

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
JUNE 15, 2016

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

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. All members were present except Gail Bromley whose absence was excused and Ms. Wolf.

APPROVAL OF THE MINUTES OF THE MAY 18, 2016 PUBLIC HEARING

Mr. Hoen moved to approve the minutes as written and distributed. Mr. Gilliam seconded the motion which carried 3-0-1. Ms. Dietrich was not present at the May 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, Mr. Zych 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

JUNE 15, 2016

CALENDAR NO. 3399

John and Jenifer Coakley, 2521 Edgehill Rd., 'A' single-family district, request a variance to Code Section 1121.12(d) to permit rear yard 70.4% coverage to construct of deck and stairs (60% maximum coverage 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 is a single family home located in an 'A' single-family zoning district. The properties to the east, west and south across Edgehill Road are also zoned 'A' single-family. The properties to the north are zoned 'MF3' multi-family.

2521 Edgehill Rd. is a nonconforming lot of record as it is 45' wide at the building line and is 7,110 square feet. The zoning regulations state that a parcel in an 'A'

single-family district is to be 50' wide at the building line and a minimum of 7,500 square feet.

The rear yard is 3,150 square feet and currently has a three car garage and concrete driveway that covers 60.76% of the rear yard. The garage covers 19% of the rear yard and the existing driveway covers 41.7% of the rear yard. This garage and driveway were already in existence when the applicants acquired the property. The coverage of the pavement is a pre-existing nonconforming condition.

The applicants would like to build a new 15' by 18' deck and stairs to the rear yard. This would result in the rear yard coverage being 70.4%. The applicants would like to create an outside area that is directly off the house and states that decks are common amenities to houses in their neighborhood and that it would add value.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. Complete construction within 12 months of City Council's approval of this resolution; and
4. A requirement to return to the Board of Zoning Appeals for another variance should the property owner or subsequent owner consider modifications that would increase the size of the deck or stairs resulting in additional rear yard coverage.

That being the end of Ms. Knittel's report, Mr. Zych asked the applicant to come to the microphone and add anything he wished to Ms. Knittel's report.

John Coakley, 2521 Edgehill Road, thanked Ms. Knittel for her hard work and responses to his enquiries, and the professionalism of her whole team. He stated he was really grateful for her presentation because this is the first time for him and his wife. His mom presented them with the deck as a gift. We were surprised and asked our cousin Tony to make a design and realized this variance was necessary. We have worked with Karen throughout the process and I want to thank her most sincerely. My neighbors wanted to be here as they are in support of this project and hopefully we can all have a bar-b-que on our deck in the near future.

Mr. Zych asked the applicant to sit near the microphone and opened the public hearing. As there was no one who wished to testify, the public hearing was closed and he asked for questions from the Board.

Ms. Dietrich stated that she happened to meet Jennifer when she stopped by to look at the site and had a little chat. If the Board is concerned about too much coverage, there is a solution. She pointed out the slab of concrete next to the garage which now holds the applicant's picnic table and so forth. These things will probably be moved to the deck so that slab can be removed. It seems as though

the problem of too much coverage stems from too much driveway. The applicants may be willing to get rid of some of that coverage in exchange for the deck. The slab doesn't seem to serve a purpose.

Mr. Coakley stated that the slab is good for bike riding for his son but if the Board recommends it we will be glad to make arrangements to remove some of that concrete.

Mr. Zych asked staff if the stone or concrete shown at the bottom of the rear stairs was included in the calculation of coverage.

Ms. Knittel stated that it was not because the area was not included in the site plan. It is not mortar and the deck itself would be open so rainwater would fall through the wood of the deck.

Mr. Zych recalled being told that if a material is not mortared, it isn't considered coverage.

Jennifer Coakley, 2521 Edgehill Rd., stated that she would like to add one thing. Referring to the site plan she pointed out the area where they had a beautiful apple tree that was infested with termites and they had to have removed. Now that area is just a bunch of ground cover so to us it seemed like a great place to extend the house and build a deck. If it means that to have a deck we must remove that extra piece of concrete at the side of the garage that Nancy referred to, that would be fine too.

Mr. Zych, referring to the site plan, asked whether, if we got an approximation of the size of that concrete to the right of that garage, staff might have any idea roughly what that would do to the coverage if it is removed?

Ms. Knittel stated that although she didn't have that calculation, it would definitely reduce the total area of coverage. We had talked about removing that slab but they were not interested in considering it at the time which is why I didn't calculate it for you. It seems to be about the size of a parking space, 9 x 20 or 10 x 20, a little larger.

Mr. Hoen asked if the applicants had any difficulty in turning their vehicles or was that slab used for any function whatsoever.

Ms. Coakley stated that currently it's where they kept their picnic table and chairs. Obviously those would be put on the deck when it is completed.

Mr. Hoen stated that since this concrete was existing when the applicants purchased the house, he was trying to determine what the previous owners would have used this area for.

Ms. Coakley recalled the previous owners having a boat next to the garage. But we don't have a boat.

Mr. Zych observed that this is a 3-car garage. He asked what was kept in the third bay.

Ms. Coakley stated that just toys are stored there.

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

Ms. Dietrich moved to grant the variance to John and Jenifer Coakley, 2521 Edgehill Rd., from Code Section 1121.12(d) to permit 69.7% coverage of the rear yard where 60% maximum coverage is permitted, with the condition that the portion of the driveway to the west of the garage be removed to create more permeable coverage.

Mr. Zych reminded the motioner that a practical difficulty and the remaining conditions are needed in the motion.

