

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
February 16, 2022**

MEMBERS PRESENT:

Benjamin Hoen	Vice Chair
Dennis Porcelli	
Thomas Zych	Chair
Liz Wolf	
Graig Kluge	

STAFF PRESENT:

Karen Knittel	Assistant Planning Director
Lee Crumrine	Assistant Law Director
Christy Lee	Recording Secretary

CALL TO ORDER 7:01 pm

APPROVAL OF THE MINUTES

Ben Hoen motioned to approve both the December 15, 2021 Minutes, and the January 19, 2022 Minutes, the motion was seconded and both Minutes were approved.

**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 a 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. 3535 B. & J. Miller, 1618 Rydalmount Rd., A Single-Family, requests a variance to

- A.** Sect.1121.12(a)(2) to permit new garage/workshop to be setback less than 5' min. required side yard setback;
- B.** Sect. 1121.12(d)(1) to permit garage/workshop rear yard coverage to be greater than max. 20%; &
- C.** Sect. 1121.12(e)(2) to permit garage floor area to be greater than max. area permitted.

This case was continued from the December 2021 BZA Meeting to allow the applicant to have his property surveyed. The applicant has not been able to have the survey completed. Given the snow cover and the uncertainty as to when a survey can be completed, he has requested to withdraw his application. He plans to submit a variance request after he has had a survey.

Ms. Wolf motioned to withdraw Cal. No 3535 B. & J. Miller, 1618 Rydalmount Rd., from the roster. Mr. Porcelli seconded the motion. The motion was approved. 6-0.

Ms. Knittel was sworn in by Mr. Crumrine.

Mr. Zych asked that the staff report dated February 11, 2022, be entered into the record, hearing no objection it shall be entered.

Karen Knittel's PowerPoint Presentation was as follows:

Cal. No. 3540 K. Laubscher dba Meadowbrook Venture Properties LLC, 3362

Meadowbrook Blvd., A Single-Fam., proposing an addition to house requests variance to Sect. 1121.08(a)(2) to permit the front yard to be less than the established front yard (required minimum).

Context

- This is a single-family house zoned 'A' Single-Family. The property is surrounded by single-family houses in an 'A' Single-Family district.
- The Future Land Use Map from the Master Plan shows this area as continuing to be used for detached single-family houses.

Project

The applicant proposes to construct an addition to the front of the house including an open porch. The addition is being proposed to modernize the functionality of the home's dining room and kitchen. The proposed front yard addition would extend into the established front yard and therefore requires a variance. A code conforming addition to the rear of the house is also part of the project.

Facts

- This is a non-conforming property in terms of lot width and area. It is 6,407 square feet in area and is 45-feet wide at the building line. Code Section 1121.06 states that in an 'A'

Single-family district the minimum lot width is 50 feet and the minimum lot area is 7,500 square feet.

- The applicant's property is on Meadowbrook Boulevard located between Silsby Road to the west and South Taylor Road to the east. Meadowbrook Boulevard gently curves between the two streets.
- Code Section 1121.08(a) states that the minimum front yard is 25 feet, except on blocks that are partially built up where the established building line defines the depth of the front yard.
- Code Section 1121.08 (a)(1) states that where the dwelling farthest from the street provides a front yard not more than 10 feet deeper than the dwelling closest to the street, then the required front yard shall be an average of the existing front yards.
- The established front yard in this area of Meadowbrook Rd. is approximately 42'9" (as measured on myplace.cuyahoga.us).
- The applicant's house is 42'3" from the public right of way,
- The applicant is proposing an addition and box bay window that will extend a total of 5'11" in front of the current house. The addition is 4'5" and the box bay window is 1'6".
- The Architectural Board of Review approved this project at their January 4, 2022 meeting.

If approved, conditions may include:

1. Variance 3540 is granted to permit an addition to extend 5'11" in front of the houses current setback as shown on the site plan submitted with their BZA application.
2. Receipt of building permits; and
3. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel concluded her presentation and said that the applicant was present and prepared to briefly review their project and statement of practical difficulty.

Lee Crumrine asked the applicants to swear or affirm that the testimony they were about to give was the truth the whole truth and nothing but the truth.

Kristen Laubscher and William Fugo affirmed this.

William J. Fugo gave his address as 2424 Princeton Road Cleveland Heights, Ohio.

