

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
May 20, 2020**

MEMBERS PRESENT:	Denver Brooker	
	Dennis Porcelli	
	Liza Wolf	
	Thomas Zych	Chair
	Ben Hoen	Vice-Chair
STAFF PRESENT:	Karen Knittel	City Planner
	Pam Roessner	Assistant Law Director
	Richard Wong	Planning Director

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:02 p.m. at which time a quorum was present.

APPROVAL OF THE MINUTES OF THE FEBRUARY 19, 2020 PUBLIC HEARING

Ms. Wolf moved to approve the minutes. Mr. Porcelli seconded the motion, and the motion was 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 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
May 20, 2020

Mr. Zych stated that each of the cases before the BZA has multiple variances for the Board to consider. For efficiency purposes but to preserve the public record, there will be a single public hearing for each case. Once that hearing is closed, the Board will then consider each of the requested variances separately with a separate vote.

CALENDAR NUMBER 3495

G. Thomas, 2736 Berkshire Rd., AA Single-family, requests a variance to Code Section 1121.12(i)(1) to permit a fence in the corner side yard along Mornington Lane to be taller than max. 4'.

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

Going forward, Mr. Zych entered the staff report from Ms. Knittel, dated May 12, 2020.

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

CONTEXT

- The property is zoned AA Single-family
- The houses north across Berkshire Road are zoned AA Single-family
- The houses to the west along Berkshire Road are zoned AA Single-family
- Across Mornington Lane, along Berkshire Road, the AA Single-family zoning continues for two parcels and then changes to an A Single-family district
- To the south and the rear of the property are houses zoned A Single-family with Derbyshire Road addresses

ZONING HISTORY

Cal. No. 3467 (Aug. 2018) a variance was granted to Section 1121.12(b) to permit the porch in the corner side yard to be 6'2" from Mornington Lane right-of-way (14' minimum was required).

Cal. No. 3317 (Aug. 2013) a variance granted to Section 1121.12(i) to permit a 6-foot tall wood fence 10' from Mornington Lane as shown in the site plan submitted to BZA.

PROJECT

- This was a March application. The applicant proposes a 6' tall wood fence set back 10' from Mornington Lane as shown on the site plan submitted with the variance application. The proposed fence location is different than the fence location approved in August 2013. The 2013 site plan had the fence connecting to a shed that was located in the southeast corner of the rear yard. This shed is no longer there. The variance is needed for the portion of the fence that roughly begins at the gate and continues to the rear yard property line.

May Update: With no BZA meeting held in March or April, the fence has been constructed. The fence was part of a larger rear yard improvement project, the contractor stated that they needed to complete the project and move their crews to

FACTS

- This parcel is a nonconforming parcel of record as it is 72.9 feet wide and the AA Single-family zoning code requires a minimum width of 100 feet at the building line of a parcel.
- This parcel is 22,800 sq. feet and the minimum area and the AA zoning code requires a minimum area of 15,000 square feet
- This is a corner parcel located at the southwest corner of Berkshire Road and Mornington Lane.
- The front northeast corner of the existing house is setback 10 feet from the Mornington Lane right-of-way.
- Calendar Number 3467 granted a variance to permit the side porch to be 6'2" from the Mornington Lane right-of-way.
- Mornington Lane runs from Cedar Road to Euclid Heights Boulevard. Mornington Lane does not have sidewalks.
- Calendar Number 3317 granted a variance to permit a 6' tall wood fence to be set back 10' from the Mornington Lane right-of-way as shown on the site plan submitted to BZA.
- This variance is necessary as the length and location of this fence are different from the fence approved in Cal. No. 3317. This site plan had the fence connecting to a shed that was located in the southeast corner of the rear yard. This shed is no longer there. The variance is needed for the portion of the fence that roughly begins at the gate and continues to the rear yard property line.
- The Architectural Board of Review approved the fence at their October 3, 2019 meeting.

If approved, conditions may include:

1. Variance 3495 is granted to permit a 6' tall fence in the corner side yard as shown on the site plan submitted with the variance application.

Mr. Zych asked the applicant would he like to present briefly their project to the board.

Pam Roessner asked do you swear or affirm that the testimony that you're about to give to the Planning Commission is the whole truth and nothing but the truth?

Matt Matisko 2460 Frangton Drive Westlake, oh affirmed the oath and agreed that the standard variance application from February 11, 2020, was accurate, Mr. Matt went on to give an overview why the request for the variance was brought to the Board of Zoning Appeals. He went to detail the practical difficulty detailing that due to the homeowner's daughter needing access to the back yard and the need for privacy as well as security.

