

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
AUGUST 17, 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
	Elizabeth Rothenberg	Assistant Law Director
	Richard Wong	Planning Director

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 JULY 20, 2016 PUBLIC HEARING

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

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

THE POWERS OF THE BOARD AND PROCEDURES OF THE
BOARD OF ZONING APPEALS PUBLIC HEARINGS

For the benefit of the applicants, representatives, and the public, Ms. Bromley stated that these hearings are quasi-judicial and certain formalities must be followed as if this were a court of law. Those who wish to speak regarding each case will be placed under oath. Following a presentation by City staff, each applicant may present his or her case. The Board will open a public hearing to obtain testimony from any other persons and the applicant will have a chance to respond to any such testimony. The Board will then ask questions of the applicant and render its decision. The formal nature of these proceedings is necessary because the applicant is asking for an extraordinary remedy called a variance. A variance is formal permission for the applicant not to comply with the municipal ordinances by which all other citizens are bound. The factors and criteria weighed by the Board with respect to the granting of variances are set forth in the Zoning Code and have been made available to all applicants. The burden is upon each applicant to establish the right to a variance under these criteria. The applicant must demonstrate circumstance unique to the physical character of his or her property, not personal difficulty, hardship or inconvenience. All variances granted by this Board are subject to review by City Council.

PUBLIC HEARING

AUGUST 17, 2016

CALENDAR NO. 3406

Steven B. Stone, 2350 Ardleigh Drive, 'A' single-family district, requests a variance to Section 1121.12(a)(8) to construct a driveway 0' setback from side property line (min. 3' setback req'd.).

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

Ms. Knittel, who had been sworn in, gave her report as follows:

This single family home is located in an 'A' single-family district with single-family homes to the north, east and south. To the west, abutting the applicants rear yard are single-family properties located in a 'B' two-family district.

The applicant intends to replace a damaged asphalt driveway with a concrete drive. The applicant is seeking a variance of a 0' setback from the side property line to enable the current driveway to be straightened. The current driveway is located at

the property line beside the house and for about 17 feet in front of the house and then it angles south away from the side (north) property line. The Zoning Code requires a driveway to have a minimum 3-foot setback from a side property line.

The applicant states that the current angled drive results in guests and contractors frequently running over the grass or over the small landscaped triangle between the driveway, sidewalk and the north property line.

There is an existing hedge just north of the property line separating the two driveways at the front of the property, and a fence providing separation in the rear. The applicant is proposing a code conforming change to the driveway in the rear yard.

The proposed front yard driveway configuration is similar to other driveway configurations in this block of Ardleigh. The following addresses have driveways that according to the County GIS maps are on the property line: 2307 Ardleigh and 2299 Ardleigh; 2300 Ardleigh and 2290 Ardleigh; 2286 Ardleigh and 2276 Ardleigh. Therefore, the applicant's proposed driveway would be in keeping with the character of the neighborhood.

If the variance is approved, conditions should include:

1. Receipt of applicable Building Department Permits; and
2. Complete construction within 18 months of City Council's approval of this resolution.

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

Mr. Stone, 2350 Ardleigh Drive, who had been sworn in, stated that he and his wife recently purchased this house. One of the reasons for that bare triangle area shown in the slide is that people run over it when backing out of the drive. When the drive is straightened landscaping will be installed in that area. We've had work done on the house with contractors driving in and out. When they were backing out, it was a particularly difficult maneuver.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

There being no one who wished to testify from the audience, Ms. Bromley asked for questions or comments from the Board.

Mr. Zych confirmed with staff that the driveway sits on the property line, along the side of the house and 17 feet in front of it. This is the position of the current drive and the proposed, and moving it in any way away from the property line would result in a too narrow driveway.

Ms. Knittel stated that was correct.

Mr. Zych further commented that he had a much smaller bend in his own driveway to get around a drain in the street but most people just drove over it. He could understand perfectly the applicant's predicament from first-hand experience. He also found it odd that the driveway was constructed that way in the first place.

Mr. Stone guessed it was because there were already several other driveways constructed the same way on this street for some reason.

Ms. Wolf asked the applicant if he would also be combining his apron with that of the neighbor.

Mr. Stone confirmed that he would.

Ms. Knittel added that he would also be removing the portion of the drive that now swerves to the left and leads to a separate apron,

Ms. Wolf confirmed that the area would then be landscaped.

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

Mr. Zych moved to grant a variance to Steven B. Stone, 2350 Ardleigh Drive from Section 1121.12(a)(8) to permit a driveway to be constructed with a 0-foot setback from the side property line where a 3-foot minimum setback is required based upon the finding that experience has shown that the siting and the location of the driveway invites and actually causes damage to the property given the unusual angle in which people would have to go in and out, particularly when on the way out. It can also create damage to the apron and curb as well, as often happens in these situations. Evidence further shows that this is an arrangement that is quite common on Ardleigh Drive, will not detract from the neighborhood and in fact would have a more even green spacing for the property in keeping with a normal front lawn. If the variance is approved I also add the following conditions:
1. Receipt of applicable Building Department Permits; and 2. Complete construction within 18 months of City Council's approval of this resolution.

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

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

CALENDAR NO. 3407

Lana Radl & Mithun Rajan, 3500 Fenley Rd, 'A' single-family district, request a variance to Section 1153.05(gg)(4)B to permit a chicken coop 0' setback

from principal structure (min10' setback req'd.).

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

Ms. Knittel, who had been sworn in, gave her report as follows:

This property is located in an 'A' single family district and is surrounded by other single family properties. This property exceeds the minimum lot area and width regulations for an 'A' single family district. It is 90 feet wide and has 28,000 square feet. The minimum is 50 feet wide and 7,500 square feet.

In addition to its size, this parcel is unusual in its shape. It is a wedge shape that is widest at the rear property line. The rear of the property is wooded and abuts a wooded lot along Belvoir Boulevard.

The house has an attached garage. There is an attached shed on the rear of the garage, facing the back of the property. This shed has electricity and is configured in such a way that the applicant would like to use it as their chicken coop. Chicken Coops are a conditionally permitted use in our single family districts. Zoning Code Section 1153.05 gg provides the standards for chicken coops. Section 1153.05(gg) (4) (B) specifically requires that the Chicken Coop and run be located a minimum of 10 feet from any principal building and 10 feet from an adjacent lot. This standard was a recommendation from our zoning code consultants which we adopted as we had no experience with urban chicken keeping in 2012. Cuyahoga County Board of Health staff were consulted to determine if there are any health standards or concerns about having a chicken coop located less than 10 feet from the principal structure. The BOH staff stated that there is no standard concerning distance; the most important factor is the maintenance and upkeep of the chicken coop. The BOH stated that typically city chicken keepers tend to their coops and maintain high standards of keeping the coops clean. The Planning Commission approved a conditional use permit for this chicken coop at the July 2016 meeting contingent on the applicant receiving a variance.

The attached storage shed has electricity which would allow the applicants to provide heat to the chicken coop in the winter. Also, the applicants state that the wooded and undeveloped nature of their property and the properties near them results in wildlife being present that could pose a threat to chickens such as raccoons and transient coyotes. The applicants believe that having the chickens housed in the attached shed/coop would provide added security for them from this wildlife. The applicants also point out that utilizing an existing structure is a more sustainable option. They state that if the variance were not granted, an additional structure would need to be constructed and this structure would provide additional coverage of the property. The applicant states that utilizing the existing structure also maintains the character of the neighborhood as an additional outbuilding would

not. Due to the size and configuration of this yard, the storage shed is not visible to the street or neighbors and therefore, using it as a chicken coop will not have a negative impact on neighbors.

There has been one similar case before the Board of Zoning Appeals, Cal. No. 3302 in February 2013, where a chicken coop shared between neighbors was located in a side yard (not permitted) with 0' setback from the property line and 0' setback from the house (10'min. setbacks required). These variances were approved due to the due to the unique characteristics of the site and the fact that there would be no adverse impact on the surrounding neighborhood or adjacent properties.

If approved, conditions should include:

1. The applicants shall adhere to all Building Code regulations;
2. The variance shall expire at such time that the applicant sells or otherwise conveys ownership of the property at 3500 Fenley Rd. (PPNs 682-02-016 and 682-02-017).
3. The owner shall be required to maintain the required conditional use permit for chicken coops.

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

Lana Radl, 3500 Fenley Rd, who had been sworn in, stated the only thing she wanted to add was that she was unaware that having the chicken coop in this location was a violation. She also applied to have a home day care and the inspector did not include the garage as part of the principal building. The proposed location is 12 feet from the main living area of the home so when I applied for a chicken coop permit was when I found out that I needed a variance to use the shed as a chicken coop or alternative location in the back yard. In the woods are resident raccoons that visit the rear porch and 4 houses down the property owner has a nice picture of a pack of coyotes in their rear yard. In conversation with other Cleveland Heights residents and there was one family who had lost their chickens 2 years into raising them due to raccoons so I want a stable shed and I feel this is the most ideal situation. Another point is that this shed has a cement floor and a cement walkway surrounds it which allows me to thoroughly rinse out the floor of the shed and it prevents a buildup of organic matter which reduces the smell much better.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

There being no one who wished to testify from the audience, Ms. Bromley asked for questions from the Board.

Mr. Gilliam asked if the chickens were already there.

Ms. Radl confirmed that they were. She explained she had adopted them in July.

Mr. Gilliam recalled that when he visited the site the chickens had wandered into the street.

Ms. Radl explained that though she had adopted them as teenagers, in the space of 1 week and a half they had learned to fly over the dog fence. This meant she has to add extra netting to the fence keep them in. Meanwhile I'm keeping 2 in the shed all day and there is one who doesn't stray who stays outside while she is in the process of procuring the netting that they cannot go over. That was a learning process for her. Her husband has raised chickens but she have not.

Mr. Gilliam commented that one of his neighbors is raising chickens and has already lost one to a raccoon who climbed this fence and took the chicken then he brought it into my garage to eat and left feathers everywhere along with the carcass. It's good that you are looking into additional netting because raccoons can ruin your day very quickly.

Ms. Radl stated that was her main concern.

Mr. Zych pointed out that the second condition recommended by staff states that the variance would expire upon the conveyance of the property when normally the rule is that the variance runs with the land. He was curious as to why that condition was added.

Ms. Knittel explained that the conditional use permit is only for the applicant that applies for it so the conditional use permit to keep chickens would not transfer to the next owner.

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

Mr. Hoen moved to grant Lana Radl and Mithun Rajan, 3500 Fenley Rd., a variance to Section 1153.05(gg)(4)B to permit a chicken coop to be 0-feet set back from the principal structure where a minimum setback of 10-feet is required based on the finding that it doesn't appear that we know or understand the reason why the rule was promulgated with a 10 foot requirement. The applicant is not asking to build a new structure that will be used as a chicken coop. Instead, the applicants are asking to use an existing structure which is already a part of the home. The unique characteristics of this site that lend itself to raising the chickens such as it is, is that it is a larger property with a wooded rear yard and the fact that the structure is attached to the home as opposed to 10 feet away from the home, and will not in any way adversely affect the ability to raise healthy chickens. The information provided to us indicates that the Board of Health has no objection to raising chickens in this manner and therefore I see no reason why we shouldn't grant the variance request to use the existing structure as a chicken coop. There are also

substantial reason why this may be a better scenario in that it could protect the chickens better than a coop that was built 10 feet away. If the variance is approved the following conditions shall be included: 1. The applicants shall adhere to all Building Code regulations; 2. The variance shall expire as such time that the applicant sells or otherwise conveys ownership of the property at 3500 Fenley (PPNs 682-02-016 and 682-02-017); and 3. The owner shall be required to maintain the required conditional use permit for chicken coops.

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

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

OLD BUSINESS

Ms. Knittel advised the Board that both variances approved by the Board in July were confirmed by City Council.

NEW BUSINESS

Ms. Knittel reported that staff had not received any applications for September so there will be no September meeting.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:23 p.m.

Respectfully Submitted,

Gail E. Bromley, Chair

Vesta A. Gates, Secretary