Kristen Laubscher's permanent address is 35 Mount Four Acre Drive Summerfield, California and her second home is 3362 Meadowbrook Blvd. Cleveland Heights, Ohio.

Mr. Zych asked if the application submitted on January 19, 2022, by Mr. Fugo was accurate, correct, and timely.

Mr. Fugo responded that it was.

Mr. Zych said that without objection this application will be entered into the record and hearing no objections, it shall be so entered.

Mr. Fugu explained why the variance was needed. He said that changes would be for the current owner's mother and that the changes would allow for a more modern feel to the house and that adding the front porch adds visual appeal.

Ms. Laubscher added that these changes would honor the architectural feel of the neighborhood, she added that the home next door is also a house she owns. Ms. Laubscher said that this home will allow her mother to reside in a place surrounded by family and to have modern conveniences including not having to climb stairs to enter into a bedroom.

Mr. Zych asked if there were any public comments at this time, there was one person from the public however there was no public comment regarding this case. Mr. Zych asked if there were any questions from the Board.

Ms. Wolf asked for clarification regarding expanding the kitchen.

Ms. Laubscher stated that her mother who is 87 years old, and very able at the time. However, they are looking to have a more modern house with an open floor plan that allows for options to age in place. Ms. Laubscher stated that because the home is small they wanted to better use of the space in the home by making changes to the functional use of the house.

Mr. Zych asked how much of the addition extends to the front yard.

Ms. Knittel showed the dimensioned site plan and reviewed the established setback of the neighborhood, the current setback of the house, and the proposed addition's setback. In answering the question, Ms. Knittel stated that approximately 5 feet of the addition extends into the front yard.

Mr. Zych stated that that still would leave over 40 feet.

Ms. Knittel responded that this was correct.

Mr. Zych asked if there were any additional questions from the Board. There were none and the public hearing was closed.

MS. Wolf motioned for approval for **Cal. No. 3540 K. Laubscher dba Meadowbrook Venture Properties LLC, 3362 Meadowbrook Blvd.**, A Single-Fam., proposing an addition to house requests variance to Sect. 1121.08(a)(2) to permit the front yard to be less than the established front yard (required minimum). After reviewing the application and other submissions hearing the evidence under oath. The Board finds and concludes that special circumstances do exist, which are particular to the land structure involved, as this is in a regular nonconforming lot on a curving street the homes on that street are not at all in an exact straight line across to the properties. The property in question will not yield a reasonable return without the variance. The home is small and does not have the space to accommodate modern amenities to allow for future movement throughout the entire 1st floor. The variance is insubstantial and is the minimum necessary to make it possible. The reasonable use of the land structure as the home can not accommodate as stated before the modern amenities necessary. The essential character of the neighborhood would not be altered as a result of the variance. The addition will blend in with the current architecture of the neighborhood and would not extend past the neighboring home. A variance would not affect the delivery of government services and the following special conditions and

circumstances existed that are not a result of the actions of the applicant as this is an older home built on an irregular nonconforming lot, with necessary addition to accommodate the more modern amenities necessary for a home as the applicants predicted feasibly cannot be resolved through a method other than a variance. The kitchen and dining room currently exist in the front of the home so making an addition on the back would not be possible. If granted the variance would have the following conditions:

1. Variance 3540 is granted to permit an addition to extend 5'11" in front of the houses current setback as shown on the site plan submitted with their BZA application.
2. Receipt of building permits; and
3. Complete construction within 24 months of the effective date of this variance.

Mr. Porcelli seconded the motion and the motion carried 5-0.

Moving to the next case, Mr. Zych said there was a staff report for Cal. No. 3541 dated February 10, 2022, and without objection, the staff report would be entered into the record and seeing and hearing no objection it was so entered.

