

**CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
May 19, 2021**

**MEMBERS PRESENT:**

Liza Wolf	
Thomas Zych	Chair
Ben Hoen	Vice-Chair

**ABSENT MEMBERS:**

Dennis Porcelli
Melissa Fliegel

**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 7:02 p.m. at which time all members were present except for Mr. Porcelli and Ms. Fliegel. A quorum is present.

**APPROVAL OF THE MINUTES OF THE MARCH 17, 2021 MEETING.**

Mr. Hoen moved to approve the Minutes as presented with a minor revision. The motion was seconded by Ms. Wolf. The motion was approved. 3-0

**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. 3519 12401 Cedar Road LLC, 12401 Cedar Rd.**, S-2 Mixed-Use, requests use variance to Sect 1131.02 to permit a freestanding, walk-up ATM on the SW corner of the parcel (use not permitted).

Mr. Hoen motion for consideration of the application to be withdrawn.

Ms. Wolf seconded the motion.

The motion was approved. 3-0

Pam Roessner do you swear or affirm that the testimony that you are about to give is the truth the whole truth and nothing but the truth.

Ms. Knittel "I do"

Mr. Zych asked that the Staff report dated May 11, 2021, be entered into the record. And seeing and hearing no objection the report is so entered.

Ms. Knittel gave her PowerPoint presentation as follows:

**Cal. No. 3520 Chris & Coleen Chin, 2565 Norfolk Road**, 'AA' Single-Family, requests a variance to Section 1121.12(i)(6) to permit additional chain link fence in Berkshire Rd. corner side yard (chain link not permitted).

### Context

- 2565 Norfolk is a single-family house zoned 'AA' Single-Family. The properties to the rear are also zoned 'AA' Single-Family. The properties to the east along Norfolk Road are single-family houses zoned 'A' Single-Family. To the west across Berkshire Road are single-family houses zoned 'AA' Single-Family. Across Norfolk Road, the single-family houses are zoned 'AA' Single-Family.
- The Future Land Use Map of the zoning code shows the area in which the property is located as being used for detached single-family houses.

### Project

The applicant proposes an additional chain link fence to enclose the rear yard. A portion of this fence is located in the corner side yard. The fence would be 4 feet tall.

### Facts

- This is a code conforming parcel in terms of lot width and area. It is 21,420 square feet

and is 121 feet wide at the building line. Per section 1121.06, a code conforming ‘AA’ parcel has a minimum of 15,000 square feet and has a minimum width at the building line of 110 feet.

- This is a corner property located at the corner of Norfolk Road and Berkshire Road.
- The location is one block from the Euclid Heights Boulevard and Berkshire Road intersection.
- After crossing Norfolk Road, Berkshire Road splits into Berkshire Road and Kent Road.
- The house is unusually sited on the parcel as the front of the house faces the corner, putting the house at a diagonal to the parcel.
- Section 1103.03(b)(118) defines ‘yard, corner side’ to mean on a corner lot, the yard between the principal building and the side lot line adjacent to the street and extending from the front yard to the rear lot line.
- A portion of an existing swimming pool is located in the Berkshire Road corner-side yard.
- There is an existing chain-link fence in the Berkshire Road corner side yard.
- There are shrubs and trees located in the yard between the fence and the Berkshire public right-of-way.
- The applicants purchased the property with its current conditions in May 2020.
- The Architectural Board of Review reviewed and approved this fence at their May 4, 2021 meeting.

If approved, conditions may include:

1. Variance 3520 is granted to permit chain link fence in the Berkshire corner side yard as shown on the site plan submitted with the BZA application;
2. Receipt of a fence permit;
3. Maintain the landscaping in front of the fence that screens the chain link fence from being viewed from Norfolk and Berkshire roads; and
4. Complete construction within 18 months of the effective date of this variance.

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

Mr. Zych asked if there were any questions for Ms. Knittel.

Ms. Wolf asked many extra feet are they are requesting to add to the existing chain link.

Ms. Knittel stated that as it is shown on the site plan the existing fence runs parallel to Berkshire. What the applicant wants to do is have the remaining yard fence in for security purposes. So, the chain link would run from the existing chain link to the home's back door. Ms. Knittel stated that she doesn't have the exact measurement for that.

Mr. Chin interjected stating that it is about 30 feet in length.

Mr. Zych asked if there were any further questions for Ms. Knittel.

Pam Roessner do you swear or affirm that the testimony that you are about to give is the truth the whole truth and nothing but the truth.

Mr. Chin "I do". Chris Chin 2565 Norfolk Rd Cleveland Heights, Ohio.

Mr. Zych asked Mr. Chin if either he or a representative submit a request for a variance

Mr. Chin "Yes"

Mr. Zych stated that there was an application submitted on April 14, 2021, he asked Mr. Chin to confirmed that the information is true and correct to the best of his knowledge.

Mr. Chin "Yes".

Mr. Zych asked that the application submitted dated April 14, 2021, be entered into the record, seeing and hearing no objection it was entered.

Mr. Chin went on to explain why they are looking to have the extension of fencing built on the property, he stated that they have a very unusual property with it positioning as a corner lot. Mr. Chin further explained that they wanted to create a more secure area with the backyard, he went on to explain the choice of having a chain link fence and it will keep with the current character of the property. Mr. Chin continued to express that they wanted to keep the character with the current style while adding additional security. He expressed that add a new material such as wood would implead their visibility on the property where a pool exists. Considering that they have a small child they want to keep all visibility available on the property which is why they have chosen to continue with the chain-link fence.

Mr. Zych asked if there were any questions from the board. Mr. Zych stated that he was aware that the chain link fencing would provide better visibility however, there seems to be landscaping that is obstructing the sightline of the new proposed fence, so in essence, how is this helping provide clear visibility and safety.

Mr. Chin stated it would be from that particular side of the yard which is the front yard, it would be from the East which is where the enclosed porch is located. It's more to be able to see better from the side entrance and pool.

Mr. Zych asked if it's a more opaque fence that doesn't change anything about the visibility that you would like to the pool.

Mr. Chin referred to the sign plan to further detail how this would in fact provide the needed security and privacy that he was looking for.

Mr. Zych went on to say that he still wasn't sure how having the chain-link fence and the current landscape that is obstructing would provide more visibility.

Mr. Chin expressed that he doesn't want to have two different types of materials used on the property for fencing therefore he would like for the counted use of chain-link to be permitted.

Mr. Zych went on to say that this is why chain link fencing is not wanted in Cleveland Heights, he then asked Ms. Knittel if the existing chain link fence was non-conforming.

Ms. Knittel "yes" it would be non-conforming material because chain link fencing is not permitted in the front or corner yard.

Mr. Zych “Thank you” that answers my question, he proceeded to ask the other members if they had any additional questions at this time.

Ms. Wolf said that her understanding from the applicant is that the visibility is the existing chain link fence and if he were to change to another material such as wood he would lose that current visibility. That he wants to ensure that the current ecstatic of the property remains, she also mentioned that changing the entire fence wouldn't be cost-effective at this time as well.

Mr. Chin “Yes” at this to change the entire fencing around the home wouldn't finically be in their best interest. At this time, they want to keep the current materials that are in place and additional privacy as well as security.

Mr. Zych mentioned that this is not a request to forcibly remove the current fence but a request for a variance to keep the current material that has been used. Mr. Zych asked if there were any further questions, he went to say that he believed there were no public comments.

Mr. Hoen said that he believed to have heard that there was 200 feet of existing fence currently if so is that an accurate measurement.

Mr. Chin said that he hasn't had an actual survey but he believed it to somewhere in that neighborhood.

Mr. Hoen how much new fencing are you again going to add.

Mr. Chin said that it is just short of 70 feet.

Mr. Zych asked if there were any other questions for the applicant, he stated there were no members of the public present in regards to the project he proceeded to ask for a motion.