Mr. Zych asked if there were any further factors for the need and the actual practical difficulty.

Matt Matisko. went on to say that the main factor that the variance should be upload considering that one had been approved for a 6' fence already. He went on to say that the homeowner has been adamant about needing privacy and security for her daughter. Extending the fence would allow for continued safety and security for the homeowner considering that they had already been granted the already standing fencing.

Mr. Zych asked if there was any public comment. He then closed all comments from the public and asked if staff had anything they wanted to add or ask.

Pam Roesser asked if Mr. Wong had received any public comments.

Mr. Wong “No”.

Mr. Zych asked the board if there were any question

Ms. Wolf asked to clarify of the fence had already be installed, she also asked if the 6’ fence is the minimum to help maintain that privacy of the owner and her family.

Matt Matisko “yes”

Mr. Zych stated that this is Mornington Lane is a frequent walking trail for residents and there are several brick walls and fences.

Matt Matisko stated that this was an additional reason behind wanting to have the additional fence. To keep people from cutting through the property while walking.

Dennis Porcelli asked if the parking installed and was its code conforming.

Matt Matisko affirmed that it is and along with all other work at the site. All projects have permits and have been inspected.

Mr. Zych asked if there was a motion.

Mr. Hoen made the motion to approve the variance for G. Thomas, 2736 Berkshire Rd., AA Single-family, requests a variance to Code Section 1121.12(i)(1) to permit a fence in the corner side yard along Mornington Lane to be taller than max. 4’. Special conditions and circumstances due exist which is why the need for the fence should be granted. The variance is insubstantial and that there is an existing 6’ fence in the same side corner yard which is needed for the essential for the privacy and security for the homeowner. The essential character of the neighborhood would not be substantially altered or adjoining properties would not suffer a substantial detriment as a result of the variance because of the existing fence that currently surrounds the neighboring properties. The variance would not adversely affect the delivery of government services and are not the adverse action of the applicant. So therefore in the spirit of the zoning code to approve the variance with the following conditions

Ms. Wolf second the motion.

Mr. Zych stated that the motion was approved 5-0.

CALENDAR NUMBER 3496

B. & K. Volpe, 2638 Fairmount Blvd., AA Single-family, requests a variance to Code Section 1121.08(b)(2) to permit an addition to the attached garage in the corner side yard (not permitted).

Mr. Zych asked that the Staff report dated May 8, 2020, entered into the public record. Hearing no objection, it is so entered.

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

CONTEXT

- The property is zoned AA Single-family.
- The properties to the north along Fairmount Boulevard are single-family homes zoned AA Single-family
- east and west along Fairmount Boulevard are single-family homes zoned AA Single-family
- The properties to the south along Woodmere Drive are single-family homes zoned A Single-family

ZONING HISTORY

Cal. No 3315 (June 2013) variance granted to permit a 4' tall ornamental metal fence (3' maximum height was permitted). *Note: the zoning code has since been amended to permit 4' tall fences in front and corner front yards.*

PROJECT

The applicant proposes adding a one-door garage to their existing two-door attached garage. Currently, there is a parking pad in the location of this additional garage space.

FACTS

- This is a code conforming property as it is 27,370 square feet and has a frontage of 115 feet. Code Section 1121.06 requires AA Single-family properties to be a minimum of 15,000 square feet and to have a minimum lot width of 100 feet at the building line.
- This is a corner property located at the southeast corner of Fairmount Boulevard and Woodmere Drive.
- Code Section 1121.12(e) permits this property to have a garage up to 1,200 square feet, with the proposed garage the applicant's garage area would be 817.45 square feet.
- The addition of the proposed garage results in a rear yard of 61.66'. Code Section 1121.08 requires AA single-family properties to have a minimum rear yard depth of 30'.
- The existing attached garage is set back 23' from Woodmere Drive.
- The proposed garage would be set back 18" from the existing garage, resulting in a setback of 24.5' from the public right-of-way.
- The first house on Woodmere Drive south of the applicant is set back 46'.
- The corner side yard is established by drawing a line from the northwest corner of 2347 Woodmere Drive to the existing southwest corner of the applicant's house. The area between the public right-of-way and the principal building is defined as the corner side yard. (Section 1121.08(b)(2)). *Variance required.*
- The property directly across the street from the applicant, 2626 Fairmount Boulevard, also has an attached garage with multiple doors facing Woodmere Drive. This house closer to Woodmere Drive than the first house south of it on Woodmere.
- There currently is a parking pad in the location of the proposed garage.
- The Architectural Board of Review will review the garage plans at their March 17, 2020 meeting.

