



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
1200 Ontario Street
Cleveland, Ohio 44113

Court of Common Pleas

MOTION TO...
March 20, 2023 22:18

By: RONALD J. O'LEARY 0068207

Confirmation Nbr. 2806440

RONALD J.H. O'LEARY, ET AL

CV 23 976612

vs.

CLEVELAND BOARD OF ZONING APPEALS, ET AL

Judge: WILLIAM T. MCGINTY

Pages Filed: 17

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

RONALD J.H. O'LEARY, et al.	)	JUDGE WILLIAM T. McGINTY
	)	
Appellants,	)	CASE NO. CV-23-976612
	)	
vs.	)	LOWER CASE: CLEVELAND
	)	BOARD OF ZONING APPEALS
CITY OF CLEVELAND, OHIO	)	CALENDAR NO. 22-213
BOARD OF ZONING APPEALS, et al.	)	
	)	<u>APPELLANT'S EMERGENCY</u>
Appellees.	)	<u>MOTION TO STAY</u>

For the reasons stated below, Appellants Ronald J.H. O'Leary, Dolores Garcia, Brian Rockas, Connie Homes, Jeff Homes, Robert M. Shenk, and Celine Shenk move this Court for an order staying the Cleveland Board of Zoning Appeals' ("BZA") decision to grant variances in BZA Calendar No. 22-213.¹ Appellants' move this Court for a stay to preserve the status quo until there is a full and complete judicial review of the facts and orders arising in this matter and because Appellants will suffer irreparable injury without this stay because Defendant City of Cleveland may issue a building permit based on the BZA's decision.

Appellants filed a Motion To Stay with the BZA on March 16, 2023. At its meeting on March 20, 2023, the BZA denied the Appellants' motion citing lack of jurisdiction since this appeal is pending in Common Pleas.² Also during the hearing on March 20, 2023, the BZA secretary stated that the BZA had transmitted the documents necessary to process the permit application pending with the Cleveland Department of

¹ Copy of decision attached as Exhibit 1.

² Copy of decision attached as Exhibit 2.

Building & Housing. Time is of the essence for this Court to stay the BZA's decision to preserve the status quo and prevent the Building Department from issuing a permit.

Introduction and Parties

The Appellants are property owners on Franklin Blvd. in between W. 38th Street and W. 44th Street in Cleveland's Ohio-City neighborhood. The neighbors on this block range in age from toddlers to senior citizens. Several of the neighbors are long-time residents who have lived on the block for over 40 years. Appellants include members of three families with a combined 12 minor children living on the block.

The Appellants are appealing the BZA's decision that granted variances for a property in the middle of their block at 4100 Franklin Blvd. ("the Property") to change the existing use from an office building. The office use is a legal, non-conforming (aka grandfathered) use that could not be constructed at the site today because the City of Cleveland has zoned the entire block (and most of Ohio City) as a residential zoning district. The residential zoning on this block of Franklin Blvd. has been in place since the 1990s.

The property owner—Lutheran Metropolitan Ministry ("LMM")—is a business entity that sought variances from the BZA after the Building Department denied the application to change or expand the non-conforming use because it is not permitted in a residential zoning district without a variance.³ The variance that the BZA granted will change the use from an office building to a daytime shelter ("Shelter") at the Property. The target population who will use the Shelter are homeless or housing-insecure people

³ Copy attached as Exhibit 3.

aged 16 to 24. This is a countywide program that will draw people mostly from outside Ohio City.

To blunt negative perceptions of the proposed operation, LMM's promotional materials brand the Shelter as a "Youth Drop-In Center." In public meetings, LMM's representatives claim that the changed use is not a shelter because the facility will not have beds where people will sleep overnight. But the services that the Shelter will offer include the following:

- Showers
- Food distribution
- Clothing distribution
- Personal-hygiene supplies
- Counseling services
- Couches for people to rest or sleep on.

LMM is not currently offering any of these services at the Property, and the Property will need substantial interior renovation for LMM to offer them. The hours of operation will expand to 10 hours per day, seven days a week. Calling the operation a "Youth Drop-In Center" does not change the fact that the proposed services are substantially the same services that LMM offers at the shelters that it and other entities operate.

Grounds for Motion To Stay

The neighbors objected to the BZA granting the variance because of the increased noise, traffic, and crime that the Shelter will bring to their residential block. For crime, one of the neighbors presented evidence to the BZA from a study of similar programs showing that the users often have high rates of substance abuse (75%), have engaged in

prostitution of some form (33%), and have mental illnesses (50%).⁴ The increased criminal activity that is likely to accompany the Shelter will substantially harm Appellants and other neighbors near the Property.

The neighbors also objected because the hours of operation will increase from the office use of roughly 9:00 a.m. to 5:00 p.m., Monday through Friday to the Shelter use of 9:00 a.m. to 7:00 p.m. seven days per week, 365 days a year. This will significantly increase traffic and noise on their block and will negatively impact the quality of life for Appellants and the other neighbors near the Property.

In another case pending in the Cuyahoga County Court of Common Pleas, the Court ordered a stay to preserve the status quo where the BZA granted a variance. That case did not have the safety issues that the Shelter will cause in this case. In *Fay Harris et al. v. City of Cleveland, et al.*⁵, the Court granted a motion staying the BZA's grant of a variance.⁶ The appellants in that case moved the Court for a stay "to preserve the status quo until there is a full and complete judicial review of the facts and orders arising in this matter and because Appellants will suffer irreparable injury without this stay because Defendant City of Cleveland could issue a building permit[.]" The Court granted the stay, and the City has not issued any permits for the project in that case.

Just as in *Fay Harris*, granting a stay while the parties present their positions to the Court regarding the variances will maintain the status quo and protect the families who will be harmed by the Shelter's negative impact on their neighborhood. For this reason, this Court should grant Appellants' Emergency Motion To Stay.

⁴ Copy of slide from presentation by Appellant Robert Shenk attached as Exhibit 4.

⁵ *Fay Harris et al. v. City of Cleveland, et al.*, Cuy. Co. Common Pleas No. CV-22-961201.

⁶ Copy of Journal Entry attached as Ex. 5.

Respectfully submitted,

/s/ Ronald J.H. O'Leary

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And

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CERTIFICATE OF SERVICE

I certify that I served this Emergency Motion To Stay on March 20, 2023 by e-mail to:

Caroline Downey, Counsel for Cleveland
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And

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/s/ Ronald J.H. O'Leary

Ronald J.H. O'Leary
Pro se Appellant

roleary@olearylwcle.com

From: Kukla, Elizabeth <Ekukla@clevelandohio.gov>
Sent: Wednesday, March 15, 2023 3:40 PM
To: Ron O'Leary
Subject: Resolution LMM
Attachments: BZA-033025.pdf

Please see attached.



Elizabeth Kukla
Secretary of the Board of Zoning Appeals
Phone 216-664-2581
Web clevelandohio.gov
[Cleveland City Planning Commission](#)



CLEVELAND BOARD OF ZONING APPEALS

CALENDAR NO. 22-213:

4100 FRANKLIN BOULEVARD

RESOLUTION

MARCH 13, 2023

WHEREAS, Lutheran Metropolitan Ministry (LMM), owner, proposes to renovate existing legal non-conforming charitable institution to add use as drop-in care center for teens and adults, and to expand hours of operation at in a B1 Two-Family Residential District. The owner appeals for relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Sections 337.03(b) and 337.02(g) which state that a charitable institution in a Two Family Residential District must be at least 30 feet away from adjoining premises, and requires review and approval by the Board of Zoning Appeals after public notice and public hearing to determine if adequate yard spaces and other safeguards to preserve the character of the neighborhood are provided, and if in the judgment of the Board such buildings and uses are appropriately located and designed and will meet a community need without adversely affecting the neighborhood. The proposed use is not 30 feet from adjoining premises.
2. Section 349.01(a) which states a use of building or land for which a permit has been lawfully issued, may be continued even though such use does not conform to the provisions of this Zoning Code for the use district in which it is located, but no enlargement or expansion shall be permitted except as a variance under the terms of Chapter 329, and no substitution or other change in such nonconforming use to other than a conforming use shall be permitted except by special permit from the Board of Zoning Appeals. Such special permit may be issued only if the Board finds after public hearing that such substitution or other change is no more harmful or objectionable than the previous nonconforming use in floor or other space occupied, in volume of trade or production, in kind of goods sold or produced, in daily hours or other period of use, in the type or number of persons to occupy or to be attracted to the premises or in any other characteristic of the new use as compared with the previous use.

WHEREAS, after public notice and written notice mailed to fifty one directly affected property owners, a public hearing was held on February 6, 2023. This case was heard in tandem with Calendar Number 23-014 in which the appellant's attorney Mr. Ben Ockner argued that the determination of the Building and Housing official was illegal, arbitrary and capricious in issuing the Notice of Nonconformance because per a Certificate of Occupancy dated 2009 the legal permitted use of the property is as "charitable and family services" and that the establishment of the Youth Drop In Center falls within that classification. The representative of Building and Housing stated that as with any expansion of any nonconforming use (such as adding a drive-thru to a nonconforming restaurant) a variance is still required by law. The Board determined that issuance of the Notice of Nonconformance was valid and a variance is needed; and,

WHEREAS; Mr. Alan Weinstein argued that the use will meet a community need without altering the character of the neighborhood as there are "far more" intense uses nearby including an 8 unit apartment building, a small boutique hotel, a youth hostel, an emergency shelter and an outreach center in the same block and across the street is a convalescent facility. He stated that he believes that the area is already service oriented. Maria Foschia from Lutheran Metropolitan Ministry stated that they proposed to be open for 10 hours a day 7 days a week; the specific location was picked as it is less intimidating to the clients than a retail or industrial area. She stated that they will provide social services, parenting classes, bus passes, and similar services; they will help them find overnight accommodations off site. She said there will be security on site and there will be a "no weapons" policy. Nate Lull from Ohio City Inc. stated that the community has had three occasions to attend a public meeting regarding the proposal. Marge Misak, a community member stated that she believes that the building is appropriately sized and parking is ample. City Planner Matt Moss stated that the use will provide a service that is greatly needed and the location is ideal as it very accessible by public transit. 30 letters of support were submitted; and,

WHEREAS; 9 letters of opposition were submitted. 5 neighbors were present to express opposition to the project and concern about the neighborhood's safety and security; it was mentioned that they have already witnessed loitering at the property. The directly adjacent neighbor stated that the facility has operated quietly for many years with hours from 9 to 5, light traffic and little noise; the expanded hours would have a negative impact. Ms. Garcia asked how the security will be handled as she has 7 children under the age of 10; she also mentioned that the property has not been well maintained. Mr. Rockas expressed concern about crime (specifically survival crime) and that LMM has not done any real research to evaluate the risk to the community. Mr. Shenk stated that this will have a heavy effect on the residential feel of the area as it will bring people from the entire county; and,

WHEREAS, after due consideration of the testimony and other evidence presented at the hearing, the Board determined that the variances should be granted with the following conditions:

- Hours of operation will be 9am to 7pm,
- No person will be permitted to stay in the facility overnight,
- Loitering will not be permitted,
- LMM will provide transportation off site after services have been rendered,
- A security plan will be detailed and will be submitted in writing to the board (received February 20, 2023; and,

WHEREAS, Local conditions and the evidence presented justify the Board in granting relief from practical difficulty and unnecessary hardship caused by strict compliance with specific provisions of the zoning ordinances. Refusal of the variance would deprive the owner of substantial property rights and granting the appeal will not be contrary to the purpose and intent of the Zoning Code; now therefore,

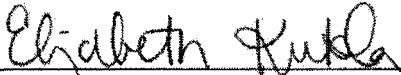
BE IT RESOLVED that the decision of the Building and Housing Department is reversed and the appeal is granted subject to the stated conditions and further subject to the Cleveland Codified Ordinances.

Yeas: Britt, Brown, Holzer, Faith

Absent:

Recuse: Rocha

Approved and adopted by the Board of Zoning Appeals March 13, 2023.



Elizabeth Kukla- Secretary
Board of Zoning Appeals

roleary@olearylwcle.com

From: Kukla, Elizabeth <Ekukla@clevelandohio.gov>
Sent: Monday, March 20, 2023 6:22 PM
To: roleary@olearylwcle.com; Benjamin Ockner
Cc: Cornely, Mary; Downey, Carolyn
Subject: Denial of Stay - 4100 Franklin
Attachments: BZA-033154.pdf

Please see attached.



CITY OF CLEVELAND
Mayor Justin M. Rich

Elizabeth Kukla
Secretary of the Board of Zoning Appeals
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Board of Zoning Appeals
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March 20, 2023

Ronald J.H. O'Leary et al
4110 Franklin Blvd.
Cleveland, OH 44113

Re: Emergency Motion for Stay Pending Appeal

Dear Appellant:

On March 16, 2023 our office received your request to stay the decision of the board in Calendar Number 22-213 (regarding a Youth Drop-In Center at 4100 Franklin) until the Cuyahoga County Court of Common Pleas issues a final decision. The Board of Zoning Appeals at its meeting on March 20, 2023 voted to deny your request to stay the decision as they determined that jurisdiction now lies with the Court of Common Pleas.