Karen Knittel reviewed her staff report with a PowerPoint Presentation was as follows:

Cal. No. 3541 V. Whiting, 2489 Coventry Rd., AA Single-Fam., proposes pool-house, pool, patio requests variances to

- a. Sect. 1121.12(a)(2) to permit a pool house to be in the front yard (N. Park Blvd.) permitted rear yd. only;
- b. Sect. 1121.12(a)(3) to permit pool to be set back 10' from the side property line (min. 15' required.);
- c. Sect. 1121.12(a)(5) to permit patio to be in front yd.;

- d. Sect. 1121.12(c) to permit side yd. coverage to be greater than max. 60%;
- e. Sect. 1121.12(i)(1) to permit a front yard fence to be taller than max. 4' permitted;

Context

- This is a single-family house zoned 'AA' Single-Family. The houses to the east and west along North Park Blvd. are zoned 'AA' Single-Family. The houses to the north or rear of the property along Fairmount Blvd. are also zoned 'AA' Single-Family. To the south across North Park Boulevard is the Park.
- 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 swimming pool with the required 6-foot tall fence surrounding it, pool house, and patio. The pool house, a portion of the patio, and a portion of the 6-foot tall fence would be in the front yard. The pool would be installed 10 feet from the side property line. To implement the proposed plan, the applicant would remove the existing driveway that enters the property from North Park Blvd, patios and relocate a hot tub.

Facts

- This is a code conforming property in terms of lot width and area. It is 51,200 square feet in area and is 157-feet wide at the building line. Per Section 1121.06, a code conforming 'AA' single family property is a minimum of 15,000 square feet in

area and is a minimum of 100 feet at the building line.

- This is a corner property located at the corner of Coventry Road and North Park Boulevard.
- Per the Zoning Code Definitions Sect. 1103.04(120) the front yard of a corner property shall face the shorter street dimension of the lot and is defined to mean the yard the full width of the lot extending from the front of the principal building to the front lot line.
- The applicant's property has 157' of frontage along North Park Boulevard and approximately has 314' of frontage along Coventry Road (myplace.cuyahogacounty.us measurement).
- The applicant's house is oriented so that the front door faces Coventry Road, however, the zoning code definition of front yard requires us to identify the front yard as the yard along the North Park frontage.
- The zoning definition of front yard results in the yard between the house and the adjacent property at 2731 North Park Boulevard being the side yard.
- The house is oriented to Coventry Road with the front door facing Coventry and the yard between the house and 2731 North Park Boulevard (side yard) has uses (driveway, hot tub, and patios) generally associated with rear yards.
- The side yard currently has a driveway, hot tub, and patio in it.
- The house is located on the parcel so that there is approximately 76' between the Coventry Road right-of-way and the house and is between 30' and 36' between the house and the adjacent property, 2731 North Park Boulevard.
- The house is set back approximately 115' from the North Park Blvd. right-of-way and there is approximately 92' from the house to the property line shared with 2760 Coventry Road.
- The driveway with access to Coventry Road and attached garage are on the north side of the house and separate the house from the north yard.
- There is not a door from the house to the yard to the north.
- Code Section 1121.12(a)(2) states that a pool house is permitted only in the rear yard.
- The proposed pool house would be setback 48' from the North Park Blvd. right-of-way and requires a variance as it would be in the front yard.
- Drawings of the pool house have not been completed, however, the applicant states that the structure will be a maximum of 15' in height to conform with Section 1121.12(g) Maximum Height of Accessory Structures.
- Code Section 1121.12(a)(3) states that swimming pools may be located in the rear and side yards and must be a minimum of 15' from the property line.
- The proposed swimming pool is located in the side yard 10' from the property line shared with 2731 North Park Blvd.
- Code Section 1121.12(i)(1) states that a fence or wall located in a front yard may have a maximum height of 4' above ground level.
- The applicant is proposing to install a 6'-tall fence around the area of the front and side yard where the proposed pool would be located as is required by Section 1121.12(h)(3).
- A portion of the proposed 6'-tall fence would be in the front yard and requires a variance.
- Section 1121.12(a)(5) note (b) states that a patio may extend into a front yard no than 12' provided it does not extend more than 6' into the front yard.
- The applicant's plans propose a patio between the proposed swimming pool and the pool house. This patio will extend approximately 15' into the front yard and requires a variance.
- Code Section 1121.12(c)(2) states that the maximum side yard coverage shall be

60%.

- The current side yard coverage is 61%.
- The plans for the side yard would result in a side yard coverage of 69%, requiring a variance.
- The applicant has submitted landscape plans with their BZA application.

