

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
MAY 18, 2016

MEMBERS PRESENT:	Gail E. Bromley	Chair
	George A. Gilliam	
	Benjamin Hoen	
	Liza Wolf	
	Thomas Zych	Vice Chair
STAFF PRESENT:	Vesta A. Gates	Zoning Administrative Assistant
	Karen Knittel	City Planner
	Tiffany Hill	Assistant Law Director

CALL TO ORDER

Ms. Bromley called the regular meeting to order at 7:00 p.m. at which time all members were present. She introduced the newest member of the Board, Liza Wolf, and stated that she would be sworn in by Ms. Hill.

OATH OF OFFICE

Ms. Wolf raised her right hand as Ms. Hill read the oath as follows:

"Do you solemnly swear or affirm that you will support the constitution and laws of the United States of America, the constitution and laws of the state of Ohio, the charter and ordinances of the city of Cleveland Heights; and that so long as you continue to hold a position as a member of the Board of Zoning Appeals you will honestly, faithfully, and impartially discharge the duties of that office to the best of your ability."

Ms. Wolf responded, "I do."

APPROVAL OF THE MINUTES OF THE APRIL 20, 2016 PUBLIC HEARING

Mr. Zych stated that he had given Ms. Gates a minor correction prior to the meeting and moved to approve the minutes as corrected. The motion was seconded by Mr. Hoen and carried 3-0-2. Mr. Gilliam and Ms. Wolf were not present at the April 20th meeting and therefor abstained.

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

MAY 18, 2016

CALENDAR NO. 3397

Neil and Bobbie Stanich d.b.a. Berkshire Services, LLC, 1991 Lee Rd., 'S-2' Mixed-Use district, requests variances to Code Section 1131.09 (c)(3) to permit a 48" tall ornamental metal fence in the corner-side-yard along the property line shared with 3213 E. Berkshire Rd. (36" max. height permitted).

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

Ms. Knittel's staff report was as follows:

This office building is located at the northeast corner of the Lee Road and E. Berkshire Road intersection. This property and the parcels along Lee Road are zoned 'S-2' mixed-use. The first parcel on East Berkshire Road (3214 E. Berkshire), across the street from 1991 Lee Road is also zoned 'S-2'. The balance of properties along E. Berkshire Road are zoned 'A' single family.

The applicants are installing a code-conforming 6-foot tall fence around the perimeter of the parking lot. This fence will be an ornamental metal fence that matches the small section or fence that exists along the parcel line shared with 1976 Lee Road. The applicant would like to continue this metal fence along their rear property line from the corner of 3214 Berkshire to the public right-of-way. In recognition that this segment of their property is viewed as a front yard from Berkshire Road, the applicant is proposing that the fence be 4 feet tall. Zoning Code Section 1131.09 (c)(3) states that the maximum height of a fence in a corner side yard is 3-feet, therefore a variance is required for this portion of the fence.

Currently, there is a double row of shrubs along the rear property line. The applicant intends to remove the shrubs closest to their parking lot and maintain the shrubs facing 3213 Berkshire Road. These shrubs are approximately 4-feet tall.

The applicant states that there have been numerous issues with persons cutting through their parking lot and loitering in the parking lot. The fence is being installed to eliminate the ability for persons to walk through the parking lot as a short cut and with the intent of eliminating persons loitering on their property. The applicant had initially wanted to include a security gate to the parking lot, however they have modified their plans to just the perimeter fencing described believing that this will alleviate their safety concerns.

If approved, conditions should include:

1. Receipt of a Fence Permit;
2. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the fence's height;
3. Approval of a landscaping plan for the corner side yard fence by the Planning Director;
4. Installation of the fence shall not impede the required sight triangles for the 3213 E Berkshire Rd. driveway; and
5. Complete construction within 12 months of City Council's approval of this resolution.

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

Neil Stanich, 1991 Lee Road, stated that Ms. Knittel's presentation was very good and he had little to add. He reiterated that a three-foot tall fence would not help their problem at all.

Bobbie Stanich, 1991 Lee Road, stated that they could not have created a better demonstration of the problem than the day Ms. Knittel visited the property. There were all these teenagers running through the parking lot and over the fence in the back where we had put up a "No Trespassing" sign and those kids were literally climbing on top of the no trespassing sign. It doesn't really save that much time compared to walking around the corner on the sidewalk but for whatever reason people tend to cut through even if there is a mound of snow back there. They will trudge through the snow and climb over that pile of snow to get over the gate rather than walk around the building. Additionally, employee vehicles are parked in the parking lot and she would like them to feel safe by keeping people off the property who don't belong on the property. There was one instance when she came out of the building late in the evening and there was a car parked in the far corner of the parking lot. The people inside were just sitting there and it was kind of scary. Hopefully, when people see there is no other outlet when they enter the parking lot it will discourage them. We initially wanted a gate but we are willing to try it this way first. If the fence is tall enough in the back we hope it will encourage people not to come on the property.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Mr. Zych asked if the existing shrubbery will remain.

Referring to the slide showing the shrubbery, Mr. Stanich explained that the property line ran through the middle of those shrubs. Some of the shrubs on the parking lot side will be eliminated when the fence is installed.

Ms. Stanich further explained that there were actually two rows of shrubs on either side of the property line.

Ms. Knittel reiterated that there were two rows of shrubbery that have grown together but it was her understanding that the shrubs on the applicants side of the property line will be removed when the fence is installed. This is the reason we requested a landscape plan so that any soil that is on the parking lot side will have shrubbery or some sort of ground cover.

Mr. Zych pointed out a concern would be that removal of the shrubs on the applicant's side might damage the soil which might also damage neighbors' shrubs. This makes a landscape plan very important.

Ms. Stanich added that the hedges on the resident's side will block their view of the fence. She just felt the proposed fence will conform more to the existing fence and

make everything look more uniform.

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

Mr. Zych moved to grant the variance to Neil and Bobbie Stanich d.b.a. Berkshire Services, LLC, 1991 Lee Rd., from Code Section 1131.09 (c)(3), to permit a 48-inch-tall ornamental metal fence in the corner-side-yard along the property line shared with 3213 E. Berkshire Road where a 36 inch maximum height is normally permitted, on the basis that the record demonstrates that the unique siting of the applicants property in a mixed use zoning district next to a residential area has resulted in an unusual amount of foot traffic, loitering traffic, and potentially damaging traffic through the parking lot, so that a fence is necessary for the preservation of the value of the property. Further, that the existing shrubbery and other greenspace will largely mask the appearance of the fence and that the approved fence is ornamental and meets the type of fencing that this Board has seen fit to approve in the context of variances. Further finding that there is no adverse effect upon the surrounding properties and that the use remains fit for its zoned use. If this variance is approved conditions should include:

1. Receipt of a Fence Permit;
2. A requirement for the applicant or any future owner to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the fence's height;
3. Approval of a landscaping plan for the corner side yard fence by the Planning Director;
4. Installation of the fence shall not impede the required sight triangles for the 3213 E Berkshire Rd. driveway; and
5. Complete construction within 12 months of City Council's approval of this resolution.

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

Ms. Bromley reminded the applicants that City Council must review this variance.

OLD BUSINESS

Ms. Knittel reported that all variances approved at last month's meeting were confirmed by City Council.

NEW BUSINESS

None.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:20 p.m.

Respectfully Submitted,

Thomas Zych, Vice Chair

Vesta A. Gates, Secretary