Mr. Hoen regarding **Cal. No. 3520 Chris & Coleen Chin, 2565 Norfolk Road, 'AA' Single-Family**, requests a variance to Section 1121.12(i)(6) to permit additional chain link fence in Berkshire Rd. corner side yard (chain link not permitted). Moved to grant for the variance. After hearing the evidence under oath, I find that there are special conditions and circumstances that exist at this property, first this a request to have a fence in the corner side lot if this was an actual backyard as it is being treated this would be a conforming request and therefore the request itself is insubstantial. The property has an existing chain link fence that covers 200 feet of the current property and the applicant is asking to only add 30 feet of additional non-conforming fencing and be it that a portion of that 200 feet is a preexisting non-conforming fence however that was not at the fault of the applicant. And therefore, with staying with the overall look of the property it would be appropriate for the applicant to add a chain-link fence where a chain-link fence would otherwise not be allowed. The applicant would not adversely affect the delivery of government services and are not the action of the applicant as the applicant has recently purchased the property with the existing chain link fence there and therefore only wanting to close that fence and keep that continuous clean look with the property. This cannot be resolved through a method other than a variance being that the chain-link fence is not allowed therefore the variance is necessary for this corner side yard and it would not confer on the applicant any special privilege if granted the variance should have the following conditions.

1. Variance 3520 is granted to permit chain link fence in the Berkshire corner side yard as shown on the site plan submitted with the BZA application;
2. Receipt of a fence permit;
3. Maintain the landscaping in front of the fence that screens the chain link fence from being viewed from Norfolk and Berkshire roads; and
4. Complete construction within 18 months of the effective date of this variance.

The motion was seconded by Ms. Wolf

Mr. Zych added that there should be an additional condition whereas any future owners of the property will have to maintain the current chain-link fence. This additional condition was agreed upon by all members of the Board.

The motion was approved 2-1 with Mr. Zych against.

**Cal. No 3521 Ben & Jill Silver, 2671 Scarborough Road, 'A' Single-Family**, requests a variance to Section 1121.12(i)(1) to permit a fence in the corner side yard along Demington Drive to be taller than the 4' maximum height permitted.

Mr. Zych asked the staff report dated May 11, 2021, to be entered into the record hearing or seeing no object it shall be entered into the record.

Karen Knittel gave her PowerPoint presentation of the staff report.

**Cal. No 3521 Ben & Jill Silver, 2671 Scarborough Road, 'A' Single-Family**, requests a variance to Section 1121.12(i)(1) to permit a fence in the corner side yard along Demington Drive to be taller than the 4' maximum height permitted.

#### Context

- This is a single-family house zoned 'A' Single-Family. It is surrounded by single-family houses zoned 'A' Single-Family.
- The Future Land Use Map of the zoning code shows the area in which the property is located as being used for detached single-family houses.

#### Project

The applicant proposes to fence their rear yard. A portion of the fence would be located in the Demington Road corner side yard.

#### Facts

- This is a code conforming parcel in terms of lot width and area. It is 7,645 square feet and is 55 feet wide at the building line. Per section 1121.06, a code conforming 'A' parcel has a minimum of 7,500 square feet and has a minimum width at the building line of 50 feet.
- This is a corner property located at the corner of Scarborough Road and Demington Drive.
- This house has an attached garage with driveway access to the garage from Demington Drive.

- Section 1103.03(b)(119) defines ‘yard, corner side’ to mean on a corner lot, the yard between the principal building and the side lot line adjacent to the street and extending from the front yard to the rear lot line.
- Code Section 1121.12(i)(1) states that a fence in the corner side yard may have a maximum height of 4-feet.
- The Architectural Board of Review reviewed and approved the fence at their April 20, 2021 meeting with the condition that the fence be setback a minimum of 2-feet from the Demington Drive public sidewalk,
- To the west across Demington Drive, the houses have front yards facing Demington Drive.
- 2666 North Saint James Parkway detached garage and driveway is to the north along the applicants’ rear property line.

If approved, conditions may include:

1. Variance 3521 is granted to permit a 6-foot tall fence to be installed a minimum of 2' from the Demington Drive public sidewalk as shown on the site plan submitted with the BZA application;
2. Receipt of a fence permit;
3. Install and maintain the landscaping in front of the fence along Demington Drive as shown on the landscape plan submitted with the BZA application;
4. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel said the applicant was present and prepared to briefly review their statement of practical difficulty.

Mr. Zych asked if there were any questions for Ms. Knittel. He asked that the applicant be sworn in.

Pam Roessner do you swear or affirm that the testimony that you are about to give is the truth the whole truth and nothing but the truth.

Ben & Jill Sliver 2671 Scarborough Road “I do”

Mr. Zych asked if the application that was submitted on April 14, 2021, and could they confirm that was their application.

Ms. Sliver that is correct.

Mr. Zych added could they also confirm that the application is true and correct to the best of their knowledge.

Ms. Sliver “they are”.

Mr. Zych said that hearing and seeing no objection asked that the applicant dated April 14, 2021, be entered into the public record.

Mr. and Mrs. Silver went on to express the reason behind the need for the variance for the fence, due to wear and tear on the current fence they would like to replace that fence with a 6 feet tall

scalloped wood fence. They added that the height of the fence would provide additional privacy as well as added security to the property considering that they're on a corner lot.

Mr. Zych asked if there was anyone from the public that would like to testify or other public comments.

Ms. Knittel stated there were neither.

Mr. Zych asked if there were any questions from the board.

Mr. Hoen asked considering that this is a corner property, the side is primarily used as a back yard is that correct.

Mr. and Mrs. Silver "Correct"

Mr. Zych asked if there was a motion.

Mrs. Wolf regarding **Cal. No 3521 Ben & Jill Silver, 2671 Scarborough Road, 'A' Single-Family**, requests a variance to Section 1121.12(i)(1) to permit a fence in the corner side yard along Demington Drive to be taller than the 4' maximum height permitted.). Moved to grant for the variance. After hearing the evidence under oath, I find that there are special conditions and circumstances that exist at this property, where the side yard is really the applicant back yard so the proper use or best use of the property of a backyard for security and privacy purposes is to have a 6 feet tall fence as opposed to the code conforming 4-foot-tall fence. The essential character of the neighborhood will not be sustainably altered as there are other properties with higher than 4-foot fences in the area. The variance would not adversely affect the delivery of governmental severies in their back yard. The property owner has testified that they purchased the property without the knowledge of the zoning restrictions as indicated on their submission. The following condition circumstances exist that are not as a result of the actions of the applicant as this is a corner lot and the best use of the property for privacy and security would be to have a higher fence. If granted the variance should have the following conditions

1. Variance 3521 is granted to permit a 6-foot tall fence to be installed a minimum of 2' from the Demington Drive public sidewalk as shown on the site plan submitted with the BZA application;
2. Receipt of a fence permit;
3. Install and maintain the landscaping in front of the fence along Demington Drive as shown on the landscape plan submitted with the BZA application;
4. Complete construction within 18 months of the effective date of this variance.

Mr. Hoen seconded the motion.

The motion was approved 3-0.

**Cal. No. 3522 Frank & Sarah Kuhar, 2613 Wellington Road, 'A' Single-Family**, requests a variance to Section 1121.12(a) (3) to permit a swimming pool to be less than 15' from the side (south) property line.

Mr. Zych asked that the staff report dated May 11, 2021, be entered into the public record, hearing and seeing no objection the report was so entered.

Ms. Knittel gave her PowerPoint presentation of the staff report as follows:

**Cal. No. 3522 Frank & Sarah Kuhar, 2613 Wellington Road**, ‘A’ Single-Family, requests a variance to Section 1121.12(a) (3) to permit a swimming pool to be less than 15’ from the side (south) property line.

#### Context

- This is a single-family house in an ‘A’ Single-Family District. It is surrounded by single-family houses zoned ‘A’ single family.
- The Future Land Use Map of the zoning code shows the area in which the property is located as being used for detached single-family houses.

#### Project

The applicant proposes to construct a swimming pool that would be set back from the side (south) property line 8 feet where the code requires swimming pools to be setback from property lines a minimum of 15 feet. The pool would be 15’ from the rear (east) property line and approximately 67 feet from the north side property line. The pool would be enclosed by a 6-foot fence with a self-latching and self-closing gate across the driveway.

#### Facts

- This is a code conforming parcel in terms of lot width and area. It is 20,833 square feet and is 80 feet wide at the building line. Per section 1121.06, a code conforming ‘A’ parcel has a minimum of 7,500 square feet and has a minimum width at the building line of 50 feet.
- The detached garage/office building is located to the north of the pool.
- The detached garage at 2621 Wellington Road is located to the south of the adjacent property.
- There is an existing 6-foot fence that surrounds the rear yard with a 2-foot gate at the driveway. The applicant states that a self-latching and the self-locking latch will be installed on the gate prior to the pool installation.
- Code Section 1121.12(a)(3) requires swimming pools to be a minimum of 15 feet from the rear lot line and the side lot line.
- The swimming pool will be code compliant except for the south side yard setback for which this variance is being requested.
- The rear yard has a higher elevation at the rear and south property lines and slopes down towards the house and driveway.
- There is a storm drain in the rear yard between the garage and the proposed pool site.
- The Future Land Use Map of the zoning code shows the area in which the property is located as being used for detached single-family houses.
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If approved, conditions may include:

5. Variance 3522 is granted to Section 1121.12(a) (3) to permit a swimming pool to be 8 feet from the side (south) property line as shown on the site plan submitted with the BZA application.

6. A self-latching and self-locking latch will be installed on the gate;
7. Approval of the Architectural Board of Review;
8. Receipt of a Building Permit; and
9. Complete construction within 24 months of the effective date of this variance.

Ms. Knittel said the applicant was present and prepared to review his statement of practical difficulty.

Mr. Zych asked if there was any comment from staff, there were none.

Pam Roessner do you swear or affirm that the testimony that you are about to give is the truth the whole truth and nothing but the truth.

Mr. Kuhar “ I do” 2613 Wellington Road.

Mr. Zych asked if the applicant had submitted this application.

Mr. Kuhar responded “I did”

Mr. Zych asked if the contents of the application dated April 14, 2021, are true and correct.

Mr. Kuhar responded “yes”

Mr. Zych said that hearing and seeing no objection let the application dated April 14, 2021, be entered into the public record.

Mr. Kuhar went on to explain the reason for the request for a swimming pool to be 8 feet from the house on the south side of the property. He went on to explain the security measure that will be put into place to ensure safety for the family and the surrounding neighbors.

Ms. Knittel stated that there was a public comment sent via email from James and Mary Hurley of 2605 Wellington Road. The Hurley expressed their support of Kuhar’s project to build a pool in the backyard.

Mr. Zych asked that the comment be placed into the public record as well. Mr. Zych then asked if there was a motion on the floor.

Mrs. Wolf said that regarding **Cal. No. 3522 Frank & Sarah Kuhar, 2613 Wellington Road**, ‘A’ Single-Family, requests a variance to Section 1121.12(a) (3) to permit a swimming pool to be less than 15’ from the side (south) property line. . Moved to grant for the variance. After hearing the evidence under oath, I find that there are special conditions and circumstances that exist at this property, the elevation of proportions of the back yard makes it difficult to safely set back the pool 15 feet from the side south property line. With that being said there are no safety concerns along with the current 6 feet fence that surrounds the property the addition of a latch or self-closing fence by the entrance of the property. The variance is insubstantial due to the current elevation of the property and being that there is no other location for the pool to be built. This will not affect the essential character of the neighborhood as it is hidden by a 6 feet fence. The variance would not affect the delivery of governmental services, the property owner has

indicated that they purchased the property without the knowledge of the zoning restrictions. If granted the variance would have the following conditions.

1. Variance 3522 is granted to Section 1121.12(a) (3) to permit a swimming pool to be 8 feet from the side (south) property line as shown on the site plan submitted with the BZA application.
2. A self-latching and self-locking latch will be installed on the gate;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit; and
5. Complete construction within 24 months of the effective date of this variance.

Mr. Hoen seconded the motion.

The motion was approved 3-0.

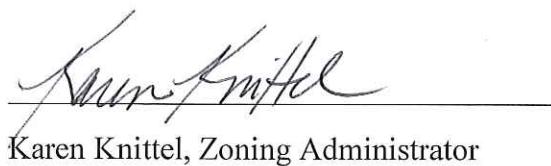
There was no old business to discuss.

Ms. Knittel reported that there was at least one application for the next BZA meeting.

The meeting adjourned at 8:02 PM.



Thomas Zych, Chair



Karen Knittel, Zoning Administrator