If approved, conditions may include:

- 1 a. Variance 3541(a) is granted to permit a pool house to be in the front yard (N. Park Blvd.) as shown on the site plan submitted with the BZA application;
- b. Variance 3541(b) is granted to permit a swimming pool to be set back 10' from the side property line as shown on the site plan submitted with the BZA application;
- c. Variance 3541(c) is granted to permit a patio to extend into a front yard 15' as shown on the site plan submitted with the BZA application;
- d. Variance 3541(d) is granted to permit the side yard coverage to be a maximum of 69% as shown on the site plan submitted with the BZA application;
- e. Variance 3541(e) is granted to permit the front yard fence to be a maximum 6'-tall as shown on the site plan submitted with the BZA application;
2. The pool house will be a maximum height of 15' to conform with Section 1121.12(g) Maximum Height of Accessory Structures.
3. The swimming pool shall be completely enclosed by a wall or fence of sturdy construction not less than 6' in height and gates shall be self-closing and self-latching to adhere to Code Section 1121.12(h).
4. Approval of the Architectural Board of Review;
5. Receipt of a fence permit;
6. Approval of final landscape plan by the Planning Director;
7. Receipt of building permits; and
8. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel concluded her presentation and said that the applicant was present and prepared to briefly review their project and statement of practical difficulty.

Mr. Zych asked that the aerial view of the parcel with the zoning code-defined yards be shown and reviewed.

Ms. Knittel gave further details on how the front yard, side, rear, and corner side yard are defined.

Ms. Wolf asked if after the pool house was built there would still be 48 feet of front yard well side yard space.

Ms. Knittel responded that there would be 48 feet from the North Park Boulevard right away to where the pool house would be.

Lee Crumrine asked the applicant and her representative if they swore or affirmed that the testimony they were about to give was the truth the whole truth and nothing but the truth.

Heidi O'Neill and Vanessa Whiting both affirmed that it was.

Vanessa Whiting gave her address as 2489 Coventry Cleveland Heights, Ohio

Heidi O'Neill said her address was 7568 Fairmount Road Russell, Ohio. She stated that she was the landscape architect on this project.

Mr. Zych asked if the application that was submitted was true and accurate and correct to the best of her knowledge.

Ms. Whiting responded that it was.

Mr. Zych said that without objection the application would be entered into the record and hearing no objection it was so entered.

Ms. O'Neill reviewed why the variances were needed. Ms. O'Neill added that Ms. Whiting wanted to make use of her backyard while adding value to the property and the neighborhood. Ms. O'Neill said that the addition would also bring privacy to the home. She added that this improvement and addition to the property would allow for certain landscaping to remain which adds character to the home.

Ms. Whiting echoed what Ms. O'Neill presented as their practical difficulty.

Mr. Zych asked if there was anyone from the public that had comments, there were none. Mr. Zych asked if there were questions to the applicant or the applicant representative from the Board.

Mr. Porcelli asked what the purpose was for the large fenced area adjacent to the pool house facing North Park Boulevard and if there was a functional use for the space.

Ms. O'Neill said that the pool lines up with the south side of the house and the fence had to be put beside that area. She added that she didn't want to dissect that area and have the pool house between the fence which wasn't particularly ideal. Ms. O'Neill stated that is possible that she could add a screen along North Park which would screen the front of the fence as well as to have additional planting. She said that in answer to the question regarding function, they wanted to have one gate that allows access if needed.

Ms. Whiting added that she is okay with the changes to the fence location if needed to obtain the variances.

Mr. Zych explained to the applicant and the applicant's architect that this isn't the place for negotiating changes however there can be additional conditions added to the variance.

Ms. Wolf stated that per the site plan there is a circle next to the pool house, that circle is the tree, and that currently is what we are referring to that we don't want to take down but allow for it be used as additional shading. So, the proposals are to have a 6-foot tall fence and to not divide the pool house from the pool, but to have the fence come out from the house and line up with the pool house with a gate next to the pool house and that in doing this it would save the tree.

Ms. O'Neill responded that they wanted to save the tree.

Mr. Zych asked if there were any additional questions at this time. There were no members of the public present the public hearing was closed.

Mr. Zych asked if there was a motion on the floor.

