

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
July 15, 2020

MEMBERS PRESENT: Ben Hoen Vice-Chair
Dennis Porcelli
Liza Wolf
Thomas Zych Chair

MEMBERS ABSENT: Denver Brooker

STAFF PRESENT: Karen Knittel Planner II
Christy Lee Administrative Assistant
Pam Roessner Assistant Law Director

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:12 p.m. at which time a quorum was present. Mr. Zych thanked all for their patience and apologized for the glitch that prevented him from joining the meeting and delayed the start of the meeting.

APPROVAL OF THE MINUTES OF THE JUNE 17, 2020 PUBLIC HEARING

Mr. Zych noted a few corrections. Mr. Hoen moved for approval of the minutes with the corrections. Ms. Wolf seconded the motions, 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 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. A 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
JULY 15, 2020

Mr. Zych stated that 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 the case. Once that hearing is closed, the Board will then consider each of the requested variances separately with a separate vote.

Calendar Number 3503

Jim Posch & Joyce Braverman, 2205 Demington Dr., A Single-Fam., requests a variance to a) Section 1121.12(a)(3) to permit a swimming pool to be less than 15' from side & rear property lines; b) to Section 1121.12(a)(2) to permit a pool equipment shed to be less than 5' from rear property line & c) to Section 1121.12(d)(5) to permit the rear yard coverage to be greater than 60%.

Karen Knittel was sworn in by Ms. Roessner.

Mr. Zych asked if the staff report dated July 10, 2020, was for all three variances. Ms. Knittel responded that it was. Mr. Zych stated that with no objections, the staff report dated July 10, 2020, would be entered into the record.

Using a PowerPoint presentation, Ms. Knittel reviewed her staff report as follows:

Context

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

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

Zoning History

Cal. No. 3498 (May 2020) a variance to Section 1121.12(a)(5) was granted to permit an ornamental pool to have side yard setbacks ranging from 2' to 2'8" from the side property line (3' min. required).

Project

The applicant is proposing landscape improvements to their rear yard including a new patio, fence, driveway, and landscaping. Initially, a 41-foot-long ornamental pool was proposed. The revised plan includes an in-ground lap pool to be located 6 feet from the rear and side property lines. (15' min. setback required from rear & side property lines) There will also be a pool equipment shed that will align with the rear wall of the garage with a setback of 3.5' from the rear property line. (5' min. setback required) The rear yard plan results in the rear yard coverage of 68.1%. (60% total coverage is permitted) A code-conforming 6' tall fence with a self-closing and self-latching gate will fully enclose

the rear yard. The fence and dense landscaping will screen the pool from adjoining properties.

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 lap swimming pool will be screened behind a 6-foot wood fence and shrubs.
- A code conforming self-closing and self-latching 6-foot tall gate will be installed across the driveway.
- The lap swimming pool will be set back 6' from the rear and the side property lines, Code Section 1121.12(a)(3) requires a minimum distance of 15' from property lines. (variance required)
- The pool location is adjacent to the neighbor's driveway and garage.
- There is an existing garage is 3.5' from the rear yard, Code Section 1121.12(a)(1) requires detached garages to be a minimum distance of 3' from property lines.
- The pool equipment shed will be located adjacent to the garage with the rear wall of the shed alining with the rear wall of the garage, and therefore will have a setback of 3.5' from the rear property line. Code Section 1121.12(a)(2) requires sheds to have a minimum distance of 5' from property lines.
- The proposed improvements including the lap swimming pool as shown on the revised site plan submitted on July 9, 2020 result in a rear yard coverage of 68.1% or 2673 square feet. Code Section 1121.12(d) permits a maximum of 60% coverage which is 2355 square feet.

If approved, conditions may include:

1. Variance 3503(A) is granted to permit the lap swimming pool to have a setback of 6' from the side and rear property lines as shown in the July 9, 2020 site plan;
2. Variance 3503(B) is granted to permit the pool equipment shed to have a setback of 3.5' from the rear property line as shown in the July 9, 2020 site plan;
3. Variance 3503(C) is granted to permit the total rear yard coverage to be 68.1% as shown on the July 9, 2020 site plan;
4. Approval by the Architectural Board of Review;
5. Receipt of required building permit(s);
6. Receipt of a fence permit; and
7. Complete construction within 24 months of the effective date of this variance.

Mr. Zych asked the applicants to present their project and review their statement of practical difficulty.

The applicants, Jim Posch and Joyce Braverman were sworn in by Ms. Roessner,.

Joyce Braverman reviewed their statement of practical difficulty.

Mr. Zych asked if the Board had questions for the applicants. Mr. Porcelli asked whether the pool equipment shed could be moved further from the property line and asked about noise. Ms. Braverman responded that the back of the shed lines up with the back of the garage, making a visually appealing look for their rear neighbor. Mr. Posch stated that the shed would be brick.

There were no members of the public present and the public hearing was closed.

Mr. Zych asked if there was a motion.

Mr. Hoen stated that regarding Calendar No. 3503A Jim Posch and Joyce Braverman, 2205 Demington Drive, I move to grant the application with conditions for the variance to Section 1121.12(a)(3) to permit a swimming pool to be less than 15' from the side & rear property lines. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that special circumstances exist which are peculiar to the land/structure, in particular, the yard is narrower than the typical yard; a variance granting a side yard setback for an ornamental pool had been previously granted and the variance requested for the lap swimming pool is twice the distance of the setback approved in the ornamental pool variance and the lap pool being installed is not as large as a standard swimming pool; and that the property in question will not yield a reasonable return without the variance as the useable interior rear yard space would be reduced without the variance; the variance is insubstantial and the minimum necessary to make possible the reasonable use of this land/structure as is demonstrated by the fact that the house is an existing nonconforming structure being located closer to the side property line than what the code requires; the essential character of the neighborhood would not be substantially altered as the result of the granting of this variance; the variance would not adversely affect the delivery of government services; the circumstances that exist are not the result of the applicant; the predicament cannot be resolved through a method other than a variance and that the granting of this variance upholds the spirit and intent of the zoning code and that granting this variance will not confer on the applicant any special privilege. If granted the variance shall have the following conditions:

1. Variance 3503(A) is granted to permit the lap swimming pool to have a setback of 6' from the side and rear property lines as shown in the July 9, 2020 site plan;
2. Approval by the Architectural Board of Review;
3. Receipt of required building permit(s);
4. Receipt of a fence permit; and
5. Complete construction within 24 months of the effective date of this variance.

Ms. Wolf seconded the motion. The motion was approved 4-0.

Ms. Wolf stated that in regarding Calendar No. 3503 B Jim Posch and Joyce Braverman, 2205 Demington Drive, I move to grant the application with conditions for the variance to Section 1121.12(a)(2) to permit a pool equipment shed to be less than 5' from the rear property line. After reviewing the application and

other submissions, hearing the evidence under oath, the Board finds and concludes: that special conditions and circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same zoning district that aligning the back of the pool equipment shed to the back of the garage creates a more appealing appearance and that noise should not be an issue as the pool equipment shed is to be brick; the variance in question is insubstantial and is the minimum necessary to make possible the reasonable use of the land and structure and the rear wall of the shed will align with the rear wall of the garage; the essential character of the neighborhood would not be substantially altered as a result of the variance as the location of the shed is an appealing siting and aligns with the rear of the garage and the shed will be brick; this variance would not adversely affect the delivery of government services; and the applicant's predicament feasibly cannot be resolved through a method other than a variance as the most logical siting of the shed is to have its rear wall align with the rear wall of the garage.

1. Variance 3503(B) is granted to permit the pool equipment shed to have a setback of 3.5' from the rear property line as shown in the July 9, 2020 site plan;
2. Approval by the Architectural Board of Review;
3. Receipt of required building permit(s);
4. Receipt of a fence permit; and
5. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen seconded the motion. The motion was approved 4-0.

Mr. Porcelli stated that regarding Calendar No. 3503 C Jim Posch and Joyce Braverman, 2205 Demington Drive, I move to grant the application with conditions for the variance to Section 1121.12(d)(5) to permit the rear yard coverage to be greater than 60%. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes: special conditions exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same zoning district including the narrowness of this property; the property I question will not yield a reasonable return without the variance and that the rear yard improvements will enhance the property; the variance is insubstantial and 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 the variance; the variance would not adversely affect the delivery of government services; the applicant's predicament cannot be resolved through a method other than a variance as is demonstrated by the limited size of the lap pool; the spirit and intent of behind the zoning code would be observed and the granting of the variance will not confer on the applicant any special privilege. If approved the variance shall have the following conditions:

1. Variance 3503(C) is granted to permit the total rear yard coverage to be 68.1% as shown on the July 9, 2020 site plan;
2. Approval by the Architectural Board of Review;
3. Receipt of required building permit(s);
4. Receipt of a fence permit; and
5. Complete construction within 24 months of the effective date of this variance.

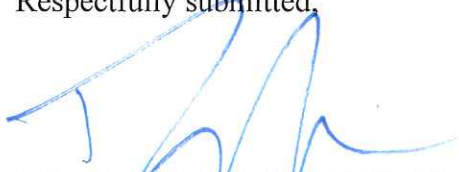
There was no old business to discuss.

Under new business, Karen Knittel stated that she was working with one applicant who may be on the August agenda.

Mr. Hoen stated that he would not be able to attend the August BZA meeting.

With no further business, the meeting was adjourned at 7:45 p.m.

Respectfully submitted,



Thomas Zych, Chair



Karen Knittel, Secretary