If approved, conditions may include:

2. Variance 3496 is granted to permit a portion of the addition to the attached garage to be located in the corner side yard as shown on the drawings submitted with the BZA application.
3. Approval of the Architectural Board of Review;

4. Receipt of a building permit; and
5. Complete construction within 18 months of the effective date of this variance.

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

Mr. Zych asked for the applicant to present and prepare to discuss the practical difficulty, he also asked that they are sworn in and give their name and address.

Pam Roessner asked do you swear or affirm that the testimony that you're about to give to the Planning Commission is the whole truth and nothing but the truth?

Sharon Sanders Cleveland Heights address inaudible affirmed oath

Ben Volpe 2638 Fairmount Blvd affirmed the oath.

Mr. Zych stated that the application was submitted on February 12, 2020. He asked the applicant if he was familiar with the application and to the best of his knowledge were the facts stated in the application are accurate and true.

Mr. Volpe answered affirmatively.

Mr. Zych stated that hearing no objection, the application is entered into the record.

Ms. Sanders being of comments are inaudible. She went on to state this is a large property the current garage is a mismatch to the current style of the home. The new design would allow for more a visual appeal, also giving the homeowner the ability to have more space as well as add value to the home. Ms. Sanders went on to show a PowerPoint presentation showing the visual effect of how the new structure will not impact the surrounding neighbors.

Mr. Zych asked there have been any comments from the public. Mr. Wong affirmed as well that there were no additional comments via email. Mr. Zych closes the floor for public comments. Mr. Zych asked if there were any from the board.

Mr. Hoen wanted to clarify on Code Section 1121.12(e) permits the property to have a garage built up to 1200 sq. ft. and this garage will be 1817 sq. ft. Mr. Hoen wanted to know if the garage was built in the back-yard verse the corner side yard would it still be code conforming.

Ms. Knittel "yes" it would be code conforming.

Ms. Wolf asked what was the actual propose of the third garage.

Ms. Sanders the propose is to give the home additional parking as well as allowing for a particular function of the garage, giving the homeowner ability to park their vehicle in a comfortable structure without impeding their ability to keep the vehicle damage-free.

Mr. Zych asked if there was a motion.

Mr. Booker moved regarding Calendar 3496 B. & K. Volpe, 2638 Fairmount Blvd., AA Single family, to grant a variance to Code Section 1121.08 (b) (2) to permit an addition the attached

garage in the corner after reviewing the application and other submission and hearing the evidence under oath I find and conclude that special circumstances and conditions exist at this particular property such as indicated and are not generally applicable to other land structure in the same zoning district. In particular, this is a corner side yard and that condition creates these circumstances for the side yard setback variance. The variance is insubstantial and is the minimal necessary to make possible use of the land structure demonstrated by the fact that small portion crosses the setback line, the overall garage area is substantially under the maximum garage size allowed by zoning. The essential character of the neighborhood would not be substantially altered because the garage addition is within keeping of the neighborhood and the houses with corner side garages. The spirit and intent behind the zoning requirement are being observed. The intent is to have an aesthetically pleasing environment. The variance does not adversely affect the delivery of government services and is not the result of an action of the applicant. If granted the variance should include the following conditions

1. Variance 3496 is granted to permit a portion of the addition to the attached garage to be located in the corner side yard as shown on the drawings 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.

Mr. Porcelli second the motion which carried 5-0.

CALENDAR NUMBER 3498

Jim Posch & Joyce Braverman, 2205 Demington Dr., 'A' Single-family, requests a variance to Code Section 1121.12(a)(5) to permit an ornamental pool less than the minimum 3-foot setback required from the side property line.

Mr. Zych stated that unless there are any objections the staff report dated March 13, 2020, entered into the record, hearing no objection, it is so entered.

Ms. Knittel reviewed her staff report using a PowerPoint presentation.

Context

This a single-family house zoned 'A' Single-family.

The properties surrounding it are single-family houses, zoned 'A' Single-family.

Project

The applicant is proposing landscape improvements to their rear yard including a new patio, fence, driveway, and landscaping. A water feature is proposed to be 41 feet long by 18 inches wide, except at either end where the water circulates. This ornamental pool will be set back 3 feet from the side property for most of its length. The circulation pool/furthest to the west is 5'8" long and has a proposed set back is 2'8" from the side property line, and the circulation pool furthest to the east is 7' long and has a proposed set back of 2' from the side property line.

Facts

- This is a code conforming parcel that is 50' wide and has 8,260 square feet. Code Section 1121.06 requires 'A' Single-family zoned properties to have a minimum lot

width of 50' and a minimum lot area of 7,500 square feet.

- The house an existing nonconforming structure as it is setback 2.75 feet from the side (south) property line; a code conforming structure required to be setback a minimum of 5 feet from the side property line (Code Section 1121.08).
- The ornamental pool will be screened behind a 6-foot wood fence and shrubs.
- The location is adjacent to the neighbor's driveway and garage.
- The depth of the water in the trough will be 8" and will be 12" in the pools located at both ends.
- The ends of the ornamental pool are wider to accommodate the receptacle to recirculate the water. Only the ends of this ornamental pool are less than the minimum 3' setback required by Code Section 1121.12 (a)(5).
- The proposed improvements including the ornamental pool as shown on the site plan submitted with the BZA application result in a rear yard coverage of 59%, which is code conforming. Code Section 1121.12(d) permits a maximum of 60% coverage.

If approved, conditions may include:

1. Variance 3498 is granted to permit the ornamental pool to have a setback of less than 3' from the side property line as shown in the site plan submitted with the BZA application;
2. Receipt of required building permit(s); and
3. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel stated that there was an email from a neighbor that she would like to read and have submitted into the record. Ms. Knittel read a letter from Mrs. Lyons 2207 Demington Road, stating that she had received the plan for Cal No. 3498 and are in support along with her husband for the request of a variance.

Ms. Knittel further stated that the applicants are present and can discuss there practical difficulty for the Board.

Jim Posch & Joyce Braverman, 2205 Demington Drive, and their representative Michael Beightol, 2171 Demington Drive were sworn in.

Pam Roessner asked do you swear or affirm that the testimony that you're about to give to the Planning Commission is the whole truth and nothing but the truth?

Mr. Posch. Ms. Braverman and Mr. Beightol all affirmed the oath.

Mr. Zych stated that the application was submitted on March 9, 2020. He asked the applicant if he was familiar with that application and to the best of his knowledge were the facts stated in the application are accurate and true.

Ms. Braverman stated this is a back-yard renovation to increase the use and value of the home. Ms. Braverman went on to explain how this would allow maximum use of the back yard as well as add visual appeal. There will be additional landscape to help ensure that surrounding neighbors will not be imposed upon.

Mr. Zych stated that there weren't any further comments from the public or by email, that a letter of agreement was received from the neighbors with that Mr. Zych closed the floor for comment.

Mr. Zych asked for a motion.

Ms. Wolf regarding Calendar No. 3498 Jim Posch & Joyce Braverman, 2205 Demington Dr., move to grant the application with conditions to the variance code section 1121.12 (a) (5) to permit an ornamental pool to be set back on the side property line less than the minimum 3 ft required. After reviewing the application and other submissions and hearing the evidence under oath the board finds I find and conclude that special circumstances and conditions exist at this particular land structure involved as this home doesn't have code conforming property lines the back yard is narrow there would not be sufficient space between the properties to create this ornamental pool without the variance. The properties in question will not yield a reasonable return without the variance because the homeowner could not complete the improvements as planned without the variance. Variance is insubstantial minimal necessary to make possible the reasonable use to the land structure without the variance they couldn't complete this ornamental pool addition the essential character of the neighborhood would not be altered, this is the back yard a would enhance the character of the neighborhood. The variance does not adversely affect the delivery of government service and is not the result of an action of the applicant. if granted the variance should include the following conditions

1. Variance 3498 is granted to permit the ornamental pool to have a setback of less than 3' from the side property line as shown in the site plan submitted with the BZA application;
2. Receipt of required building permit(s); and
3. Complete construction within 24 months of the effective date of this variance.

Mr. Brooker second the motion which carried 5-0.

Old Business

No old business to report

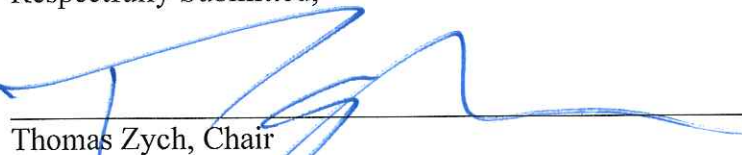
New Business

No new business, Ms. Knittel stated that we have received three cases for June so there will be a meeting.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:56 pm.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Zoning Administrator

