

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
June 17, 2020

MEMBERS PRESENT: Denver Brooker  
Liza Wolf  
Thomas Zych Chair  
Ben Hoen Vice-Chair

ABSENT MEMBER Dennis Porcelli

STAFF PRESENT: Karen Knittel City Planner  
Pam Roessner Assistant Law Director  
Richard Wong Planning Director

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:02 p.m. at which time a quorum was present.

APPROVAL OF THE MINUTES OF THE MAY 20, 2020 PUBLIC HEARING

Ms. Wolf moved to approve the minutes. Mr. Porcelli seconded the motion, and the motion was approved.

THE POWERS OF THE BOARD AND PROCEDURES OF THE BOARD OF ZONING  
APPEALS PUBLIC HEARINGS FOR REGULAR VARIANCES

Mr. Zych stated that the purpose and procedures for tonight's meeting are stated for all in attendance. The hearings are quasi-judicial in nature and certain formalities must be followed as if this were a court of law. Anyone who wishes to speak about a case will first be placed under oath. For each case, City staff will make a presentation and then each applicant will present his or her case stating practical difficulty for which we are being asked to grant a variance. The Board will then open a public hearing to obtain testimony from any other persons interested in the case. The applicant will have an opportunity to respond to any testimony from the public and will address those comments to the Board. The Board may then ask questions of the applicant. Based on all the evidence in the record, the Board will make findings of fact and render its decision by motion. The formal nature of these proceedings is necessary because each applicant is asking for an extraordinary remedy called a variance. A variance is formal permission by the City for an individual not to comply with a portion of the municipal Zoning Ordinances which is binding to all others.

In making its decision of whether to grant a standard variance, the Board will weigh factors set forth in the Zoning Code in Section 1115.07(e)(1). The burden is upon the applicant to demonstrate by a preponderance of the evidence that the literal enforcement of the Zoning Code would result in a practical difficulty. Preponderance of evidence means the applicant proved his or her position is more likely than not true. The applicant must demonstrate circumstances unique to the physical character of his or her property. Personal difficulties, personal hardships,

or inconvenience are not relevant to the Board's determination. The Board is the final administrative decision-maker for all regular variances.

PUBLIC HEARING  
JUNE 17, 2020

Mr. Zych stated that each of the cases before the BZA has multiple variances for the Board to consider. For efficiency purposes but to preserve the public record, there will be a single public hearing for each case. Once that hearing is closed, the Board will then consider each of the requested variances separately with a separate vote.

**CALENDAR NUMBER 3500**

Susan Kutash, 3044 Somerton Rd., 'A' Single-family, requests a variance to Code Section 1121.12(a)(10) to permit a generator in the west side yard to have setback less than the minimum 5' required

Context:

This a single-family house zoned 'A' Single-family.  
The properties surrounding it are single-family houses, zoned 'A' Single-family.

Zoning History:

Cal. No. 3330 (October 2013) a variance to Section 1121.12(a)(1) was granted to permit a garage to be rebuilt with a 0' setback from the east side lot line (3' minimum required).

Project:

The applicant proposes to install a generator in their side yard that would be set back from the side property line 2'. The applicant states that this location provides access to the gas line. The applicant states that the generator will only be used during power outages.

Facts:

- This is a nonconforming parcel that is 40' wide and is 6,640 square feet. A code conforming 'A' Single-family parcel a minimum of 50' wide at the building line and has a minimum lot area of 7,500 square feet (Code section 1121.06).
- Code Section 1121.12(a)(10) permits emergency generators to be located in the rear and side yards, requiring a minimum setback of 5' when located in the side yard.
- The applicant's driveway is located in the east side yard. This driveway is shared with 3048 Somerton.
- The requested location on the west side of the house provides direct access to the gas meter.
- In the west side yard, there is a stairwell with 3 steps leading to a side door. These stairs extend into the side yard 3'7.5". The fence/railing surrounding the steps is 2' from the property line.
- The generator would be set back 2' from the west property line. Section 1121.12(a)(1) requires a minimum side yard setback of 5'.
- The neighbor to the west, 3040 Somerton, who would be most impacted has written a letter supporting this variance request.

- The applicant provided photographs documenting that the rear yard is prone to having standing water during storm events when it is expected that the use of the generator would be required.

If approved, conditions may include:

1. Variance 3500 is granted to permit an emergency generator to be located in the west side yard with a setback of 2' as shown on the revised site plan dated June 10, 2020.
2. Receipt of a building permit;
3. Submit a plan to screen the generator from the view of street and neighbors for Planning Director's approval; and
4. Complete construction within 18 months of the effective date of this variance.

Mr. Zych asked the applicant would he like to present briefly their project to the board.

Pam Roessner asked do you swear or affirm that the testimony that you're about to give to the Planning Commission is the whole truth and nothing but the truth?

Susan Kutash, 3044 Somerton Rd., affirmed the oath and agreed that the standard variance application from May 8, 2020, was accurate, Ms. Kutash went on to give an overview of why the request for the variance was brought to the Board of Zoning Appeals. She went to detail the practical difficulty detailing that due to the flooding and frequent outages the needing for a generator on the side of the home where the gas line is located was necessary.

Mr. Zych asked if there were any further factors for the need and the actual practical difficulty.

Mr. Kutash 1804 Caldwell Ave. affirmed the oath went on to say that the main factor that the variance should be considered due to the flooding inside and outside of the home that has happened for several years on the property, along with frequent outages the only particular placement would be on the side of the home. He went on to say that this would allow the homeowner to feel secure in the events listed.

Mr. Zych asked if there was any public comment. He then closed all comments from the public and asked if staff had anything they wanted to add or ask.

Ms. Wolf stated that she was aware that power outages in the area was common asked if this was the need behind the request for a variance.

Ms. Kutash 'Yes'

Pam Roesser asked if Mr. Wong had received any public comments.

Mr. Wong "No".

Mr. Zych asked if there was a motion.

Ms. Wolf regarding Cal No. 3500 Susan Kutash, 3044 Somerton Rd., 'A' Single-family, to

grant a variance to Code Section 1121.12(a)(10) to permit a generator in the west side yard to have setback less than the minimum 5' required after reviewing the application and other submission and hearing the evidence under oath I find and conclude that special circumstance and conditions exist at this particular property such as indicated and are not generally applicable to other land structure in the same zoning district. The property in question will not yield a reasonable return without the variance. Generators are a benefit in the City of Cleveland Heights, due to the frequent outages. The variance is insubstantial and the minimal necessary to Make possible the reasonable use. The applicant has a sub-pump to reduce the water issues in the basement and due to power outages in Cleveland Heights and the fact that the installation is not necessarily possible in the back of the property due to flooding, it is a necessity. The essential character of the neighborhood would not be substantially altered as this would only be used and operated during outages it will not affect the character of the neighborhood and it will come out about the same width as the current basement railing. The variance would not adversely affect the delivery of government services and is not the result of an action of the applicant as they didn't have the issues that they presently have now with the flooding of the basement. This applicant predicament cannot be resolved with method other than a variance because this is the only place the generator due to finical reasons. If granted the variance should include the following conditions;

1. Variance 3500 is granted to permit an emergency generator to be located in the west side yard with a setback of 2' as shown on the revised site plan dated June 10, 2020.
2. Receipt of a building permit;
3. Submit a plan to screen the generator from the view of street and neighbors for Planning Director's approval; and
4. Complete construction within 18 months of the effective date of this variance.

Mr. Hoen seconded the motion.

Mr. Zych stated that the motion was approved 4-0.

### **CALENDAR NUMBER 3501**

Andrew Plante & Melinda Lawrence, 2301 Coventry Rd. 'AA' Single-family, requests a variance to Code Section 1121.12(h)(3) to permit maintaining fence less than the minimum 6' height required to surround a new swimming pool.

#### **Context:**

This is a single-family house zoned 'AA' Single-family. The property is surrounded by single-family houses zoned 'AA' Single-family.

#### **Zoning History:**

Cal. No. 3316 (July 2013) a variance to Section 1121.12(c)(1)(C) to permit a 16' wide front yard curved driveway with 2 curb cuts (12' maximum width; 1 drive and 1 curb cut permitted).

#### **Project:**

The applicant would like to install a new 16' by 32' swimming pool in their rear yard and maintain the current fencing which has a height less than the minimum 6' required by Code Section 1121.12(h)(3).

Facts:

- This is a code conforming parcel that is 200' wide and has 59,000 square feet (1.35 acres). Code Section 1121.06 requires 'AA' single-family parcels to have a minimum lot width at the building line of 100' and to have a minimum lot area of 15,000 square feet.
- The proposed location of the swimming pool in the rear yard is code conforming (Section 1121.12(a)).
  - The pool would be set back 107' to 112' from the north property line and would be set back 72' to 77' from the south property line. A minimum of 15' from the side property line is required.
  - The pool would be set back 74' to 76' from the rear property line. A minimum of 15' from the rear property line is required.
- All gates will be code conforming self-closing and self-latching (Section 1121.12(h)).
- The rear yard of the property is enclosed by fences. Zoning Code Section 1121.12(h)(3) a swimming pool to be surrounded by a fence that is a fence a minimum of 6' in height. The height of the fence the applicant is requesting to maintain to surround the pool varies:
  - The fence along the rear property line is 68" (5.67 feet) to 73" (6.08 feet) tall.
  - The fence parallel to the north side property line in front of the garage is 57' (4.75 feet) to 63" (5.25 feet) tall and the fence segment behind the garage parallel to the north property line is 72' (6 feet).
  - The fence segment north of the pool and parallel to the house is 58.5" (4.875 feet) to 60" (5 feet) tall.
  - The fence parallel and south of the house is 60" (5 feet) tall.
- The south side yard is enclosed by a fence. The fence closest to the street and parallel to the street is 62" (5.167').
- Extensive landscaping exists along the rear(east) property line and additional landscaping would be added along the side property lines.
- The pool would be located behind the house and therefore, not visible from Coventry Road.
- The pool is part of a larger rear yard renovation plan that includes patio areas and landscaping.
- The Architectural Board of Review reviewed and approved these plans at their February 4, 2020 meeting.

Mr. Zych asked that the Staff report dated May 8, 2020, entered into the public record. Hearing no objection, it is so entered.

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

If approved, conditions may include:

1. Variance 3501 is granted to permit the existing fence to surround and enclose a new swimming pool as shown on the site plan submitted with the BZA application.
2. All gates providing access to the rear yard will be code conforming self-closing and self-latching gates.

3. Receipt of building permit; and
4. Complete construction within 18 months of the effective date of this variance.

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

Mr. Zych asked for the applicant to present and prepare to discuss the practical difficulty, he also asked that they are sworn in and that they give their name and address.

Pam Roessner asked do you swear or affirm that the testimony that you're about to give to the Planning Commission is the whole truth and nothing but the truth?

Andrew Plante & Melinda Lawrence 2301 Coventry Rd affirmed the oath went on to say that the main factor that the variance should be considered due

Mr. Zych stated that the application was submitted on February 12, 2020. He asked the applicant if he was familiar with the application and to the best of his knowledge were the facts stated in the application are accurate and true.

Mr. Plante and Ms. Lawrence answered affirmatively.

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

Mr. Plante went on to state this is a large property that currently has a fence, however, with the installation of a pool they are requesting a variance to permit the fence that is less than minimum 6' height requirement. Mr. Plante stated that removing the old fencing and installing a new fence around the entire property would not be feasible. He added that they currently have children and are aware of the security and safe that need to be put in place. Mr. Plante stated that cameras, as well as motion detectors and other security measures, have been put in place to ensure the safety of the homeowners and surrounding neighbors. The new design would allow for more a visual appeal, also giving the homeowner the ability to have more space as well as add value to the home.

Mr. Zych asked if there have been any comments from the public. Mr. Wong affirmed as well that there were no additional comments via email. Mr. Zych closes the floor for public comments. Mr. Zych asked if there were any comments from the Board.

Mr. Zych asked if there has been any occasion where a person has climbed the current fence and come onto the property.

Mr. Plante "No" he went on to explain the detail of their security that is in place on the property itself.

Mr. Zych asked if there was a motion.

Mr. Booker in regards to Cal No. 3501 Andrew Plante & Melinda Lawrence, 2301 Coventry Rd. 'AA' Single-family, requests a variance to Code Section 1121.12(h)(3) to permit maintaining fence less than the minimum 6' height required to surround a new swimming pool. after reviewing the application and other submission and hearing the evidence under oath I find and

conclude that special circumstances and conditions exist at this particular property such as indicated and are not generally applicable to other land structure in the same zoning district. In particular, the existing fence is securing the back yard and the area of the pool new and close to the zoning requirements. The installation will include all security features including motion detectors, alarms, and cameras, and automatic alerts. The variance is insubstantial and is the minimal necessary to make possible use of the land structure demonstrated by the fact that the back yard is currently secured by a fence that is at least 5' and new gate compliant with safe locks and extensive perimeter landscaping that will reinforce that security. The essential character of the neighborhood would not be substantially altered as a result of the variance because existing perianal landscaping can be maintained by keeping the existing fencing. The variance does not adversely affect the delivery of government services and special circumstances exist that are not the action of the applicant: there is an existing fence that is close to the zoning required height on the property already. If granted the variance should include the following conditions

1. Variance 3501 is granted to permit the existing fence to surround and enclose a new swimming pool as shown on the site plan submitted with the BZA application.
2. All gates providing access to the rear yard will be code conforming self-closing and self-latching gates.
3. Receipt of building permit; and
4. Complete construction within 18 months of the effective date of this variance.

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

## **CALENDAR NUMBER 3502**

Hebrew Academy of Cleveland, 1516 Warrensville Center Rd., AA Single-Family, requests a variance to Code Section 1165.03(g)(1) to permit a building to be located on more than one parcel (not permitted).

Ms. Wolf wanted to make note that her children attend Hebrew Academy. Mr. Zych asked if that association would inhibit her decision on this case. Ms. Wolf "No". Mr. Zych asked if any of the board members felt that Ms. Wolf should recuse herself. No member objected.

Mr. Hoen stated that he also had associations with Hebrew Academy and also that that association wouldn't inhibit his decision on the matter.

Mr. Zych went on to state the detail of this case, and that he's aware of the question at hand in regards to the joining of the two parcels. He stated that unless there are any objections the staff report dated June 10, 2020, entered into the record, hearing no objection, it is so entered.

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

### **Context:**

The land is zoned "AA" single-family. To the south, in South Euclid, about 1/3 of the former Oakwood Club land was developed as a Walmart and other retail stores. To the north and west are large single-family homes in the "AA" single-family district on Oakwood Drive, a private road, and single-family homes in the "A" single-family district. To the east are properties in South Euclid, commercial and residential, which are zoned C-1 (Limited Commercial), C-2 (General Commercial), R-50 (Single-Family 50), and R-50 (Single-Family 40).

Zoning History:

January 2016 (Proj. 16-5): The Planning Commission approved reuse of the former Clubhouse as Hebrew Academy's 10-classroom, first floor high school and administrative offices, retention and reuse of existing outbuildings, and construction of playfields and courts.

September 2016 (Proj. 15-31): The Planning Commission approved a conditional use permit for new school (early childhood, elementary, jr. high) with parking & playfields at former Oakwood Club.

June 2017 (Proj. 17-14): The Planning Commission approved a conditional use permit for Hebrew Academy to use 13,028 s.f. in the lower level at high school for six new K-12 classrooms & support space to bring total maximum number of students in building to 310 students.

November 2017 (Cal. No. 3435): a variance to Code Section 1121.12(i)(1) and (6) was approved to permit a 7' tall chain link fence in the front yard surrounding a playground in front of the existing school (4' maximum height permitted, chain link not permitted).

Project:

The applicant is requesting a variance to permit a building to be located on more than one parcel to enable the subdivision of their parcel. The applicant wants to separate the existing 9.8-acre campus from the expansion campus of 25.9 acres during the construction and subsequent mortgage repayment term.

Facts:

- At their May 13, 2020 meeting the Planning Commission approved with conditions the applicant's request to split the existing parcel into four code-conforming parcels:
  - Parcel "A-3A", 41.8319 acres and 1,975' wide
  - Parcel "O", 25.9748 acres and 598' wide
  - Parcel "M", 9.7962 acres and 415' wide
  - Parcel "N", 5.4518 acres and 234' wide

The approval included the condition that the applicant receive a variance to have one building on two parcels. A code conforming "AA" Single-family parcel is a minimum of 15,000 square feet and 100' wide.

- The lot split will result in a building being on two parcels (parcel M and parcel O). The proposed parcel separation will occur between the existing school facility and the new addition under construction. Code Section 1165.03(g)(1) states that every building shall be on one lot only.
- The building plan includes a firewall at this connection and the exterior wall of the existing facility was modified at this connection to meet building code requirements.
- The proposed lot split will not change the use of the property nor will it affect neighboring properties.
- The Architectural Board of Review approved the building expansion at their March 3, 2020 meeting.

If approved, conditions may include:

5. Variance 3502 is granted to permit the school building as shown on the site plan submitted with the BZA application to be located on more than one parcel;
6. Receipt of a building permit; and
7. Complete construction of the school building shown on the site plan submitted with the BZA application within 48 months of the effective date of this variance.

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

Mr. Hoen stated that based on the drawing that it appears that dividing line between parcel "M" and parcel "O" would be exactly the building boundary of the existing building and the vacant



lot that will be the future home of the new building, and if they were to be divided today there would be no structure on the parcel labeled "O".

Ms. Knittel currently that is correct.

Ms. Wolf asked if the division of the parcel is due to a financial reason.

Ms. Knittel the current building is on one parcel, when looking at the PowerPoint presentation it shows how the actual division of the parcel will be done. Ms. Knittel stated that more detail will also come from the applicant.

Pam Roessner asked do you swear or affirm that the testimony that you're about to give is the whole truth and nothing but the truth?

Ivan Soclof 22400 Ranch Rd, Beachwood, Oh. affirmed the oath.

Mr. Zych asked for the applicant to explain his practical difficulty in this matter.

Mr. Soclof stated that finally they want to place a new mortgage on the existing building while the new building is being constructed. He added that it is the intent that the buildings operate as a single unit, but for a financial reason, they are requesting the lot split. He went on to further explain the reasoning behind the decision based on what would be a sound financial move for all involved. Mr. Soclof stated that the lot split does not affect in any way the intended use of the Overall property. Mr. Soclof reiterated that this would not change the use of the property it is strictly for a financial reason.

Mr. Zych stated that the Hebrew Academy submitted on May 13, 2020, an application form can you state to the best of your knowledge that it's true and complete. Mr. Soclof "Yes".

Mr. Zych asked that it be, entered into the record, hearing no objection, it is so entered. Are there any members of the board who have any questions for the applicant.

Mr. Hoen stated that it appears the if the parcels weren't split it would be code conforming building and construction zone, and was there any thought given to combining these two parcels having the possibility of having an exception lot and having the loan on the exception lot and not the whole parcel.

Mr. Soclof stated that the issue with this is that because of mechanic lien waivers laws, it would preclude a lender from being interested in either property.

Mr. Zych if there were any further comments from the board or public.

Ms. Wolf read a statement from the public which stated "Marylin Stokes, 3794 Shannon Rd, how does this affect my property.

Mr. Soclof stated this wouldn't affect the property at all.  
Mr. Zych asked if there was a motion.

Mr. Hoen regarding Calendar No. 3502 Hebrew Academy of Cleveland, 1516 Warrensville Center Rd., move to grant the application with conditions to the variance code section 1165.03 (g)(1) to permit a building to be located on more than one parcel (not permitted). After reviewing the application and other submissions and hearing the evidence under oath the board finds I find and conclude that special circumstances and conditions exist at this particular land structure that this is a large parcel of land that's under construction and an existing structure on the Northside of the land with structure South of the property and combine into one. The parcel is being split for purposes of mortgaging the existing structure on the parcel the structure itself will remain used in the same matter that it would have been used had the parcel split not been. The parcel split will allow the completion of the project for the benefit of the community. Variance is insubstantial minimal necessary to make possible the reasonable use to the land structure without the variance they couldn't co the essential character of the neighborhood would not be altered, this is the back yard a would enhance the character of the neighborhood. The variance does not adversely affect the delivery of government service and is not the result of an action of the applicant. if granted the variance should include the following conditions

1. Variance 3502 is granted to permit the school building as shown on the site plan submitted with the BZA application to be located on more than one parcel;
2. Receipt of a building permit; and
3. Complete construction of the school building shown on the site plan submitted with the BZA application within 48 months of the effective date of this variance.

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

#### OLD BUSINESS

No old business to report

#### NEW BUSINESS

No new business, Ms. Knittel stated that we have received one case for July so there will be a meeting.

#### ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 8:10 pm.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary