

**CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
July 22, 2021**

**MEMBERS PRESENT:**

Dennis Porcelli	
Thomas Zych	Chair
Ben Hoen	Vice-Chair

**ABSENT MEMBERS:**

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 7:01 p.m. at which time all members were present with the absence of Ms. Wolf. A quorum is present.

**APPROVAL OF THE MINUTES**

Mr. Hoen moved to approve the minutes of both the April 21, 2021 and May 19, 2021 public hearing as submitted. Ms. Wolf second the motion which carried 4-0.

**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 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. 3525**

Muhammad Shazam & Rubina Hussain 2599 North Park Blvd., AA Single-Family requests a variance to Sect. 1121.12(i)(1) to permit a rear fence in the Woodmere Dr. corner side yard to be taller than 4' maximum height permitted.

Pam Roessner swore in all who would be commenting on the case.

The staff report dated July 13, 2021, was entered into the record.

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

#### **Context**

- This is a single-family house zoned 'AA' Single-Family. The houses to the east and west along North Park Boulevard are also zoned 'AA' Single-Family. The houses to the north or rear of the property along Woodmere Drive are two-family houses zoned 'A' Single-Family. South across North Park Boulevard is parkland.
- 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 replace a fence along their rear yard property line. A portion of the proposed fence is located in the Woodmere Drive corner side yard. The proposed fence is 6 feet tall.

#### **Facts**

- This is a code conforming property in terms of lot width and area. It is 29,200 square feet and is 108 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 North Park Boulevard and Woodmere Drive.
- This house has an attached garage with driveway access from North Park Boulevard.
- There is an existing wood fence along the rear property line that is approximately 5 to 6 feet tall. The existing chain link fence along Woodmere Drive is not being replaced.
- Across Woodmere Drive (2571 North Park Blvd.) is a tennis court that has a chain-link fence that is approximately 8 to 9 feet tall
- The house immediately to the rear of the applicant, 2453-5 Woodmere Drive is a two-family property.
- 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.

If approved, conditions may include:

1. Variance 3525 is granted to permit a 6-foot tall fence to be installed along the rear property line with a portion of it being in the Woodmere Drive corner side yard as shown on the site plan submitted with the BZA application;

2. Approval of the Architectural Board of Review;
3. Receipt of a fence permit; and
4. Complete construction within 18 months of the effective date of this variance.

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

Mr. Zych stated that an application was submitted on June 9, 2021. He asked the applicant if her was familiar with that application and to the best of his knowledge were the facts stated in the application are accurate and correct.

Mr. Shazam and Ms. Hussain answered affirmatively.

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

Muhammad Shazam& Rubina Hussain 2599 North Park Blvd. stated that their property was a corner property that this yard is both used as both a back and side yard. They further explained that having a fence on the property would add privacy and added security to their property but allow for the ability to utilize the space. Due to the foot traffic from those who walk to Cain Park, this will allow for them to have privacy when using the space.

Mr. Zych asked if there were any public comments at this time.

Ms. Knittel replied that copies of two emails were shared with the BZA members: an email from Stan and Ingrid Czuma, 2448 Woodmere Drive dated June 14, 2021, supporting the request for a variance, and an email dated July 14, 2021, the applicant's neighbor Bill Saltzman also in support of the fence.

Mr. Zych stated that this would be entered into the record.

Mr. Zych asked if there was a motion

Mr. Hoen Moved regarding Calendar 3525, Muhammad Shazam & Rubina Hussain, 2599 North Park Blvd., AA Single-Family requests a variance to Sect. 1121.12(i)(1) to permit a rear fence in the Woodmere Dr. corner side yard to be taller than the 4' maximum height permitted. After reviewing the application and other submissions and hearing the evidence under oath I find and conclude that special circumstances and conditions exist at this particular property, such indicated that having the fence be taller than 4' maximum height permitted due to this property setback as a corner side yard. Approval by the Architectural Board of Review; Receipt of required building permit(s); Receipt of a fence permit; and complete construction within 24 months of the effective date of this variance. The spirit and intent behind the zoning requirement is being observed. 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 3525 is granted to permit a 6-foot tall fence to be installed along the rear property line with a portion of it being in the Woodmere Drive corner side yard as shown on the site plan submitted with the BZA application;
2. Approval of the Architectural Board of Review;
3. Receipt of a Fence Permit; and
4. Complete construction within 18 months of the effective date of this variance.
- 5.

