 15, 2022, motion to reconsider the size variance of 26'x 26' that was previously granted for 6583 Cheryl Ann Drive.

**ROLL CALL: Yeas: Fortlage, Monteleone, Walchanowicz, Moreal
Nays: None
MOTION CARRIED**

A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, Jr., to rescind the subsequent approval of a 28'x 28' footprint of the building to maintain a 6' side variance in the rear areas as drawn and installing a driveway to be 6' off the property line.

**ROLL CALL: Yeas: Fortlage, Monteleone, Walchanowicz, Moreal
Nays: None
MOTION CARRIED**

Mrs. Fortlage asked is that the one made in August or December?

Assistant Law Director Doyle stated this is the one made in December.

Mrs. Fortlage asked why would we rescind that?

Assistant Law Director Doyle stated so this is the clunky step. We're basically clearing the deck of how and what went wrong in the voting at the December meeting. So, this is to clear the slate clean because the original vote was a reconsider vote in August that was voted wrong, it should have been basically a rescind vote that was voted yay. This now sets up the next 2 motions; this is the step that you wouldn't have to do, Carol if you didn't want to, but just to be as clear as possible we should make this motion.

Mrs. Fortlage asked so, by making this motion we are giving no approvals of any kind to this petitioner?

Assistant Law Director Doyle stated correct, but there are 2 motions that are coming after this particular one.

Mrs. Fortlage stated got it.

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A motion was made by Carol Fortlage, seconded by Pasquale Monteleone, Jr., to rescind the size variance of 26'x 26' that was previously granted for 6583 Cheryl Ann Drive in August 2022.

**ROLL CALL: Yeas: Fortlage, Walchanowicz, Moreal, Monteleone
Nays: None
MOTION CARRIED**

Mrs. Fortlage asked didn't we just do that?

Assistant Law Director Doyle stated no, that was December.

Mrs. Fortlage stated no, what did we do in the first motion tonight?

Assistant Law Director Doyle stated the first motion was to rescind the December 15, 2022, motion to reconsider the size variance.

Mrs. Fortlage stated okay, thank you.

A motion was made by Councilperson Walchanowicz, seconded by Pasquale Monteleone, Jr., to approve as presented, a 28'x 28' footprint of the building maintaining a 6' side variance in rear areas as drawn and installing a driveway to be 6' off the property line.

**ROLL CALL: Yeas: Walchanowicz, Monteleone, Moreal, Fortlage
Nays: None
MOTION CARRIED**

Mrs. Fortlage stated I still have a question, are we done with those now? Did we fix the problem?

Assistant Law Director Doyle stated those are done.

Mrs. Fortlage stated Debi, we've got all these minutes and December minutes that say things that are not really the permanent record. How does that get reflected so that somebody who looks in August doesn't realize there's more to the story?

The Secretary stated Carol, what we could do is attach a copy of these minutes from this meeting to both the August and to the December minutes.

Mrs. Fortlage stated I know something has to be done because if I was searching for it, once I got to August I'd say, "oh I see" and I'd be done. We need an indicator.

The Secretary stated we will put an indicator on those minutes.

Mrs. Fortlage stated thank you.

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Chairman Moreal stated at this time I'd like to ask the Board if there are any corrections, changes, or additions to the January 19, 2023, meeting?

Mrs. Fortlage stated I have one question. On page 19, Pasquale you're quoted as saying "I was dead", did you say that?

Mr. Monteleone stated I hope not, I don't think so, I'm still here.

The Secretary stated you were referring to when you were sick.

Mr. Monteleone stated oh okay, maybe I was sick.

Mrs. Fortlage asked but, it's a correct capture of what was said, do you think?

Mr. Monteleone stated, I guess.

Mrs. Fortlage stated okay, that was my only question about those minutes.

Assistant Law Director Doyle stated during a deposition we usually say let the record reflect that I'm kidding.

A motion was made by Carol Fortlage, seconded by Mark Moreal, to approve the minutes of the Board of Zoning Appeals meeting of January 19, 2023.

**ROLL CALL: Yeas: Fortlage, Moreal, Walchanowicz, Monteleone
 Nays: None
 MOTION CARRIED**

Chairman Moreal stated before we get started, I'd like to read the Board of Zoning Appeals opening statement.

Mrs. Fortlage stated excuse me, did we approve the December minutes?

Assistant Law Director Doyle asked isn't that what we just did?

Chairman Moreal stated we did January's.

Assistant Law Director Doyle stated then, yes you need to approve them now.

Chairman Moreal stated oh, we just adjusted all the motions.

At this time, I'd like to ask the Board if there are any corrections, changes, or additions to the December 15, 2022, meeting?

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A motion was made by Pasquale Monteleone, Jr., seconded by Mark Moreal, to approve the minutes of the Board of Zoning Appeals meeting of December 15, 2022.

**ROLL CALL: Yeas: Monteleone, Moreal, Walchanowicz, Fortlage
Nays: None
MOTION CARRIED**

Mrs. Fortlage asked why is there so much inaudible in January? Do we have a problem with microphones or recording devices or what? I never saw so much inaudible in minutes.

The Secretary stated everybody was talking at the same time last month, and they were talking over each other.

Mrs. Fortlage asked so, it wasn't the quality of the recording?

The Secretary stated no.

Mrs. Fortlage stated okay, good to know. Thank you.

Chairman Moreal proceeded to read the Board of Zoning Appeals opening statement.

The Board of Zoning Appeals is a quasi-judicial body and, as such, its role is similar to a judge in a court case. The Board will hear evidence and testimony that is factual and will make decisions based upon the facts which are presented, and the rules as set forth in the Zoning Code principles of Ohio law.

The City of Independence has adopted a Zoning Code and, per the City's Charter, has appointed a five-member Board of Zoning Appeals. This Board is empowered to hear and decide appeals and to authorize variances from the strict terms of the Zoning Code where the variance will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the

Zoning Code will result in practical difficulty or undue hardship, depending on the type of variance requested.

With this being stated, the Board's proceedings are relatively informal; but, in order to conduct an orderly meeting and allow all parties of interest, mainly contiguous property owners (or their legal representatives), the opportunity to present the evidence, certain procedures need to be followed:

All interested parties must be sworn in. The applicant will be asked to present evidence to support the requested appeal, the Board will ask questions, and then all interested parties (contiguous property owners) may present evidence concerning the appeal and ask questions regarding previously presented evidence. Any party may ask questions to another party.

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It is the applicant's burden to produce evidence to support the application. The Board will not make the applicant's case for them. In order to prepare appropriate meeting minutes, each person who speaks will need to state, for the record, his or her full name and address. The meeting may be continued by either the applicant or the Board. The Board must base their decision upon facts and not on expressions of concerns or non-factual matters. The action of the BZA does not become final until 30 days after the date of the meeting that the minutes are approved by the BZA. Any appeal may be made to the Cuyahoga County Court of Common Pleas by an interested party within 30 days of the date the minutes are approved.

Chairman Moreal stated on tonight's agenda, we have one item.

6884 Bradford Circle, Patrick Kmieck – Patrick Kmieck was in attendance.

Assistant Law Director Doyle asked Mike, are you going to get into the substance of the application?

Building Official Gero stated yes.

Assistant Law Director Doyle asked is he online?

The Secretary stated he is online.

Assistant Law Director Doyle stated Mr. Kmieck, I'm just announcing for the record that there are only 4 out of the 5 member of the Board of Zoning Appeals here tonight, which means theoretically the decision on your application could be 2/2 vote, and a tie, which is treated for all intents and purposes as a denial for your request, so you do have the right to push this to next month when you would have a full board, presumably, but that's your election ultimately.

Mr. Kmieck stated great, understood.

Building Official Gero stated so, Mr. Kmieck's property is 6884 Bradford Circle, which is up in the Chestnut Woods subdivision. We've had plenty of requests because of the topography and the layout of the lot. So, he came in and we discussed what exactly he wanted to do, what his intent was, and what he would need a variance for.

So, he wants to extend the deck on the back of his home, 16' out, and 40' wide. By laying that out on the topo, the 16' comes right to the edge of the storm sewer easement, so he would not be encroaching into the storm sewer easement, but he does encroach into the rear building line. He is requesting a variance to have his deck extend passed the rear building line of the lot that he has. Patrick did I explain that right?

Mr. Kmieck stated that is correct.

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Chairman Moreal stated Patrick, I need to swear you in. Can you raise your right hand and swear that the testimony you're about to give should be the truth, the whole truth, and nothing but the truth so help you God.

Mr. Kmieck stated yes.

Chairman Moreal stated okay. So, now that we understand what you're looking to do, it's self-explanatory. How much of the corner do you think is going into the rear building line?

Building Official Gero stated Mr. Chairman, if I could.

Chairman Moreal stated yes.

Building Official Gero stated it's going to extend approximately 10' past the rear building line. You can't see it on the drawing because we don't have dimensions on the easements and building line on that drawing, but he's coming off that back corner of the house 16', 6' is where his house sits from the rear building line, so he would be extending about 10' into the rear building line.

Chairman Moreal stated I saw the 6', I thought it was 6' past the line, but it's 10'.

Building Official Gero stated I laid this out (inaudible) topo.

Chairman Moreal asked and then about 2/3 or a 1/3 of the way in it's back into the building?

Building Official Gero stated it goes from the southwest corner of the deck, and then north, that's where the building line is, approximately 10' in.

Chairman Moreal stated so, his drawing is not accurate, okay.

Mrs. Fortlage stated there are no quantities in the agenda's statement, so if we have a resolution, don't we need to have quantities included? How much encroachment?

Building Official Gero stated no, we've done that before where (inaudible) past the rear building line.

Chairman Moreal stated we usually go by what they have on the drawing.

Mrs. Fortlage asked are the drawings in the minutes?

Chairman Moreal stated the drawings will be on the minutes, yes. Did she get a copy of this?

Mrs. Fortlage stated I have all that, these are not the minutes. I'm talking about for the record, if we approve this, there are no quantities stated, no how much encroachment. How does that get covered?

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Building Official Gero stated Carol, I thought I had mentioned that in my presentation, I thought I mentioned that he would be encroaching past the rear building line by 10'.

Mrs. Fortlage asked by only 1/3 of the way across or don't we bother with how much across?

Building Official Gero stated he's encroaching past the rear building line 10'.

Assistant Law Director Doyle stated no more than 10'.

Chairman Moreal stated we know it's not 10' all the way, but it's 10'.

Mrs. Fortlage stated and that does not need to be in the resolution?

Assistant Law Director Doyle stated an encroachment is an encroachment.

Chairman Moreal stated 10' would be the max, right?

Assistant Law Director Doyle stated yeah.

Chairman Moreal stated you did a good job at explaining that.

Building Official Gero stated that would be the limitation.

Mrs. Fortlage stated I don't see it in what would become the resolution when we look at the agenda.

Assistant Law Director Doyle stated it would be a variance of no more than 10' from the rear building line.

Mrs. Fortlage asked do you guys have an agenda that's more up to date than mine that says 10'?

The Secretary stated there wasn't anything on the application that indicated 10'.

Mrs. Fortlage stated okay, well when it comes time for the resolution I think we need to include that.

Building Official Gero asked you mean the motion, Carol?

Mrs. Fortlage stated that is what I mean.

Councilperson Walchanowicz stated a motion, and a resolution are two different things, I think.

Chairman Moreal stated I thought so.

Mrs. Fortlage stated you move a resolution.

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The Secretary stated Amanda did notify all the neighbors too, just so you know.

Chairman Moreal stated okay, thanks.

The Secretary stated you're welcome.

Chairman Moreal stated I don't have any issue with this, you explained it pretty thoroughly.

Mr. Monteleone stated I'd like to make a motion to request a variance 1165.02 to encroach into the rear building line no more than 10'.

Mrs. Fortlage stated I'll second.

A motion was made by Pasquale Monteleone, Jr., seconded by Carol Fortlage, to approve the variance to 1165.02 to encroach 10' into the rear building line.

**ROLL CALL: Yeas: Monteleone, Fortlage, Moreal, Walchanowicz
 Nays: None
 MOTION CARRIED**

Building Official Gero stated alright Patrick you're all set.

Mr. Kmieck stated thank you all for your time, I appreciate it.

Chairman Moreal stated we have nothing else, motion to adjourn.

There being no further business, the February 16, 2023, meeting of the Board of Zoning Appeals was adjourned at 5:50 p.m.

Chairman Mark Moreal

Amanda Sharrer, Secretary
Minutes Unapproved at Time of Release 02/24/23