Mr. Hoen motioned approval of **Cal. No. 3541 V. Whiting, 2489 Coventry Rd., AA** Single-Fam., proposes pool-house, pool, patio requests variances to

- a. Sect. 1121.12(a)(2) to permit a pool house to be in the front yard (N. Park Blvd.) permitted rear yd. only;
- b. Sect. 1121.12(a)(3) to permit pool to be set back 10' from the side property line (min. 15' required.);
- c. Sect. 1121.12(a)(5) to permit patio to be in front yd.;
- d. Sect. 1121.12(c) to permit side yd. coverage to be greater than max. 60%;
- e. Sect. 1121.12(i)(1) to permit a front yard fence to be taller than max. 4' permitted;

and the reason that I have asked that this all be consolidated is that they're all connected one way or another to the proposed pool and patio structure, and cannot be segregated as such. After reviewing the application and the submission and hearing the evidence under oath, I find that there is practical difficulty pertaining specifically to this property, being a corner property. This property is located on the corner of Coventry and North Park intersection where the front of the house front entrance faces Coventry, however, the code as it is written and describes this particular property deems the front of the property to be along North Park with the front yard to be along North Park and the side yard to be in front of the front entrance of the property and the rear of the property and the rear of the property to be the side of the northside of the property where the driveway and garage are located. The project would be permitted without variances to be located in the rear yard. However, it would be impractical for the owner to put the project in the rear yard where no variance would be required because that rear yard is bisected from the house by a driveway and garage, and it would be impractical for the owner to reach that without having a difficulty. Therefore, the proposal that's been presented to the board is the more practical approach where the swimming pool would be and what is actually the rear of the house although concerned by the code to be the side yard together with a pool house. The code also requires that a pool be surrounded by a 6-foot fence and although the fence is proposed to be in what the code deems to be the front yard is actually more practically the side yard of the property and would be otherwise a code conforming fence. The fence is required to be 6 feet for safety purposes to be surrounded by just around the pool. In addition, the fence proposal as presented to the board takes into consideration a large tree and therefore runs from the front of the house and around the tree. Thus, creating the necessity for the variance to surround the pool in a desirable manner. The swimming pool itself being set back 10 feet where 15 feet is required is a nominal variance, that the pool is surrounded by fencing and landscaping will have no adverse effect on the neighborhood. The patio as well will be extending into the front yard of more than 12 feet maximum is permitted once again a front yard being by the technical definition of the code more pertinently it is a side yard and for the aesthetics and the practicality of the project that variance should be permitted. In addition, regarding the request to permit the side yard coverage to be greater than the maximum where 60% is permitted, the side yard currently is non-conforming and has a non-conforming coverage, the additional coverage amount, which will increase the coverage from the current 61% to 68% coverage is a minimal extension and therefore the variance should be granted. And finally, to permit the front fence to be taller than a maximum of 4-feet as I alluded to earlier the fence must be 6-feet for safety purposes, as required by the code when we're dealing with a swimming pool. In addition, the yard itself being definition a front yard is actually a side yard where otherwise such a fence would be code conforming and no variants would be required if granted it should include the following conditions:

If approved, conditions may include:

- 1 a. Variance 3541(a) is granted to permit a pool house to be in front yard (N. Park Blvd.) as shown on the site plan submitted with the BZA application;
- b. Variance 3541(b) is granted to permit a swimming pool to be set back 10' from side property line as shown on the site plan submitted with the BZA application;
- c. Variance 3541(c) is granted to permit a patio to extend into a front yard 15' as shown on the site plan submitted with the BZA application;
- d. Variance 3541(d) is granted to permit the side yard coverage to be a maximum of 69% as shown on the site plan submitted with the BZA application;
- e. Variance 3541(e) is granted to permit the front yard fence to be a maximum 6'-tall as shown on the site plan submitted with the BZA application;
2. The pool house will be a maximum height of 15' to conform with Section 1121.12(g) Maximum Height of Accessory Structures.
3. The swimming pool shall be completely enclosed by a wall or fence of sturdy construction not less than 6' in height and gates shall be self-closing and self-latching to adhere with Code Section 1121.12(h).
4. Approval of the Architectural Board of Review;
5. Receipt of a fence permit;
6. Approval of final landscape plan by the Planning Director;
7. Receipt of building permits; and
8. Complete construction within 24 months of the effective date of this variance.

Ms. Wolf seconded the motion, motioned carried 5-0.

Old Business

There was no old business.

New Business

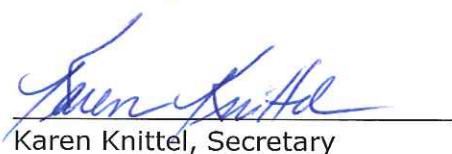
There will be a Board of Zoning Appeals held this coming March 23, 2022, by way of Webex.

Meeting adjourned at 8:08 p.m.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary