

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
August 19, 2020

MEMBERS PRESENT: Denver Brooker  
Thomas Zych Chair  
Ben Hoen Vice-Chair  
Dennis Porcelli

ABSENT MEMBER Liza Wolf

STAFF PRESENT: Karen Knittel City Planner II  
Pam Roessner Assistant Law Director  
Richard Wong Planning Director  
Christy Lee Recording Secretary

**CALL TO ORDER**

Mr. Zych called the regular meeting to order at 7:03 p.m. at which time a quorum was present.

**APPROVAL OF THE MINUTES OF THE JULY 15, 2020 PUBLIC HEARING**

Mr. Brooker corrected the Minutes to show that he was not present at this meeting. Mr. Hoen moved to approve the minutes as corrected. 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**  
**August 19, 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 No. 3504**

Hebrew Academy of Cleveland, 1860 S. Taylor Rd., ‘C’ Local Retail & ‘A’ Single-Family, Request variance to 1153.03(3) to permit temporary modular classroom to be less than 50’ from rear property line & side property Lines.

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

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. He stated that unless there are any objections the staff report dated August 13, 2020, entered into the record, hearing no objection, it is so entered.

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? Karen Knittel affirmed the oath.

Ms. Knittel reviewed her staff report using a PowerPoint presentation. Ms. Knittel added that notification went to the surrounding neighbors as well all properties abutting the Hebrew Academy of Cleveland. Ms. Knittel added comments that were received from the public in support of the project from Dr. Petal 3429 Blanche Ave who stated “I reside on Blanche Avenue and his property directly abuts the athletic field which visible from my property. I am directly impacted by this project, I wholeheartedly support this project. Hebrew Academy has been a great neighbor and maintained their property in good working order and have a positive impact on the community. I strongly encourage the board to approve this project so that there can be safe education during the pandemic”.

**CONTEXT:**

The T-shaped campus occupies the western block face of South Taylor Road between Berkeley Road and Blanche Avenue. In the middle, the property extends west into a single-family zoned district. This area currently is the playfield and is bordered by the rear yards of single-family homes.

## **HISTORY:**

2001: Proj. 01-05 A revised conditional use permit was issued to permit the demolition of the house at 3442 Berkeley Ave (PPN 684-26-075) for the construction of a 24' driveway and lot consolidation.

2003: Proj. 03-11 A revised conditional use permit was issued to permit a new front entry and additional parking at the corner of Berkeley and S. Taylor.

2013: Proj. 13-40 A revised conditional use permit was issued to permit the construction of a playground and to expand the parking lot with 17 new spaces on what had been vacant lots at 3438 & 3434 Berkeley Road.

2013: Cal. No. 3003 BZA granted variances to permit a front yard setback of 12' for a new parking lot.

2019: Cal. No. 3484 BZA granted a variance to permit a 6' tall fence around the parking lot at the corner of Berkeley Ave. and South Taylor Rd

## **PROJECT DESCRIPTION:**

The Hebrew Academy of Cleveland is seeking approvals to install a temporary modular classroom at their 1860 South Taylor Road Campus. This additional temporary classroom space is needed for the school to comply with state and COVID 19 recommendations for social distancing between student desks. This temporary structure would be on-site until either the requirements for COVID 19 social distancing are lifted or the construction of the Hebrew Academy school building at the former Oakwood Country Club site is completed. Hebrew Academy anticipates this new school building to be completed by August 2021.

The proposed temporary modular classroom would be 96'10½" by 68' and would be 13'6" tall. The temporary modular classroom would be located on the athletic field and be set back 28' from the rear property line and 22' from each of the side property lines. A variance is required because school buildings are required to be a minimum of 50' from property lines (Code Section 1153.03(3)).

## **FACTS**

- Educational facilities are conditionally permitted uses in both the A single-family district and the C-2 local retail district.
- Code section 1153.03 requires that school facilities be set back a minimum of 50' from property lines. This proposal requires setback variances.
- The temporary classroom would be 22' from the side property lines and 28' from the rear property line.
- The proposed site for the temporary classroom is what has been the school's athletic/play field.
- This site is adjacent to the rear yards of single-family homes on Berkely Rd. and Blanche Ave.
- The field has a chain-link fence around it and a 6' wood fence located at the rear property lines of the Berkeley Rd. homes.
- This additional temporary classroom space is needed so that the school may reduce the number of students in each classroom in an attempt to follow the recommended COVID 19 social distancing requirements.
- The temporary modular classroom is 13'6" tall. Accessory Buildings in the 'A' single-family district are permitted to be 15' (Code Section 1121.12(g)).
- The Planning Commission approved a conditional use permit for this temporary modular classroom at their August 12, 2020 meeting.

If approved, conditions may include:

1. Variance 3504 is granted is to permit the temporary modular classroom building to be located 22' from the side property lines and 28' from the rear property line as shown on the site plan dated July 31, 2020;
2. The temporary modular classroom building shall be removed when the newly constructed Hebrew Academy school building at the former Oakwood Country Club opens or when the need for COVID-19 social distancing is no longer present;
3. The athletic/play field shall be restored to its current condition immediately after the modular classroom building is removed;
4. The applicant shall work with staff to resolve any complaints from neighbors and residents;
5. Receipt of Architectural Board of Review approval; and
6. Receipt of all required building permits.

Mr. Zych stated that unless there are any objections the email from the public will be entered into the record, hearing no objection, it is so entered.

Glen Ramage stated that he would be the representative for Hebrew Academy of Cleveland 7980 Elmhurst Drive Broadview Heights, OH.

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?

Mr. Ramage affirmed the oath.

Mr. Zych stated that the Board has an application dated July 7, 2020. He asked the applicator representative whether to the best of his knowledge the content of the application was true, accurate, and current.

Mr. Ramage "Yes"

Mr. Zych stated that if there was no objection the application will be entered into the record. Hearing no objection, it was so entered.

Mr. Ramage stated that he felt that the staff report was thorough in explaining the particle difficulty and the need for the variance. Mr. Ramage informed that this is a hardship that many are facing in light of the current pandemic. He went on to state that this will be a temporary structure to allow for safe learning along with keeping with social distancing guidelines. Mr. Ramage stated that Hebrew Academy has always kept a great working relationship with the community, and will continue to do so with the installment of the temporary modular classrooms.

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

Mr. Hoen asked for clarification on the temporary structure and is there any distinction within the code about a temporary structure as opposed to a permit structure such as a tent permit and having a variance for a temporary structure.

Ms. Knittel stated that the city's law department had been notified about this case and how this should be viewed in light of the current pandemic. Ms. Knittel stated that currently due to this having to also obtain a

conditional use permit and the reasoning behind this temporary structure limitations are granted some leeway to say with state regulation of social distancing. And therefore, any additional will have to go before the Planning Commission going forward.

Mr. Zych reminding the board this is not meant to be a legal discussion in this meeting. Mr. Zych stating that a tent is a transitory structure and not in any way affixed to the property. Mr. Zych then asked if there were any further questions for the Board or the applicant.

Mr. Porcelli asked what type of pavement would be installed to get from the modular unit to the existing building.

Mr. Ramage responded that a concrete sidewalk would connect the modular unit to the existing building. The pavement would wrap around the east side of the building and connects to the pavement between the two playgrounds.

Mr. Porcelli asked if the building would have both storm and sanitary connections to existing facilities.

Mr. Ramage responded that they have been looking into the existing utilities and that it does appear that there is appears to be a sanitary connection to the north in what used to be a residential property that appears to allow a connection. He stated that they found water as well and that they are working on a power connection and have submitted the permit applications. He states that for stormwater there are two existing inlet basins, one to the northwest and one to the northeast. He explained that they plan to arrange their downspouts to point towards these two existing inlet basins. He stated that should stormwater become an issue they would work with the City to avoid any stormwater problems.

Mr. Porcelli stated that he would not want this to become a problem for the neighbors,

Mr. Zych stated that this concern that stormwater is adequately dealt with could be considered as a condition to a motion. Mr. Zych asked if there were further comments for the board or public.

Ms. Knittel stated two callers were unmuted. Mr. Zych asked if they wanted to be sworn in and comment.

Rabbi Eli Dessler identified himself and explained that he was not able to connect with a computer and therefore called into the meeting.

Ms. Knittel stated that this was 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?

Rabbi Dessler affirmed the oath. He gave his address, 3681 Bendemeer Cleveland Heights.

Rabbi Dessler thanked the Board and the City of Cleveland Heights for the phenomenal attitude in the midst of the current crisis of Covid-19. Rabbi Dessler went on to say there are building their Oakwood school and that they hope to be in the building in 2021. He stated that they do need this temporary structure. He stated that staff outlined the situation during the staff report and that Glenn Ramage has also described the situation.

Mr. Zych hearing no one who wished to speak, Mr. Zych closed the public hearing. There being no further questions from the Board Mr. Zych asked for a motion.

Mr. Brooker moved regarding Calendar 3504, Hebrew Academy of Cleveland, 1860 South Taylor Rd., 'C' Local Retail & 'A' Single-Family District, to grant a variance to Code Section 1153.03(3) to permit temporary modular classroom to be than 50' from rear property line & side property lines. After reviewing the application and other submissions and hearing the evidence under oath I find and conclude that special circumstances and conditions exist at this particular property, which aren't generally applicable to these land and structures in the same zoning district. in particular, this is a temporary measure only to allow the school to operate daily under the current pandemic. The variance is insubstantial and is the minimal necessary to sustain the reasonable use of the land and structure as determined by the fact that this temporary for 12 to 16 months only with their expansion of the Oakwood Country Club providing the necessary additional space if the pandemic conditions still exist at that time. The essential character of the neighborhood would not be substantially altered as a result of the variance, again this is temporary and the building is buffered by existing trees and the detached garages of the adjacent residential properties. The variance would not adversely affect the delivery of government services. The granting of the variance requested would not confer any special privilege on the applicant because the intent is to provide a benefit that is temporary and specific to this school's needs. If granted the variance will have the following conditions.

1. Variance 3504 is granted to permit the temporary modular classroom building to be located 22' from the side property lines and 28' from the rear property line as shown on the site plan dated July 31, 2020;
2. The temporary modular classroom building shall be removed when the newly constructed Hebrew Academy school building at the former Oakwood Country Club opens or when the need for COVID-19 social distancing is no longer present;
3. The athletic/play field shall be restored to its current condition immediately after the modular classroom building is removed;
4. The applicant shall work with staff to resolve any complaints from neighbors and residents;
5. Receipt of Architectural Board of Review approval;
6. Receipt of all required building permits; and
7. The applicant shall provide stormwater management control for the new temporary structure.

Mr. Porcelli seconded 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 three cases for September so there will be a meeting.

**ADJOURNMENT**

There being no further business to come before the Board, the regular meeting was adjourned at 7:31pm.

Respectfully Submitted,

  
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Thomas Zych, Chair

  
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Karen Knittel, Zoning Administrator

