

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
JULY 20, 2016

MEMBERS PRESENT:	Gail E. Bromley George A. Gilliam Benjamin Hoen Liza Wolf Thomas Zych	Chair    Vice Chair
STAFF PRESENT:	Vesta A. Gates Elizabeth Rothenberg Richard Wong	Zoning Administrative Assistant 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.

APPROVAL OF THE MINUTES OF THE JUNE 15, 2016 PUBLIC HEARING

Mr. Zych stated that he had given Ms. Gates some corrections prior to the meeting. He moved to approve the minutes as corrected.

Mr. Gilliam 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

JULY 20, 2016

Ms. Bromley clarified for the public that tonight's public hearing contained two cases that were continued from the previous month of June. The record will show that in this instance, because each of the applications have changed and the composition of the Board is different, each of these cases will be heard as a new case. The Board will make its determination entirely based on the record created tonight.

CALENDAR NO. 3403

Samuel Gibson and Ellen Malone, 2457 Demington Drive, 'A' Single-Family district, request a variance to Section 1121.12(i)(4) for a 6' tall wood fence in a corner side yard (3' maximum height permitted).

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

Ms. Bromley asked staff for a report.

Referring to the slides, Mr. Wong stated that the reason we are here is because the Zoning code only permits a 3-foot-tall fence in a corner side yard. It is the applicant's job to explain his or her practical difficulty based on these factors.

He stated that in June notices were sent to the surrounding neighbors, the Sun Press and the web site. We received 5 comments in writing. To summarize, the neighbors questioned the appearance of the fence and its lack of transparency. We went through the same notification procedure for the July meeting, which included notices to the neighbors and so forth. This time we received 1 letter which was included in the packets to the Board. Referring to an aerial of the site he stated that the applicant's house is 46.8 feet from the Demington Road right-of-way and the house to the south on Demington Road is set farther back, meaning that the corner side yard is on a diagonal. The dotted purple line shows the difference between the corner side yard and the rear yard where a maximum 7-foot-tall fence would be permitted. The request is for both privacy and security. They recently acquired their property and note in their letter of practical difficulty that remnants of a vulgar spray-painted phrase still remains on the back of their house and the fence will keep uninvited persons from having access to the rear of their house. The applicants considered constructing a code-conforming fence in the rear yard but due to the location of 2465 Demington, (the house to the south) this would have resulted in a fence not being in a straight line and parallel to the street. It would have angled east as the fence followed the imaginary corner side yard line. Referring to another slide of the site plan he indicated another fence location the applicants considered, represented by a red line, which would have been parallel to the street but would have intersected their house at a very awkward spot where a window exists.

They went before the Architectural Board of Review (ABR) and received approval of a fence style; board-on-board at the bottom and either a lattice at the top or spindle, as shown here. The two conditions from ABR were that it be cedar wood and that they receive a variance for the height. These fence styles were approved with the understanding that its location and its height is approved by the Board of Zoning Appeals. This slide gives you an idea of where the fence would be. The 11.5 foot dimension is the difference between code-conforming and a fence that requires a variance. You can see from the side view of the house how the fence would project out 11.5 feet toward Demington to get around the two trees.

That being the end of the staff report, Ms. Bromley asked the applicants to come forward.

Samuel Gibson and Ellen Malone, 2457 Demington Drive, came to the microphone.

Mr. Gibson stated that Mr. Wong had covered everything. He pointed out that a code-conforming fence would result in the loss of the two trees which is something we wanted to avoid. We changed our design when we went to the Architectural

Board of Review to make it a little more transparent to try and accommodate some of the letters received from the neighbors.

Ms. Malone stated that she originally wanted a taller fence but ultimately this proposal seemed more acceptable. We just want a little privacy as we are little more vulnerable on our corner lot and we just want to make sure we are secure and also that we can just hang out in our back yard.

#### PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

There being no testimony from the public, Ms. Bromley asked for comment from the Board.

Mr. Zych stated that a concern was raised at the last meeting which he didn't quite understand, about how stockade fencing is used. When I think of a stockade fence, I think of something that is blocking the view of the house. In this case we have a side view that is impeded to some extent, but by and large, I don't see much being obscured by this fence that would give rise to the concern about the stockade effect of large fences.

Mr. Wong stated that a stockade fence can be described as boards that are side-by-side with no gaps. He agreed with Mr. Zych in that the setback proposed in this instance is extraordinary compared to the usual corner side yard fence setback requests.

Mr. Hoen asked if anyone knew how much space is between their property line and the fence running along the neighbor's driveway.

Ms. Malone explained that their property line actually extended a foot onto their driveway but they didn't want to interfere with them, so they decided to set the fence back at least 3 feet from where the property line is so the neighbors have enough room to get out of their car.

Ms. Bromley asked if that meant that the fence would be 2 feet away from the neighbor's driveway.

Ms. Malone confirmed that it would. She hoped that would be enough space to allow them to open their car doors.

Mr. Hoen asked if those neighbors had an easement for their driveway to be on their property.

Mr. Gibson explained that they didn't know. They only found out about the encroachment when they received a copy of a recent survey. The neighbors have a really narrow lot and they have no wish to narrow it further.

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

Mr. Zych moved to grant the variance to Samuel Gibson and Ellen Malone, 2457 Demington Drive, for a 6 foot tall wood fence in a corner side yard where a 3 foot maximum fence height is permitted based on the grounds that for many corner side yards there are specific security and privacy concerns raised that the fence is meant to address. Also noting that a code conforming fence may require the removal of trees which is something we are loathe to do. Further finding that the large setback from the Demington right-of-way provides a very substantial buffer distance and that unlike other fences we have reviewed, the fence does not produce an adverse effect on the neighborhood of blocking-off or "stockading" the house and there are plenty of unobstructed views. While noting the concerns of the neighbors we believe that the modifications address them. The approval is conditioned upon the following conditions:

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 or length; and
3. Complete construction within 12 months of City Council's approval of this resolution.

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

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

#### CALENDAR NO. 3400

Agustus Beck, 1955 Coventry Rd., 'A' single-family district, requests a variance to Section 1121.12(b) to construct a 25'x69' basketball court to cover approximately 50% of the corner side yard with a 13' tall backboard behind hoop and a 10' tall ball containment set back 6.66' from Coventry Rd. right-of-way in the corner side yard (not permitted).

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

Ms. Bromley asked staff for a report.

Mr. Wong reported that as with the previous case, this request was continued from the June meeting. Because the proposal has changed significantly and the

composition of the Board is different, this will be heard as a new case. BZA will make its determination entirely based on the record created tonight.

For residential corner lots the zoning code defines a front yard as the yard facing the shorter street dimension. Therefore, even though the street address is Coventry Rd., Edgehill Rd. is the front yard and the area along Coventry is the 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 feet 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 foot width at the building line. The property to the south is set back from Coventry Road further than the applicants. A line connecting the sw corner of the applicant's home to the nw corner of 1999 Coventry Rd. establishing where the corner side yard meets the rear yard. The applicant initially proposed installation of a 37 foot X 77 foot basketball court, a 13 foot tall basketball backstop and a 7 foot tall ball containment in the corner side yard. A portion of the basketball court and a second 13 foot tall backstop and 7 foot tall ball containment was in the rear yard. This proposal resulted in 34% of the side yard being covered and required the consideration and approval of three variances: one for a basketball court in the corner side yard (not permitted), one for the side yard coverage being above the permitted 30%, and one for a fence 7 foot tall in the corner side yard when the maximum height permitted is three feet. We call it a fence but it is actually the ball containment system.