Ms. Wolf second the motion; the motion carried 4-0.

Cal. No. 3524

Greg & Mary Pat Jolivette, 2791 Scarborough Rd., 'A' Single-Family, propose to build a 46' by 26' garage/indoor basketball court accessory building request variances to (a)Sect. 1121.12(a)(2) to permit rear yard, west side yard & east side yard setbacks less than the minimum 5 feet; (b) Sect.1121.12(d)(1) to permit the accessory building to cover more than 20% of rear yd; (c) Sect. 1121.12(e) to permit garage floor area to be greater than 733 square feet maximum permitted; (d) Sect. 1121.12(g) to permit accessory building height to be taller than the maximum of 15 feet.

Pam Roessner swore in all who would be commenting on the case.

Mr. Zych stated that without objection, the staff report from Ms. Knittel, dated June 9, 2021, was entered into the record.

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

Context

- This is a single-family house in an 'A' Single-Family District. The properties surrounding this address are single-family houses zoned 'A' Single-Family.
- The Future Land Use Map from the Master Plan shows this area as being used as detached single-family houses.

Project

The applicant proposes to construct a 46' by 26' replacement garage/basketball/sports accessory building replacing the existing detached garage.

Facts

- This is a code conforming property in terms of lot width and area as it is 60 feet wide and has 9,504 square feet in area. Per Section 1121.06, a code conforming 'A' single-family property is a minimum of 50 feet wide at the building line and has a minimum of 7,500 square feet in area.
- County records state this house was built in 1920.
- The house has a carport across the driveway. The site plan shows the driveway to be 8 feet wide from the front of the public right of way to the back of the house.
- The properties to the rear and west have detached garages and the adjacent property to the east has an attached garage.
- Code Section 1121.12(a)(1) requires detached garages to have a rear yard and side yard setbacks of a minimum of 3 feet.
- Code section 1121.12(a)(2) requires pool houses, storage sheds, and other similar to have rear and side yard setbacks of a minimum of 5 feet.
- This accessory building is proposed to serve as an indoor basketball/sports activity area and as a garage, therefore code Section 1121.12(a)(2) setback regulations apply and a variance is required.
- The current detached garage is setback 3 feet from both the rear and west property lines,
- Code Section 1121.12(d)(1) states that accessory buildings can cover a maximum of 20% of the rear yard.
- The applicants' rear yard is 3,171 square feet and n the proposed accessory building is 1196 square feet resulting in 37.7% rear yard coverage.
- Code Section 1121.12(e) states that the maximum floor area of a garage can be is 500 square feet plus 1 square foot for each 15 square feet of lot area greater than 6,000 square feet.
- The applicants' lot is 9,504 square feet; the code would permit a garage floor area of up to 733 square feet.

- The garage/basketball/sports area building will not have interior walls, therefore the entire floor area is reviewed as being available for garage purposes.
- Pavement to the garage is shown on the site plan as remaining as it currently is with 22' width at the garage/basketball/sports area accessory building.
- Pavement for parking is 14.5% coverage, code 1121.12(d)(3) states that the maximum rear yard coverage of pavement related to parking is 30%.
- The total rear yard coverage with the proposed accessory building is 52.2%; Code Section 1121.12(d)(5) permits a maximum rear yard coverage of 60%.
- Code Section 1121.12(g) states that the maximum height of an accessory structure is 15 feet.
- Section 1103.03(14) defines building height as the mean height level between eaves and ridge line for gambrel, gable, or hip roofs.
- The proposed building has a gable roof and measures 17' to the eaves and has a peak that is 23.5' tall. The mean height is 20' 3".

If approved, conditions may include:

1. Variance 3524 is granted:
  - (a) to permit the rear yard, west side yard & east side yard setbacks to be 3 feet where the minimum setback required is 5 feet
  - (b) to permit the accessory building to cover 37.7% of the rear yard where the maximum rear yard coverage permitted for an accessory building is 20%;
  - (c) to permit garage floor area to be 1,196 square feet where 733 square feet is the maximum permitted;
  - (d) to permit the accessory building height to be 20'3" where 15 feet is the maximum height permitted.
2. Survey of the rear yard to establish the property lines;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit;
5. The garage/basketball court accessory building shall be used only for family activity;
6. The garage/basketball court accessory building shall not be rented or used as a commercial or community space; and
7. Complete construction within 18 months of the effective date of this variance.

Mr. Zych stated that an application was submitted on June 9, 2021, 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.

Mr. Jlivette answered affirmatively and confirmed that he was sworn in.

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

Mr. Jolivette went on to further explain why he was seeking the variance. He explained that the current garage that has been in existence since the home was built is no longer functional for today's modern family of eight. He further detailed that a six-bedroom home with children having limited play space has become more apparent in light of the past 18 months of COVID-19. Mr. Jolivette went on to express how the children need an indoor play area considering winters, and that this structure would allow for

additional storage a providing more adequate parking for the family's vehicles. He reviewed why an addition could not be added to the house.

Mr. Zych asked if there were any questions for the applicant from the Board.

Mr. Procelli and Mr. Zych both asked for clarification about how the new structure would function better for the property.

Mr. Jolivette went on to explain that the house is over 100 years old, and the garage wasn't designed for today's modern vehicles. He stated that he needed the ability to turn his vehicles around in the garage. Also, they are looking to full advantage of the new space not only for their vehicles but for their children to have more adequate space for play. He went on to say that the green space that they have now isn't viable for use, his many attempts to have grass grow have not been successful. He said that having such a large home with six bedrooms needs a large garage to match and that it would bring more value to the property.

Mr. Zych asked if there were any comments from the public.

Ms. Knittel a statement was shared with BZA members dated July 16, 2021, from Stephanie Hronek, 2792 Coleridge, stating that she has no problem with the garage size or design, it's rather attractive. However, her concern is the control of the water runoff given that this building is twice the size of the existing garage.

Mr. Zych asked the applicant if he has a response to the concern of the potential water runoff.

Mr. Jolivette stated that the plan that he has submitted was an outline of the possible design of the new structure and that any changes that may need to be made to ensure that no water damage is incurred due to the structure will be done.

Mr. Porcelli again asked if it was possible to keep the current structure and possibly make the driveway wider.

Mr. Jolivetter stated that widening the driveway would further limit the space they have for recreation use on the property by having the new structure this would allow for them to accommodate all the needs of the family.

Mr. Zych asked if there were further questions and if there was a motion on the floor.

Mr. Hoen moved regarding Calendar 3424, Greg and Mary Pat Jolivette, 2791 Scarborough Rd., A Single-Family, propose to build a 46' by 26' garage/indoor basketball court accessory building request variances to (a)Sect. 1121.12(a)(2) to have rear yard, west side yard & east side yard setbacks less than the minimum 5 feet. After reviewing the application and other submissions and hearing the evidence under oath I find and conclude that special circumstances and conditions exist which are peculiar to the land/structure involved which are not generally applicable to other land/structures in the same zoning district, the property in question will not yield a reasonable return, the variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure by providing additional parking and recreation space for the family while adding property value to the home. As we have seen the past 15 months due to the pandemic outdoor space in homes are more utilized and therefore some changes are required. The addition of the basketball court area along with an extended garage will allow for the property's entire space to be utilized. 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 following special conditions or circumstances exist that are not a result of

actions of the applicant such as the size of the current garage that limits parking of the family vehicles and the building of a recreational area for the family in light of the past 15 months of the Covid-19 pandemic and shut down. The spirit and intent behind the zoning requirement would be observed and substantiation justice. The granting of the variance will not confer on the applicant any special privilege.

