

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
MARCH 16, 2016

MEMBERS PRESENT:	Gail E. Bromley Nancy J. Dietrich George A. Gilliam Thomas Zych Benjamin Hoen	Chair   Vice Chair
STAFF PRESENT:	Vesta A. Gates Karen Knittel Elizabeth Rothenberg Richard Wong	Zoning Administrative Assistant City Planner Assistant Law Director Planning Director
OTHERS PRESENT:	Kahlil Seren	Vice Chair, Planning & Development Committee

#### CALL TO ORDER

Ms. Bromley called the regular meeting to order at 7:00 p.m. at which time all members were present.

#### ELECTION OF OFFICERS

Ms. Bromley explained for the audience that the annual election of officers must take place before continuing with the regular meeting. She then asked for nominations for the position of Chair.

Mr. Zych nominated Gail Bromley for Chair for year 2016

Mr. Gilliam seconded the nomination.

There being no further nominations Ms. Bromley asked Mr. Wong to call the roll for a vote.

Ms. Dietrich stated "Aye."

Mr. Hoen stated "Aye."

Mr. Gilliam stated "Aye."

Mr. Zych stated "Aye."

Ms. Bromley abstained.

Mr. Wong stated that the vote is 4 in favor. Ms. Bromley is Chair for year 2016.

Ms. Bromley asked for nominations for the position of Vice Chair.

Mr. Hoen nominated Tom Zych for Vice Chair.

Mr. Gilliam seconded the nomination.

There being no further nominations Ms. Bromley asked Mr. Wong to call the role for a vote.

Ms. Dietrich stated "Aye."

Mr. Hoen stated "Aye."

Mr. Gilliam stated "Aye."

Ms. Bromley stated "Aye."

Mr. Zych abstained.

Mr. Wong stated that the vote is 4 in favor. Mr. Zych is Vice Chair for year 2016.

#### APPROVAL OF THE MINUTES OF THE FEBRUARY 17, 2016 PUBLIC HEARING

Mr. Zych moved to approve the February minutes as written.

Mr. Hoen seconded the motion which carried 5-0.

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

MARCH 16, 2016

CALENDAR NO. 3392

Tyler Katz and Joshua Chefitz, 3126 Scarborough Rd., 'A' single-family district, request a variance to Code Section 1121.12(b) to permit front addition of steps and unenclosed porch to extend 14' into the front yard (10' max. permitted).

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

Ms. Knittel reported the following:

This house is located in a single family district with single family homes located to the north, west and south. Fairfax Elementary School is located to the east. The property is code conforming in terms of width at the building line and area. The house has an unusual orientation as the front entry door is on the east, facing Fairfax Elementary School rather than Scarborough Road.

The applicant proposes adding a new formal entry to the home that would enter in the front of the house facing Scarborough Road and they propose including a front unenclosed porch that is 10 feet deep with steps up to the porch that are an additional 4 feet into the front yard. Unenclosed porches and steps may extend into the front yard no more than 10 feet in front of the building.

This house is set back 40'8" from the front right-of-way. Many of the homes along Scarborough have front porches with stairs that lead up to the porch. The distance from the ROW to the front steps of 3112 Scarborough is approximately 36' the setback of 3114 Scarborough is 24'6". The applicant provides addresses of homes along Scarborough that have front porches, on both the north and south side of Scarborough demonstrating that the addition of a porch is not out of character with the neighborhood.

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.

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

Martin Johannessen, Harmoni Designs, 2990 Berkshire Rd., stated that he was the architect for the project and he didn't have a lot to add to this. To reiterate, there are a lot of porches on this street. Some larger than what is being proposed. The property is very unique. We have already been to the Architectural Board of Review and one of the members said that they drove by this house all the time and never noticed that it did not have a front entrance. All we are really asking for is a variance for the 4 foot extension of the steps. The porch already meets code setback requirements.

**PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED**

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

Mir, Hoen moved to grant Tyler Katz and Joshua Chefitz, 3126 Scarborough Rd., a variance to Code Section 1121.12(b) to permit a front house addition of steps and an unenclosed porch that will extend 14 feet into the front yard where a 10 foot maximum extension is permitted based on the finding that, as has been shown, many of the homes in the neighborhood have similar porches therefore the proposal would not be out of character with the neighborhood. In fact the neighboring property has a porch that extends 24 feet 6 inches into the front yard which is further than the extension in this 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.

