

**CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
AUGUST 18, 2021**

MEMBERS PRESENT: Melissa Fliegel
Dennis Porcelli
Thomas Zych Chair
Ben Hoen Vice-Chair

ABSENT MEMBERS: Liza Wolf

STAFF PRESENT: Karen Knittel Assistant Planning Director
Pam Roessner Assistant Law Director
Christy Lee Administrative Assistant

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present with the absence of Ms. Wolf. A quorum is present.

APPROVAL OF THE MINUTES OF THE JULY 22, 2021 MEETING

Minutes for the July 22, 2021 meeting were reviewed, Mr. Hoen moved to accept the Minutes. The motion was seconded by Mr. Porcelli; 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 a 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

Cal. No. 3527 Erich & Debra Lachman, 1560 Rydalmount Rd., 'A' Single-Family requests variance to Sect. 1121.12(a)(10) to permit air conditioning condensing unit to be less than the required 5' from the south side property line.

Mr. Zych asked that staff report dated August 11, 2021, be entered into the record seeing and hearing no objections, the report is so entered.

All those wishing to testify were sworn in by Pam Roessner.

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

Context

This is a single-family property zoned 'A' Single-family. The properties surrounding it are single-family homes, zoned 'A' single-family. The Future Land Use Map from the Master Plan shows this property in an area to be used for detached single-family homes.

Project

The applicants propose a replacement furnace and whole-house air conditioning. The location of the exterior air conditioning condensing unit would be two feet from the south side property line.

Facts

- This is a code conforming parcel that is 50 feet wide and is 7,950 square feet in area. A code conforming 'A' Single-family parcel is 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 freestanding air conditioning machinery to be located in the rear and side yards, requiring a minimum setback of 5' when located in the side yard.
- The air conditioner condensing unit would be set back two feet from the south property line.
- There is an existing four-foot-tall board-on-board fence along the south property line.
- The applicants' driveway is located along the north side property line.
- There is a deck and patio behind the house.

If approved, conditions may include:

1. Variance 3527 is granted to permit an air conditioner condensing unit to be placed 2-feet from the south property line as shown on the site plan submitted with the BZA variance application.
2. Receipt of a building permit; and
3. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel stated that the applicant is present and can discuss the particle difficulty for the

Board.

Mr. Zych asked if there were any questions from the Board to Ms. Knittel. There were no questions.

Mr. Zych stated that hearing no objection, the application dated July 22, 2021, is entered into the record.

Mr. Eric Lachman and Mrs. Debra Lachman, 1560 Rydalmount Rd, confirmed that they were sworn in and thanked the Board of Zoning Appeals for the opportunity to present their case. He further explains how this will allow for the home to be fully air-conditioned, which would add value to the property. He further explained the reason behind the placement of the air conditioning unit being 2-feet from the south property line because there is an existing deck on the property giving an additional reason why the variance is needed.

Mr. Zych asked if there were any further presentations by the applicant. He then asked if there were questions from the Board.

Mr. Porcelli asked who owns the fence along the property line and if the fence is exactly on the property line.

Mr. Lachman, we own the fence, which was installed by me which is on our property line.

Mr. Hoen asked if the location of the deck is that the reason for the request for the variance.

Mr. Lachman responded that it was.

Mr. Zych asked if there were any public comments at this time.

Ms. Knittle said there was one email sent on August 15, 2021, in support of the variance from Elijah Devnew, 1564 Rydalmount.

Without objection, Mr. Zych asked that the emailed public comment be entered into the record.

Mr. Zych asked if there was a motion on the floor.

Mr. Hoen moved regarding **Cal. No. 3527 Erich & Debra Lachman, 1560 Rydalmount Rd.,** 'A' Single-Family requests variance to Sect. 1121.12(a)(10) to permit air conditioning condensing unit to be less than the required 5' from the south side property line. After reviewing the application and submission and hearing the evidence under oath I find and conclude that special conditions and circumstances exist which are peculiar to this land/structure, specifically, the proposed location is the most efficient and cost-effective location for the air conditioning condenser and the adjacent neighbor who would be most impacted has no objection. The property in question would not yield a reasonable return without this variance as the proposed location is the most efficient and effective. The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land. The essential character of the neighborhood would not be substantially altered as a result of this variance as the condenser will be not be seen from the street or neighbor as there is an existing wood fence and landscaping. The variance does not adversely affect the delivery of government services and the spirit and intent behind the zoning

requirement would be observed and substantial justice is done by granting the variance. If granted the variance should have the following conditions.

- 1. Variance 3527 is granted to permit an air conditioner condensing unit to be placed 2-feet from the south property line as shown on the site plan submitted with the BZA variance application.
- 2. Receipt of a building permit; and
- 3. Complete construction within 18 months of the effective date of this variance.

Mr. Zych asked if there was a second.

Mr. Porcelli seconded the motion.

Mr. Zych asked if there were any further discussion.

Motioned carried 4-0.

Cal. No. 3528 Oakwood Drive Homeowners Association, PPN 683-11-072 1591 Wood Rd., A & AA Single-Fam. requests variance to Sect. 1121.05 to permit accessory 6’-tall gate across access lane at private Oakwood Drive with no principal structure (not permitted).

Mr. Zych asked that staff report dates August 11, 2021, be entered into the record seeing and hearing no objections, the report is so entered.

All those wishing to testify were sworn in by Pam Roessner.

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

Context

- This alley is zoned ‘A’ Single-family from Wood Road to the rear of the adjacent property, to the north, and then is zoned ‘AA’ Single-Family to Oakwood Drive.
- The properties on Wood Road area single-family house zoned ‘A’ Single-family.
- The properties to the east on Oakwood Drive are single-family homes zoned ‘AA’ Single-family.
- Fences and gates are permitted accessory uses in the ‘A’ and ‘AA’ single-family districts.
- The Future Land Use Map from the Master Plan shows this property as being used for detached single-family houses.

Project

The applicant is requesting a variance to keep a 6’ tall ornamental metal gate that can close across the privately-owned access lane located between Wood Road and Oakwood Drive. The gate is located close to Oakwood Drive.

Facts

- This parcel is 16 feet wide and 143 feet in length and is 2,672 square feet.
- Section 1121.03 single-family detached dwelling is the permitted use in an ‘A’ or ‘AA’ single-family district.
- Code Section 1121.05 states that an accessory building and uses are permitted in association with and subordinate to a permitted or conditionally permitted use.

- Section 1121.05(g) permits Fences as an accessory uses in the ‘A’ and ‘AA’ single-family districts.
- Section 1103.03(12) defines ‘fence’ to mean any structure erected in such a manner and in such location as to enclose, secure, partially enclose or secure all or any part of any premises.
- As shown by the 1941 Cuyahoga County Plat map, this parcel has been used as an alley for over 80 years, making this a nonconforming use.
- The alley is posted on Wood Rd as a private drive.
- Curbing along the Oakwood Drive end of the alley forces cars to turn right (south),
- The property to the south, 1598 Oakwood Drive, has its front yard on Oakwood Drive and rear yard with driveway to their garage from Wood Road.
- The property to the north, 1591 Wood Rd. has their front yard facing Wood Road, and their rear yard abutting Oakridge Drive has a chain-link fence that is approximately 5’ tall surrounding their rear yard.
- The ornamental metal fence has keypads that are accessible from the window of a vehicle’s driver that will be used by residents to operate the gate

If approved, conditions may include:

1. Variance 3528 is granted to permit the 6-foot tall ornamental metal gate to remain across the access lane between Wood Road and Oakwood Drive as shown on the site plan submitted to BZA; and
2. Receipt of a fence permit.

Ms. Knittel that applicant is present and can their statement of particle difficulty. She added that two public comments were submitted by Mareen Dee Messerman.

Without objection, Mr. Zych asked that the public comments be entered into the record.

Maureen Dee, 1598 Oakwood Drive, affirmed that she took the oath. Ms. Maureen gave a brief history of the Oakwood Drive neighborhood and the private lane. She expressed her concerns that the street was being used as a cut-thru to access the other surrounding streets. She expressed that cars are causing unnecessary damage to the area, which brings the neighborhood value down. Ms. Dee added this is why the fence is needed. It has a keypad that would allow access to those who live on the residential street, giving more security and privacy to her fellow neighbors.

Kevin Green 1610 Oakwood Drive echoed Ms. Dee’s concerns and reasoning for why the gate is needed.

Diane Calta 1620 Oakwood Drive also echoed the concerns of her fellow neighbors, she added that the brick road is currently in need of maintenance which also is one of the many reasons why a gate is needed, and to protect the historic presence of the neighborhood. Ms. Calta went on to state that they would like to eventually add a second gate at the other end of the street and that each entrance would have a keypad that the City of Cleveland Heights Police and Fire Department also have access to in case of an emergency. Ms. Calta added that they are open to having a sign placed to direct traffic of the changes to street access.

Mr. Porcelli stated regarding Cal No. 3528 Oakwood Drive Homeowner Association, PPN 683-11-072 1591 Wood Rd., A & AA Single-Fam, request a variance to Sect. 1121.05 to permit accessory 6'tall gate across lance at private Oakwood Drive with no principal structure(not permitted) After hearing the evidence under oath, I find that there are special conditions and circumstances that exist which are peculiar to this land/structure, specifically, this is a private drive connecting to a private road. The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land. The essential character of the neighborhood would not be substantially altered as a result of this variance. The variance does not adversely affect the delivery of government services as long as access is given to Fire and Police Departments. The applicant's predicament cannot be resolved through a method other than a variance as there is a need to control access to the private road. The spirit and intent behind the zoning requirement would be observed and substantial justice is done by granting the variance, and the granting of this variance will not confer on the applicant any special privilege.

If approved, conditions may include:

1. Variance 3528 is granted to permit the 6-foot tall ornamental metal gate to remain across the access lane between Wood Road and Oakwood Drive as shown on the site plan submitted to BZA;
2. Receipt of a fence permit; and
3. Applicant shall provide gate access key codes shall be provided to the Cleveland Heights Police and Fire Departments.

The motioned was seconded by Ms. Fliegal.

Motioned carried 4-0.

Old Business

New Business

We will meet on Tuesday, September 14, 2021.

With no further business to discuss, the meeting was adjourned at 7:45 p.m.



Thomas Zych, Chair



Karen Knittel, Secretary