

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
DECEMBER 16, 2015

MEMBERS PRESENT:	Gail E. Bromley	Chair
	George A. Gilliam	
	Thomas Zych	Vice Chair
	Benjamin Hoen	
	Michael Wellman	
STAFF PRESENT:	Vesta A. Gates	Zoning Administrative Assistant
	Karen Knittel	City Planner
	Elizabeth Rothenberg	Assistant Law Director
	Richard Wong	Planning Director
OTHERS PRESENT:	Cheryl L. Stephens	Vice Mayor, Planning & Development Committee Member

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 NOVEMBER 18, 2015 PUBLIC HEARING

Mr. Zych moved to approve the minutes as written and distributed.

Mr. Wellman 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

DECEMBER 16, 2015

CALENDAR NO. 3388

Gurgit Nanrhe, 2603 Noble Rd., 'C-2' Local Retail district, converting auto repair bays to accessory retail at a gas station requests variances to Code sections: 1) 1161.03(d)(2) to permit 5 parking spaces (7 req'd.); 2) to section 1131.13(a) to permit parking in the front yard on Noble Rd. and corner-side-yard on Monticello Blvd. (not permitted); and 3) to section 1131.08(a)(2) to permit no landscaping adjacent to an 'A' single-family district at rear lot line adjacent to 3851 Monticello Blvd.(10' landscaped area req'd).

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

Ms. Knittel reported the following:

The auto repair business is located in a 'C-2' local retail district at the corner of Noble Road and Monticello Boulevard. The 'C-2' local retail zoning district continues

north and south along Noble Road. An 'A' Single-family district with single family homes is located to the northeast along Monticello Road.

BZA CASES

Cal. No. 2689 variances were granted permitting: 1) fuel pumps to be located 15'6" Oct. 1997 from the right-of-way, 25' setback required; 2) to permit 2 canopies to be located 6'6" and 17'8" from the right-of-way, 15' setback required (no signage permitted on the canopy and lighting not to spill onto neighboring properties); and 3) to install a 4' wide landscaped area adjacent to the public sidewalks, 15' required.

The applicant has a purchase agreement for this site and would like to change the structure from auto repair bays into a retail store and intends to maintain the sales of gasoline. This case is continued from the November BZA agenda. The site plan has been revised since the November meeting.

The change in use results in the need to evaluate the site for compliance with applicable codes that correlate with retail sales in addition to the gasoline sales. Per section 1161.03, .5 parking spaces are required per pump and 1 parking space is required for each 500 square feet of retail space. There are 6 pumps and the retail space will be 1843 square feet. This results in the requirement for 7 parking spaces. ($6 \times .5 = 3$ spaces plus $1843/500 = 4$ spaces)

The applicant is proposing 5 parking spaces. Two spaces would be located in the front yard along Noble Road adjacent to 2595 Noble Road, the Cleveland Heights Police Academy. One space would be located in the Monticello corner-side yard adjacent to the property line shared with 2595 Noble Road. These locations result in the need for the second variance to section 1131.13(a) that states that corner lots in commercial districts are not permitted to have parking in the front or corner side yards or in areas that are located between a principal building and a public right-of-way.

Three parking spaces would be located in front of the dumpster area and adjacent to 3851 Monticello Boulevard, a single family house located in a single-family district, resulting in the need for the third variance to accessory parking regulation section 1131.08(a)(2) to permit no landscaping adjacent to an 'A' single-family district at rear lot line. A 10 foot landscaped area is required by code.

The size of the dumpster was reduced from the initial site plan reviewed in November to maintain an area of pavement where plowed snow could be piled.

The applicant states that the variances are necessary due to the limited size of the parcel. According to the County parcel map, this parcel to be 9,223 square feet. A code conforming C-2 commercial lot is required to have a minimum development area of 10,000 square feet.

Ms. Knittel stated that a representative from the Police Department, Captain Mecklenberg, was present. She asked the Chair if the Captain could speak at this time.

Ms. Bromley answered affirmatively.

Captain Annette Mecklenberg, 40 Severance Circle, Cleveland Heights Police Department, stated that she has been with the department for 25 years and had been asked to present some concerns the Police Department had regarding the proposed plan. One of those concerns is regarding delivery trucks. Changing from a gas station with limited products to sell inside to selling more products such as chips, candy, pop and other items, we believe will require an increase in deliveries. Delivery trucks being fairly large, it is likely they will park next to the building which will create a parking hazard within the property. They would possibly block access to the pumps or vehicular or pedestrian traffic and that would create more difficulty in navigating the site and that, to us, is a safety issue. Another concern is the on-site parking spaces. With only 5 spaces and 1 space designated for employee parking, the fact that this will be a convenience store means more vehicular traffic. Having only 4 spaces available will not be safe for everyone. It is the contention of the Police Department that many people will not use the available spaces properly and will try to park as close to the building as possible, maybe blocking the door or the pumps and other traffic from moving safely throughout the site. Regarding the area between the pumps and the store for example, if you are driving westbound and enter the site from Monticello Boulevard, if spots 2 and 3 are taken, there is no place to park. If the driver would like to enter the store you would have to drive to the other side of the site to find space 5 to park. However if vehicles are parked at the pumps, there is nowhere the vehicular traffic can go. They will either park where they are, creating an issue with the parking or they will try to back out onto Monticello which is a heavily trafficked thoroughfare. That could create a hazard for pedestrians walking to the bus stop or one of the other businesses, or a traffic hazard for vehicles on Monticello Boulevard, possibly causing an accident. Overall, the main concern of the Police Department is regarding vehicle traffic, increased pedestrian traffic and on-site parking. Due to the increase in the sale of merchandise that was not previously available, it is believed will attract a lot more customers. This means more vehicle traffic and pedestrian traffic to the site. We are concerned for everyone involved, especially the pedestrians and the bicyclists who frequent the area.

Ms. Knittel continued with her staff report stating, if approved, conditions should include:

1. Receipt of a Planning Commission conditional use permit;
2. Approval of the Architectural Board of Review;
3. Receipt of applicable Building Department Permits;
4. Complete construction within 12 months of City Council's approval of this resolution; and

5. Approval by the Fire Department of bollards at the end of each pumping station area.

As we heard at the last month's meeting, the Fire Department was concerned about people backing into the pumps. There are some bollards already there but the Fire Department wants the ability to examine them and make sure they are adequate. That concludes staff's report.

Ms. Bromley asked the applicant or representative to come to the microphone.

Gurgit Nanrhe, proposed owner, 1826 Grey Birch Rd., Ft. Wayne IN, stated that he had been sworn in. The operating hours of the convenience store will be 6 a.m. to 10:00 p.m. Delivery hours will be in the morning between 6:00 a.m. and 7:00 a.m. and during anticipated slow time between 10:00 a.m. to 2:00 p.m. No deliveries will be allowed during the busy times.

Nate Malik, attorney for Mr. Nanrhe, 2925 Bolingbrook Rd., Pepper Pike, Ohio, confirmed that he had been sworn in. He stated that he wished to address some of Captain Mecklenberg's concerns. Referring to the site plan he pointed out that space number 2 was reported as being an employee parking space but that is incorrect. The plan is to purchase a parking permit for a space in the city parking lot next to CVS for employee parking. This means that space number 2 can be used for customer parking. He felt it was important to point out that there was a significant amount of space behind spaces 1 and 2 so that if 2 is backing out there will be no concern about backing into space number 3. We also put planter boxes at the corners facing Noble Road and Monticello so any pedestrian traffic on Monticello Blvd. will not be at risk. As far as delivery trucks, my client will only do deliveries of food and gas during early hours when there is no rush and between 10:00 a.m. and 2:00 p.m. which is another dead time and not busy. There would be no deliveries during rush hour and it is very easy to coordinate with the food vendors and for the gas company to schedule the gas drops at specific times. We also addressed the flow of traffic on the site. We have also designated an area for snow removal in the area next to the dumpster. If there is an excess amount of snow to be distributed, the space designated number 2 can be moved back to the open area behind it and extra snow can be stored there. There was discussion at the last meeting about garbage pick-up. The way it is now the truck can come in off Monticello Blvd. straight back to the dumpster as shown on the site plan. But if necessary a dumpster on wheels can be used and on pick-up days it can be wheeled to the sidewalk for pick-up. There was also concern about on-site parking and traffic flow. I think that the way we have designed this we have minimized potential for cars running into each other or pedestrians getting hit because of the way the parking spaces are located. There was discussion at the last meeting about vehicles being blocked when other vehicles are parked on either side of the gas pumps. He believed there was more than enough space for cars to maneuver around and there are several entry/exit drives that can be used. There are two on

Noble Road and two on Monticello Blvd. so it isn't that difficult for people to get in and out of the lot. He understood the Police Department concerns but given the size of the lot and the way we have diligently worked on redesigning the site over the last 3 weeks, we have alleviated the potential for cars running into each other or pedestrians getting hit. We have addressed the concerns regarding the parking issues, we've addressed the snow removal, we've addressed the issue of pedestrian traffic being at risk, and I think that this is the best design that we can represent to allow this to go forward.

Richard Green, 6548 Hunt Circle, Mayfield Village, OH, had been sworn in. He stated that he was a real estate broker representing the current owner of the property. He stated that he was also a city planner with a degree from MIT and had been the Community Development Director for the City of Cleveland when Carl Stokes was mayor. This is a very, very small site that has been a gas station for some time so the fact that they will continue to dispense gas should not bother anybody. Referring to the site plan, he indicated that all the bollards were placed in such a way that there is no danger of anybody backing into a pump. That is a rational concern that will be addressed. He indicated the placement of the door and stated that there will be a walkway around the building so someone can park their car and walk to the walkway and into the convenience store. He did not see that there would be any conflict with pedestrian movement within the site. This will be a brand new Mobil oil station and will be called Noble Road Mobil. I wanted to call it 'The Noble Mobil', but they said no. The station will be totally remodeled with new pumps, new signage, and the inside will be renovated. This property is currently configured as an auto repair shop. The owners have tried to find another mechanic to buy the property. Unfortunately today single mechanics for small shops don't exist. People take their cars to the dealers or a big auto repair place. So the owners decided the best use was a gas station with a convenience store. No one in today's market will buy a gas station without a convenience store. Gas stations with a convenience store is standard in the industry. There has always been traffic coming to this site because of the gas pumps. He was not aware that the gas station traffic had ever caused any problems. The addition of a store is deceptive in that 35% to 40% of the customers pump their gas, walk into the store, buy their merchandise, go back to their cars and leave. It is not unusual to leave one's car at the gas pump to do that. You also may go in to use the ATM. The additional vehicular traffic would be due to the store and there are 5 additional spaces for people to park and go into the store. It is unlikely to be a mad rush of people coming into the store. They come in 2's and 3's, buy what they need and leave. Those are persons who don't get gas. Again, parking space number 2 will not be for an employee. The owner will purchase a parking permit in the city lot next to CVS so an employee will park in that space at all times. He repeated that the traffic flow has been going on for years with people coming on the site to buy gas. The additional people that will come in due to the store may be one or two at a time. It was his opinion that there will not be a major increase in the traffic flow. The store will be an asset to the community. It will be new, clean and operated

professionally. Mr. Nanrhe has operated several other gas stations and it will be a secure station. I hope I have addressed your concerns and thank you for your consideration.

Ms. Bromley asked for clarification of whether the only items for sale would be gas, soda, candy, and cigarettes.

Mr. Green stated that some food would be sold, but no hot food yet.

Mr. Malik stated that he thought they would have to get an approval from the City before they could do that. He had also suggested to Mr. Nanrhe that during busy hours, Friday and Saturday nights and rush hour, he could have a security presence as some of his other clients have done. Just to move people along, not because of criminal activity but to monitor whether people are parking correctly and not abusing a handicap space.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Mr. Zych asked, recalling last month's discussion, if the applicant will eventually be applying for a permit to sell alcoholic beverages.

Mr. Malik stated that the application had already been applied for. It would just be another carry-out cooler item.

Mr. Wong stated that he had made this statement at last month's meeting but will say it again: Both the Police Chief and City Council oppose any request for a liquor permit at this property.

Mr. Zych stated that he had a question for staff. Referring to the site plan he noted that the distance between the south pump and the building is 15'6". He asked if he entered the site from Monticello and there is a vehicle parked at the south pump on the side closest to the building, could another car maneuver past.

Mr. Wong stated that it could not.

Mr. Zych recalled an earlier statement that it is common for a customer to leave a vehicle at the pump and go into the store, make their purchase, then come back to the car. This means the area remains blocked during fulling and potentially longer if the driver goes inside the store.

Mr. Hoen asked Mr. Malik if he could approximate the number of clients he had represented in the purchase of gas stations.

Mr. Malik guessed more than 100.

Mr. Hoen asked if he could offer an opinion of what practical use this property could have if the variances were not granted.

Mr. Malik stated that he had no idea unless the city wanted to expand the Police Academy. He knew the current owners have been working a long time trying to solve the problem with this property. They haven't been able to find anybody who is interested in taking it over as a mechanic shop.

Mr. Hoen asked if he thought this property could survive as a gas station without the store.

Mr. Mallik stated that there is also a gas station across the street. In his opinion the gas station across the street would benefit from this because if there isn't enough room to get gas here, they will go across the street. He didn't know what the traffic flow is at that gas station.

Mr. Hoen asked if the subject property would be marketable as a gas station without the store.

Mr. Malik stated that he did not think so. Without a C-store, nobody will want to buy this. The C-store is where the income is generated from at a margin level. There is a higher income margin from the C-store than there is from the gas. The gas is just to bring the customer in, get them at the pump, then they come in to buy whatever goods they want. The products being sold inside are selling at a higher margin. That is the purpose of having the C-store. If you don't have a C-store but just a small operation like they have now, it doesn't attract people to come in. They would probably go across the street.

Mr. Hoen asked Mr. Malik if he knew what it would cost to convert this site to a non-gas station use since it has been a gas station for so long.

Mr. Malik stated that the environmental issue is a significant expense by itself because of the underground tanks.

Mr. Green added that BUSTER would require removal of those tanks. There would be a phase I and phase II and if there was a problem with leakage, the dirt would have to be removed and a remediation would be required. It is a long and expensive process.

Mr. Malik stated that there would likely be more remediation required if it was converted to something that had nothing to do with a gas station. It could run into hundreds of thousands of dollars.

Mr. Green stated that his company has been in the commercial real estate business for about 20 years and the majority of his business is gas stations. We have

represented owners of more than 50 gas stations over time. Although this one is smaller than most, we have sold some that were smaller. The problem a lot of people have when considering a C-store is that they forget that this is not Macy's. People go in and come out quickly. It is unlikely, in his opinion, with those 5 spaces and the pumps, that all those spaces will be filled most of the time. You will have 2 or 3 cars coming in and leaving. Nobody stays in a the convenience store for any length of time. They come in, buy their item and they leave.

Mr. Malik added that people are pumping gas anyway, and at the same time all they are doing is going inside to buy their items and leaving.

Mr. Green thought that the current owners already have a small selling area inside the building where they sell cigarettes, pop and other things.

Mr. Zych asked staff what the distance was to the nearest school from this site.

Ms. Knittel stated that she thought the nearest school was Monticello Middle School.

Captain Mecklenberg added that to the north is Oxford Elementary School and to the south, at Noble and Montevista, is Noble Elementary school which is probably the furthest away. She further stated that from a police standpoint this situation is still a safety concern for pedestrian traffic. Those who will be entering the store on foot or on a bicycle will leave the sidewalk at some point and that is where the police become concerned for their safety from vehicular traffic. We feel with an increased offering of merchandise you will get an increase in pedestrian traffic to the store. Especially since the residential area is so close. We are talking kids, teenagers, and adults. We are concerned for their safety as well.

Mr. Gilliam stated that if the convenience store is the profit maker and gas pumps are the hook, it seemed to him that you would uncomplicated your traffic flow and parking problems by removing the pumps on the Noble Road side while retaining the pumps on the other side and making a better presentation of where the profit-maker is.

Mr. Green stated that today, given the gas prices, the C-store would make more money than the price of gas. But when gas prices go up, as it will, gas becomes more profitable, becoming a bigger attraction and bigger item. Then, from a profit standpoint, the gas station at maximum creates 40% of the profit when things are going well. Currently, you are absolutely right that the profit is low because the gas prices are low. But they won't be this low forever. This is being built with everything new for the future. We should assume this will be a very profitable operation and taking out the pumps will make it very difficult for the future. Even now there is the convenience for people coming in off Noble Road.

Mr. Wellman stated that he appreciated that the applicant has come back to the

Board with a revised plan with some thought put into it. He personally liked the previous plan better. Overall this is a difficult parking arrangement. Spaces 3 and 5 would almost be unusable. In a parallel parking situation you need to be able to back up to get out of the space and those look like you would only have a front entry. At best you will have an angled car poking out of either of those spots. Another variance is required because the landscaping is not per code requirements. There have been concerns expressed for vehicular and pedestrian safety. I think everyone understands that pedestrian and vehicular traffic is going to increase due to the C-store. The previous variances that were issued for this site allowed for this construction but already created a tight situation. Now we are being asked to increase those variances and make the situation even worse so I'm having a hard time with that. It feels like this is the wrong use for this site and I don't think it is the applicant's fault in the least. This site is here and the applicant is trying to do the best he can with it, but he didn't know that he could do much better.

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

Mr. Wellman moved to deny the variance to Gurgit Nanrhe, prospective purchaser of 2603 Noble Rd., to convert auto repair bays to accessory retail at a gas station requests variances to Code sections: 1) 1161.03(d)(2) to permit 5 parking spaces (7 req'd.); 2) to section 1131.13(a) to permit parking in the front yard on Noble Rd. and corner-side-yard on Monticello Blvd. (not permitted); and 3) to section 1131.08(a)(2) to permit no landscaping adjacent to an 'A' single-family district at rear lot line adjacent to 3851 Monticello Blvd.(10' landscaped area req'd) because he didn't feel that it would be a good use for this site and he didn't feel that the practical difficulty has been met.

