

**CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
September 14, 2021**

**MEMBERS PRESENT:** Liza Wolf

Melissa Fliegel  
Dennis Porcelli  
Thomas Zych      Chair  
Ben Hoen      Vice-Chair

**STAFF PRESENT:**

Karen Knittel      Assistant Planning Director  
Pam Roessner      Assistant Law Director  
Christy Lee      Administrative Assistant

## CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present.

## APPROVAL OF THE MINUTES OF THE AUGUST 18, 2021 MEETING

Minutes for the August 18, 2021 meeting were accepted with correction.

## **THE POWERS OF THE BOARD AND PROCEDURES OF THE BOARD OF ZONING APPEALS PUBLIC HEARINGS FOR REGULAR VARIANCES**

Mr. Zych stated that the purpose and procedures for tonight's meeting are stated for all in attendance. The hearings are quasi-judicial in nature and certain formalities must be followed as if this were a court of law. Anyone who wishes to speak about a case will first be placed under oath. For each case, City staff will make a presentation and then each applicant will present his or her case stating practical difficulty for which we are being asked to grant a variance. The Board will then open a public hearing to obtain testimony from any other persons interested in the case. The applicant will have an opportunity to respond to any testimony from the public and will address those comments to the Board. The Board may then ask questions of the applicant. Based on all the evidence in the record, the Board will make findings of fact and render its decision by motion. The formal nature of these proceedings is necessary because each applicant is asking for an extraordinary remedy called a variance. A variance is formal permission by the City for an individual not to comply with a portion of the municipal Zoning Ordinances which is binding to all others.

In making its decision of whether to grant a standard variance, the Board will weigh factors set forth in the Zoning Code in Section 1115.07(e)(1). The burden is upon the applicant to demonstrate by a preponderance of the evidence that the literal enforcement of the Zoning Code would result in a practical difficulty. Preponderance of evidence means the applicant proved his or her position is more likely than not true. The applicant must demonstrate circumstances

unique to the physical character of his or her property. Personal difficulties, personal hardships, or inconvenience are not relevant to the Board's determination. The Board is the final administrative decision-maker for all regular variances.

## **PUBLIC HEARING**

**Cal. No. 3529 M. Ribenboim (Riben LLC), 3137 Fairmount Blvd., AA Single-Fam.** requests variance to Section 1121.12(b) to permit a patio to extend more than 6 feet into the required front yard. (not permitted).

Mr. Zych asked that staff report dated September 8, 2021, be entered into the record; seeing and hearing no objections, the report is so entered.

All those wishing to testify were sworn in by Pam Roessner.

Ms. Knittel reviewed her staff report in a PowerPoint presentation as follows

### **Context**

- This is a single-family house zoned 'AA' Single-Family. The houses to the east, west, and south along Fairmount Boulevard are also zoned 'AA' Single-Family. The houses to the north along Wellington Road are single-family houses zoned 'A' Single-Family.
- The Future Land Use Map from the Master Plan shows this area as being used as detached single-family houses.

### **Project**

The applicant proposes to install a patio along the south side of their home. The patio would extend more than six feet into the required front yard.

### **Facts**

- This parcel is code conforming in area as it is 24,947 square feet and an 'AA' single-family parcel is to have a minimum of 15,000 square feet. (Section 1121.06)
- This parcel is a nonconforming parcel in terms of width at the building line as it is 97 feet wide and Section 1121.06 states that the required minimum width of a parcel in the 'AA' Single-Family district is 100 feet.
- This is a corner parcel located at the northeast corner of the Fairmount Boulevard-Wellington Road intersection.
- While the house has a Fairmount Boulevard address, the house is oriented to Wellington Road with both the front door and driveway/garage access coming off of Wellington Road.
- Zoning code section 1103.03(b)(120) defines the front yard of a corner lot in a residential district: "the front yard shall face the shorter street dimension of the lot ...".
- This parcel has 106 feet of frontage on Fairmount Boulevard and has 247 feet of frontage on Wellington Road, therefore the front yard of this parcel as defined by our zoning code is along Fairmount Boulevard.
- Section 1121.12 permits unenclosed decks and patio to extend into the front or corner side yard, no more than 12 feet provided that it does not extend more than six feet into the required front yard.
- The required front yard is the established setback of the properties along Fairmount Boulevard.

- The patio extends 15'8" in front of the house.
- The proposed patio is 94.7 feet from the Fairmount Boulevard right-of-way.
- There is existing landscaping along Fairmount Boulevard and the patio plans include additional landscaping.
- The siting of the house results in this area being a side yard but it is defined as front yard by the zoning code.
- There are approximately 10 feet between the rear of the house and the east side property line shared with 3145 Fairmount Boulevard.
- The plans are on the September 9 Architectural Board of Review Agenda. Staff will report ABR's actions at the BZA meeting.

If approved, conditions may include:

1. Cal No 3529 variance to Section 1121.12(b) to permit a patio to extend more than 6' into the required front yard as shown on the site plan submitted with the BZA application;
2. Approval of the Architectural Board of Review;
3. Receipt of a building permit; and
4. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel further stated that the applicant is present and can discuss the practical difficulty for the Board.

Mr. Zych asked if there were any questions from the Board to Ms. Knittel. There were no questions. He asked that the applicant representative be sworn in.

Ms. Roessner administered the oath to M. Ribenboim.

M. Ribenboim 3137 Fairmount Blvd Cleveland Heights, Ohio Mr. Ribenboim 3137 Fairmount Blvd.

Mr. Zych stated that hearing no objection, the application dated August 11, 2021, is entered into the record.

Ms. Ribenboim thanked the Board. She went on to detail the proposed project to add a patio to the property. She further explains how this will improve how they are able to utilize their entire property considering the property is located on a corner lot.

Mr. Ribenboim thanked the board and went on to also explain that due to the house being a side corner the utilization of the yard is difficult and privacy is not available. He said that this would give the family the ability to truly use the yard space in a private and secure fashion.

During this moment of the Board of Zoning Appeals meeting, Cleveland Heights City Hall lost power. The Board and applicant agreed to finish the public hearing. There were no members of the public present.

Mr. Zych asked if there were any further questions or comments from the Board. There were none. Mr. Zych asked if there was a motion.

Mr. Hoen said that regarding Calendar Number 3529 Myriam Ribenboim (Ribon LLC), 3137 Fairmount Boulevard, he moved to grant the application with conditions for the variance to Section 1121.12(b) to permit a patio to extend more than 6-feet into the required front yard as shown on the site plan submitted with the BZA application. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes special conditions and circumstances exist which are peculiar to this land/structure, specifically, this is a corner parcel at Wellington Road and Fairmount Blvd., the house front is along Wellington Road but the zoning code identifies the Fairmount Road frontage as the front yard; the rear yard of the house is about 10-feet deep and the zoning code identifies this yard as a side yard, and there is no access to the outside except for the front door and the door to the proposed patio area; the variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land; the essential character of the neighborhood would not be substantially altered as a result of this variance as the plan includes extensive landscaping that will maintain the character of the neighborhood; the variance does not adversely affect the delivery of government services; the applicants testified that they purchased the property without knowledge of how the zoning code defined the yards of their property; and the spirit and intent behind the zoning requirement would be observed and substantial justice is done by granting the variance. If granted, the variance shall have the following conditions:

1. Cal. No. 3529 variance to Section 1121.12(b) is granted to permit a patio to extend more than 6-feet into the required front yard as shown on the site plan submitted with the BZA application;
2. Receipt of building permit; and
3. Complete construction within 18 months of the effective date of this variance.

The motion was seconded and approved 5-0.

The next case, **Cal. No. 3530 Start Right CDC, 961 Nelaview Rd.**, A Single-Fam. requests variances to Sect. 1121.08 to permit new house side yard to be less than min. 5' req'd. and to Sect. 1121.12.09(b) to permit attached garage with a visible door on the street (visible door on the street not permitted). requested to be moved to the October BZA meeting.

Mr. Hoen motioned to continue this case until the October BZA meeting, the motion was seconded and approved 5-0.

The meeting adjourned at 7:30 pm.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary