

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
OCTOBER 21, 2015

MEMBERS PRESENT: Gail E. Bromley Chair
 George A. Gilliam
 Thomas Zych Vice Chair
 Benjamin Hoen
 Michael Wellman

STAFF PRESENT: Vesta A. Gates Zoning Administrative Assistant
 Karen Knittel City Planner
 Elizabeth Rothenberg Assistant Law Director
 Richard Wong 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.

APPROVAL OF THE MINUTES OF THE JULY 15, 2015 PUBLIC HEARING

Mr. Zych stated that he had given Ms. Gates some small comments prior to the meeting. He moved to approve the minutes as modified. Mr. Gilliam seconded the motion which carried 5-0.

Ms. Bromley informed the audience that due to extenuating circumstances, there will be a change in the order the requests are considered. We will begin with Calendar Number 3383. She also explained that she was recusing herself from consideration of this request because she is an abutting neighbor.

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.

Ms. Bromley left the bench at 7:04 p.m. turning the meeting over to Vice Chair Zych.

Mr. Zych informed the audience that there had been an apparent policy long ago that when one recused oneself, one left the room. We have not continued that policy and, if no one objects, the Chair will be allowed to sit in the audience.

Ms. Rothenberg added that the Chair is also allowed to speak which is another reason for her to remain in the room.

PUBLIC HEARING

OCTOBER 21, 2015

CALENDAR NO. 3383

Eric and Cheryl Lazar, 2691 North Park Blvd., 'AA' single-family district, request a variance to Code section 1121.08(b)(1)(A) to permit an addition to be set back 56' from Coventry Road right-of-way (71' 9" setback req'd).

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

Ms. Knittel, who had been sworn in, reported the following:

This property is located at the corner of Coventry Road and North Park Boulevard. It is surrounded by other single-family houses. The applicants are renovating the house and would like to convert the existing attached garage to additional living space. They propose adding a new attached single-story two-car garage beside the current garage and utilizing the existing drive that exits onto Coventry Road.

Zoning Code section 1121.08 (b) (1) requires that additions to an existing building located on a corner lot shall maintain a corner-side-yard that is the greater of the corner-side-yard of the abutting corner lot or 20 feet in an "AA" District. The adjacent house, 2480 Coventry Road has a front yard setback of 71'9" from the Coventry right-of-way. This distance is the greater distance and therefore the required setback of the addition is 71'9".

The applicant's current setback is 76' from the Coventry Road right-of-way. The proposed addition is 20 feet wide; the new setback would be 56' from the right-of-way. The new garage needs to be located as proposed due to the configuration of interior space of the house. Also, the area to the west of the house is the children's play area. Locating a garage in this interior location would result in additional driveway pavement along the entire north property line. This would eliminate any useable outdoor area north of the applicants' house and would impact private outdoor space of the neighboring property to the north.

This is a heavily wooded lot and the intent is to maintain this. The applicants have contacted their neighbor's to the north who have stated that they are not concerned about the proposed addition or variance request.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and
3. Complete construction within 18 months of City Council's approval of this resolution.

Mr. Zych asked the applicant or the applicant's representative to come to the microphone.

Eric Lazar, 2691 North Park Blvd., who had been sworn in, stated that Ms. Knittel has summed up the reason for the proposal. We need this for storage. We have two young children and lots of stuff. We have a very wooded lot and a lot of equipment we purchased to maintain it. We have no finished attic so we need a lot of storage space.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Mr. Zych asked Ms. Knittel to show the slide with the aerial and asked if the house to the north has a front that faces Coventry Road.

Ms. Knittel confirmed that that it did.

Mr. Zych pointed out that this is an anomaly that we are comparing a front yard to a side yard with regard to a setback and that is what is causing a technical problem.

Ms. Knittel agreed.

There being no further questions from the Board, Mr. Zych asked for a motion.

Mr. Wellman moved to grant Eric and Cheryl Lazar, 2691 North Park Blvd., a variance to Code section 1121.08(b)(1)(A) to permit an addition to be set back 56' from the Coventry Road right-of-way where a 71' 9" setback is required based upon special conditions or circumstances that exist that are peculiar to this lot, specifically, that it is a corner lot and that is limiting the logical and practical areas for where an addition can occur. I feel that the location proposed by the owner is the best location seeing that the house fronts on North Park Blvd. The variance is insubstantial due to the size of the lot and the existing vegetation on the lot as well. Also the essential character of the neighborhood would not be substantially altered if the variance was granted. In addition, the following conditions should be met:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and
3. Complete construction within 18 months of City Council's approval of this resolution.

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

Mr. Zych reminded the applicant that the variance must be also be reviewed by City Council.

Ms. Bromley returned to the bench at 7:16 p.m.

CALENDAR NO. 3382

JoAnn Melaragno and Stacy G. Miller, 2995 Edgehill Road, 'A' single-family district, request a variance to Code sections 1121.12(i)(1) & (4) to permit a 5'8" tall solid wood fence in front and corner-side-yards along Woodward and Edgehill Roads. (3' max ht. permitted).

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

Ms. Knittel, who had been sworn in, reported the following:

This property is located at the corner of Woodward Avenue and Edgehill Road. It is surrounded by single family houses. For residential corner lots, Zoning Code section 1103.03(121) defines the front yard as facing the shorter street dimension. Therefore, even though the street address is on Edgehill, Woodward is the front yard and the area along Edgehill is corner side yard.

The applicants propose to construct a 5'8" tall solid wood fence in the front and corner-front-yard. Code permits fencing no taller than 3' in the front and corner-front-yard, therefore a variance is required. The location of the fence would be 4'5" from the public sidewalks along Woodward and Edgehill. The fence would be located behind an existing privet hedge that is 5'8"-tall. The applicants intend to maintain this landscaping. The applicant is seeking an area they can secure for their dog and an outside area that they can enjoy with privacy and security.

The applicant is requesting a solid wood fence. They have not yet gone to the Architectural Board of Appeal with their fence design. The ABR regularly requires fences in the front and corner-side-yards to have 20% transparency. In the recent past, corner-side-yard fences taller than the permitted 3 feet have been granted variances and approved by ABR that were 4' of solid wood fencing topped with an open trellis element adding architectural interest and openness to the fence.

If approved, conditions should include:

1. A requirement that the fence be 20% transparent;
2. Approval of the Architectural Board of Review;
3. Receipt of a Fence Permit;
4. Complete construction within 18 months of City Council's approval of this Resolution; and
5. A requirement to return to the Board of Zoning Appeals for another variance should property owner consider modifications that would increase the fence height, length or transparency.

Ms. Knittel further stated that she had received a public comment from Margaret Duhill at 2936 Edgehill Road, stating her opinion that if the code required the fence to be no taller than 3', the applicants should follow the Code.

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

JoAnn Melaragno, 2955 Edgehill Road, who had been sworn in, stated that she and her husband have lived at this address for about 20 years. We desire to have a fence that provides privacy and security. This is a very busy intersection with cars going back and forth. It is also very noisy and she hoped the proposed fence would

help deflect some of that noise. It is now her understanding that she has to have a 20% transparency which is not what she and her husband want. The fence is being handmade by her husband. They rode around the neighborhood on their bikes over the summer, looking at fences, and found one to their liking and decided that was what they wanted to do. Her husband began building the fence, not realizing they needed a permit and when they received a violation notice, they stopped. She brought a picture of the portion of the fence that is already up to show the Board that it is a really beautiful fence. She stated, I'm not here to do battle or be inflexible. We just want you to consider our request and what we feel would be appropriate. Obviously, you cannot see the fence as evidenced by the pictures in the slides. The reason the tops of the posts are visible is because we hadn't yet trimmed them down. Also the gate that would be constructed would be no taller than the hedges. We thought long and hard about this. We didn't want to go to Home Depot and buy some pre-made panels and just slap them up there. We've live here for 20 years, and this was previously my aunt's home. There is a neighbor present who lives directly across the street. I understand the neighbor's concern about the zoning, which is valid. But if you consider all the facts, you would realize that is truly not our front yard. That is our side yard and the front yard is where our front door is. It didn't make sense to her that based on some terminology, they can't have what they really want. With that being said, she asked, if this is not going to be granted and we must have 20% transparency, would we be able increase the height of the fence? Could we go to Home Depot and buy a panel and put that up?

Ms. Bromley stated for clarification that the proposals in these public hearings are advertised and that is only what the Board can consider.

Ms. Melaragno asked if that meant they would have to come back with a new proposal that included a pre-made panel.

Ms. Bromley explained that would be allowed only if the proposal is different from this one.

Ms. Melaragno stated that she believed it would be less expensive to buy a pre-made fence with 20% transparency from Home Depot, although she hadn't done the research yet.

Ms. Rothenberg recommended putting the picture of the proposed fence into evidence.

PUBLIC HEARING OPENED

Mark Deacon, 1915 Woodward Ave., who was sworn in, stated he lived directly across the street from the applicant. He stated that he is a carpenter, had been a maintenance technician and a contractor, and in his opinion, the quality of

workmanship on this fence is fabulous. He had no problem sitting on his front porch looking over at it. He appreciated the work the homeowner had done on it. As to the transparency, he believed that leaving it as it is would cut down on barking when pedestrians are walking past with their pets and would afford the family a little more privacy. He supported them going ahead with this and believed they were doing a great job.

Stacy Miller, 2995 Edgehill Road, who had been sworn in, stated the only thing he wanted to add was the existence of their rather large, enthusiastic, dog which was not mentioned in Ms. Knittel's presentation. The dog has a habit of barking at anyone who walks by and has frightened some people. The reason he didn't think they needed a permit was because they were replacing an existing wire fence which we thought was an improvement. The wire fence contained the dog but she scares people when she hops up on the fence and barks and is one of the reasons we thought a solid fence would make everyone a little more comfortable when they walked by our property. I realize the dog is not a permanent situation, and that eventually she will pass on, but he just wanted the Board to be aware of another reason they needed a solid fence.

PUBLIC HEARING CLOSED

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

Mr. Gilliam commented that the Board gets this a lot; people with a dog, large or small, who want to put up a fence because the dog barks or the dog bites or whatever. That is not a situation mentioned in the zoning code as a reason for a variance. He just wanted to state this once again and thought maybe it should be specified in the packet that the applicant receives. There really is no need to mention the dog because the variance cannot be based on that.

Mr. Zych further commented that he lived on Edgehill on the other side of Coventry Road and he recalled the police were very good about making sure one stops at the stop sign at this corner. He asked to see the drawing indicating where the fence will go and the picture of the privet hedge. He observed that where the privet hedge slopes down as it rounds the corner from Woodward to Edgehill, a substantial part of the proposed fence will be visible.

Mr. Hoen asked the applicant if there was a way to cultivate that section of the privet hedge that slopes down to grow as tall as the rest of the hedge.

Ms. Melaragno asked if he was referring to the angle of the fence that curves back toward the house.

Mr. Hoen stated that he was.

Ms. Melaragno stated that was an area that is already very densely landscaped. There are evergreens, a hemlock, and an apple tree. She wasn't sure if staff had been able to get close enough to look at that and she never thought to take a picture of the area herself. Encouraging growth of the privet itself to screen the fence would be no problem.

Mr. Zych asked, referring to the picture of the hedge where it slopes down, were does the fence angle back toward the house?

Ms. Melaragno indicated where the fence angled back on the slide.

Mr. Zych commented that it appeared to him in the slide that the trees in that area would be behind the fence rather than in front of it.

Ms. Knittel apologized for not having a better picture of that area.

Ms. Melaragno stated that the existing gate shown in the picture would be removed and the tall posts would be cut down to the height of the new gate.

Mr. Zych asked if the new gate would also be solid wood.

Ms. Melaragno stated that the new gate is made of metal with a pattern.

Mr. Zych stated that the variance request as presented to the Board proposes an undifferentiated solid fence, including the gate. The gate is at the same height as the rest of the fence and made of the same wood.

Mr. Miller explained that he thought he could make the actual design of the fence clearer for the Architectural Board of Review. The gate would be significantly shorter than the fence and you would be able to see over it before you walk through. He estimated the gate height would be about 4 feet. Then the rest of the fence would go back up to the 5'8" height all the way back to the house.

Ms. Melaragno further stated that the side of the house has an open porch and the yard area is in front of it, which is why they wanted the fence to be taller as it gets closer to the house.

Mr. Gilliam advised the applicants that they would have to be a little more specific for the Architectural Board of Review. The Board will probably ask why the fence that angles toward the house had to be 5'8" rather than 3' tall.

Ms. Bromley asked Mr. Gilliam if he was thinking of making a motion in some way relative to that comment.

Mr. Gilliam stated that if he did, it would be a modification of what was published in

the paper.

Mr. Zych stated that he was not in favor of continuing this because could see a path towards approval here. Just by way of background, dogs are a frequent element of people who live in the Heights so when we look at these, we look to what the uses typically are, which are family uses in a single-family district. We have given variances for fences, understanding that technically, though not allowed, we grant a variance and we can put conditions on that in the interest of the neighborhoods. By and large, the Board's view historically has been, with good counsel from Planning staff, that the proliferation of stockade fences in front and corner-side-yards would be bad for the City. We have some of those in my area of Edgehill and we know what that looks like. So there has been this idea, not policy but practice that we avoid stockade fences whenever possible because of what that will do to the walking neighborhoods. We have accommodated corner fences and while a dog is not a practical difficulty, typical uses of the house are taken into account. We also understand, specifically regarding your property, that the front and side yard are odd because they both face trafficked roads. Side yard fencing is what my neighbor has between us and although you can't see it from the street, it separates our yards. I look at these as street-facing fences. The privet hedge is terrific. I enjoy going by that house all the time. I am loath though in this instance to say we are going to do away with the 20% transparency because people have it for privacy all over the city. People have it for their dogs or for their young kids and we've made accommodations. We just haven't gone so far as to say a solid fence is the way to go. As advertised and with the conditions recommended, I would add another condition to say that suitable landscaping be maintained as well. You understand that we are not giving you the variance, we are giving your house the variance, and the next owner, and the next. What we do is permanent here. So that is why we have been hesitant. Not far away, on Washington Boulevard, we had someone who came to us after they had completed their fence, then asked permission, and we said no, for that reason. We're not trying to be unreasonable, but that is the way the city has gone in terms of fencing and I think, as advertised, with the conditions, it's there.

Ms. Bromley asked if that was in preparation for a motion.

Mr. Zych moved to grant JoAnn Melaragno and Stacy G. Miller, 2955 Edgehill Road, a variance to Code sections 1121.12(i)(1) & (4) to permit a 5'8" tall wood fence in the front and corner-side-yards along Woodward and Edgehill Roads where a 3' maximum height would normally be permitted based on the practical difficulty that these are especially heavily trafficked roads used as an avoidance of Euclid Heights and Coventry Road and so for a residential area has unusually heavy traffic. Further finding that the ordinary uses of the property, children and other occupants of the house, could use the security and noise abatement that a fence provides. Permitting a fence higher than the 3' maximum height is justified for those reasons on this property. If the variance is granted conditions shall include:

1. A requirement that the fence be 20% transparent;
2. Approval of the Architectural Board of Review;
3. Receipt of a Fence Permit;
4. Complete construction within 18 months of City Council's approval of this Resolution;
5. A requirement of the applicant or successive owner to return to the Board of Zoning Appeals for another variance should property owner consider modifications that would increase the fence height, length or transparency; and
6. That adequate and appropriate landscaping be maintained around and in front of the fence to shield it from view from the right-of-way.

Mr. Gilliam seconded the motion.

Mr. Wong interrupted the vote, stating that there was a typo in the conditions. We never send a fence back to the Board for an increase in transparency. It should say a decrease in transparency.

Mr. Zych amended condition number 5 to state .." that would increase the fence height or length or decrease the transparency of the fence."

Mr. Gilliam agreed to the amendment.

There being no further discussion, the motion carried 5-0.

Ms. Bromley reminded the applicant that City Council must review the variance.

CALENDAR NO. 3384

Imani Temple Ministries, 2475 North Taylor Road, 'A' single-family district, requests a use variance to Code Sections 1121.03, and 1121.04 to conditionally permit a former rectory to be a lodging house (not permitted).

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

Ms. Knittel, who had been sworn in, reported the following:

2475 N. Taylor Road is part of the Imani Temple Ministry campus, along with the school and church building, parking lot and play areas. This is the former location of Saint Louis Catholic Church and School. 2475 North Taylor was built as the rectory, a structure intended to house the priests and to provide office and meeting spaces. Just to the south is Council Gardens, the 7-acre senior living apartment complex which is located in a 'MF1' Multiple-Family zoning district. To the north and east is single-family housing in an 'A' Single-Family zoning district and west across

North Taylor Road is single family housing located in an 'A' Single-Family zoning district.

The following Planning Commission cases document the conditionally approved uses for the buildings within the Imani Temple Ministry, formerly Saint Louis Church and School Campus:

Case History

- 1994: Project 94-16 conditional use permit granted to add approximately 45 preschoolers to the Catholic elementary school *NO LONGER IN OPERATION*
- 1998: Project 98-6 conditional use permit granted to Interfaith Hospitality Network of Greater Cleveland to provide food and overnight lodging to maximum of 14 persons for one week every two to three months in the school building's multipurpose room *NO LONGER IN OPERATION*
- 2007: Project 07-17 conditional use for Woodside Center to operate 100-child childcare center/kindergarten/after-school program at former Saint Louis School 6:30 a.m. to 6:30 p.m. Monday through Friday in 5 classrooms, office and social hall of school building *NO LONGER IN OPERATION*
- 2008: Project 08-04 Woodside's conditional use permit revised to add 50 children to enrollment for total of 150 children *NO LONGER IN OPERATION*
- 2011: Project 10-26 Imani Temple Ministries granted conditional use permit to operate church in former Saint Louis Church.
- 2011: Project 11-25 D. Longino, dba Imani Youth Academy, granted conditional use permit to operate 24-child after-school tutoring program K-10 in school building, operating 4-8 p.m. Monday through Friday *NO LONGER IN OPERATION*
- 2011: Project 11-33 ITM Building Blocks Child Care Center granted conditional use permit to transfer operation of Woodside Childcare (granted conditional use in 2008) to ITM Building Blocks, 80-child care center located in school building open 6:30 a.m. to 6:30 p.m. Monday through Friday *NO LONGER IN OPERATION*
- 2014 Project 14-33 Bridge Builders Academy for Girls granted conditional use permit for 125-middle school (6, 7, 8th grade) in school building
- 2015 Project 15-5 Aurora Health Alternatives, LTD. dba Higgins Healthcare Institute granted conditional use permit for special training school for nursing/health care in school building

Project Description

Imani Temple Ministries purchased the former Saint Louis Catholic Church campus in 2011. This 5.2 acre site includes the church and school structure, the parking lot and play areas and the former rectory. The rectory was built in 1962 and has been vacant since at least the date that the Imani Temple Ministries purchased the site. It is believed that the structure was vacated by the priests a few years prior to the sale of the property.

To convert this structure to a single family residence would require significant reconfiguration of interior walls, electrical lines and plumbing which is cost prohibitive. The Ohio Building Code classifies this original use of this building as R-2. Major alterations will be required to bring the building up to both Fire and Building Code standards. If the R-2 use remains, only minor alterations are required. The Building Code defines the R-2 use as follows:

R-2 Residential occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses* (nontransient)
- Convents
- Dormitories
- Fraternities and sororities
- Hotels (nontransient)
- Live/work units
- Monasteries
- Motels (nontransient)
- Vacation timeshare properties

Nontransient is defined as a residency of at least 30-days. R-2 use does not include the zoned, residential use.

The applicant has represented to the City that it is not economically viable for the building to be converted to a non-R-2 use. The alterations required under Building and Fire codes are cost prohibitive. In other words, the building cannot be used as a single family house or as a non R-2 use per the building code.

As the structure is located in an 'A' single-family district, none of the uses allowed by the building code are permitted in this zoning district.

Also, as the structure was built to be a rectory, the floor plan has multiple sleeping and sitting areas on the second floor, one large kitchen, one large dining room and living room (or parlor), offices on the first floor and the basement has two large rooms.

Imani Temple has been working to lease this structure; however the only uses that have been interested have been those that would be classified by the zoning code as lodging or boarding houses. While this use would be allowed by the building code, it is not permitted by the Zoning Code in an 'A' Single-Family zoning district.

Zoning Code section 1103.03 (63) defines a lodging house as *a building occupied for, or arranged, intended or designed to be occupied for rooming or rooming and boarding for compensation by not less than four (4) persons by prearrangement for definite periods of not less than one (1) week in contrast to a hotel which is open*

for occupancy for shorter periods. The term "lodging house" includes "boarding house" and "rooming house".

Imani Temple Ministries anticipates leasing the structure to an organization that may provide lodging for up to 44 people, including live-in staff and therefore is requesting a Use Variance.

Lodging Houses (or Boarding Houses) are conditionally permitted in our Multiple-Family districts, therefore should this use-variance be granted, a Planning Commission conditional use permit would be required. This conditional use permit would be issued to the tenant would choose to lease the structure.

A property may only be occupied by land uses that are explicitly permitted by the Code in the zoning district in which the property is located. Property owners wishing to use their land for a use not permitted must apply to the Board of Zoning Appeals (BZA) for a use variance. To obtain a use variance, a property owner must show, to the BZA's satisfaction, an "unnecessary hardship" if forced to strictly comply with the Zoning Code's use limitations. The applicant has submitted a Statement of Hardship as part of their application.

In making its determination, the BZA must find that **all** seven criteria listed below are met by the proposed use of the property that is the subject of the use variance request.

A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district;

The former rectory building was constructed in 1962. The building's floor plan is not suitable for a single family dwelling as the structure is designed to have separate private areas. The structure contains:

- 1) The second floor has 4 areas consisting of a living/sitting room, bedroom/sleeping room and a private bathroom all connecting to a common hall way.
- 2) Over the garage, there are two bedrooms/sleeping areas each with a private bathroom, these share a common living/sitting room
- 3) The first floor consists of a large common kitchen, dining room and living room.
- 4) There also are two separate wings with large rooms that may have been used as meeting/waiting rooms.
- 5) The basement has two large finished rooms.

The building has been vacant since at least 2011 when Imani Temple Ministries acquired the former Saint Louis Church and School campus. The applicant also believes that the former rectory was vacant for a number of years prior to the Catholic diocese selling the property.

As explained above, there is no economically viable way for the applicant to change the use of the building from the R-2 Building Code because the alterations required under Building and Fire codes are cost prohibitive. In other words, the building cannot be used in the manner it is zoned for. It can be used as a boarding house, which is a R-2 use under the Building Code. A use that more closely mirrors the intended use for the building at the time it was built.

The applicant anticipates leasing to an organization which may provide lodging for up to 44 people, including live-in staff. Because this property is located on 5.2 acres, there are plenty of parking spaces to accommodate both the church and any organization which would occupy the building. As lodging houses are conditionally permitted, the Planning Commission would be required to review the parking needed by the different uses on this campus.

B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district;

This is an unusual building which was constructed for the singular institutional use as housing for the parish priests. This type of structure is not ordinarily found in single family zoning districts. A family could not comfortably live in such a structure.

C. The hardship condition is not created by actions of the applicant;

The applicant has not created the conditions of this site. This is an existing building that was built in 1962 and was part of the former Saint Louis Church/School campus acquired by Imani Temple Ministries in 2011. It is located on 5.2 acres. Because of the code disparity, the building has become an economic hardship for Imani Temple Ministries.

D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents;

The essential character of the neighborhood will not be substantially altered. It is also clear that none of the adjoining properties will suffer any detriment as a result of this variance. Adjacent structures include Council Gardens, a multi-family complex to the south, Single family dwellings to the east and north, and a five lane street to the west. The proposed lodging house use is a conditionally permitted use that requires an applicant to review their proposed use with the Planning Commission for review to assure that the use does not have a negative impact on the neighborhood.

E. The granting of the variance will not adversely affect the public

health, safety or general welfare;

The site operated as a rectory for the former Saint Louis Parish for many years with no adverse effect on the public health, safety or general welfare. The proposed usage would also pose no adverse effect on the public health, safety or general welfare of the community. The applicant believes that it will be inhabited by staff members 24 hours, seven days a week.

Additionally, as a conditionally permitted use, any tenant would present their proposed to the Planning Commission who would consider the impact to assure that the public health, safety and general welfare is not negatively impacted.

F. The variance will be consistent with the general spirit and intent of the Zoning Code;

Zoning Code Section 1121.01 explains the purpose of the single-family and two-family zoning districts and states that "single-family residential uses are extremely sensitive to adverse effects from other uses and require high standards for occupancy and use of the principal buildings if these areas are to be maintained and to continue to be good places in which to live".

One purpose of the Zoning Code that is described in section 1121.01 (d) states that the code is "to encourage as a conditional use flexible residential development to promote creative and efficient use of land through unified development".

Section (f) further states that a purpose of the residential zoning code is: "to encourage sustainable development and practices in residential neighborhoods".

The structure is located on the south side of the 5.2 acre property, separated from the school/church structure by a two lane driveway and a grass area of close to 50 feet. N Taylor Rd is 5-lanes wide in front of structure providing a natural buffer to the single family homes across the street. The proposed use is residential in nature and would be a conditionally permitted residential use

G. The variance sought is the minimum which will afford relief to the applicant.

This variance is the minimum which will enable the structure to be occupied/utilized, and will provide economic relief to Imani Temple Ministries.

If the use variance is granted, conditions should include:

1. Tenant(s) of the former rectory shall receive a Conditional Use Permit(s) from the Planning Commission for the lodging house use.

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

Pastor Rodney S. Thomas, pastor of Imani Temple Ministries, 1804 E. 81st Street, Cleveland, Ohio, had been sworn in. He stated, as Ms. Knittel reported, that the property has been vacant since it was purchased in 2011 and the Catholic Church informed us that it had been vacant approximately 3 years prior to that. We have been maintaining the building in the absence of anyone using it, addressing such things as heating and air-conditioning, plumbing problems and so forth. We know that we are in an R-2 area as designated by the Ohio Building Code and we are currently in negotiation with the Evans Foundation which is a veteran's transitional housing organization, who has informed us of their desire to lease the building. We have had several people over the last 4 years who proposed to use the building as a dormitory-style residence and we had to contact the city to find out about the zoning. We finally found out the zoning was "A" single-family and R2 as defined by the Ohio Basic Building Code. Instead of having an empty building that the church is maintaining so it doesn't fall into disrepair or become vandalized, we would like to be able to lease the property.

PUBLIC HEARING OPENED

Grenetta Taylor, 3481 Glen Allen Drive, had been sworn in. She stated that her residence is directly behind Imani Temple. Her concern was regarding the property's use as a lodging house and the impact that it may have on market values of residences in the area. She was concerned about noise or any other type of changes in the character of the neighborhood and quality of life. She was also concerned that the house could hold 44 people and whether there will be dedicated parking spaces. She asked for details about the type of business that would be housed there, the ratio of staff to residents and whether this is permanent housing or transitional housing.

Ms. Bromley asked the applicant if he could address those issues.

Pastor Thomas stated that we are seeking to utilize the property the way it has always been used. When the rectory was operational, the priests could be considered borders. They were housed there for a period of time and then would leave if they were reassigned to another parish. Also on the opposite side of the property is a nunnery. The nuns, approximately 9 to 13 of them, were also living in a family structure. Any organization who wishes to lease the building would have to have a 24-hour live-in staff person. We are negotiating with a veterans group for transitional housing. The residents would have to stay there a minimum of 6 months to a maximum of 9 months. There would be 3 full-time staff persons working and living on the property. We have over 142 parking spaces on this site but the maximum number of occupants that would be allowed would be 20, so 20 parking spaces would be allocated for the residence.

Ms. Bromley stated that the neighbor was also concerned about the activity level and how it might change the character of what has previously been on this property.

Pastor Thomas stated that the church is there every day. A child day care was there prior to the church's purchase of the property. The church also has youth activities on the property. This building is located close to Council Gardens and some of those tenants use the parking lot and the park area. There are people who live on Edison who have back yard fences with gates built in so they can enter our property to walk their dogs. Some of those homeowners use the gates to come on the property to use it as a playground for their children. I would imagine that after a later hour, there would be no one in the parking lot. Any person living in the house would be part of a transitional group that would be phased out after a period of time, like veterans who are trying to get back on their feet, working through the Veterans Administration. They would not be in the residence all day. They would have to go out and work within the program to be able to remain there and eventually move on to a permanent situation with their spouses or family members.

Judith Bieler, 3477 Edison Rd., who had been sworn in, stated that she could not deny that a facility for veterans to get back on their feet is a wonderful thing. The statement by the city staff person regarding 44 occupants is kind of scary. Where does that come from? To have 44 people who are transient in the neighborhood is scary. If there were 44 priests there, it would be great or even the 20 persons mentioned by the pastor. But 44 transitional people in the neighborhood sounds a little overwhelming to me. She originally thought Imani would be working with City Mission because she was aware that many other Imani Temple Ministries are working with City Mission housing. I think a lot of our questions will come at the Planning Commission but it's difficult to judge how to go forward without knowing what is really going to be there.

Pastor Thomas stated that once he found out about the R2 designation, it was decided to hire an architect to come and evaluate and draw a floor plan of the building. The square footage of the property is 8,962 square feet which is divided by 200 square feet per person and equaled occupancy of 44 persons. We decided that we would be looking at a maximum occupancy of 20 to 25 persons to live in the property. We hired an architect on the advice of the city which gave us the square footage which equaled occupancy of 44 persons. When it was used by the Catholic Church, they had up to 16 persons in residence at this house. When the priests lived in the house, this residence was also used as a meeting space with their parishioners.

Ms. Bromley added that although it is not a part of the BZA purview, the 8,962 square feet included not only the living area, the office area, the living room, kitchen, and so on.

Pastor Thomas stated that it also included the suites over the garage.

LaTonya Griggs, 2430 North Taylor Rd., who had been sworn in, stated that her concern was how this would affect the market value of the surrounding homes.

Ms. Bromley stated that the concern is a valid one but it is something that the Board of Zoning Appeals does not consider because the Board is only looking at code variances so the Board cannot respond to that. She advised Ms. Griggs to stay with the request as it goes to the other commissions and see if others can respond to that.

Ms. Griggs stated that the residents were very pleased with the way the ministry is keeping up the property.

Ms. Knittel asked to be allowed to state a few points of clarification. She stated that this site was in conflict with what the zoning code allowed on the property in a single-family district versus what the Ohio Basic Building Code said this building was designed to be used as. It was during that period when the Building Department was trying to understand what this building was that they asked Imani to have an architect take a look at it to confirm that it was indeed an R2 classified building per the Ohio Basic Building Code. So that is where the architect came in and where the determination of 44 persons came from. If it were to be allowed to be used as a lodging house, any tenant would have to make application to our Planning Commission. Part of what they would do is hold a public hearing and surrounding residents would be notified of that intended use. That would include taking a look at the number of occupants that are coming in and the impact of parking and noise and anything else that might impact the neighborhood or community at large. Those are all factors that the Planning Commission would look into and the staff report would also address. The neighbors would have an opportunity to come and speak if they had concerns about the use or the intended use. Imani is currently talking with a group that is looking for transitional housing for veterans and when that application is complete and ready it will go on Planning Commission's agenda and post cards will be sent notifying neighbors of that intended use. If this use variance is granted, that could potentially happen as soon as next month.

Ms. Rothenberg added that the variance is permanent and runs with the property, but the difference about a conditional use permit is that even if the conditional use permit is granted, if things don't go the way it was envisioned, it can always come back to the Planning Commission and be re-heard. So even though tonight is a permanent decision, anything specific that happens in the building will go before

the Planning Commission every time it changes. Also, the door is always open if there is problem. Those are just some of the safeguards that are in place, since it is such an extreme decision that this Board is making tonight.

PUBLIC HEARING CLOSED

Mr. Gilliam asked staff if, in the past, there was a discussion regarding some angled parking on the north side of that property.

Ms. Knittel thought it may have been parking for the convent.

Mr. Gilliam asked, referring to the aerial view, if that parking area was in the right-of-way since it wasn't included with the 140 space parking lot.

Mr. Wong stated that staff cannot currently answer that but seriously doubted that it would impact this variance request.

Mr. Zych stated that he had a couple of questions for staff because conditional uses are so different for us in terms of what we do and how others interact with this. He did think there was a substantial change in the use. The rectory, particularly when inhabited by priests with the good sisters looking over them, is a certain limited, low impact use. When we are hearing 44 or dozens of occupants, whether its veterans or whatever, it is a substantial change, especially given the transience of the occupants. It's not a bad thing but it is a substantial change. I think the impact on the property values would be a part of this because factor (D) refers to the rights of adjacent property owners or residents and I would think that would include their real estate rights. He asked if staff could be more particular with regard to what's in the purview of the Planning Commission. Does that include approval of the tenant who will be operating this? Will it include the level of occupancy? I looked at that property before and during the meeting and my head spins at 44 also. I was counting bathrooms, recreational areas and other things. What assurances can we get that each of these specific issues, the identity, and the use, will be addressed. If it's Evans or something similar, that's wonderful but what about the viability of that operator over the long run, the use, the oversight, the operation. Is that something that is the subject of the original approval and potentially continuing oversight, so that the best of intentions doesn't deteriorate into something that would bring into reality the kind of worries these neighbors have. Is there any light you can shed on what the Planning Commission can do in their wisdom?

Mr. Wong stated that the one thing that comes to mind is that the quantity of people in itself is not a criterion on which Planning Commission could base their decision. It would be on what planners refer to as "externalities". What can you perceive of this use from your property? Whether you are 200 feet away, like a Glen Allen resident or 400 feet away like an Edison resident. I'm just guessing the

distances looking at the map. Are you a football field away or half a football field away or are you right next door to a property? Planning Commission has to take that into account when they are evaluating whether 44 people housed in a building does have true externalities that can be perceived by residents on their particular property. You are correct that there is a criterion in the Planning Commission and it doesn't have to be satisfied in itself as ironclad if you affect the property rights substantially. That's a criterion but it's pretty hard to prove. You would have to demonstrate as an applicant that you are doing everything you can not to affect neighboring residents or the neighborhood detrimentally; that you are a benefit to the neighbors. That is what we strive for.

Ms. Rothenberg added that the Planning Commission does always talk about the number of people that will use the site. Everything Richard said is true, but what is actually discussed and sometimes altered in the course of the conditions is the maximum number of people that can use the site because they look so often at how it affects the neighbors. It matters to the Commission how many people would be living in the space in this example. We could read you the standards, (A) through (K), if that would be helpful. Many of them talk about affecting the neighbors and not changing the character and those sorts of things.

Mr. Zych stated that another part of his question was regarding the oversight of the operator. You could have a good operator who can do well with 25 people and a really bad operator for whom 25 people would be a really horrible job for the neighborhood. Other than the Building Department who makes sure the building is kept up, is there any oversight in these kinds of situations and over the identity of the lessee?

Ms. Rothenberg explained that any oversight is based on complaints from neighbors. That is the safeguard for conditional use permits. It takes only one person to call for an investigation to be triggered.

Mr. Wong stated that the city doesn't take a complaint lightly. As soon as we hear from a neighbor, we will be calling the applicants, whomever they are and arranging a meeting with them to figure out what it is about what they do that disturbs the neighbors comfort or enjoyment of their property.

Ms. Rothenberg added that if the issue is not addressed by the applicant they must come back before the Commission and there will be a hearing regarding whether a conditional use permit should be revoked. It is something that has happened in the past.

Mr. Hoen stated that he just wanted to follow up on Mr. Zych's comments and allay some of the neighbors' concerns as to market values. Certainly the substantial change in the use is a concern, however I would juxtapose that and stat that over the last number of years we have seen a great change in our neighborhoods as a

whole caused by vacant and abandoned properties. The evidence that's been presented is that this property has been vacant for the last three years. While the ministry is to be commended for the upkeep of the property while vacant, I think that anyone concerned about falling market prices should be even more concerned if the property remains vacant, becomes abandoned, becomes a nuisance and invites crime into the neighborhood. That is something also to consider in conjunction with the substantial change in the use.

Mr. Wellman stated that the issue he was struggling with firstly is the R2 designation. He did not understand how the new owners could own a building that can't be used the way that someone is telling them it is designated. In his mind there is very little difference from a group of priests living here or a group of veterans living here. They seemed very similar to him.

Ms. Rothenberg stated we were also really confused because we don't know anything about the Building Code. Our understanding is that it was built as an R2 use. The rectory is like a dormitory and is considered an R2. The cost prohibitive issues come into play because if they were to change it from an R2 use, things like sprinklers would have to be added which is a really expensive thing to do. If it stops being the original use then it would have to be brought up to the higher level of the Fire Code. That is what the conversation about R2 is. But it is built in an area that is zoned single-family and that is where the conflict comes in. Although this is a single-family district, a family can't live there either without having to put in too much money to convert it.

Mr. Wellman asked what will be the use under the boarding house use.

Ms. Rothenberg stated that it will remain an R2 use. The problem is that the zoning code language is different from the building code language. The zoning code has lodging/boarding house as the use that is being offered to the Board today. There is nothing in the building code that says lodging/boarding house. But the building code definition is all these uses listed under R2. The confusion is that the language is different. Does that clarify matters?

Mr. Wellman stated that it still doesn't seem like these people are significantly changing the use from the previous owners, in his opinion.

Ms. Knittel stated that it's not a change of use in the building code, it's a change of use in the zoning code. It's the variance from the zoning code that's being requested so they can use for the R2 use that it was designed for.

Mr. Wellman observed that it was through no fault of the applicant's own.

Ms. Knittel stated that was correct.

Mr. Gilliam commented that this is not the Board's first case dealing with some form of veterans housing. I'm just wondering if it's time that the city had a conversation with the local veterans administration to find out what their general plan is for this part of the suburbs. There are so many vacant church structures and campuses in Cleveland Heights, I think someone from the City of Cleveland Heights should contact someone from the veterans' administration to see what they have planned for this suburb or the metropolitan area. They may be considering installing a number of facilities out in the suburbs where the veterans come from.

Ms. Bromley thanked Mr. Gilliam for his comments and stated that that they will be reflected in the minutes. She then asked for a motion.

Mr. Hoen moved to grant a use variance to Imani Temple Ministries, 2475 North Taylor Rd. a use variance to Code Sections 1121.03, and 1121.04 to conditionally permit a former rectory to be a lodging house which is not otherwise permitted based on the finding that this is a unique request being that this is a use variance request as opposed to the standard variance requests so the standard in this instance is unnecessary hardship for the reasons eloquently stated by our staff which are:

- A. The property cannot be put to any economically viable use under any of the permitted uses in the zoning district due to the constraints of the costs of renovating the property to change it to the "A" single family residential use and it can be used currently for the Building Code R2 use. The variance is necessary to bring the "A" single-family use in the zoning code to be consistent with the R2 Building Code use which was the intended purpose of the house when it was constructed as a rectory.
- B. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district finding that this is a unique building, as stated, which was constructed under the Building Code as opposed to the "A" single family zoning code.
- C. The hardship condition is not created by actions of the applicant. Again, it is because of the inconsistency in the codes which were in existence prior to the acquisition of this property by the ministry.
- D. The granting of the variance will not adversely affect the rights of adjacent property owners or residents, as was previously stated in my opinion, even though there is a considerable change in the use, going from a rectory to a temporary housing use, I do believe the effect on neighboring properties will be minimal as the property will continue to be used as a viable property.
- E. The granting of the variance will not adversely affect the public health, safety or general welfare and,

- F. The variance will be consistent with the general spirit and intent of the Zoning Code because it will continue to be consistent with the intent of the structure as it was constructed under the Build Code and,
- G. The variance sought is the minimum which will afford relief to the applicant.

If this use variance is granted, the following condition should be included:

1. The tenant(s) of the former rectory shall receive a Conditional Use Permit from the Planning Commission for the lodging house use which is the subject of today's discussion.

Mr. Gilliam seconded the motion and there being no further discussion, the motion passed 5-0.

Ms. Bromley reminded the applicant that City Council must review this use variance and that the proposal still had to go before the Planning Commission.

Mr. Wellman advised the applicant that there is a section of the Building Code called 3412 which makes it significantly easier to bring older buildings up to the current Building Code levels. He recommended having the architect look at section 3412, Alternative Compliance, and if certain things need to be updated, you can usually not do the sprinklers if you use that code section. There are ways to renovate historic buildings economically.

OLD BUSINESS

Ms. Knittel stated that the three cases that were approved at the last meeting in July were approved by City Council. There was another applicant who was going to build an oversized garage and we have been working with that applicant and I believe we have found a code-conforming solution. He is taking the site plan and ideas back to this architect to confirm that.

The issue of the fence at the corner of Edgehill and Washington Boulevard was raised earlier, for which the variance was denied. I want the Board to know that we first worked with the applicant to no avail and finally sent violation notices from the Law Department to attempt to get him to come into compliance.

Ms. Rothenberg added that the Board may see that applicant in December.

NEW BUSINESS

Ms. Rothenberg stated that the Board might be familiar with the Taylor Road Synagogue and recently there have been some issues with building code violations. As a result, an order to vacate was issued. You may not know that this is under the Board's jurisdiction, but if someone appeals an order to vacate under the business maintenance code, which they have, the Board of Zoning Appeals get to hear it.

There is always a possibility that these things can be worked out but if it is not, it will be the last thing that happens at the November meeting. I will be representing the Board and someone else from the Law Department representing the City and presenting their case to prove to the Board that the order to vacate was reasonable. The Board is welcome to deliberate in executive session and use the Executive Conference room down the hall. I would encourage that and at that point I can give you legal advice. Of course the Board will be the fact finders.

Mr. Hoen asked Ms. Rothenberg if she could see any reason why he, as a contiguous neighbor, should recuse himself.

Ms. Rothenberg suggested that they should talk about it later and determine whether or not he felt he would be biased.

Mr. Hoen stated that he did not think he would have a problem being impartial. He just did not want there to be any hint of unethical behavior.

Ms. Rothenberg stated that her instinct was that there is no conflict, but she wanted to think about it some more.

Mr. Zych asked Ms. Rothenberg if she could help the Board by giving them a standard of review.

Ms. Rothenberg stated that it would be a preponderance of evidence so the city will have to prove that it is more likely than not that what they are saying is true.

Mr. Zych acknowledged that they bear the burden and it is a simple preponderance.

Ms. Rothenberg stated that the Board is literally the fact finder and it's just a preponderance of evidence that it is more likely than not and is 51%. I'm happy that I researched that last week.

Mr. Hoen asked if there were any rules of evidence in play.

Ms. Rothenberg stated there was not. The important thing is that both sides get to put on their case and they get to cross examine each other. That is a little bit different from the format the Board is used to.

Mr. Zych observed that it may be quite a long hearing.

Ms. Rothenberg stated that she hoped not but she suggested that the Board hold off eating the M & M's until later.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 8:34 p.m.

Respectfully Submitted,

Gail E. Bromley, Chair

Vesta A. Gates, Secretary