

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
FEBRUARY 15, 2017

MEMBERS PRESENT:	Gail E. Bromley Benjamin Hoen Liza Wolf Thomas Zych	Chair  Vice Chair
MEMBERS ABSENT	George A. Gilliam	
STAFF PRESENT:	Vesta A. Gates Kevin Roberts 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. Four members were present. Mr. Gilliam's absence was excused.

APPROVAL OF THE MINUTES OF THE JANUARY 18, 2017 PUBLIC HEARING

Mr. Hoen moved to approve the November minutes as written and distributed.

Ms. Wolf seconded the motion which carried 3-0-1. Mr. Zych abstained as he was not present at the meeting.

APPROVAL OF THE MINUTES OF THE JANUARY 18, 2017 PUBLIC HEARING

Mr. Zych stated that he had given Ms. Gates a minor correction prior to the meeting. He moved to approve the January minutes as corrected. Mr. Hoen seconded the motion which carried 4-0.

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

FEBRUARY 15, 2016

CALENDAR NO. 3315

Larry and Christina DeAngelis, 2655 Derbyshire Rd., "A" single-family district, requests variance to 1121.12(i)1 to permit a 4' tall fence in a portion of front yard. (3' ht. max. ht. permitted).

All those who wished to testify regarding this request were sworn in by Mr. Roberts.

Mr. Wong's staff report was as follows:

The property is zoned 'A' single-family. The property is located at the corner of Derbyshire Road and Overlook Lane. The front of the house faces Derbyshire Road and the driveway access to the garage is from Overlook Lane. The yard facing Derbyshire Road is the front yard and the yard along Overlook Lane is a corner side yard.

The applicants built their house in September 2016. Prior to this, the site was the location of a tennis court which was part of 2656 Berkshire Road's rear yard. The

parcel immediately to the east continues to be part of 2656 Berkshire Road's rear yard which currently has a nonconforming 4 foot tall chain link fence setback approximately 2' from the Derbyshire Road public sidewalk. The next property to the east, 2677 Derbyshire Road also has a nonconforming 4 foot tall chain link fence in the front yard setback approximately 2' from the public sidewalk. This fence has a row of shrubs planted between the fence and the public right of way.

The applicant is requesting a variance to construct a 4 foot tall fence in the front yard. Zoning Code permits fences to have a maximum height of 3 feet in the front yard. The fence would be setback 20 feet from the Derbyshire public sidewalk and would extend from the property line west for 32 feet. The applicants are enclosing a portion of their rear and interior side ward with fencing. Because the house has an open side porch, the applicants' state that there is a need to extend the fence into the front yard to secure the area.

If approved, conditions may include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Fence Permit;
3. Complete construction within 18 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 consider modifications that would increase the fence height or length.

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

Christina DeAngelis, 2655 Derbyshire Rd., and who had been sworn in, came forward. Ms. DeAngelis asked if this was where she discussed her practical difficulty.

Ms. Bromley explained that she only had to indicate her answers to the factors on the statement of practical difficulty. She did not need to read the factors themselves.

Ms. DeAngelis read the following:

a) The presence of an open porch necessitates pushing the fence into the front yard setback when otherwise, it could be placed in line with the house. The variance for a 32' long 4' tall ornamental fencing in the front yard is the minimum necessary to secure the yard for our family.

b) The presence of an open porch necessitates pushing the fence into the front yard setback when otherwise, it could be place in line with the house. The variance for a 32' long 4' tall ornamental fencing in the front yard is the minimum necessary to

secure the yard for our family.

c) The variance for a 32' long portion of 4' tall ornamental metal fencing in the front yard is the minimum necessary to secure the yard for our family. The fence will also be set back 60' from the Derbyshire Rd. sidewalk, making the difference between a 3' tall fence and a 4' tall fence virtually indiscernible from the street.

d) The essential character of the neighborhood will not be changed nor will adjoining properties suffer detriment. The owner of the adjacent property, Jim Haas, 2656 Berkshire Road, is also in support of this proposal. Their rear yard abuts our rear yard and they have a pool and eventually intend to replace their existing fence. They will share the portion of the fence that abuts the rear yards.

e) The variance will not adversely affect the delivery of governmental services. The two adjacent properties to the east have chain link fences located close to the public sidewalk. Ours will be shorter, ornamental, and set back from the street.

f) Our property is located at Derbyshire and Overlook Lane. Henry Fence has informed us that it is considered a corner lot by the city and therefore our fence is limited to 3' in specific locations. We were unaware of the zoning restriction when we built our house here and believe there is no other way to secure our property without a variance. We have a dog that would jump a 3' tall fence.

g) When designing and building the home we did not realize that a 4' tall fence close to the front of the home would be an issue, mainly due to the neighboring fences noted above.

i) We feel that the spirit and intent behind the zoning requirement would be observed by granting the variance.

j) No special privilege will result from the granting of this variance.

Ms. Bromley asked the applicant if she had submitted an email or letter from the Berkshire Road neighbor.

Ms. DeAngelis stated that she had not thought about asking for a letter. He has already provided financial support for the cost of the 6 foot portion of the fence.

Ms. Bromley stated that it may not be critical but it is mentioned on record and we have no documentation, which could be helpful.

Ms. DeAngelis asked if it could be provided at a later time,

Ms. Bromley stated that she wouldn't delay a decision on that basis. She was only asking if it was possible that an email or something be provided to be attached to this request.

## PUBLIC HEARING OPENED

Dorothy Bier, 2672 Derbyshire Road, who had been sworn in, stated that she was present because she thought there would be a stockade fence all the down to the sidewalk and she objected to that. She found the proposed fence very pleasing and had no objection to any of it. Also, she could see why the 4 foot height would be necessary and had no objection to any part of this proposal.

## PUBLIC HEARING CLOSED

Mr. Zych asked Mr. Wong if he could see the slide that showed the porch. He noted that the porch was not unusually sized or sited. It is there because architecturally that is where it ought to be and it seemed to him to be a desirable feature of the house and porches are good things for a house.

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

Mr. Zych moved to grant Larry and Christina DeAngelis, 2655 Derbyshire Rd., a variance to 1121.12(i)1 to permit a 4 foot tall fence in a portion of the front yard where a 3 foot maximum height is permitted based on the finding that we have a classic corner-side-yard situation, noting that while it is a corner, it is not a corner of traditionally two heavily trafficked streets. There is a lane so we don't have as many of the usual considerations of interfering with traffic or sight lines. Finding that the need for the slight variance of 3 to 4 feet and the slight bump into the front yard are necessary given an attractive and desirable feature of the house, that being the east facing porch and that a fence that is only 3 feet high and code-conforming, while we are not the Architectural Board of Review, would be non-functional and aesthetically less than pleasing. Noting that the style of fence that was presented to us on which we make the decision is not a stockade fence as is the type that we have routinely approved, and the fact that it is 60 feet from the right-of-way means that even if it were a different style, it will be virtually imperceptible and the style of the fence would mitigate against any interruption with the view of the property. Also noting that the surrounding properties seem to have non-conforming chain-link fences and this in fact is an improvement to the appearance of this neighborhood. If this variance is approved the following conditions must be met:

- 1) Approval of the Architectural Board of Review;
- 2) Receipt of a Fence Permit;
- 3) Complete construction within 18 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 fence height or length.

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

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

#### OLD BUSINESS

Mr. Zych stated that at the November meeting there was some discussion about the basketball court at the S.E. corner of Edgehill and Coventry Roads. When walking by, my untrained eye noted some difference between my view of what was approved and what was there and I didn't want that to go unchecked. He asked if staff had a chance to look at that property yet.

Mr. Wong asked Mr. Zych if he was referring to the openness.

Mr. Zych explained that it was described to the Board how far the goal on the west side of the court was, its proximity to the road, the netting that is used and the fact that the netting would only be up when a game is being played but it seems to be up all the time. The concern was always whether there will be adequate protection from balls that will come bounding onto the street when the son gets older and shoots baskets more like an adult or others may use the court like adults do. He just wanted someone from staff to walk by and assuage his concerns about the design and construction.

Mr. Wong stated that Karen Knittel had gone out to check and taken some pictures. He showed the pictures to the Board taken of the court from different angles. He stated that she also phoned Mr. Beck about the fence not being pulled back, even though it wasn't a condition. He said it would be pulled back when it is not being used and he would take care of that. Everything else at the time of Karen's site visit checked out OK.

Mr. Zych stated that he appreciated the information and asked Mr. Wong to convey his thanks to Ms. Knittel.

Ms. Bromley stated that there was also another fence on Washington Boulevard erected prior to requesting a variance.

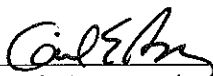
Mr. Wong explained that he didn't think Ms. Knittel had approached that owner and he wasn't sure if the same owner still lived there but staff will address that.

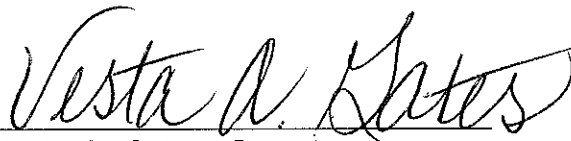
Mr. Wong also stated that the variance granted last month, a fence for the high school that would be tall enough to stop home run balls from bounding into Goodnor Road was approved by City Council.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:25 p.m.

Respectfully Submitted,

  
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Gail E. Bromley, Chair

  
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Vesta A. Gates, Secretary