If granted the variance should include the following conditions

1. Variance 3524(a) is granted to permit the garage/indoor basketball court accessory building to have the rear yard, west side yard & east side yard setbacks to be 3 feet;
2. Survey of the rear yard to establish the property lines;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit;
5. The garage/basketball court accessory building shall be used only for family activity;
6. The garage/basketball court accessory building shall not be rented or used as a commercial or community space; and
7. Complete construction within 18 months of the effective date of this variance.

Ms. Wolf second the motion which carried 3-1.

Mr. Hoen moved regarding Calendar 3424, Greg and Mary Pat Jolivette, 2791 Scarborough Rd., A Single-Family, propose to build a 46' by 26' garage/indoor basketball court accessory building request variances to **(b) Sect.1121.12(d)(1) to permit the accessory building to cover more than 20% rear yd;**

1. Variance 3524(b) is granted to permit the garage/indoor basketball court accessory building to cover 37.7% of the rear yard;
2. Survey of the rear yard to establish the property lines;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit;
5. The garage/basketball court accessory building shall be used only for family activity;
6. The garage/basketball court accessory building shall not be rented or used as a commercial or community space; and
7. Complete construction within 18 months of the effective date of this variance.

Mr. Hoen moved regarding Calendar 3424, Greg and Mary Pat Jolivette, 2791 Scarborough Rd., A Single-Family, propose to build a 46' by 26' garage/indoor basketball court accessory building request variances to **(c) Sect. 1121.12(e) to permit garage floor area to be greater than 733 square feet maximum permitted;**

1. Variance 3524(c) is granted to permit the garage/indoor basketball court accessory building to have a garage floor area to be 1,196 square feet;
2. Survey of the rear yard to establish the property lines;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit;
5. The garage/basketball court accessory building shall be used only for family activity;
6. The garage/basketball court accessory building shall not be rented or used as a commercial or community space; and
7. Complete construction within 18 months of the effective date of this variance.

Ms. Wolf second the motion which carried 3-1

Mr. Hoen moved regarding Calendar 3424, Greg and Mary Pat Jolivette, 2791 Scarborough Rd., A Single-Family, propose to build a 46' by 26' garage/indoor basketball court accessory building request variances to **(d) Sect. 1121.12(g) to permit accessory building height to be taller than the maximum of 15 feet.**

1. Variance 3524(d) is granted to permit the garage/indoor basketball court accessory building height to be 20'3";
2. Survey of the rear yard to establish the property lines;
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit;
5. The garage/basketball court accessory building shall be used only for family activity;
6. The garage/basketball court accessory building shall not be rented or used as a commercial or community space; and
7. Complete construction within 18 months of the effective date of this variance.
- 8.

Ms. Wolf second the motion which carried 3-1.

#### CAL. NO. 3526

Robert Schulte & Mary Zodnik, 3321 Hyde Park Ave., A Single-Family request a variance to Sect. 1121.12(i)(1) to permit a fence in the Minor Park Lane corner side yard to be taller than the 4' maximum height permitted.

Pam Roessner swore in all who would be commenting on the case.

Mr. Zych stated that without objection, the staff report from Ms. Knittel, dated June 13, 2021, was entered into the record.

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

#### **Context**

- This is a single-family house zoned 'A' Single-Family.
- The area around the house is zoned 'A' Single-Family. The Hyde Park properties to the east, west, and south are single-family houses. The property to the north behind the applicant is a two-family house with a rentable third floor.
- The Future Land Use Map of the Master Plan shows the area in which the property is located as being used for detached single-family houses.

#### **Project**

The applicants propose to replace an existing 4-foot to 5'foot tall wood fence with a new 6-foot tall fence wood fence with the top 1-foot of the fence being lattice.

#### **Facts**

- This is a code conforming parcel in terms of lot width and area. It is 50' wide and has 7,500

square feet in area. 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 Hyde Park Avenue and Minor Park Road.
- The house immediately to the rear of the applicant, 3220 Berkeley is a two-family house with a rentable third floor.
- 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.
- Hyde Park Avenue is north of Cain Park. During the Cain Park performance season patrons park their vehicles along the adjacent streets.
- Driveway access to the applicant's detached garage is from Minor Park Lane.
- Across Minor Park Lane is the driveway and garage to 3330 Berkeley Road and the driveway and garage to 3334 Berkeley Road.
- The Architectural Board of Review is scheduled to review this fence at their July 21 meeting. The ABR action will be reported at the BZA meeting.

If approved, conditions may include:

1. Variance 3526 is granted to permit a 6-foot tall fence to be installed in the Minor Park Lane corner side yard as shown on the site plan submitted with the BZA application;
2. Approval of the Architectural Board of Review;
3. Receipt of a fence permit; and
4. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel stated that the applicants were present and prepared to review their statement of practical difficulty.

Mr. Zych stated that an application was submitted on July 13, 2021, he asked that applicant if they were familiar with the application and to the best of his knowledge were the facts stated in the application are accurate and true.

Mr. Schulte and Ms. Zodnik answered affirmatively and confirmed that they had been sworn in.

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

Mr. Schulte and Ms. Zodnik explained the request for the fence placement on the property's back yard considering that their property is located on a corner of Minor Park Lane. They said that the fence would allow for additional privacy as well as security. They said that being so close to Cain Park results in a lot of pedestrians being in their neighborhood. They further explained that this would replace the current 4' to 5' foot fence, allowing for a newer fence bringing additional value to the home.

Mr. Zych asked if there was any public comment.

The applicants shared two letters from neighbors in support of the project: Beverly Giordano 3325 Hyde Park Ave and Robert Troupe 3330 Berkeley Road.

Mr. Zych asked if there was any further question from staff and if there was a motion on the floor.

Ms. Wolf moved regarding Calendar No. 3526 Robert Schults & Mary Zodnik, 3321 Hyde Park Ave., A Single-Family request a variance to Sect.1121.12(i) to permit a fence in the Minor Park Lane corner side yard to be taller than the 4' maximum height permitted. After reviewing the application and other submissions and hearing the evidence under oath I find and conclude that special circumstances and

conditions exist which are peculiar to the land/structure involved which are not generally applicable to other land structures in the same zoning direct, in particular, this is property yard considering that the property is corner property the back is used as both a back and side yard, and enlighten of the current circumstances of the past 15 months of the Covid-19 pandemic the use of the back yard has become utilized and therefore more privacy and security are needed. The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the permitted property. the essential character if the neighborhood would not be substantially altered as a result of the variance giving the actual use of the building, and if this wasn't a corner side property it would be compliant with zoning. The fence has been designed and detailed to be complementary to the existing home. The variance would not adversely affect the delivery of government services and the spirit and intent behind the zoning requirement would be observed and substantial justice is done by granting the variance because again in terms of the structure the visibility of the site is all with the zoning requirements. If granted, the variance shall have the following conditions:

1. Variance 3526 is granted to permit a 6-foot tall fence to be installed in the Minor Park Lane corner side yard as shown on the site plan submitted with the BZA application;
2. Approval of the Architectural Board of Review;
3. Receipt of a fence permit; and
4. Complete construction within 18 months of the effective date of this variance.

Second by Mr. Hoen; the motion carried 4-0.

#### Old Business

There was no old business to discuss.

#### New Business

There will be a meeting on August 18, 2021, there are currently two cases.

The meeting adjourned at 8:47 p.m.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary