

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
SEPTEMBER 27, 2017

AMENDED MINUTES

MEMBERS PRESENT:	Gail E. Bromley	Chair
	Benjamin Hoen	
	Liza Wolf	
	Thomas Zych	Vice Chair
MEMBERS ABSENT:	George A. Gilliam	
STAFF PRESENT:	Vesta A. Gates	Zoning Administrative Assistant
	Karen Knittel	City Planner
	Kimberly Bolton	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 except Mr. Gilliam whose absence was excused. Since there were 3 sets of minutes to be voted on, Ms. Bromley suggested postponing the vote until the end of the meeting and the rest of the Board agreed.

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

SEPTEMBER 27, 2017

CALENDAR NO. 3433

Yeshiva Derech Hatorah, 1700 S. Taylor Rd., 'A' Single Family District, requests a variance to Code section 1121.12 (i)(1) to permit a 6' tall fence in the corner side yard next to 3436 Euclid Heights Blvd. and in the front yard next to 1732 S. Taylor Rd. (4- foot maximum height permitted).

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

Ms. Knittel's staff report was as follows:

Yeshiva Derech Hatorah is located on South Taylor Road at the corner of Euclid Heights Boulevard and is zoned 'A' Single-Family. Houses to the west along Euclid Heights Boulevard are zoned 'A' Single-Family. Across Euclid Heights Boulevard are single family houses in an 'A' Single-Family District. There is one single family house to the south on South Taylor Road in the same block as the school which is in a 'B' Two-Family District. Across South Taylor Road is the entrance to Severance Circle and NewSong Church, zoned 'S1' Mixed-Use.

Case History

1989-1990 (Proj. 90-5 and Cal. No. 2213): Planning Commission approves lot joining of five parcels and Board of Zoning Appeals approves Mosdos Ohr Hatorah private school for girls grades K-12. 42 parking spaces were required and 22 provided. Lot joining was not recorded at Cuyahoga County Recorder's Office.

1994 (Proj. 94-18 and Cal. No. 2505): 8-car parking lot and paved play area constructed. Two-story addition atop a one-story space was approved for 1 classroom and resource center. Variance included condition that school staff use all 8 off-street parking spaces off of Beechwood Road and that no greater than 17 classrooms be created without additional parking.

2009 (Proj. 09-16): Planning Commission approves lot resubdivision and revision to conditional use permit to demolish the house and detached garage at 3436 Euclid Heights Boulevard for a 10-space parking lot addition (never implemented) and a rain garden water retention facility.

2016(Proj. 16-7): Planning Commission approves Conditional Use Permit for Yeshiva Derech Hatorah, formerly Mosdos Ohr Hatorah to continue operation of preschool through 12th grade.

Project

The applicant is requesting two six-foot tall privacy fences on the property along the front yards of South Taylor Road and Euclid Heights Boulevard. This is a day school with nursery through 12th grade students. The fences are being requested to enclose the outdoor playgrounds used by the children. The privacy fences would be 6 feet tall. Zoning Code Section 1121.12(i)(1) permits a fence in the front yard to have a maximum height of 4 feet.

The fence along Euclid Heights Boulevard will be set back 48.3feet from the public right-of-way to match the front setback of the house located at 3436 Euclid Heights Boulevard. The school building is setback approximately 80' from the public right-of-way. The 6 foot fence would run east parallel to Euclid Heights Boulevard until the parking lot where it would run parallel to the parking lot until it is even with the school building, which is set back 85.8 feet from Euclid Heights Boulevard. The Zoning Code establishes the front yard by drawing a line from the front of the school building to the front of the house at 3436 Euclid Heights Boulevard.

The 6' fence along South Taylor Road would be located south of the building and is set back 20 feet from the public right-of-way. The house at 1732 South Taylor Road is set back 35 feet from the public right-of-way. The closest point of the curved front of the school building is 20 feet from the public right-of-way. The Zoning Code establishes the front yard by drawing a line from the front of the school building to the front of the house at 1732 South Taylor Road.

The Architectural Board of Review (ABR) approved this fence as shown with the following conditions:

- for the fence facing Euclid Heights Boulevard, the vinyl fence shall transition to wood at the corner, the street setback be the same as the Willis home's, and the arborvitae parallel to the Willis' driveway be preserved with the fence installed east of that hedge.
- a maintenance and replacement plan shall be provided regardless of the Board of Zoning Appeals' decision
- Board of Zoning Appeals' approval of the setback shall be obtained.
- Confirmation shall be received from the Police Chief that she does not object to the fence's lack of transparency.

The Police Chief has reviewed the site plan and has discussed it with the security directors of the Jewish Federation. She has no objections to the construction of the fence around the school.

If approved, conditions may include:

1. A landscape plan shall be approved by the Planning Director;
2. Receipt of a Fence Permit;
3. Complete construction within 18 months of City Council's approval of this resolution; and
4. A requirement to return to the Board of Zoning Appeals for another variance should the property owner or subsequent owners consider modifications that would increase the fence's height or length.

That being the end of staff's report, Ms. Bromley asked the applicant to come to the microphone and go over the practical difficulty for the Board.

Dan Neff, Neff and Associates, 6405 York Road, Parma Heights, Ohio, represented the applicant. He stated that he appreciated the way staff always made things easy for presentation because everything is always outlined. Regarding the practical difficulty he stated that the fence is being installed as part of a Federal grant for safety and security for the children in the playground. The Board has copies of letters in the application packet explaining why. The height is one issue but the other issue is the location. As shown on the slide, there is an exit onto the play area at the corner of the building and is the reason for the proposal for the extra height within that setback. He understood that a 4 foot tall fence would be permitted but that would not meet the security requirement for the school. Although it was not mentioned, the school also has security cameras within the playground so the school always has complete monitoring of the activities within the area. Discussion in ABR was about possibly installing a more opaque fence because the purpose of the security is to have visual block so that passerbys don't know what is going on there. Regarding the fence setback, it was agreed at ABR to

set the fence in line with the face of the neighbor's house on Euclid Heights Boulevard. In the case of the house setback from South Taylor Road, the rear of house is very close to the property line so the fence will be set back from the property line to allow room for the resident to maintain the back of the house. Along the Euclid Heights side there is an existing evergreen hedge and the fence has been pulled back from that hedge in order to leave it in tact. There is also an agreement with the school regarding ongoing and future maintenance. Also additional landscaping has been added on both sides to soften the look along the front.

Ms. Bromley asked Mr. Neff if he could read through items A to J of his practical difficulty so it could be entered into the record.

Mr. Neff stated that A) the current use of the property is a day school for girls that accommodates nursery through 12th grade. The request is for fences to enclose areas in which children play outdoors.

B) Without the variance it would be necessary to erect a 4 foot tall fence which would not provide the necessary security.

C) The entire length of both fence frontages is 6 feet tall and only slightly encroaches the setback as shown in the site plan. Allowing the fence to be 6 feet tall would ensure the children have secure and adequate space for play.

D) Each fence will be set back 20 feet from South Taylor Road and 50 feet from Euclid Heights Boulevard in order to avoid altering the neighborhood by their additions. Additionally the fence creates consistent character across the frontage in height concealing play equipment from view from the street making it look cleaner.

E) The fences will not disturb delivery of governmental services. That was also evident from the police report saying they didn't have any issue with it.

F) The addition of the fences was not considered during the purchase of the property. With increase in threats to the Jewish community the safety and security of the community is taken very seriously as described in the letter from the Jewish Foundation.

G) As previously mentioned, with the increase in threat to the Jewish community, the safety and security is taken very seriously as the circumstances are out of control of the owner.

H) Creating a fence that is tall enough to provide security for the children cannot be feasibly resolved without the use of variances in the circumstances.

I) Other than the height of the fences parallel to the road the proposed fences conform to all applicable zoning requirements and the variances are minimal and landscaping has been provided to soften the look of the fences and;

J) The granting of this variance is not intended to be a special privilege but to satisfy the schools need for security.

That being the end of the applicant's presentation Ms. Bromley opened the public hearing.

Tom Herman, 3428 Euclid Heights Boulevard, stated that he had a few issues with this proposal. Firstly, this is a residential neighborhood and a 6 foot tall wire fence will make this neighborhood look like a prison. He did not think that would help the neighborhood in any way. The way the proposed fence is located on Euclid Heights Boulevard, it will interfere with the sight line of the next door neighbor. He did not think the need for the fences has been established. He went around and looked at the schools in Cleveland Heights and University Heights and noticed that none of these schools had anything approaching this kind of fencing. The other private school on Taylor Road does have a fence in the back but it is in a commercial area and the fences are far from the street. The fence is behind a parking lot and shrubbery. Unless you are looking for the fences you don't really notice them. Also they are openwork fences that don't have the plastic covering on the fence. So, in his opinion, the privacy issue in this case had not been established. Also he did not believe the fencing actually added much security for the children. You can always tell when they are out there whether they can be seen or not because they are very loud. He could think of a dozen ways to go over a 6 foot fence and if someone really wanted to go over a 6 foot fence, they could think of a dozen more. Lastly, he didn't see anything on the site plan showing the location of the dumpster. Referring to the site plan he pointed out that with the fence in the proposed location, the dumpster would have to be closer to the sidewalk, which he would not like to see.

Jeff Robertson, Deputy Director of Security, Jewish Federation of Cleveland, 847 Chagrin River Road, Gates Mills, Ohio, stated that he was called by Rabbi Kline about 4 months ago to do a security assessment at the school. The security assessment involved the issue of fencing. He was told at that time that the City would only allow a 4 foot tall fence. As we all know times have changed. I am the Deputy Director of Security, there is a Director, and we now have an entire security force because of what is going on in the world. We are doing security assessments throughout the community and addressing issues such as this. The playgrounds that used to be wide open aren't wide open any more. In some of the schools, they still are, but not in the Jewish schools. Assessment is based on location and activity that has occurred in the neighborhood. When he assessed this school it was obvious that a 4 foot tall fence was not sufficient. It was also apparent that the proposed fence was set back from the street far enough that it would not obstruct the view of people backing out of their driveway on Euclid Heights Boulevard. There was one portion of the fencing that was especially important to him, which was the eastern front of the school where there is a door. Currently there is a wrought iron fence in that location that will be removed and replaced by the 6 foot tall fence. Kids in the playground can get back into the school or if they have to leave the school in case of an emergency they can use this door and still be on more secure grounds and cameras will also be installed at that location. After doing the assessment, you don't automatically say "you have to have a 6 foot tall fence" but in this location, facing 2 major roads, we determined that the best route to take

for the best protection and security of the school would be a 6 foot tall fence.

Melvin Russell, 3432 Euclid Heights Boulevard, the house with the driveway next to the school. He stated that he opposed the 6 foot tall fence, especially this design. One of the things he looked at is how it will block his view coming out of his driveway. Currently he has a very clear view of what is coming up or down the street. He did not understand why the school had security issues when there is a Cleveland Heights Policeman that sits there nearly 24/7 and every other Jewish school also has a Cleveland Heights Policeman. Since he didn't see them at any other school, he wasn't sure what the security problem was. The fence proposal is ridiculous. They were supposed to install arborvitae around the perimeter for security which they did not finish, so he wasn't sure any promises given now would be kept since previous promises were not. As was recommended by Mr. Herman, if the fence would be set back to his back porch and the height reduced to 5 feet, he could live with something like that. The current proposed 6 foot tall fence makes it look like a stockade. I moved into this neighborhood in 1980 and at that time there no fences. This was a residential neighborhood and he could look up and down the street with a clear view of everyone's yard with no obstruction. It was a wonderful neighborhood. That is the kind of neighborhood I like and why I stayed in Cleveland Heights. I think we have to look at another venue, Are they planning on keeping the hedges? If they do, which side of the hedge will the fence be on? If the fence is on the inside of the hedges, they will never maintain them on my side because they don't take care of them now. It took me having to complain to City Hall to get them to trim them because they hang over into my driveway and I can hardly drive up my driveway. The hedges have been there since we moved there and I like the hedges, in fact the hedge will be better protection than the fence because it is very difficult to drive a car through those hedges I have found. So ultimately, I think they should look at something else.

Yossi Klein, 3507 Shannon Road, Administrator of Schools, stated that he would like to respond to the statements made. Regarding the mention of wire fencing, we specifically did not go with wire fencing, instead going with a more expensive version of a vinyl fence that will be on either side of the building. He wasn't sure why the neighbor felt his view would be blocked more than it is now. He didn't think the neighbor was clear on where the fence would actually be. It will be on the inside of the hedges, closer to the school. He agreed with the neighbor that there were some brakes in the hedge line. He stated they have been brought to the attention of the landscaper but he didn't know exactly when he would get to it. We did have the hedges trimmed on the drive side of the neighbor and once the fence is up the hedge along the neighbor's driveway will be maintained in a manner that the neighbor wants. Regarding the location of the dumpster, it will remain where it is, next to the building, within the fenced-in area. We didn't originally love the idea of the fencing, but the recommendation came from Homeland Security after their assessment of this property about a year ago. They actually recommended a more non-aesthetically appealing, 7 foot tall fence that would be a much greater

deterrent. Obviously we are not trying to create a jail-like appearance which is why we went with what we thought was the most aesthetically pleasing option.

PUBLIC HEARING CLOSED

Mr. Zych stated that the Board is always sensitive to sight lines for traffic. He asked if staff had a picture, aerial, or drawing showing the neighbor's driveway in relation to the proposed fence. We like sight lines to be preserved before you get to the sidewalk so you can see pedestrians and then vehicles. He asked how far back from the sidewalk the fence would be.

Mr. Wong stated, referring to the slide, that the fence would be parallel to the face of the house which means everything in front of that would be unobstructed.

Mr. Neff stated that there once had been a house on that property that the school removed several years ago, so it was agreed to pull the fence back to the same site lines as the homes along Euclid Heights Boulevard.

Mr. Zych agreed that if a resident is backing out of the driveway there is room to see pedestrians first, then street traffic.

Mr. Neff recalled it being noted in ABR that some of the hedges that have died must be replaced. The fence will be inside the hedge but the school is still responsible for maintenance.

Ms. Bromley asked Mr. Neff what he estimated the hedge height to be.

Mr. Neff estimated the current height to be 9 or 10 feet. The fence will be quite a bit lower and they block the view of the fence from the neighbor, Mr. Russell, who likes the look of the hedge. Initially the intent was to remove the hedge and replace it with the fence but at the last meeting it was decided to leave the hedge, install the fence inside it and maintain the hedge.

Mr. Hoen asked if there had been a meeting with the neighbors.

Mr. Neff stated that the neighbors were at the last zoning meeting held here. It was at that time there was discussion about the fence and we agreed to pull the fence back to be in line with Mr. Russell's house. We also discussed the change in the fence materials, making it consistent from the front to the side.

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

Mr. Zych moved to grant Yeshiva Derech Hatorah, 1700 S. Taylor Rd., 'A' Single Family District, a variance to Code section 1121.12 (i)(1) to permit a 6 foot tall fence in the corner side yard next to 3436 Euclid Heights Boulevard and in the front

yard next to 1732 South Taylor Rd. where a 4 foot maximum height is permitted. In the record we have a letter from our own Police Chief and a letter regarding Homeland Security and The Jewish Federation and there is no contrary evidence on the record, that there is a particular safety and security concern not unlike other settings where we have the intersections of two busy roads. So in addition to the specific current tenant but with regard to any owner using the property for similar reasons there would be a particularized and established security need requiring a fence of this type. Also finding that the setbacks in all directions are sufficient to maintain sight lines for pedestrians as well as traffic on this busy intersection and finding that it will not unduly burden the neighborhood or surrounding properties given the steps that have been taken regarding the landscaping, the landscape plan, and the specific maintenance plan which will be a condition of the variance if it is granted. I would note that should the variance be granted it would come with the following conditions, including; 1)A landscape plan to be approved by the Planning Director and complied with by the owner and any subsequent owner; 2) Receipt of a fence permit; 3)Compliance with the maintenance and replacement plan for the fencing and landscaping as submitted by the applicant and made part of the record; 4)A requirement that the applicant or any subsequent owner return to the Board of Zoning Appeals for another variance should the property owner or subsequent owner consider modifications that would increase the fence's height or length; and finally, 5)All construction is to be completed within 18 months of City Council's approval of this resolution.

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

Ms. Bromley reminded the applicant that City Council must review all variances.

APPROVAL OF THE MINUTES OF THE MAY 17, 2017 PUBLIC HEARING

Mr. Zych stated that prior to the meeting he had provided corrections or additions to these minutes. He moved to approve the May 17, 2017 minutes subject to those corrections or comments.

Mr. Hoen seconded the motion which carried 3-0-1. Ms. Bromley abstained because she had an excused absence from that meeting.

APPROVAL OF THE MINUTES OF THE, JUNE 21, 2017 PUBLIC HEARING

Mr. Hoen moved to approve the June 21, 2017 minutes as distributed.

Ms. Wolf seconded the motion which carried 3-0-1. Mr. Zych abstained because he had an excused absence from that meeting.

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

Mr. Zych explained that although he would abstain due to absence from this meeting, he had given Ms. Gates some corrections prior to the meeting. Ms. Wolf moved to approve the July 19, 2017 minutes with corrections.

Mr. Hoen seconded the motion which carried 3-0-1. Mr. Zych abstained.

OLD BUSINESS

None.

NEW BUSINESS

Ms. Knittel reported that there were no new cases for next month, therefore there will be no meeting in October.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:43 p.m.

Respectfully Submitted,



Gail E. Bromley, Chair



Vesta A. Gates, Secretary