Yeas: Britt, Faith, Brown, Holzer
Nays: None
Abstain: Rocha

Please contact our office if you have any questions, 216-664-2580.

Very truly yours,

A handwritten signature in black ink that reads "Elizabeth Kukla". The signature is written in a cursive, flowing style.

Elizabeth Kukla - Secretary
Board of Zoning Appeals

cc: File



**CITY OF CLEVELAND
DEPARTMENT OF BUILDING AND HOUSING
ZONING REVIEW
NOTICE OF NON-CONFORMANCE**

Examined By Richard M. Riccardi
May 13, 2022

Owner: Lutheran Metropolitan Ministries

Address: 4515 Superior Avenue

Location: 4100 Franklin Blvd.

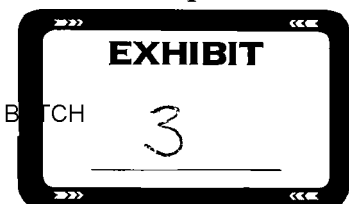
Use: Two Family Area: B Height: 1

Application to renovate facility with exterior and interior alterations to add use of a drop-in and care center for teens and adults, and expand hours of operation at existing, legal non-conforming charitable institution in a Two Family Residential District is denied due to the following:

<u>Zoning Code</u>	<u>Text</u>
337.03(b), 337.02(g)	Charitable institution in Two Family Residential District must be at least 30 feet away from adjoining premises, and requires review and approval by the Board of Zoning Appeals including public notice and public hearing to determine if adequate yard spaces and other safeguards to preserve the character of the neighborhood are provided, and if in the judgment of the Board such buildings and uses are appropriately located and designed and will meet a community need without adversely affecting the neighborhood. Use is not 30 feet from adjoining premises.
359.01(a)	A use of building or land for which a permit has been lawfully issued, may be continued even though such use does not conform to the provisions of this Zoning Code for the use district in which it is located, but no enlargement or expansion shall be permitted except as a variance under the terms of Chapter 329, and no substitution or other change in such nonconforming use to other than a conforming use shall be permitted except by special permit from the Board of Zoning Appeals. Such special permit may be issued only if the Board finds after public hearing that such substitution or other charge is no more harmful or objectionable than the previous nonconforming use in floor or other space occupied, in volume of trade or production, in kind of goods sold or produced, in daily hours or other period of use, in the type or number of persons to occupy or to be attracted to the premises or in any other characteristic of the new use as compared with the previous use.
341.02	Approval of the Cleveland Landmarks Commission is required.

An appeal of this Notice of Non-Conformance may be made to the Cleveland Board of Zoning Appeals, Room 516 Cleveland City Hall, 601 Lakeside Avenue, Cleveland, Ohio 44114 pursuant to Section 329.04(d) of the Cleveland Zoning Code.

/s./
Electronically Filed 03/20/2023 22:18 / MOTION / CV 23 976612 / Confirmation Nbr. 2806440 / B
Richard M. Riccardi
Zoning Administrator



4

Drop-in center users display characteristics that are incompatible with residential neighborhoods

75%
Substance Users/Abusers¹

33%
50%

Have engaged in prostitution in
some form²

Rate of mental illness¹

Low barriers to entry are necessary in order to accommodate risky persons excluded by restrictive rules of shelters

11"Facilitators and Barriers of Drop-in Center Use Among Homeless Youth" by Eric Pederson, Joan Tucker and Stephanie Kovalchik. Published Journal of Adolescent Health, August 2016.

²“Issue Brief: Consequences of Youth Homelessness” by The National Network for Youth..



125315059

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

FAY HARRIS ET AL
Plaintiff

Case No: CV-22-961201

Judge: KENNETH R CALLAHAN

CITY OF CLEVELND ET AL
Defendant

JOURNAL ENTRY

HAVING REVIEWED APPELLANT'S MOTION TO STAY, APPELLEE'S OBJECTION AND APPELLANT'S REPLY BRIEF, THE COURT FINDS APPELLANT'S MOTION TO STAY TO BE WELL TAKEN AND HEREBY GRANTS APPELLANT'S MOTION TO STAY. APPELLEE IS HEREBY ORDERED TO TAKE THE NECESSARY STEPS TO EFFECTUATE THIS ORDER.

Judge Signature

06/24/2022

06/23/2022

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