Ms. Dietrich added that the practical difficulty is that their yard is smaller than usual.

Ms. Knittel stated that she wanted to make a correction. The percentage of coverage is 70.4% rather than 69.7% which was on the applicant's drawing. She just wanted to make sure everyone understood that.

Ms. Dietrich further amended her motion to include the following conditions:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. Complete construction within 12 months of City Council's approval of this resolution; and
4. A requirement to return to the Board of Zoning Appeals for another variance should the property owner or subsequent owner consider modifications that would increase the size of the deck or stairs resulting in additional rear yard coverage.

Mr. Gilliam seconded the motion.

Mr. Zych asked if there was any discussion of the motion.

Mr. Hoen stated that he just wondered whether the condition to remove the portion of paving to the west would result in a variance not even being necessary if we re-measured the coverage of the property. Should we perhaps table the request and

re-measure the property?

Mr. Coakley stated that he would like to keep that area of concrete.

Mr. Zych commented that we are doing things out of order so things are getting confused. He explained for the applicant that a Board member made the comment that if that concrete was removed, you may not need a variance at all. We are not withdrawing that condition. His observation was that because we do not know if that condition removes the need for a variance, it would be advisable for us to proceed with the motion.

Ms. Knittel agreed, stating that it made sense only because it is a condition of the variance that causes the removal of the additional paving.

Mr. Coakley again thanked the Board for allowing him to keep the concrete.

Mr. Zych corrected Mr. Coakley again, explaining that a comment was made by a Board member that the Board would be more amenable to granting the variance if that concrete was removed. That comment became a condition of the variance, requiring removal of that concrete. Absent that condition we do not know if the Board would approve the variance. That condition was added to those listed in the staff report to further minimize the percentage of coverage in the rear yard.

There being no further discussion, the motion carried 4-0.

Mr. Zych reminded the applicant that City Council must review the variance.

CALENDAR NO. 3401

New Kenilworth Partners LLC, 14 Kenilworth Mews 'MF-3' multi-family district, requests a variance from Code Section 1123.12(a)(6) to permit a free form paver patio set back 10' to 15' from rear property line (15' minimum setback req'd.).

Mr. Zych explained that the following requests, Calendar Numbers 3401 and 3402 are two related matters. We will proceed with separate reviews because these are 2 separate matters and 2 separate parcels. However, to the extent to which the parties wish to have the record from the first apply to the second, that is something I believe the Board may approve. So in the first calendar review, I believe the more we include, the better off we are.

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

Ms. Knittel's staff report was as follows:

14 Kenilworth Mews is one unit in a 2-unit structure that is part of the Kenilworth Mews cluster home development. This is zoned 'MF3' multi-family. Properties to the north, west and south are also zoned 'MF3' multi-family. Properties to the east across Kenilworth Lane are zoned 'A' single-family.

In March 2004 the Planning Commission granted a lot re-subdivision to Waldorf Partners Kenilworth Mews to permit 18 new parcels to be split from the root parcel to accommodate the proposed Kenilworth Mews fee simple cluster home development. The original site plan showed 17 units in clusters of various sizes and one common parcel for the private drive.

In February 2005, the developer altered the plan by splitting a proposed 6-unit structure on the south side into buildings of 4 and 2 units. A variance to Code section 1123.08, building arrangement, to allow distance between two walls facing each other to be 15' (20'min. required) was granted (Cal. No. 3072).

In May 2014, the developer altered the plan by splitting a proposed 4-unit structure on the south side into two buildings of 2 units. A variance to Code section 1123.08, building arrangement, to allow distance between two walls facing each other to be 15' (20'min. required) was granted (Cal. No. 3345).

14 Kenilworth Mews is in one of the 2 unit structures built after Cal. No. 3345 was approved. It is the western unit in this structure. The rear yard of this unit abuts Margaret Wagner House's parking lot. The applicant would like to build a free form paver patio that will be set back 10' to 15' from the rear property line. The zoning code in a MF-3 district requires the same minimum yard requirements for accessory structures as the principal building, which is 15'. The code was developed for a multi-family structure and did not take into consideration a single-family unit that is part of a cluster development. The applicant states that the deck and patio add to the quality of the unit.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and
3. Complete construction within 6 months of City Council's approval of this resolution.

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

Eric Lee, 23875 Commerce Park, Cleveland, Ohio, representing New Kenilworth Partners stated the only thing he had to say was this is a single family home in a multi-family district which is why a variance is needed.

No one from the public wished to speak so the public hearing was closed. Mr. Zych

asked for questions from the Board.

Mr. Hoen asked staff if this single family residence was in a residential district, would the variance be necessary.

Ms. Knittel confirmed that if this was in an 'A' single-family district, the deck would be permitted to be 5 feet off the property line.

Mr. Wong added that because these units are in an MF-3 district, these units could be in excess of 45 to 50 feet tall, thus the setback requirement.

There being no further comment from the Board, Mr. Zych asked for a motion.

Mr. Hoen moved to grant New Kenilworth Partners LLC, 14 Kenilworth Mews a variance from Code Section 1123.12(a)(6) to permit a free form paver patio set back 10' to 15' from rear property line where a 15 foot minimum setback is required based on the fact that this is a single family home in an otherwise multi-family district. This unique property would otherwise be a conforming lot with a required 5' setback if it were not in a multi-family district. The setback is not necessary in this circumstance because the building is smaller than what the code would anticipate in a multi-family district. There would be no adverse effect on the neighborhood, in fact given the pictures presented before the Board today I think it would be an improvement and I think everyone in the neighborhood would be satisfied with that. If the variance is granted conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and
3. Complete construction within 6 months of City Council's approval of this resolution.

Mr. Gilliam seconded the motion.

Mr. Lee stated that there was a patio in the original construction documents that were submitted to the ABR and to the Building Departments for permits. Will that satisfy the first 2 conditions?

Mr. Zych explained that this Board could not speak for the ABR nor does this Board determine if those conditions are met.

There being no further discussion, the motion carried 4-0.

Mr. Zych reminded the applicant that the variance must be reviewed by City Council.

CALENDAR NO. 3402

New Kenilworth Partners LLC, 15 Kenilworth Mews, 'MF-3' multi-family district, requests a variance from Code Section 1123.12(a)(6) to permit a free form paver patio set back 11.5' to 15' from rear property line (15' minimum setback req'd.).

All those who wished to testify regarding this request had already been sworn in by Ms. Hill.

Ms. Knittel's staff report was as follows:

15 Kenilworth Mews is one unit in a 2-unit structure that is part of the Kenilworth Mews cluster home development. This is zoned 'MF3' multi-family. Properties to the north, west and south are also zoned 'MF3' multi-family. Properties to the east across Kenilworth Lane are zoned 'A' single-family.

In March 2004 the Planning Commission granted a lot re-subdivision to Waldorf Partners Kenilworth Mews to permit 18 new parcels to be split from the root parcel to accommodate the proposed Kenilworth Mews fee simple cluster home development. The original site plan showed 17 units in clusters of various sizes and one common parcel for the private drive.

In February 2005, the developer altered the plan by splitting a proposed 6-unit structure on the south side into buildings of 4 and 2 units. A variance to Code section 1123.08, building arrangement, to allow distance between two walls facing each other to be 15' (20'min. required) was granted (Cal. No. 3072).

In May 2014, the developer altered the plan by splitting a proposed 4-unit structure on the south side into two building of 2 units. A variance to Code section 1123.08, building arrangement, to allow distance between two walls facing each other to be 15' (20'min. required) was granted (Cal. No. 3345).

15 Kenilworth Mews is in one of the 2 units structures built after Cal. No. 3345 was approved. It is the eastern unit in this structure. The rear yard of this unit abuts Margaret Wagner House's parking lot. The applicant would like to build a free form paver patio that will be set back 11.5' to 15' from the rear property line. The zoning code in a MF-3 district requires the same minimum yard requirements for accessory structures as the principal building, which is 15'. The code was developed for a multi-family structure and did not take into consideration a single-family unit that is part of a cluster development. The applicant states that the deck and patio add to the quality of the unit.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and

3. Complete construction within 6 months of City Council's approval of this resolution.

That being the end of Ms. Knittel's report, Mr. Zych asked Mr. Lee if he had anything to add.

Eric Lee, 23875 Commerce Park, Cleveland, Ohio, representing New Kenilworth Partners stated that he had nothing further to add.

There being no testimony from the public, therefore Mr. Zych closed the public hearing.

There being no question or comment from the Board, Mr. Zych asked for a motion.

Mr. Hoen moved to grant a variance to New Kenilworth Partners LLC, 15 Kenilworth Mews, from Code Section 1123.12(a)(6) to permit a free form paver patio set back 11.5' to 15' from rear property line where a 15' minimum setback is required based upon the reasons given in the last calendar matter. The situation is similar in nature and if it were a single-family home the patio would be code-conforming having a requirement of a 5' setback. The variance is not significant and if the variance is granted conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and
3. Complete construction within 6 months of City Council's approval of this resolution.

Mr. Gilliam seconded the motion.

There being no further discussion, the motion carried 4-0.

Mr. Zych reminded the applicant that the variance must be reviewed by City Council.

CALENDAR NO. 3403

Samuel Gibson and Ellen Malone, 2457 Demington Drive, 'A' single-family district, requests variance to Section 1121.12(i) for a 6' tall wood fence in corner side yard (3' maximum 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 single family property is located at the corner of Demington Drive and Colchester Road. It is surrounded by properties zoned 'A' single-family.

The parcel is square in shape. The parcel is 11,918 square feet and approximately 110' wide at the building line. The definition of yard states that if the lot is square or almost square, then the front yard may face either street. While the property address is Demington Drive, the front of the house appears to be along Colechester Road and the useable rear yard is located behind the house with the corner side yard facing Demington Drive. Therefore, for the zoning review the front yard is along Colechester and the corner side yard is along Demington Drive.

There is 46.8 lineal feet from the Demington Drive public right of way to the house. The first house south along Demington is set back further from Demington Drive. This results in the corner side yard being determined by drawing a line from the southwest corner of the applicants' house to the northwest corner of 2456 Demington.

The applicants considered constructing a code conforming fence in their rear yard, but due to the location of 2465 Demington this would have resulted in the fence not being a straight line parallel with the public right of way, but would have angled east as the fence followed the imaginary corner side yard line.

The applicants' also considered moving the fence further east into their rear yard, so that the fence could be run in a straight and parallel line to the Demington Drive right of way from the northwest corner of their neighbor's house to their home. This resulted in the fence meeting the applicant's house where a window is located and also resulted in a smaller rear yard than the applicants' want.

There are existing trees at the southwest corner of the applicants' house. The site plan submitted by the applicants shows the fence being constructed in front of these trees so as not to harm them. The fence would be 11.5' in front of the applicants' house. There would still be 35.3' of yard between the proposed fence and the Demington Drive right-of-way. The property has existing shrubs and trees along Demington Drive that will remain.

The applicants are seeking a fence to provide both security and privacy. The applicants recently acquired the property and note in their practical difficulty statement that remnants of a spray-painted vulgar phrase remains on the back of their home. They state that the fence will keep uninvited persons from having access to the rear of their house.

In addition, being that this is a corner parcel, the rear yard is visible from the public right-of way and has no outdoor area that is private.

We have received 5 letters from 4 households and the main concern in all the letters seems to be the proposed style of the fence. Originally they proposed an alternative board-onboard fence. This will go before the Architectural Board of

Review. Any time a fence is in a corner side yard it must be reviewed by the ABR. They are scheduled to be on the ABR agenda on June 21st.

These are some corner side yard fences that received variances. CAL No, 3357 3457 Bradford Rd, 6' wood fence 8'5" from Public Right of Way, Oct 2014. This is a 5'6" tall fence that is 6' from the right-of-way. Cal. No. 3325 2115 Lamberton 5'6" fence set back 6' from Right of Way

Oct 2013

In this case it is a board-on-board with a lattice treatment on the front. This is another style that the Architectural Board of Review approved.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Fence Permit;
3. 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 or length; and
4. Complete construction within 12 months of City Council's approval of this resolution.

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

Sam Gibson 2457 Demington Drive, stated that most of the letters in opposition all seem to object to the wall-like appearance. We would be willing to look at a more open design with 20% transparency. We originally thought that the board-on-board design would satisfy that requirement but have since discovered that it does not. We would be willing to look at a more open style. I know that personal factors do not enter into this but in one of the letters a neighbor was concerned about us leaving our dogs in the back yard and barking. That neighbor mentioned that he works from home and I also work from home. I can't have dogs barking in the yard all day either.

Ellen Malone, 2457 Demington Drive, stated that we are super excited to be in the neighborhood and have enjoyed meeting everyone. Again, we are open to a new style, if it's just a lattice on top or something a little more transparent that's fine. Our main concern is security. We are pretty exposed being on a corner lot. Having such a vulgar phrase put on our house that we are still trying to get off. There is still some on the side that is covered by vines right now. I think it would help to detract intruders if we had more of a barrier, an appealing-looking barrier, but something there so we have a little more security. Also we can have a little more privacy when we go outside and hang out without feeling super exposed and our dogs can run around and we can enjoy our house.

As no one from the public wished to testify, Mr. Zych closed the public hearing. For the record Mr. Zych noted that the Board had received letters from: 1) Marty and David Friel, 2465 Demington Drive; 2) Charles B. Cushwa, 2655 North Park Blvd.; 3) Marcelle Bergman & Alan M. Rauss, 2665 North Park Blvd.; 4) Ronald Neil, 2688 Colchester Road; 5) Ann Harlan, 2688 Colchester Rd. He then asked for any questions or comment from the Board.

Ms. Dietrich stated that the people in this neighborhood have resisted this for many years. I walk a lot and in walking around places that have fences with even 20% transparency I really think they give a fortified look to the neighborhood. It is something that, in our city, I think we have to avoid. You may find that once people know the house is occupied you may not have people going into the yard to spray paint graffiti. I am just saying I will not vote for this because I think it makes the neighborhood look like it is trying to protect itself, and I think that is not what we are trying to say in Cleveland Heights. I'm sorry, it's not personal.

Mr. Hoen stated that he had a question for staff. We have seen several examples of other corner side yard fences where variances were granted. I wonder if you can elaborate on the special conditions on which those variances were granted. I believe that in this case the corner side lot abuts the neighbors' property and just from these limited photos it looks like the corner side yards on the other properties may not abut neighbors' properties but rather are contiguous to a driveway.

Ms. Knittel stated that this property had two fences constructed. One was the privacy fence in the corner rear yard. They had an existing board-on-board fence that had been erected without a permit and came with the house. When they wanted to replace that existing fence is when they came in. They have an existing patio behind the house where they would like to enjoy morning coffee and be able to have some privacy from South Taylor Road. Their practical difficulty is inherent with corner side yards in that they have no private rear yard space. Referring to the slide showing the 5'6" tall fence that is 6' from the right-of-way she stated that this property is on a corner and the fence does extend to the front corner of the neighbor's house, This fence enclosed the entire yard for the applicant's privacy and security reasons.

Mr. Zych stated that there is a fence at the corner of Euclid Heights Blvd. and Berkshire Road that is similar, being in a corner side yard and facing a street. The Board has seen this before. Referring to the site plan he noted that the distance from Demington Drive and the fence was 33.29' and at least 40' at the other end. We recently reviewed a case that had an architectural feature that was non-conforming but was set so far back from the street as to alleviate the concern for the stockade style. Although this is not a stockade fence, that kind of fencing close to the road looks like it is closing off the property, creating a stockade, which is what that word means. We have a setback here of over 33 feet with a lot of landscaping. In fact a pedestrian wouldn't even see the fence when foliage is in

bloom from several angles. While I share the concern about not stockading our city, we have a great deal of precedent to recall and the fence is set so far back and will provide privacy and an open view at the same time in a way in which we have permitted in corner side yards and corner rear yards for the reasons that the applicant has stated as being appropriate to the use of the property. I share the concern but at the same time I want to be reasonable and not be ideological about it from my point of view.

Mr. Wong stated that he agreed with the Chair who brings up memories of BZA guidelines in that the sensitivity got to the point where we always recommended setting the fence away from the sidewalk at least the same distance as the height of the fence. In this case the setback is about 5 times that.

Mr. Zych noted that staff recommended no conditions for this request.

Ms. Knittel explained that the conditions had gotten left off the staff report but the Secretary would pass them down.

Mr. Hoen asked the applicants if they could describe the area since he was not familiar with this area. Is there was a lot a foot traffic around this corner? Also, you raised safety concerns, so can you elaborate on that a little more.

Ms. Malone stated that the area is fairly quiet, which is part of its appeal. We do get pedestrians walking over to North Park and Doan Creek. Regarding the safety concerns, we are part of a website for neighbors called nextdoor.com where you can share classifieds and if there are crime and safety things happening. Recently in the past couple of weeks there have been break-ins into cars and once into the back of somebody's home. We actually found the wallet of the person who was robbed when we were doing yard work. They threw it into our bushes. That is on our minds a little. Overall the neighborhood is fairly quiet, just joggers and neighbors.

Mr. Gibson stated that the foot traffic you see are people walking to Shaker Lakes or the paths along the Doan Creek, people either jogging or walking their dogs. You also see a lot of kids, high school age maybe. There is a lot of graffiti down in the creek and there is a lot of traffic on North Park and we are only a block away. North Park is very accessible.

Mr. Gilliam commented that with regard to security concerns, he found that to a certain extent the people on nextdoor.com seem to scare each other to death. Also there are a couple of rabble rousers that are afraid of their own shadow.

Mr. Zych commented that he didn't think the Board is permitted to take notice of a website that is not before us.

There being no further comment from the Board Mr. Zych asked for a motion.

Mr. Hoen moved to grant Samuel Gibson and Ellen Malone, 2457 Demington Drive, a variance to Section 1121.12(i) for a 6' tall wood fence in corner side yard where a 3' maximum height is permitted based upon this property exhibiting unique factors including the fact that it is on a corner lot; there have been safety concerns surrounding the property and the applicants have the desire to enclose the yard due to those safety concerns. The Board is also in favor of preserving trees and shrubs whenever possible and one reason for going into the corner side yard is to preserve those trees and present a desirable look and effect to the fence which will continue into the rear yard and will enhance the property and the neighborhood. The property has sufficient space between the proposed location of the fence and the right-of-way, thus not creating an adverse effect on the walkways and the nature of the neighborhood. If the variance is granted conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Fence Permit;
3. 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 or length; and
4. Complete construction within 12 months of City Council's approval of this resolution.

I do note that there was some concern from the neighbors before we go to a vote on the motion. Taking that into consideration and although they are part of the record, nothing was presented in addition to those emails that would suggest that this fence would in any way adversely affect the neighborhood.

Mr. Zych seconded the motion.

The vote was 2 – 2. Mr. Gilliam and Ms. Dietrich were opposed.

Mr. Zych explained that a 2 to 2 vote was because the Board is missing a member of the Board who would have cast the third deciding vote. He asked Ms. Hill if given the unplanned absence of one of our members resulting in a 2 – 2 vote, would a motion to continue be in order, leaving the matter open so that it can be reconsidered once we have a full contingent of the Board.

Ms. Hill answered affirmatively.

Mr. Hoen moved to continue consideration of this request based on the 2 – 2 vote until such time that the Board will be complete and can vote on the matter at that time.

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

Mr. Zych explained for the applicants that we have an unusual situation in that we have not granted the variance but it has not been denied. Because we have a member who did not hear this we will have to go through the record one more time. That is the way the situation stands and we thank you for your patience.

CALENDAR NO. 3404

William and Debra Patterson, 2260 S. Overlook Rd., 'A' single-family district, request a variance to Section 1121.12(a) (1) to rebuild garage 4' from the principal building (10' minimum setback req'd).

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

Ms. Knittel's staff report was as follows:

This property is located in an 'A' single-family district and the properties located to the north and south and east across S. Overlook are zoned 'A' single family. The parcels to the west are zoned 'AA' single-family. This is a code conforming parcel in terms of width at the building line, as the parcel is 50' wide. However, the area of the parcel is 7,450 square feet just under the minimum area of 7,500 square feet required by the zoning code.

The applicant is replacing their current two-car garage and is seeking a variance to rebuild a two-car garage in the same location which is 4' from the house. Zoning Code requires the garage to be a minimum of 10' from the principal building.

The applicants are seeking a variance to be allowed to rebuild the new garage in the same location as the existing garage. They state that this option provides for the best practical use of space in the rear yard. They cannot relocate the garage further to the rear yard with straight access to the garage bays without removing a large maple tree. They state that this tree is probable as old as their 1925 house.

The applicants considered building a new garage 10' from the house and situated similarly as their current garage. They believe this location would devalue the property and would result in a 10' space between the house and garage that would be wasted. They state that more concrete would be added and that this would reduce the green space in their back yard.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and
3. Complete construction within 12 months of City Council's approval of this resolution.

That being the end of Ms. Knittel's report, Mr. Zych asked the applicants to come to

the microphone.

William Patterson, 2260 S. Overlook Rd., thanked Ms. Knittel for her presentation, stating that she had described their situation very well. We really just want to rebuild where our current garage is and enjoy our existing greenspace.

As there was no one from the public who wished to testify, Mr. Zych closed the public hearing. He asked the Board for questions or comments.

Mr. Gilliam asked staff if the 10 foot requirement was due to the fire code.

Ms. Knittel stated that the requirement is also in the zoning code and the wall closest to the house would have to be made fire-proof.

Mr. Patterson stated that we are going to drywall the entire inside. The existing garage was plastered inside.

Ms. Knittel added that because the requirement is also in the zoning code, a variance is required.

Mr. Wong added that you can have an attached garage with a 0' setback and still have a code-conforming situation.

Mr. Zych added that it would also need to be fire-rated.

As there were no further questions from the Board, Mr. Zych asked for a motion.

Mr. Gilliam moved to grant William and Debra Patterson, 2260 S. Overlook Rd., a variance to Section 1121.12(a) (1) to rebuild a garage 4' from the principal building where a 10' minimum setback required based on the finding that the distance and size of the new garage are very similar to what is there now. If the variance is granted conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit; and
3. Complete construction within 12 months of City Council's approval of this resolution.

He asked if the Fire Department would be involved in making sure the construction meets the fire code.

Mr. Wong explained that the requirement is part of the Ohio Residential Code so a permit would not be issued until a building official approves the plans.

Ms. Dietrich seconded the motion which carried 4-0.

CALENDAR NO. 3400

Agustus Beck, 1955 Coventry Rd., 'A' single-family district, requests the following variances to construct a 37'x77' basketball court:

- 1) 1121.12(b) court with a 13' tall backstop behind hoop in corner side yard (not permitted);
- 2) 1121.12(c)(3) 34% coverage of corner side yard (30% maximum permitted):
- 3) 1121.12(i) for 7' tall ball containment set back 10.5' from Coventry Road right-of-way and 6' from S property line in corner side yard (3' maximum height permitted).

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

Mr. Zych noted that there are 3 separate variances that may have different considerations. I think we will have a single presentation for all 3 but it may require 3 separate votes.

Ms. Knittel's staff report was as follows:

This single family property is located at the corner of Coventry Road and Edgehill Road. The properties to the north, east and south are single family homes and are zoned 'A' single family. The parcels to the west, across Coventry Road are zoned 'AA' single family. The Mornington Lane Condominiums are located directly west across Coventry Road.

For residential corner lots, the Zoning Code section 1103.03(121) defines the front yard as facing the shorter street dimension. Therefore, even though the street address is Coventry, Edgehill is the front yard and the area along Coventry is corner side yard.

The parcel is larger than the minimum standards in terms of square footage and width at the building line. The parcel is 18,180 square feet and is 87' wide. The minimum lot area and width required by the Zoning Code for the 'A' single family district is 7,500 square feet and 50' wide at the building line.

The applicant proposes installation of a 37' by 77' basketball court, 13' tall basketball backstop and a 7' tall ball containment in the corner side yard. A portion of the basketball court and a second 13' tall backstop and 7' tall ball containment is in the rear yard.

Code Section 1121.12(b) defines what structures are permitted in a front and corner front yard. A basketball court is not listed and therefore not permitted; a variance is required.

The corner side yard is 6,550 square feet and currently there are walks and a porch that cover 350 square feet. The portion of the court located in the corner side yard is 1,880 square feet. The total coverage of the side yard with the proposed basketball court is 2,230 square feet or 34% of the side yard. The maximum corner side yard coverage permitted by code is 30% (Section 1121.12(c)). Therefore, a variance is required.

Code Section 1121.12(i) permits only a 3' tall fence in the corner side yard. Therefore, a variance is required for the 7' tall ball containment. The manufacturer's specification of the ball containment describes it as a black mesh with one and three quarter inch square opening and a one inch black width of tape along the edges. It is installed on horizontal and vertical poles that have diameters of one and three eighth inch to one and seven eighth inch. The applicant's site plan shows the 7' tall ball containment located at the edge of the court along the 37' width that is parallel to Coventry Road and turning the corners of the court with 8' along the length of the court.

The applicant states that the portion of the yard defined by the zoning code as corner side yard is viewed and used as a back yard by the applicants. There is a 4.5' ornamental metal fence and 7' arborvitaes that run parallel to Coventry Road and to the south property line that the applicant states would result in the court not being visible from the road or sidewalk. The applicant states that he has discussed this project with the surrounding neighbors and there are no objections. The applicant points out that his neighbor to the south on Coventry Road has a basketball hoop located approximately 20' from the location of the proposed court. The applicant also points out that a variance was granted for a basketball court at the corner of Fairmount Boulevard and Fairfax Road (Cal. No. 3307, April 2013).

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Landscape and storm water management plan approved by the Planning Director;
3. Receipt of a Building Permit;
4. No windscreen, mesh or any other materials that would reduce the ball containment transparency shall be installed;
5. No lighting shall be installed for the basketball court;
6. At such time that the area ceases to be maintained as a basketball court, the court surface, the ball containment and basketball backstop shall be removed;
7. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the court's size, or increase the ball containment's height or length; or increase the basketball backstop's height; and
8. Complete construction within 6 months of City Council's approval of this resolution.

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

Agustus Beck, 1955 Coventry Rd., stated that he moved into the house in 2010 and spent the last 6 years working to improve the property. I care about the community and spent many years in Cleveland Heights before I moved here. My hard work was acknowledged in 2013 when I won the community improvement award. I would never pretend to do anything I thought would be a detriment to the community. I value my place in the community and my neighbors. I have spoken personally with my neighbors who raised no objections. I understand that there are condos on the other side of Coventry whose view is screened by a lot of foliage and trees. As far as the coverage is concerned, I am on a corner lot and if you take out the sidewalk, which I don't consider part of my yard, but has to be taken into account when considering coverage, it would be below the 30% maximum. I do have the 7' tall arbor vitae trees, that I do think look nice, around the property. I don't think you would really be able to see much of the court at all from the road or the side walk. The ball containment unit is higher than what the code allows but I think the variance should be considered because it is a net and basically see-through, not opaque and does not obstruct the view. One could consider why I don't put it in the front driveway but I live on a hill. This is basically for my son who just turned 4 years old. I wouldn't want him playing in the front yard driveway, on a hill. There are plenty of basketball hoops in the neighborhood and 1.1 miles from my house at the corner of Fairmount Blvd. and Fairfax Road a property has a basketball court that went through the variance process and whose set-up is very similar to this one. I spoke to the property owner who also has a similar set of arbor vitae surrounding his court and when I walked by the property I observed that you can barely see his court. As far as sound and being concerned about the neighborhood, I'm not putting up a light, so no basketball will be played at night. Again, this is for my son, who loves the Cavs and Labron. I'm going to put a Cavalier emblem in the middle of the court. He idolizes Labron and wants me to teach him how to play basketball. He goes to be early and won't be up late playing ball. Again, I ask that you consider this and that concludes my presentation.

There being no one from the public who wished to testify, Mr. Zych closed the public hearing. He then asked for questions from the Board.

Ms. Dietrich asked Ms. Knittel to show the slide showing the 7 foot tall ball containment. She asked if that was all there is? Nothing else?

Mr. Beck stated that was it. I don't think that would be obtrusive in any way.

Mr. Zych asked if one of the ball containment areas would be adjacent to Coventry Road.

Ms. Knittel stated that it would.

Mr. Zych observed that having watched basketball he knows that balls are sometimes more than 7 feet off the ground. He asked if there was anything that stopped the ball from going onto Coventry Road.

Mr. Beck stated that was the reason for the ball containment.

Mr. Zych pointed out that the ball containment was only 7 feet tall.

Mr. Beck stated that he had considered something taller but didn't think it would get approved.

Mr. Zych asked to see the slide with the large tree that will remain. He observed that the court is 37' wide and he assumed basketball courts have a little adjacent area so it may be 40' wide. You don't stop it right at the sideline. He asked where the court would be in relation to the tree.

Mr. Beck point out how the court would be constructed around the tree. He stated that it will go from the property line to the tree but he would not put cement where the tree is. He would leave a bare square to preserve the tree.

Mr. Zych asked how far the roots extended and how close to the surface are those roots.

Mr. Beck stated that it is an oak tree and he had discussed it with a landscaper. The tree is over 300 years old and the roots extend deep. He was told that as long as there is no cement immediately surrounding the tree, it will thrive. There will be cement on 3 sides and 1 side will remain open. That was taken into consideration.

Mr. Zych commented that he lived on Edgehill Road past Mornington Lane, so he was familiar with the area. Understanding the criteria that governs what this Board does when a variance is granted, the questions he had were why a basketball court and what is it about this property that would make a basketball court appropriate where our zoning code says basketball courts are not permitted in the corner side yard.

Mr. Beck explained it was because his front driveway does not permit installation of a hoop because it's on a hill.

Mr. Zych stated that's just a hoop, which is fine, but we don't have a hoop in front of us, we have a 37' X 77' basketball court. Before we can grant the variance we have to say there is something unique about this property that allows us to go contrary to a decision made by our elected officials. What is unique about this

property that will permit an entire basketball court where the zoning code does not permit it?

Mr. Beck stated that the space permits it. It was his understanding that the court is not allowed because of the permitted area coverage.

Ms. Knittel clarified that in the area considered corner side yard, a basketball court is not permitted.

Mr. Zych added that even if the shape of the corner side yard was made more rectangular on the drawing, a substantial portion of the court would still be in the corner side yard.

Mr. Beck stated that what is unique about this property is that it is a corner lot and he considered the whole area his back yard, not a corner side yard. If you look at the pictures you can see how the arbor vitae surround the yard, which is also the play area for the kids. His arrangement is similar to that for which a variance was granted approximately 2 years ago. So the uniqueness is the location of the court on a corner lot as opposed to a regular lot.

Mr. Zych stated that he appreciated that point. If it is not a corner lot, there is no corner side yard. The zoning code is given to us, we don't write the zoning code, so the area is considered a corner side yard. Even if the house next door had the same setback and the line was drawn totally parallel to Coventry Road, you would still have a considerable portion of the court in what the code defines as a corner side yard. There is a reference to a 13' tall backstop. Where would that be.

Ms. Knittel explained that was the backboard. Part of it is in the rear yard so that is a structure that is permitted. The portion in the corner side yard that is part of the court, is a structure that is not permitted.

Mr. Zych stated that we've got the 7' containment unit, 7' arbor vitae, and 6' of posts and backboard above that visible from Coventry.

Mr. Beck answered affirmatively.

Ms. Dietrich asked if the back of the backboard would face Coventry.

Mr. Beck explained that it would but it is glass so it is transparent.

Mr. Hoen stated that he could understand that it is probably more desirable to install a full court but was any consideration given to a smaller court completely contained within the rear yard. It would seem to be possible and still be quite large. It would be more of a three-quarter court but code-conforming.

Mr. Beck stated that it was considered but his son turned it down.

There being no further discussion, Mr. Zych asked for a motion and noted that each variance would be voted on separately.

Mr. Gilliam moved to grant Augustus Beck, 1955 Coventry Rd., the following variance to construct a 37'x77' basketball court:

- 1) From 1121.12(b) to permit a court with a 13' tall backstop behind the hoop in a corner side yard where it is not permitted based upon the finding that a corner side yard with the next door house being set back further causes quite an angle to what is considered the rear yard and corner side yard and this is unique to corner side yards. If the variance is granted, the following conditions should be included:
 - 1) Approval of the Architectural Board of Review;
 - 2) Landscape and storm water management plan approved by the Planning Director;
 - 3) Receipt of a Building Permit;
 - 4) No windscreen, mesh or any other materials that would reduce the ball containment transparency shall be installed;
 - 5) No lighting shall be installed for the basketball court;
 - 6) At such time that the area ceases to be maintained as a basketball court, the court surface, the ball containment and basketball backstop shall be removed;
 - 7) A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the court's size, or increase the ball containment's height or length; or increase the basketball backstop's height; and
 - 8) Complete construction within 6 months of City Council's approval of this resolution.

Mr. Hoen asked staff if there had been a safety study done. The Chair had raised the concern that a ball could potentially fly out into Coventry Road. That is a serious concern. He understood that the netting of the ball containment was 7' tall and will contain many of the balls but some balls could potentially go above and beyond that. Would a condition that a safety study be acceptable in this instance? Would the Police Chief be in charge of that?

Mr. Wong stated that he could not imagine how one could ensure that a ball would not end up on Coventry and not distract a motorist. We could study it but it seems so obvious that you can't control the accuracy of every child, teenager, or college age kid. Things can happen on basketball courts and even the pros can have an air ball. We could raise that with the Police Chief but I can't imagine anyone saying that will never happen.

Mr. Beck stated that the recommended height backstop is the one that I went with.

I do understand your concern. I did consider going with a taller backstop but I didn't think it would be approved. I did bring it up with the company and was told that 7' is the recommended height. I would have my son practice on the inside hoop until he was of an age that I felt it would be appropriate to use the outside hoop.

Mr. Hoen stated that he was less concerned about a 4-year-old shooting at the hoop than a fourteen-year-old.

Mr. Zych stated that we have a motion that is not yet in order. A motion has been made but has not been seconded. Is there a second?

There being no second, Mr. Zych stated that in the absence of a second the motion does not proceed. He asked if there was any other motion to be made.

Mr. Gilliam moved to continue consideration of this request for 30 days.

Ms. Dietrich seconded the motion.

Mr. Zych stated that he was not sure what purpose that would serve. We have a full record and we don't have a 2 to 2 vote.

Ms. Knittel wondered if it could be to allow the applicant or staff to bring additional information.

Mr. Zych commented that he tried to be mindful of his role as a Board member sitting in this chair tonight as Chair. I've never been elected by the people of Cleveland Heights to any office. I do not hold legislative power. We try to be very solicitous as you have seen tonight, working hard to accommodate the residents of Cleveland Heights. I think that is appropriate. However, I have to remember that I do not have legislative powers. I may not rewrite the zoning code. It's a fine line between granting a variance because of special circumstances and you allow a variance to go through. What I am not allowed to do is disagree with the zoning code and on that basis make a different decision. I don't have to agree or disagree with permitted or non-permitted uses of properties. I have struggled since I have been on this Board to fully get my head around the corner side yard, but it is in the code and that is what our elected City Council has said it is going to be. The circumstance is I cannot rewrite the zoning code and this happens to be one of those. It could be anywhere in this city from my point of view and not just an area like this. I happen to know Coventry Road pretty well. That would be my problem with this and I always reflect on things and I'm willing to think and consider and listen but in all my years on this Board I don't think I have varied from the belief that I can't rewrite the zoning code. That's just a judgement I have to come to.

More information is better but I'm not sure what I would hear to change that aspect of that judgement. So I don't think it is fair to the applicant or anyone to string it along.

Ms. Dietrich stated that her reason for continuation would be to allow a different variance to be brought before the Board. Maybe something smaller, further back from Coventry. There is the consideration of changing the character of the neighborhood with the court being so close to a thoroughfare where so many people walk and drive. For that possibility it would make sense to continue.

Mr. Hoen stated I'm very conflicted about this request. This is a beautiful property and I commend you for your work on the property. I think every kid should be entitled to a basketball hoop in their back yard. My sons have a basketball hoop in our back yard and I understand your driveway does not lend itself to having a basketball hoop. I am not as concerned about detracting from the character of the neighborhood but I am slightly surprised that none of the neighbors are objecting to this but the fact that they are not I am willing to go along with it. I am very concerned about the proximity to Coventry because I do drive up and down Coventry quite a bit. It is quite a busy thoroughfare and if a basketball were to even once bounce into the street, we can foresee a fatal accident. That is why I think maybe a continuance could be in order to redraw the plan to allay some of those safety concerns.

Mr. Beck asked if he could propose a containment unit as tall as the backstop.

Mr. Hoen asked if he were talking about a hockey net around the yard.

Mr. Zych pointed out that if a taller net is proposed, it has not been advertised and the Board could not act on it tonight. It seems the Board may be open within the context of the continuance to consider a revised proposal and staff will have to decide if that will require re-notification of the neighbors and re-advertisement and perhaps a recommendation I would make is given this area, maybe we go a little broader in letting people know because of all the people who have an interest in the Coventry Road area. It's just a suggestion. In terms of getting input, it may be helpful.

There being no further discussion, the motion carried 3-1, Mr. Zych was opposed.

Mr. Zych advised the applicant that the case was continued for 30 days which would give him time to work with staff to see if there is another proposal that staff can assist you with and he had always found staff to knowledgeable, helpful and intricately aware of the code.

OLD BUSINESS

Ms. Knittel stated that all variances granted by the Board last month 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 8:38 p.m.

Respectfully Submitted,

Thomas Zych, Vice Chair

Vesta A. Gates, Secretary