Last month the Board had concerns about the court being so close to Coventry Road. As a result the applicant has redesigned his proposal and is requesting a smaller basketball court. The applicant is proposing to construct a 25 foot by 69 foot basketball court and about 50% of this court is in the rear yard. The reduced size results in the side yard coverage being 20% where 30% maximum coverage is permitted. The applicant is requesting a 13 foot tall backboard behind hoop and the 10 foot tall ball containment is set back 6.66 feet from the Coventry right-of-way in the corner side yard. The court is 18.66 feet from the Coventry Road right-of-way.

The ball containment system is comprised of two 10 foot tall poles connected by a wire. A net is closed when the court is being used and is open when the court is not in use. The applicant proposes this to be located 6.66' from the Coventry Road public sidewalk.

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 foot tall ornamental metal fence and 7 foot tall 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 also 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 feet 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). Please note that the dimensions of this court are 30 feet by 45 feet. This court is also screened by arborvitae.

Referring to a slide, Mr. Wong indicated where the court will be installed about 5 feet from the tree trunk of a large oak tree which will remain.

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

Agustus Beck, 1955 Coventry Rd., stated that he moved into this community in 2010. I have enjoyed living here and have spent the entire 6 years of ownership attempting to improve this property, both the house and the yard. Not just for myself and my family but for the community. I enjoy living here and I think this was proven when I won the 2013 Community Improvement Award. I have a 4-year-old son who adores LeBron James and basketball. He wants me to teach him how to play even though he's only 4. I could put the hoop in my driveway but my driveway is on a significant hill which would make it fairly impractical to put a hoop there. There is a hoop 25 feet from where I propose to put the court which he sees my neighbor playing on and always asks to have a court as well. My initial proposal was significantly grander than this proposal and I understand the concerns raised by the Board last month so I have proposed a court that is 40% smaller than previously with the understanding that it is set 15 feet to the ball containment system and 18.66 feet from the road. This is almost 35 feet from the road and that was the biggest concern of the Board and it is understandable. This is a hoop that is 33 feet from the road and approximately halfway between the road and the hoop there is a 10 foot tall net.

I want to talk about what the net will look like. When the arborvitae was planted 2 years ago they were 7 feet tall. I went home and re-measured and now they are 9 feet tall. There will be 2 poles just inside the metal fence in front of the arborvitae, approximately 15 feet from the hoop. There will be a wire between the 2 poles which are no wider than your standard flag pole. There will be netting between the poles that will open and shut like a standard shower curtain and would not be visible when the court is not being used. When the court is in use the net will be closed by a pull-string, preventing the ball from bouncing onto the road. The likelihood that the net would be hit by a ball is extremely low given that the hoop location is now 15 feet from the net and nearly 35 feet from the road, but the net will be there and will be 10 feet tall. At the last meeting someone asked how far a ball would bounce. Physics gives us a lot of answers. A ball will bounce approximately 75% of the height that it is dropped, so if you are shooting at a 10 foot tall fence, the ball will bounce approximately, 7.5 feet up. The chances of a

ball bouncing over a 10 feet tall net, 15 feet from a hoop, is not impossible but you would have to intentionally put it over that.

The variance is described as a corner side yard but I consider this entire area of my yard to be my back yard. It was considered a back yard by the previous owner and was already enclosed. There is a swing set, we play frisbee, whiffle-ball, and other games in this back yard. We would not need a variance if this was considered a back yard and not a side yard. A precedent has been set. In 2013 a very similar proposal for a corner-side yard was granted with similar considerations.

#### PUBLIC HEARING OPENED

Dr. Robert Cambell., 2785 Edgehill Road, stated that he used to be senior minister at Church of the Covenant and is now retired. I live on the opposite corner and have a 6 foot tall fence along my side yard. Mr. Beck has done a wonderful job on the house. Some other young people have moved onto another corner and put a ton of money into their house and I have put a ton of money into my house. I figure this is what we want in Cleveland Heights. I can't see any reason why a great dad and a professional can't, within reason, do some things that make it right. I'd sure rather see his basketball court there than the one next to him that's one of those ugly things that sit up in the driveway and the ball goes out in the street. So, we're supportive and checked with everybody around and don't see any reason why not. Thank you.

There being no one else in the audience who wished to speak, the public hearing was closed. Ms. Bromley asked for questions from the Board.

Mr. Zych stated that he appreciated all the detail about the net. He asked how far apart the poles were.

Mr. Beck stated 15 feet.

Mr. Zych observed that was narrower than the width of the court.

Mr. Beck stated that was correct.

Mr. Zych asked to see the slide showing the Coventry Road side looking east. He noted that he could still see through the arborvitae. This was one of the routes he took when he went on his walks and he drove past it every day.

Mr. Beck stated that it was permeable now but they are going to grow.

Ms. Wolf observed that the court itself is not enclosed.

Mr. Beck answered affirmatively.

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

Mr. Hoen moved to grant Augustus Beck, 1955 Coventry Rd., a variance to Section 1121.12(b) to construct a 25 foot X 69 foot basketball court to cover approximately 20% of the corner side yard with a 13 foot tall backboard behind hoop and a 10 foot tall ball containment set back 6.66 feet from the Coventry Rd. right-of-way in the corner side yard where it is not permitted. Based on the finding that this property has unique characteristics, the first being that the applicant uses this corner side yard strictly as a rear yard and if this were a rear yard by code this would not require a variance; any other construction of this court to build it completely in the rear yard would require the oak tree to be removed or it would be impossible to build this. Therefore there is a practical difficulty in this particular property. The applicant has explained his safety structure with the safety net, responding to our concerns at the last hearing regarding safety issues with regard to balls going into the street. The possibility of that happening with the new plan is significantly limited. With those unique characteristics and practical difficulties, if the variance is granted conditions should include:

1. Landscape and storm water management plan approved by the Planning Director;
2. Receipt of a Building Permit;
3. No windscreen, mesh or any other materials that would reduce the ball containment transparency shall be installed;
4. No lighting shall be installed for the basketball court;
5. 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;
6. 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
7. Complete construction within 6 months of City Council's approval of this resolution.

Mr. Gilliam seconded the motion.

Mr. Zych stated that he had been reading this proposal very carefully and this is something he would very much like to vote yes on, for all the reasons that were stated. He certainly appreciated the change in design. We have seen many changes since he had been on this Board that have been beneficial changes made to proposals to meet specific concerns and he saw that being done here. He was especially appreciative since he lives in that neighborhood and considered balls going into the street a significant concern. Not being a landscape architect, he believed there were adequate means to address that, but this is the issue for him. I'm not a member of City Council. I do not have the power to rewrite the zoning code. I understand why basketball courts are not allowed in corner side yards. A

corner side yard is not a back yard. Using something as a back yard does not make it a back yard. The reason is because it runs along a street. Would I have made the same determination if I were voting on the zoning code? I don't know. I might have had a little more latitude for it. But I am not and the code is the code. I appreciate the statement of practical difficulty and it makes logical sense to me. But the use of a corner side yard as a back yard, whatever that means, does not convert it to something other than a corner side yard. This is one of those "thou shalt nots". I very much would like to be able to vote yes. I think this is a terrific property. I think this is a property that does a lot for our neighborhood and does a lot for the city. I see the idea of outdoor recreation, other than Pokemon, as being a good idea. But I just have that concern about the limited view, so it is one of those where I don't disagree with the proposal, nor do I disagree with the reasons for it and I certainly don't disagree with the modifications that have been made. This individual member, for what it's worth, has difficulty in light of what my actual role is and what I have been selected to do, so that will inform my vote.

There being no further comment from the Board, the motion passed 4-1; Mr. Zych was opposed.

Ms. Bromley reminded the applicant that City Council must review all variances.

#### OLD BUSINESS

Mr. Wong informed the Board that all variances granted 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 7:45 p.m.

Respectfully Submitted,

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Gail E. Bromley, Chair

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Vesta A. Gates, Secretary