

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
JUNE 21, 2017

MEMBERS PRESENT:	Gail E. Bromley George A. Gilliam Benjamin Hoen Liza Wolf	Chair
MEMBER ABSENT:	Thomas Zych	Vice Chair
STAFF PRESENT:	Vesta A. Gates Karen Knittel Tiffany Hill Richard Wong	Zoning Administrative Assistant City Planner Assistant Law Director Planning Director

CALL TO ORDER

Ms. Bromley called the regular meeting to order at 7:00 p.m. at which time all members were present except Mr. Zych whose absence was excused.

APPROVAL OF THE MINUTES OF THE APRIL 19, 2017 PUBLIC HEARING

Mr. Hoen moved to approve the April 21<sup>st</sup> minutes as distributed. Mr. Gilliam seconded the motion which carried 4-0.

THE POWERS OF THE BOARD AND PROCEDURES OF THE  
BOARD OF ZONING APPEALS PUBLIC HEARINGS

For the benefit of the applicants, representatives, and the public, Ms. Bromley stated that these hearings are quasi-judicial and certain formalities must be followed as if this were a court of law. Those who wish to speak regarding each case will be placed under oath. Following a presentation by City staff, each applicant may present his or her case. The Board will open a public hearing to obtain testimony from any other persons and the applicant will have a chance to respond to any such testimony. The Board will then ask questions of the applicant and render its decision. The formal nature of these proceedings is necessary because the applicant is asking for an extraordinary remedy called a variance. A variance is formal permission for the applicant not to comply with the municipal ordinances by which all other citizens are bound. The factors and criteria weighed by the Board with respect to the granting of variances are set forth in the Zoning Code and have been made available to all applicants. The burden is upon each applicant to establish the right to a variance under these criteria. The applicant must demonstrate circumstance unique to the physical character of his or her property, not personal difficulty, hardship or inconvenience. All variances granted by this Board are subject to review by City Council.

PUBLIC HEARING

JUNE 21, 2017

CONTINUED CASE

CALENDAR NO. 3423

The Orlean Company, 2728 Euclid Heights Blvd., "MF3" Multi-Family District, requests variance to Code Section 1161.03(a)(3) to permit 13 enclosed parking spaces (16 enclosed parking spaces req'd.).

This request was continued for 60 days from the May agenda.

NEW CASE

CALENDAR NO. 3429

Travis Cox, 2500 Edgehill Rd, 'A' single-family district, requests a variance to Code section 1121.12(a)(1) to permit a garage with 0' setback to side lot line (min 3' req'd.) and to section 1121.12(g) to permit a garage with a height of 16.23' (max. ht. is 15').

All those who wished to testify regarding this request were sworn in by Ms. Hill.

Ms. Knittel's staff report was as follows:

The single-family house is located in an 'A' single-family neighborhood near the corner of Edgehill and Kenilworth roads. This property is pie-shaped and has a small dog-leg at the rear, behind the garage. The rear yard is abutted by the rear yards of houses on Edgehill and Kenilworth roads and Euclid Heights Boulevard, all in an 'A' single-family district.

The applicant received a variance in 2009 to permit the installation of an 18' by 36' below-ground swimming pool behind the garage that is 12' from the rear and side property line (15' minimum is required). This below-ground pool has water and electrical lines that run from the house to the rear of the garage where the mechanical box for the swimming pool is located. A condition of that approval requires that the pool be enclosed by a 6' tall fence with a self-closing and self-latching gate. The applicant has been asked to provide documentation that the gate is self-closing and self-latching and that the fence enclosing the rear yard is 6' tall in its entirety. Failure to prove compliance may result in voidance of the 2009 pool variance by the Zoning Administrator.

The applicant's garage was destroyed by a tree and the applicant began construction on a new garage in the same location as the original garage. In late April 2017, a complaint was made to the City regarding the height of the garage. The Building Department issued a stop work order as no permits had been issued. The applicant submitted plans to the Architectural Board of Review for the garage and submitted a request to the Board of Zoning Appeals for the required variances.

The applicant presented two garage design plans to the Architectural Board of Review. The ABR Option B was a code conforming height that includes a 2<sup>nd</sup> level storage area in the rear of the garage and ABR Option A is the garage plan that has a larger 2<sup>nd</sup> level for storage that requires a height variance and was submitted with the current variance application. In a 2 to 1 vote, the Architectural Board of Review approved both of the garage plans.

The applicant is requesting variances to construct an 18.6' by 22' two car garage set back 0' from the side property line (min. 3' setback required) and a height variance to allow the garage to be 16.23' feet tall (max. height is 15'). The garage includes a sloped roof that will cover the patio behind the garage. The patio was constructed prior to the current garage project. The applicant has stated that the sloped roof will be a minimum of 3' from the side property line.

This parcel is an unusual shape which results in the width of the parcel reducing from the front property line to just behind the garage where the 'dog-leg' is located. The property is approximately 56 feet wide at the rear of the house, 46 feet wide at the garage's front elevation and approximately 35 feet wide at the narrowest point of the yard just before the 'dog-leg'. There is a rear deck attached to the rear of the house. A large tree with a tree house structure is immediately behind the deck and is attached by stairs to the deck. Grass is between the driveway and the deck and large tree. The water and electric line to the pool is

buried and runs from the house to the southeast corner of the garage at the edge of the driveway pavement.

There are no other accessory buildings on the property. Zoning Code permits a maximum of two detached accessory buildings on a lot.

If approved, conditions may include:

1. Proof of compliance with the 2009 variance;
2. Receipt of a Building Permit;
3. The garage and storage area cannot be used as an accessory dwelling or apartment;
4. The sloped roof of the patio must be located a minimum of 3' from the side property line;
5. A storm water management plan for the garage must be approved by the Planning Director;
6. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the garage's height or length; and
7. Complete construction within 18 months of City Council's approval of this resolution.

That being the end of Ms. Knittel's staff report, Ms. Bromley asked the applicant to come to the microphone.

Travis Cox, 2500 Edgehill Rd., stated that he didn't have much to add to Ms. Knittel's report. He only wanted to point out that by raising the roof in the back of the garage more space is created for storage and more headroom to access that storage. Regarding water management he explained that when he put in the swimming pool he also installed a French drain around the whole property. Two separate sump pumps are buried underground to collect water which is pumped to a drain that the pumps are attached to. He had also installed a rain barrel.

Ms. Bromley explained that the public hearing will be opened for anyone from the audience who would like to speak.

Ms. Hill asked the applicant to speak to his practical difficulty.

Ms. Bromley suggested that what had been helpful for the Board in the past was for the applicant to speak to the statements made in the letter of practical difficulty.

Mr. Cox stated regarding factor A, the water and electric lines for the swimming pool are buried underground and the pumps and filter for the pool are located inside the garage to reduce the noise that runs 24/7, all summer long. Those lines run to the back corner of the former garage. These are the reasons for locating the garage in the same place as the previous garage. He had not been aware that he could not build the garage in the same location. He stated regarding the height variance that raising the roof that extra height will allow more storage and access to that storage. Regarding the essential character of the neighborhood, he stated

that two different proposals have been approved by the ABR. The garage height when viewed from the street is code-conforming. Only the neighbor abutting the rear yard would view the higher part of the roof. The variance will not affect delivery of any governmental services. The property was purchased without knowledge of these zoning restrictions. The only space added to the footprint of the previous garage is the additional space needed for the staircase to get up to the second storage level. Regarding any special conditions that are a result of actions of the owner, he stated that there were none. He pointed out the odd shape of the lot, stating that most people don't have a lot that is wide in the front and so narrow in the back. Because of this shape the front of the garage is 7 feet from the property line while the rear corner is on the property line. Regarding whether the predicament can be resolved without the variance, with the location of the buried water and electric lines and the narrowness of the lot, he couldn't see how the garage could be located anywhere else. The spirit and intent behind the zoning requirement would be observed because this is the only place the garage can be located. As to the height variance, the front of the structure is code conforming and only the rear portion of the roof will be raised minimally to accommodate storage. The granting of the variance will not confer any special privilege because the garage will be in the same place that it was and will only be slightly larger than the previous garage. He stated that he had nothing else to add and would be happy to answer any questions from the Board.

Ms. Bromley explained that the next step is to open public hearing. She added that the Board has also received the following 3 letters regarding this request that will be entered into the record: Joanna Hardis, 2508 Edgehill Road, Christopher Boggs, 2525 Euclid Heights Boulevard, and Virginia Miles 2480 Kenilworth Road.

#### PUBLIC HEARING OPENED

Christopher Boggs, 2525 Euclid Heights Boulevard, stated that speaking as a neighbor whose property abuts this rear yard and has full visibility of his improvements to this garage, he didn't have any problems with it. He personally felt the reason people choose to live in Cleveland Heights is to enjoy the appeal of a city but also having the space to do these sort of improvements. He stated Travis Cox has been nice enough to assist me with a number of my rental properties and his work is always of the highest quality. He also ensures the maintenance of the integrity and history of this wonderful neighborhood we all enjoy and I fully support this project.

Virginia Miles, 2480 Kenilworth Rd., next door to the subject property. Ms. Miles stated that she had several concerns about this project. The first was about the water run-off. Mr. Cox has said he hopes and he plans and he intends but she has no confidence that there is anything to ensure that what he plans for dealing with the water will actually come to pass. He states that the system that he has now funnels the water down towards Edgehill Road. The Board may not be aware that the intersection of Edgehill Road and Kenilworth Road, when there is a substantial storm, the area gets flooded badly. When that happens, it comes up over the sidewalk so any overflow, rather than being absorbed into the ground, floods the

street. She was also concerned about the water in her back yard. Regarding the visibility of the garage, there are at least 3 neighbors on Kenilworth who will see it. We are looking at it over the top of the fence wondering what this is. It is another thing to look at above the fence besides the treehouse, which is huge. I have no idea if a permit or variance was issued for the treehouse. In this instance he started building the garage before a permit was issued. If you have lived in Cleveland Heights for any length of time, you know you have to have a permit for everything. I am distressed to see that it went this far before the city was involved. I like to have a view and to see more things being constructed above the fence level is very distressing.

Joe Gordon, 2490 Kenilworth Road, stated that the garage actually touches his property, as did the previous one. He had no problem with the location of the old garage and had no problem with it being rebuilt in the same place. It is taller but it is his understanding that the height is within the code requirements. Regarding what Ms. Miles said about the drainage, he wanted the Board to know it had nothing to do with the pool.

Ms. Bromley explained that the Board is only focusing on the request for the variance but it sounds as though the flooding issue should be brought before City Council.

Mr. Gordon added that he has lived at this location for 25 years, 20 years before the pool was installed, and the flooding has always been a problem.

There being no one else who wished to testify, the public hearing was closed

**PUBLIC HEARING CLOSED**

Ms. Bromley asked for questions or comment from the Board.

Mr. Hoen stated that a compelling case has been presented as far as the location of the new garage. Understanding that if a tree had not fallen on the former garage which was in the same location, no variance would be necessary. That is a practical difficulty. The problem he was having is finding a practical difficulty for the height. The applicant has presented a proposal that shows a code-conforming example which leads him to conclude that a code-conforming alternative can be built to complete the project. This means that he couldn't see a practical difficulty for the height. He understood that the applicant wants more storage space and that it is a convenience which will be very nice but he didn't see a practical difficulty.

Mr. Cox stated that the only thing he could explain was the way we use the yard. We have the pool in the back like most people. We use the garage space like a storage shed for yard maintenance equipment and apparatus for the pool. To him, that is his practical difficulty. The front of the garage is the permitted height and it's just the back that is a little taller to allow more storage space. Referring to the slide showing the garage with the 1.23 foot height in the back, he stated that the height really doesn't change that much as far as blocking the neighbor's

view. This minimal increase in height allows a lot more storage. There are 3 other garages on Berkshire Road and 2 on Kenilworth Road that have the same peaked height.

Mr. Hoen asked if anyone knows if they are code-conforming.

Mr. Cox stated that he was only making the point that when you see those garages from the front they have the same peak as this garage.

Mr. Gilliam asked staff when the applicant came in for a building permit, wouldn't he have been told this was not a code-conforming structure.

Ms. Kittel explained that that no building permit was issued for the garage.

Mr. Wong added that that was why the Building Department issued a stop-work order because he was proceeding without approvals.

Mr. Cox stated that he hadn't realized he needed a permit to replace a garage in the same place as the previous one.

Ms. Bromley asked the applicant if he had acquired permits to do work on other properties he owned in Cleveland Heights.

Mr. Cox stated that he had not done work that required permits on those properties.

Ms. Bromley asked the applicant to speak to the proof of compliance with the 2009 variance.

Mr. Cox stated that the original gate was automatic, where you pressed a button to open it. That was considered self-locking. Over the winter the gate malfunctioned and over the summer the gate was kept closed with a bungee cord. He has since ordered a lock for the gate that is self-locking. He hadn't realized that one side of the surrounding fence was 6 foot tall while the other side was 5 feet tall. He has since added a 1 foot extension to the top of the 5 foot tall length of the fence. He pointed out that there had been several inspections when the pool was being installed and the inspector never said anything about the fence.

Ms. Bromley asked staff for clarification of the procedures.

Ms. Knittel explained that while a Building Department inspector inspects the pool as it is being installed, he wouldn't be looking at the requirements imposed by a zoning variance. That's why the fence didn't become an issue for the inspector.

Mr. Cox added that he understood that the fence was a necessary safety precaution but he also had a pool cover that can't be removed without a key. With this additional precaution he didn't see much difference between the safety of a 5 foot tall fence compared to a 6 foot tall fence.

Ms. Bromley pointed out that the pool cover is not always on, in which case the fence would not be in compliance.

There being no further comment from the Board Ms. Bromley asked for a motion.

Mr. Hoen asked staff if it would be appropriate to bifurcate the motion for this request.

Ms. Knittel stated that it would be most appropriate because each variance would have a different practical difficulty and they should be voted on separately.

Mr. Gilliam moved to grant a variance for 2500 Edgehill Road to Code section 1121.12(a)(1) to permit a garage with 0' setback to the side lot line where a minimum setback of 3 feet is required based upon the practical difficulty of the lot being oddly shaped and that the electrical lines for the pool are in place underground and it would be a practical difficulty to move them. If the variance is approved conditions are:

1. Proof of compliance with the 2009 variance;
2. Receipt of a Building Permit;
3. The garage and storage area cannot be used as an accessory dwelling or apartment;
4. The sloped roof of the patio must be located a minimum of 3' from the side property line;
5. A storm water management plan for the garage must be approved by the Planning Director;
6. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the garage's height or length; and
7. Complete construction within 18 months of City Council's approval of this resolution.

Mr. Hoen seconded the motion which carried 4-0.

Ms. Bromley asked for a motion for the second variance.

Mr. Gilliam moved to deny the variance for 2500 Edgehill Rd, to section 1121.12(g) to permit a garage with a height of 16.23 feet where the maximum height is 15 feet based on the finding that the request is more for the convenience of the homeowner as opposed to a practical difficulty brought about by the property itself.

Mr. Hoen seconded the motion which carried 4-0.

Ms. Bromley reiterated that the variance for the height has been denied. She reminded the applicant that the first variance must also be approved by City Council.



OLD BUSINESS

Ms. Knittel reminded the Board about a use variance granted to Charles Zuchowski d.b.a. May Lee Building LLC, 2490 Lee Blvd. and denied by City Council. She stated that the applicant has filed an appeal.

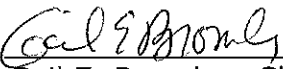
NEW BUSINESS

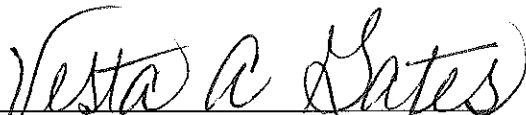
None.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:45 p.m.

Respectfully Submitted,

  
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Gail E. Bromley, Chair

  
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Vesta A. Gates, Secretary