Ms. Dietrich seconded the motion which carried 5-0.

Ms. Bromley reminded the applicant that the variance must be reviewed by City Council.

CALENDAR NO. 3393

Vince Reddy, 908 Vineshire Rd., 'A' single-family district, requests variance to Code Sections 1121.09(b) and 1161.03(a)(1) to permit 1 enclosed parking space (min. 2 enclosed req'd.).

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

Ms. Knittel reported the following:

This property is located in an 'A' single-family district surrounded by other single family homes. The parcel is a nonconforming lot of record as it 40 wide and is 5,000 square feet. The zoning code states that parcels in an 'A' single-family district should have a minimum lot area of 7,500 square feet and have a minimum lot width at the building line of 50'. Most of the parcels along Vineshire are also 40' wide by 125' deep.

Additionally, as the applicant points out in the statement of practical difficulty, this house is 1,361 square feet which is less than the minimum 1,500 square feet that the code requires for a dwelling unit in an 'A' single-family district.

The property has a one car garage which the applicant states has been suitable for the 17 years in which he has resided here. The applicant's garage was demolished in January when an oak tree from the neighbor's yard fell on it. The applicant is seeking a variance to rebuild a one car garage (the code requires 2 enclosed spaces).

The rear yard is 2,400 square feet and 40 feet wide. The original garage and driveway covered 27.5% of the rear yard. This allowed the applicant a rear yard to enjoy. The applicant has planted a tree adjacent to the garage. He is anxious to see if this tree has survived both the winter and the damage it sustained from the neighbor's fallen tree. The applicant would like to maintain the open area of his rear yard to enjoy as an outdoor area. The applicant's proposed one car garage is re-aligned to conform to the current code regulations of being 3' from both the rear

and side property lines. This slight re-alignment results in 29% of the rear yard being covered by the proposed garage and drive.

A code conforming two-car garage results in 48.3% of the rear yard being covered. The code does allow this percentage to be 60%. However, due to the narrowness of this nonconforming parcel, the useable area that would remain is a narrow strip of property approximately 19 feet wide that parallels the driveway and garage. The construction of the two-car garage would also mean the removal of the young tree the applicant has attempted to grow.

If approved, conditions should include:

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

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

Vince Reddy, 908 Vineshire Rd., stated that he appreciated Ms. Knittel's presentation. It made him sad to know that the neighbor's tree is gone because it really was one of the high points of living at this property. It was a V-shaped, 100 foot tall oak tree that fell without warning on January 17<sup>th</sup> and destroyed 3 garages. Luckily, no one was hurt. He had not included the maple tree in his original application because it was really damaged. It was that stick that was remaining that was shown in the slide. It is a tree that was transplanted as a sapling to that location and was carefully nurtured for a few years until it no longer needed nurturing. The neighboring oak tree really shaded the back yard incredibly resulting in the maple tree being smaller than average. He wanted to see if the tree will survive even though he knew it only had a 50-50 chance. That is one reason for seeking the variance. Primarily we've never needed more than a one-car garage and in keeping with the city's increased attention to more sustainability, having a useable rear yard is really important to us. As previously stated, this is a non-conforming yard in size as are all the other rear yards in this neighborhood. He felt a two-car garage to be an onerous requirement because we are both gardeners and because of this the rear and front yards are really a paradise in the warmer months. It's going to be bad enough this summer without the oak tree without having to endure my back yard being turned into a parking lot. We would survive but it would be difficult. We have a couple of lilac trees that will have to be moved. They are old and substantial in size and we would like to try and save them. We need space and somewhere to put them. We are looking forward to the new eco-system that will emerge in our back yard due to the amount of sun that will shine on our back yard that we never had in the past. The garage will be a nice wood-sided garage. He had never parked his car in the garage in 17 years and he probably won't park in this one either. That is all I have to say.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

As there were no questions or comment from the Board, Ms. Bromley asked for a motion.

Mr. Zych recalled having an old, dying maple tree in his yard that had to be removed. His neighbor was disappointed when he noticed the commotion and said he had been counting on that maple tree to get him a free garage and maybe a new car because of the direction in which it was oriented.

Mr. Reddy commented that that was the oak tree's parting gift to him.

Mr. Zych moved to grant Vince Reddy, 908 Vineshire Rd., a variance to Code Sections 1121.09(b) and 1161.03(a)(1) to permit one enclosed parking space where a minimum of two enclosed spaces are required on the grounds that this is a very unusual lot given its size. Both the lot and house are nonconforming meaning a requirement of a two-car garage would work an unnecessary hardship on the applicant and on the property in taking away a substantial part of the usable greenspace in the rear yard, replacing it with less desirable coverage. Finding that the one-car garage has proven adequate to this property for almost two decades which is an indication that it will not impact negatively to the value of the house or to its use. There is no evidence there is any likely diminished value of any nearby or adjacent property. Also finding that the variances, if granted, will place the garage in a more code-conforming location given that the setbacks and the variances will aid the retention of certain important arboreal features that are of value to this property. If approved conditions should include: 1) Approval of the Architectural Board of Review; 2) receipt of applicable Building Department Permits; and 3) Complete construction within 18 months of City Council's approval of this resolution.

Mr. Gilliam seconded the motion which carried 5-0.

Ms. Bromley reminded the applicant that City Council must review the variances and stated that it was good to see him again, having advised this Board for many years. She wished him good luck with the garage and the garden.

CALENDAR NO. 3394

Imani Temple Ministries, 2475 N. Taylor Rd, 'A' single-family district, requests an amendment to a use variance granted to Code Sections 1121.03 and 1121.04 to conditionally permit a nursing home in a former rectory (not permitted).

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

Ms. Knittel reported the following:

The former rectory 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. This building was built as the rectory (2475 N. Taylor), 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 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, providing a natural buffer to the single-family homes across the street. The site's location is more than 100' from nearby Council Gardens apartments, more than 150' from S. Taylor residences and more than 200' from Glen Allen Drive residences.

#### HISTORY:

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. The site includes the church and school structure, the parking lot and play areas and the former rectory. The rectory 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. The rectory 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.

The Planning Commission has issued several conditional use permits for uses inside the church and school buildings.

Last year, a Use Variance (Cal. No. 3384) was granted by BZA and approved by City Council that conditionally permitted this former rectory to be used as a "lodging house." The Use Variance stipulated that the operator of any lodging house in the former rectory must obtain a conditional use permit. A copy of Council's Resolution is attached to this staff report.

Also last year, the Planning Commission approved a 25-resident lodging house for Veterans Transitional Housing Services.

Veterans Transitional Housing Services never occupied the building. Imani Temple Ministries has continued to seek a tenant and recently found a potential tenant but the proposed use fits the Zoning Code's definition of "nursing home," and not a "lodging house." This is largely because the occupants will be receiving services onsite.

On March 9, 2016, the Planning Commission approved a 30-bed nursing home conditioned on BZA and Council approval of an amendment to the existing Use Variance.

#### PROJECT DESCRIPTION

Imani Temple Ministries is seeking an amendment to the use variance to add "nursing home" as a conditionally permitted use. The hardships for the original use variance still exist. The amendment is requested to provide some flexibility in how this uniquely built and situated structure may be used.

The Zoning Code's definition of "nursing home," is found in section 1103.03 (75) and is defined as *"an extended or intermediate care facility which provides...service for the rehabilitation of the persons who are convalescing from illness or incapacitation."*

The building already has a use variance for a "lodging house", which is defined in section 1103.03(63) as *"a building occupied for, arranged, intended or designed to be occupied for rooming, or rooming and boarding for compensation by not less than four persons by prearrangement for definite periods of not less than one week... ."*

In searching for a tenant, the applicant has found that the Zoning Code narrowly defines uses and therefore are seeking this amendment to its Use Variance to find a tenant so the building can cease to be vacant. The amendment results in little practical change for the possible uses in the building. The major difference between a lodging house and a nursing home in this context is that onsite services and treatment can be offered in a nursing home but not a lodging house. The applicant has been in negotiations with Northern Ohio Recovery Association (NORA) to lease the facility. NORA proposes an extended care/residential facility for women and their children. Residents will receive counseling, employment readiness, and other services described in the application materials. There will be an employee on site 24-hours a day with an anticipated staff of three clinical treatment positions, two case managers, one cook, one housekeeper/maintenance person, and at least one administrator.

As stated above, at their March 9 meeting, the Planning Commission approved a conditional use permit contingent on the property receiving an amendment to the Use Variance permitting a "nursing home" use. In the future, if a different tenant planned to use the building for a lodging house or extended or intermediate care

facility or nursing home, a new Conditional Use Permit would be required for Planning Commission approval.

If approved, conditions should include:

1. The applicant is required to advise any tenant(s) of the former rectory that it shall receive a Conditional Use Permit from the Planning Commission for the lodging house use or for the nursing home use.

Ms. Knittel further stated that should the Board require a refresher, she was prepared to go through the hardships if the Board felt it to be necessary and so the Board can concur that those hardships are still applicable.

Ms. Bromley asked for the pleasure of the Board.

Ms. Rothenberg added that it is important that this request is considered an amendment, not starting over from scratch, and that the hardships are identical.

Mr. Zych stated that he was not inclined to have the hardships re-read but asked if it would be appropriate for the Board to incorporate the findings and the hardships from the original determination and the finding be made that the hardships remain as those in the conditional use.

Ms. Rothenberg answered affirmatively, stating that it would be sad for her if it were not done that way.

Ms. Bromley asked the applicant to come to the microphone.

Rev. Rodney S. Thomas, 2463 N. Taylor Rd., stated that he had nothing to add to Ms. Knittel's presentation.

**PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED**

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

Ms. Dietrich moved to grant Imani Temple Ministries, 2475 N. Taylor Rd, an amendment to a use variance granted to Code Sections 1121.03 and 1121.04 to conditionally permit a nursing home in a former rectory that is normally not permitted. I think that the intent of the Planning Commission and the previous variance granted by this Board support the use that they are asking for at this time.

Ms. Bromley asked Ms. Dietrich if she would like to mention anything about the hardships in the motion.

Ms. Dietrich amended her motion to state that the applicant is unable to find a tenant for this property because of the strictness of the zoning code and it was previously approved as a 25 resident lodging house for the Veterans Transitional Housing Services that was unable to use it due to financial reasons. The applicant has been unable to find a tenant because the use is very narrowly defined as a lodging house and the people that would live in it now would be provided services which makes it more in keeping with a nursing home. If approved, conditions should include: 1) The applicant is required to advise any tenant(s) of the former rectory that it shall receive a Conditional Use Permit from the Planning Commission for the lodging house use or for the nursing home use.

Mr. Zych stated that he would be happy to second the motion if the motioner would agree to an amendment to state that the hardships that were originally found for granting the conditional use continue to apply equally, if not more forcefully, to this conditional use, especially since there will actually be supervision of those occupants.

Ms. Dietrich agreed to the amendment to the motion.

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

#### CALENDAR NO. 3351

Eliyahu and Yehudis Newman, 3488 Bendemeer Rd., 'A' single-family district, request an extension of time to complete project. Code Section 1115.07 (j) states that the Board may, where cause is shown, extend the time of the original variance.

Ms. Knittel reported that this is a request to extend the length of time the applicants have to construct the addition to their home. They have found the original proposal to be cost prohibitive and they are making the addition smaller so it will be set back further than the 5 feet originally proposed. They are requesting an additional 18 months to construct the new addition.

Ms. Bromley asked for a motion.

Mr. Gilliam moved to grant an extension of 18 months to complete construction.

Mr. Hoen seconded the motion which carried 5-0.

#### OLD BUSINESS

Ms. Knittel reported that the variance granted last month for the attached garage with the doors visible from the street was confirmed by City Council. She added

that no applications for April had been received by the application deadline.

#### NEW BUSINESS

Ms. Rothenberg introduced her colleague, Tiffany Hill, to the Board and advised the Board that occasionally Ms. Hill would staff the Board in her place.

#### ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 8:13 p.m.

Respectfully Submitted,

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Gail E. Bromley, Chair

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Vesta A. Gates, Secretary