



## MEETING MINUTES

### Board of Zoning Appeals

Thursday, June 29, 2023

#### CALL TO ORDER

Mr. Deschler called the meeting to order at 6:30 p.m. He stated that in addition to attending the meeting, the public can access the livestream on the City's website. The City welcomes public participation including public comments on cases. The Chair briefly explained the rules and procedures of the Board of Zoning Appeals (BZA).

#### ROLL CALL

Board Members present: Jason Deschler, Dan Garvin, Patrick Murphy, Joel Kretz  
Board Members absent: Joseph Nigh  
Staff present: Tammy Noble, Elizabeth Fields

#### ACCEPTANCE OF DOCUMENTS

Mr. Murphy moved, Mr. Garvin seconded acceptance of the documents into the record and approval of the 05-25-23 meeting minutes and the 05-10-23 work session minutes.

Vote on the motion: Mr. Deschler, yes; Mr. Murphy, yes; Mr. Garvin, yes; Mr. Kretz, yes.  
[Motion carried 4-0.]

The Chair swore in staff and members of the public who planned to address the Board during the meeting.

#### CASES

- **Miller Residence at 3165 Lilly Mar Court, 23-043V, Non-Use (Area) Variances**

An application for a variance to Zoning Code §153.210(B)(4)(a) to allow a driveway to exceed the maximum width for front-loaded garages and a variance to Zoning Code §153.021(C)(3) to permit a concrete pad to encroach into the required sideyard setback on a 0.9-acre site zoned Limited Suburban Residential District. The site is located east of the intersection of Lilly Mar Court with Braxmar Place.

#### Applicant Presentation

Ms. Fields presented an overview of the case. The site is a 0.94-acre lot located in the Sunny Dale Estates neighborhood bordered to the north by Lilly Mar Court and to the south by Martin Road.

The site has one permanent access point stemming from Lilly Mar Court to the existing single-family dwelling. The site is zoned R-2, Limited Suburban Residential and is located east of the intersection of Braxmar Place and Lilly Mar Court. The lot is rectangular with  $\pm 125$  feet of frontage on both Lilly Mar Court and Martin Road; it is very similar to other properties on the road. The existing single-family property is set back approximately 70 feet from the road, 21 feet from the east property line, 190 feet from the south property line adjacent to Martin Road, and 12.6 feet to the west property line. The site has a significant amount of open space, and the rear of the site has numerous mature trees that screens the house from Martin Road.

The applicant has submitted a request for (1) a variance to Zoning Code §153.210(B)(4)(a) to allow a driveway to exceed the maximum width for front-loaded garages and (2) a variance to Zoning Code §153.021(C)(3) to permit a concrete pad to encroach into the required sideyard setback on a 0.9-acre site zoned Limited Suburban Residential District. Per Section 153.210(B)(4)(a), no driveway pavement shall be permitted to extend beyond the front façade of the garage. Therefore, the pavement located in the sideyard must meet the sideyard setback as it is not considered to be part of the driveway. Section 153.021(C)(3) states that the minimum sideyard setback is 8 feet, with a total of 20 feet between sideyards. The current property owners received approval from Building Standards in July 2022 to put an addition onto the house which expanded the house towards the west property line and changed the garage from a side-load to a front-load garage. During the construction of the addition, a new driveway and concrete pad were poured that extended around to the back of the house, which resulted in pavement in the sideyard that is 3.9 feet from the property line. These additional driveway improvements were not a part of the approved building permit, and were later discovered by a final inspection of the approved permit and reported to Planning in March 2023. These improvements also included new parking spaces forward of the building, which creates a driveway at a width of up to 49 feet in portions of the driveway, which exceeds the 30-foot maximum for front-loaded garage driveways. When the house previously had a side-load garage, it had pavement in a similar location along the side of the house to what is requested with the variance. However, different standards apply for side-load and front-load garages. Driveways associated with side-loaded garages are permitted to be up to 30 feet in width beyond the front building setback line into the sideyard of the property. Once the garage changes to a front-loaded garage, this allowance no longer applies and the site is required to comply with the front-loaded garage requirements.

Staff has reviewed the application against the variance criteria and determined that the criteria were not met for either variance. Therefore, staff has recommended disapproval of the variance requests.

### **Board Questions for Staff**

Mr. Kretz stated that for variance 1, the total of sideyard must be 20 feet. That appears to be met, as the total sideyard is 25 feet in total. The second requirement is that there must be a minimum of 8 feet on one side. When facing the house, the left side has 21.1 feet per the plan drawing. He is confused as to why the requirement for 8 feet on one side is not met.

Ms. Fields responded that the Code requires that there must be a minimum of 8 feet on both sides, and that they have to combine to make a minimum of 20 feet. If one sideyard is 10 feet, the other sideyard would have to be at least 10 feet to meet the required 20 feet, or if one sideyard is 8 feet,

the other sideyard would have to be at least 12 feet to meet the 20 feet. However, both have to meet the requirement of at least 8 feet.

Mr. Kretz stated that when he looked up the Code, it indicated there must be a minimum of 8 feet on one side, not both. Is there another section of the Code that requires it?

Ms. Noble stated that staff has applied the minimum setback requirement to any sideyard. The second part of the requirement is that the total of both yards must be at least 20 feet. That ensures each sideyard has the minimum buffer for not only drainage but separation from uses.

Mr. Garvin inquired if the garage were still side-loaded, would the setback requirement have been 4 feet wider.

Ms. Fields inquired if there is a minimum setback for side-load garages.

Ms. Noble responded that if it were considered a driveway that would extend to the front of the house, the minimum setback would be 3 feet. Because this garage extends beyond the front façade of the house, it is considered a structure with an 8-foot sideyard requirement.

Ms. Fields stated that the previous side-load garage was considered only a garage, so was permitted to be only 3 feet from the property line.

Mr. Kretz requested clarification of his previous question. In regard to "totality", is that what the Code says or how staff has interpreted it? He remains confused because both the planning report and the Code stated one side.

Ms. Noble responded that the Code requires the minimum sideyard setback to be 8 feet, with a total sideyard of at least 20 feet.

Mr. Deschler requested that, as the discussion continues, staff pull up the Code section language. He inquired if the Board approves staff's recommendation for disapproval of both variances, what is the homeowner's obligation at that point.

Ms. Fields responded that the existing structure, which does not meet the Code requirements, would need to come into compliance.

Mr. Deschler inquired if the homeowner would need to tear portions of it down.

[Staff responded affirmatively.]

Mr. Deschler inquired if the homeowner had come before staff before constructing the garage and driveway, would staff have advised him of the Code requirements and advised him that to proceed, he would be required to submit the variance requests to BZA for approval.

Mr. Kretz referred to variance request 2, as he studied the Code further, it seemed to indicate that no driveway pavement shall be permitted to extend beyond the front façade of the garage. Is that part of this requirement?

Ms. Fields responded affirmatively. That is the reason a variance is required for the pavement on the side of the house. Once the concrete extends past the front of the garage, it is no longer considered a driveway with a permitted 3-foot setback; it is considered a structure with a required 8-foot setback.

Mr. Kretz inquired if there is guidance or precedence that clarifies how far past it has to be considered a pathway. Is the cutoff point right at the end of the structure?

Ms. Noble responded affirmatively. You could draw a literal parallel line from the most forward point of the house. The intent is to ensure that there is not a massive amount of parking or pavement in front of a house, dominating the appearance of the front façade.

Mr. Garvin stated that in the past, the Board has found that certain structures did not meet the minimum requirement to be considered a structure. In the present case, the indication is that the pad alone is a structure. This does not make sense when we look at the structure additions that other property owners have proposed. Those structures were required to be much more significant before we considered them to be a structure. This cement pad would have a difficult time meeting the definition that we have used in other cases for a structure.

Mr. Deschler inquired if staff was able to locate the pertinent Code section.

Ms. Noble responded that she had. The exact language states, "For dwellings and associated buildings, there shall be a total sideyard of 20 feet with a minimum of 8 feet on one side." Staff has interpreted that to mean any one side. If it could be one sideyard of 8 feet, then the other would need to be 12 feet to meet the requirement.

Mr. Kretz stated that if he is interpreting the Code correctly, the applicant does meet the requirement for variance 1. With a total sideyard of 25 feet, they meet the total sideyard requirement of 20 feet. They also meet the minimum of 8 feet on one side.

Ms. Fields responded affirmatively.

Mr. Garvin stated that the challenge is if the Code states any one side or each sideyard must be a minimum of 8 feet.

Mr. Kretz stated that he has no further question regarding that issue. The Code indicates no driveway pavement shall be permitted to extend beyond the front façade of the garage. Looking at the front of the house, are we saying that applies to the 12.6-foot stretch on the right side and the portion that extends to the left, or just one of the two segments?

Ms. Fields responded that it is the parking space that is in front of the house that makes the width more than 30 feet. It has nothing to do with the concrete on the side of the house.

Mr. Kretz inquired if the intent to park there would impact the definition as a driveway or if the intent would not matter.

Ms. Noble responded that the intent was part of the Code modification for this. The actual use of the pavement is not a different category. The intent was to have a functioning garage without excessive amounts of pavement. We had found that homeowners were creating portions of driveways for parking, resulting in excessive parking.

Mr. Kretz stated that the answer is yes, the intent was a key component.

Ms. Noble responded affirmatively.

Mr. Garvin inquired if there would be the option of covering the side portion of the pavement in front, making it a carport.

Ms. Fields stated that if it was a structure or additional garage element, it would be considered a building structure.

Mr. Garvin inquired if the area before the edge of the garage that bumps out to the right also violates the easement requirement of 3.9 feet.

Ms. Noble responded that to determine the widest area, staff looked at the widest portion of the driveway forward of the building. To the south, the width is smaller. The area to which he refers would be slightly larger, thereby not meeting the Code requirement.

Mr. Deschler inquired what the applicant would need to do to be in compliance.

Ms. Fields responded that the pavement would need to be brought in from the side lot line to maintain an 8-foot separation between the edge of the pavement and the side property line. Currently, that portion of pavement is 12.6 feet wide. They could have a 4-foot wide strip there, but not the current width. For variance 2, in front of the building, the entire continuous width of the driveway would need to be reduced to 30 feet or less. The parking spot in front of the house is the biggest problem, but also the bowed-out section of the driveway to the side of the garage. The bowed area may need to be eliminated. The garage width is 30 feet.

Mr. Deschler stated that their pavement exceeds the permitted width by 20 feet, which they would need to eliminate. How wide is the concrete side path?

Ms. Noble responded that it is 4.1 feet.

Mr. Deschler inquired the entire width of the section to the side of the garage.

Ms. Fields responded that it is 8.7 feet.

### **Applicant Presentation**

John Miller, 3165 Lilly Mar Ct., Dublin, OH, stated that they purchased the property a couple of years ago and have significantly remodelled it, added a shed and back fence, following the required permitting process. Their contractor was not responsible for the driveway and the side portion. They used the cement contractor that was used for other portions of the renovation. He was advised that they could keep a similar footprint as the original drive.

He showed a previous image of his and his neighbor's driveways – they were immediately adjacent to each other, the closest driveways in the neighborhood. His and many other driveways in his neighborhood extend behind the property. Although all the lots are similar in size – 1-acre lots with mature trees, the garage and driveway layouts are not similar. He clarified that the pavement in front of his house is primarily a walkway, not driveway. Their intent was to integrate the walkway and the driveway turnaround. Their house has the deepest setback for the road, 117 feet, and the intent was to avoid having to back their vehicles out of the garage and all that distance to the roadway. If they had made the driveway 30 feet wide the entire distance, it would have met Code but increased the amount of concrete on the lot. They were attempting to reduce the amount of concrete with the turnaround integrated with the walkway. Per staff's recommendation, they would need to remove a 9 x 12-foot and a 5 x 50-foot section of concrete. Inadvertently, they created the situation for themselves but do not want to have to remove that amount of concrete. The Code treats front-load garages differently than side-load garages. If they still had a side-load garage, the concrete portion could extend further than theirs does. Per staff's report, the Code's intent was to prohibit people driving by the side of the house and into the backyard and parking there. Their intention is to drive their riding mower to the backyard, not to park there. If the intent is to prevent parking there, there are other options than removing a vast amount of concrete. Their intent is to plant bushes beside the turnaround, so it will not be visible from the street and the area to the side of the garage is not very visible. All of the driveways, whether for front-load or side-load garages, are unique, and many have room to park vehicles to the side of the garage. [He showed images of several Lilly Mar driveways.] His neighbor has not objection to his driveway.

### **Commission Questions for the Applicant**

Mr. Kretz referred to the strip of concrete that extends past the driveway on the right side of house and inquired if the homeowner intended to park there frequently.

Mr. Miller responded negatively.

Mr. Kretz referred to the turnaround on the left and inquired if the homeowner intended to park there frequently.

Mr. Miller responded negatively.

Mr. Kretz referred again to the concrete on the right side of the garage and inquired if the homeowner's intent was to simply re-pave what existed.

Mr. Miller responded affirmatively.

Mr. Deschler inquired the width of the concrete of the path on the right side of the garage.

Mr. Miller responded that the pad on the side of the garage is 9 feet, and approximately 5 feet of that would need to be removed.

Ms. Noble stated that per the Code, the definition of driveway is the "hard-paved surface of the lot that is specifically dedicated or reserved for movement of motor vehicles." Although the concrete here would not be specifically for parking, it would be for the movement of vehicles. She noted that Mr. Johnson's description of the driveways within the neighborhood is correct, but this is an older community, and most of the homes pre-date the City's current Code requirements. The intent of Code updates is to bring properties into compliance. In an older community, a large number of homes would not meet the current Code, but the intent is to bring them into compliance.

Mr. Deschler clarified that when homes are no longer in compliance with Code, they are grandfathered into the Code.

Ms. Noble responded affirmatively. The City can do nothing to enforce the existing condition become compliant, but if the homeowner manipulates the condition [by home improvements], the City does require they be brought into compliance.

Mr. Miller responded that few property owners would alter the existing condition, such as fences, as it is part of the charm of the property. The configuration of 90% of the driveways in this neighborhood is the same as it was 30 years ago.

Mr. Garvin stated that many of the homes have the turnaround area. Was the situation similar on this site when there was a sideload garage, but the turnaround did not extend out as far as it does now?

Mr. Miller responded that it did. When they had the sideload garage, their turnaround space was essentially adjacent to their neighbor's yard. He referred to the image he had provided of the previous driveway.

Mr. Garvin noted that his adjacent neighbor, Mr. Ford, had provided a letter to the Board indicating that he has no issue with the driveway. He noted that staff had offered a potential solution of Mr. Miller purchasing additional sideyard area, but he assumes that would create an issue for the neighbor.

Ms. Noble stated that the area has not been surveyed, but on occasion, that has been a remedy.

Mr. Garvin inquired if the current garage sits on some of the former driveway area.

Mr. Miller responded affirmatively.

Mr. Garvin inquired about the variances he had received earlier for the shed and fence. Mr. Miller responded that they applied for those variances and they were granted. Their intent has always been to be compliant.

Mr. Murphy inquired what the inspiration was for making all the changes to the property. Mr. Miller responded that they purchased the home due to the charm of the neighborhood, size of the lots and large trees. Unfortunately, the house was one-fourth the size of their previous home and the garage depth was insufficient for his vehicle. Although they loved the lot, they were aware renovations were necessary. If they had been aware of the pavement issue, they would have avoided that, although they believe it would have required even more concrete. They are hoping the Board will consider the uniqueness of this lot and grant them a variance.

Mr. Murphy inquired if this was the most substantial change done to the property.

Mr. Miller responded affirmatively. The house was built in 1969 and no changes were made previous to his.

Mr. Murphy inquired if any essential changes were made to the interior, such as plumbing.

Mr. Miller responded that everything was changed, including new floors, kitchen, screened-in porch, addition of a master bedroom and bath, all new electric, plumbing and roof.

Mr. Murphy noted that there were many necessary renovations that occurred first.

Mr. Miller responded affirmatively; the driveway was the final renovation.

Mr. Murphy noted that much of the driveway change was necessitated by the other essential renovations.

Mr. Miller responded that a two-car garage was needed; the previous garage was one-car.

## **Public Comments**

[The following public comment was received prior to the meeting.]

Lindsay Lee & Scott Polgar, 3155 Lilly Mar Ct., Dublin, OH:

"We are the neighbors on the east side of 3165 Lilly Mar Ct. Sunny Dale Estates is a unique little neighborhood. I would encourage all members of the Planning and Zoning Board to drive through it if you have never been back here. Each house is unique in its own way. We wanted to make sure you know we have no issues with the driveway to the front or side of the Miller residence. The reconstruction of their driveway is much nicer than before and brings up the aesthetics of our entire neighborhood. I would encourage you to consider variance request 23-043V. Please read these comments at the meeting."

[Public Comment offered at the meeting.]

Steve Masonbrink, 3168 Lilly Mar Ct., Dublin, OH stated that he lives immediately across the street. He apologizes, but he opposes the granting of the requested variance. One of the driveways Mr. Miller shared was of his driveway, which was installed four years ago along with a garage renovation. He submitted multiple configurations for a driveway to City Planning. He could not construct a sideload garage, because it would have resulted in a four-foot dropoff into his neighbor's property. The current alignment is the only option Planning staff would permit. He was held to the requirement that a driveway width is not permitted to exceed 30 feet, nor to pass extend past the front façade of the garage. Another neighbor also was held to the same Code requirement. [Photo shown of Mr. Masonbrink's driveway.] Mr. Masonbrink stated that his driveway is 115 feet long, and although he had plenty of room to add a side turnaround, he was required to back out all the way to the roadway. All of the contractors he spoke with at the time

were aware of the City of Dublin's Code requirements, which was the reason he submitted various iterations to Planning staff for approval before construction.

Mr. Deschler responded that although staff made him aware of the City's Code requirements, he could have submitted a variance request.

Mr. Deschler inquired if the request was submitted to this Board.

Mr. Masonbrink responded affirmatively. There should be a case on record of his variance request.

Ms. Noble stated that perhaps staff did not receive a completed application.

Mr. Masonbrink responded that he actually came before the Board for a hearing of his variance request and was denied twice.

Mr. Kretz inquired if it was heard by the Board of Zoning Appeals or the Planning and Zoning Commission.

Ms. Noble clarified that it would have been to this Board. The Planning Commission does not review variance requests.

Mr. Masonbrink stated that he spoke with Planning staff first, who indicated the Board would not approve it, but he completed and submitted two different variance requests for two different proposals. He attended a meeting at which his request was heard.

Mr. Kretz inquired if Mr. Masonbrink had not had that previous experience if he would not necessarily have an objection. However, he feels the Code should be equally applied.

Mr. Masonbrink responded affirmatively. Both he and his neighbor were not permitted to have the same thing Mr. Miller is requesting.

Mr. Deschler inquired the timeframe of his garage and driveway renovation.

Mr. Masonbrink responded that it occurred in 2016. His previous case should not be difficult to find.

Mr. Deschler responded that would be essential to verify that there were two previous formal BZA variance denials.

[Ms. Noble conducted online research of previous Board actions.]

Mr. Deschler inquired if there were structures that could be added to the concrete area to the side of the garage that would remove the potential for parking.

Ms. Noble responded that the Code intent is not only to prevent the area to be used for a driveway but it is also to provide a minimum separation between a property line and a structure.

Mr. Deschler responded that he understands that, but a structure with a driveway existed there previously, although if it were still a side-load garage, a variance would not be necessary. He would like to avoid requiring the homeowner to remove all that pavement due to the fact that the neighbor has already indicated that he has no objection and due to the fact that pavement previously existed there up to the same point.

Mr. Garvin stated that a driveway is considered a structure when it extends beyond the front façade of the house. Is it considered a structure if it is a sidewalk that extends beyond the front façade?

Ms. Noble responded that it would not. However, this would be considered a driveway based on the definition she provided earlier.

Mr. Garvin inquired if the distinction could be made if a gate were to be added, through which a vehicle could not pass.



Ms. Noble responded that the intent is to provide separation between property lines. If the Board were to consider a variance to the separation requirement, she would recommend that to prevent vehicle maneuverability, the addition of a small permanent retaining wall. Even though the current property owner may not intend to use that concrete for maneuverability, a future property owner might. With variance approvals, conditions can be added.

The Board discussed the criteria requirement that granting the variance would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other property owners.

Mr. Garvin stated that granting the variance would grant the applicant a privilege previously denied to Mr. Masonbrink.

Mr. Kretz stated that if this was the same structure and layout as the properties that previously were denied variances, he would agree, but it is not. He does agree that this is one of the 4 criteria required.

Ms. Noble responded that in her records search, she has found a case heard by the BZA in 2014; however, that case was tabled.

Mr. Garvin responded that potentially, it was tabled because it did not look like it would be approved.

Ms. Noble noted that the Planner on that case was Marie Downey.

Mr. Kretz responded that for him how it would have potentially been determined is irrelevant. The fact that the case was tabled is relevant. He requested that the portion of the driveway definition regarding vehicle maneuvering be re-read.

Ms. Noble read the definition of a driveway: "It is a hard, paved surface of a lot that is specifically designated and reserved for the movement of motor vehicles to and from the public and private street. It includes the area from the street providing access to and from a lot and any maneuvering areas."

Mr. Deschler requested the Board's position on the variances.

Mr. Kretz responded that on variance 1, for him the definition verbiage, "specifically designated for" is key language. In his view, the applicant is not specifically designating the side portion for vehicle parking. He is inclined to approve variance 1 following the clarification previously provided that the total sideyard area must be 20 feet. That portion of the requirement is met as the total area is approximately 25 feet. The second part of the sideyard area requirement is that there be a minimum of 8 feet on any one side. Per the "any one side," the left sideyard has 21.1 feet, which is more than 8 feet. According to his review of Criteria A, he disagrees with the need for a variance. On variance 2, he interprets the 30 feet differently. He looked up the Code definition of street right-of-way line. Section 153.002E(e) defines street right-of-way line as the line that separates the street right-of-way from a continuous property, which is vague. He interprets that as the leftward and rightward bounds of the driveway that abut Lilly Mar Ct. Initially, he was not supportive of variance 2, because the driveway does appear to extend beyond the façade. However, in reviewing the definition of driveway closely -- particularly the language that it is specifically designated for motion -- the applicant has indicated that their intent is not to be using that area regularly for vehicle maneuverability.

Mr. Garvin stated, working backwards with the variance criteria, with the second set of criteria, obviously, there would be no hindrance to government services nor would be especially repeatable. He does believe approving the waiver would constitute a special privilege being granted to the Miller's that was not granted to Mr. Masonbrink, although there was no ruling on Mr. Masonbrink's earlier request. That item would be the only one of that set of criteria that he believes would not be met. In the first set of criteria, which must all be met, the first criteria and probably the third criteria are met. The criterion he is unsure about is that the variance "is not necessitated because of action or inaction of the applicant." He does not believe the side area of pavement constitutes driveway, but rather, a pathway. What it comes down to for him is whether the 30-foot width was caused by the applicant's action or inaction. He does not believe that it was, because there was not a turnaround from the sideload garage. There is probably less or similar concrete space, when you consider what was replaced by the structure. He also would be inclined to approve both variances.

Ms. Noble requested permission to clarify the subject of Mr. Masonbrink's case that was heard by the BZA in 2014 [Case 14-051]. That request was for a different variance; it was for the amount of garage door width that would be permitted to face the road. As indicted before, that variance was tabled.

Mr. Deschler requested confirmation that the 2014 variance was not related to a concrete driveway. Ms. Noble responded that it was not; it was related to the façade of the garage.

Mr. Murphy stated that he would echo his fellow boardmembers' comments. Additionally, given that a new structure for the garage was constructed as part of a broader, necessary renovation project, he is inclined to believe there were special conditions in place that called for that. If the actions were necessary, it was not due to any action or inaction of the applicant. His efforts are actually to improve the property. There were some ancillary items that arose from the renovation. He would be supportive of both variances.

Mr. Deschler stated that it appears that the sole reason for this Board hearing is because the homeowner made a mistake, which was his action. If he had been working with a contractor who was aware of the City's requirements, he would have sought a variance before the construction. He would have wanted a small turnaround area, because it is difficult to back out of the garage otherwise. He believes a special condition exists for the turnaround, based on the fact that this driveway is located so close to the neighboring yard. However, he agrees with staff on the side concrete or pathway area. He believes some sort of permanent structure preventing vehicle movement on that pathway would be necessary, for him to approve that variance. He does not particularly want the applicant to have to tear out any of the concrete; however, it is not fair for one applicant to spend a vast amount of money to be compliant with Code, while another applicant is permitted to make a mistake and not be required to remedy it.

Mr. Garvin stated that his opinion that the side area could be considered a pathway not a driveway would hinge on whether a reasonable permanent structure could be added that would make that clear.

Mr. Kretz stated that his position remains the same. The applicant has indicated that the turnaround area is not intended for parking and his decision is based on that assumption.

Mr. Murphy inquired if the applicant had retained a sideload garage, as before, would there be no issue with the pathway area.

Ms. Fields responded affirmatively. If the applicant had a sideload garage, then that area would be considered driveway and would be required to have a 3-foot setback. They have 3.9 feet between their property line and the concrete.

Mr. Murphy stated that if the applicant had changed the concrete first, then decided to have a frontload rather than sideload garage, he would not be in this position.

Ms. Fields responded affirmatively.

Mr. Murphy stated that if that could hinge on what day the concrete installer might come to do his work, that somewhat trivializes the order of operations. Looking at the time and place of when certain improvements on the land occurred makes the decision arbitrary.

Mr. Kretz moved, Mr. Garvin seconded approval of a Non-Use (Area) Variance to Zoning Code 153.021(C)(3) to permit a 3.9-foot setback for a Concrete Pad in the sideyard.

Vote: Mr. Kretz, yes; Mr. Murphy, yes; Mr. Deschler, no; Mr. Garvin, yes.

[Motion passed 3-1]

Mr. Kretz moved, Mr. Murphy seconded approval of a Non-Use (Area) Variance to Zoning Code 153.210(B)(4)(a) to permit an approximately 49-foot wide Driveway between the Right-of-Way and Front Facade of the Garage.

Vote: Garvin, yes; Mr. Kretz, yes; Mr. Murphy, yes; Mr. Deschler, no.

[Motion passed 3-1]

Mr. Deschler congratulated Mr. Miller. Both variance requests have been approved.

## **COMMUNICATIONS**

Ms. Noble updated members regarding the following:

- The recent passage of Code Amendment related to solar panels will become effective July 12, 2023. Consequently, two of the current BZA applications related to this topic may be determined administratively.

Mr. Deschler inquired if an applicant desires to propose a project inconsistent with that Code and has not succeeded via negotiations with staff, would the applicant be permitted to challenge the Code with the BZA?

Ms. Noble responded affirmatively. The applicant would be permitted to either appeal staff's decision to the Board of Zoning Appeals or if they could not meet the Code requirements, they can submit a variance request to the Board.

- The Envision Dublin Community Plan Update – the second public meeting was held June 21, 2023 at Ohio University was well attended.
- The next regular BZA meeting at 6:30 p.m., Thursday, July 27, 2023 has been cancelled, as there are no cases ready for public hearing.

## **ADJOURNMENT**

The meeting was adjourned at 8:18 p.m.



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Chair, Board of Zoning Appeals



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Assistant Clerk of Council