Mr. Gilliam seconded the motion.

Mr. Zych commented that consideration of this has been tough. He always like to commend applicants who do their best with what is a very small nonconforming site. He fully accepted the economic analysis. What was compelling to him above and beyond the factors weighed differently in different cases. Being a resident of Cleveland Heights and knowing and frequenting this area, when he hears the concerns from our police department about pedestrian, bicycle, and car safety, as much as he would like to support this and would like to see this business succeed, if he were to support this he would walk out of here thinking he was endangering people. That would be tough to do. This is not a personal feeling but is simply what he understood to be the charter that has been given to this Board by the elected officials of this city. He would love to support this, but he just couldn't, in good conscience, do so.

There being no further comment from the Board, Ms. Bromley stated that she was also in agreement with Mr. Zych. She asked for all in favor of the motion.

The motion carried 4-1. Mr. Hoen was opposed.

CALENDAR NO. 3390

Don Dakins & Fen Zharo, 2851 Edgehill Rd., 'A' Single-Family district, request variance to Code section 1121.12(i)(4) to permit a 6'10" tall wood fence in corner-side-yard along Washington Blvd. and property line shared with 2840 Washington Blvd. (3' max ht. permitted).

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

Ms. Knittel, who had been sworn in, reported the following:

2851 Edgehill is located at the corner of Edgehill Road and Washington Boulevard. This is an 'A' single family district and the property is surrounded by single family homes. The former Coventry Road School building parking lot is located to the north across Washington Boulevard.

BZA CASES

Cal. 3336: Variance was denied to keep a 6' tall solid wood fence in corner side yard Jan. 2014 (3' max ht. permitted).

In 2014, the applicants built a 6' tall solid wood fence in the corner side yard setback 5' to 8' from their rear property line shared with 2840 Washington Blvd. and 5' to 8' from the Washington Blvd. right-of-way. Code only permits a 3' tall fence. The fence along Washington Blvd. is 78' long. The fence does not fully enclose the applicants' property.

The fence was constructed prior to review and approval by ABR and without a fence permit. The applicants applied and presented information to ABR at their December 16, 2013 meeting was instructed to seek a variance for the height of the fence and then, if a variance is approved, return to ABR for further review. In January 2014, BZA heard the case and denied the variance request for the solid wood fence that was constructed.

The applicants are now requesting a 6'10" tall fence in the same location. The applicant would reduce the height of the current fence to 5'4" and then add a 1'6" vertical louver angled panel to the top of the fence resulting in a total fence height of 6'10". The applicants intend to maintain the current shrubs located in front of the fence along the public side walk.

The lot has approximately 320 feet of street frontage, over 160 feet on each street. The lot is an irregular shape. The house is located in the northeast corner of the

parcel resulting in a majority of the yard being defined as being front and corner-side yards by our zoning code. The property also slopes downhill from Edgehill Road north towards Washington Blvd. This results in the house being elevated above the sidewalk area along Washington Blvd.

The applicants state that the fence is needed in order to provide an area that is not exposed to public view. The former Coventry School parking lot is located diagonally across Washington Blvd. from their parcel. The adjacent neighbor located at 2840 Washington who is most impacted by the fence wrote a letter supporting the fence for the 2014 BZA case. As of the date of this report, no communication of support or opposition has been received for this case.

The fence does not fully enclose the yard. The fence extends 76' along the applicants' rear property line (shared with 2840 Washington Blvd.) and extends 75' along Washington Boulevard. The fence is set back 5-feet to 12-feet from the Washington Blvd. right-of way.

At its closest point, the fence is 5-feet from the adjacent 2840 Washington Blvd. property line.

The applicants have not yet gone to the Architectural Board of Appeal with their current proposed fence design. The ABR regularly requires fences in the front and corner side yards to be 20% transparent. In the recent past, corner side yard fences taller than the permitted 3 feet have been granted variances and approved by ABR that were 4' of solid wood fencing topped with an open trellis element adding architectural interest and openness to the fence.

If approved, conditions should include:

1. A requirement that the fence be a minimum of 20% transparent;
2. Approval of the Architectural Board of Review;
3. Approval of a landscape plan by the Planning Director;
4. Receipt of a Fence Permit;
5. Complete construction within 18 months of City Council's approval of this resolution; and
6. A requirement to return to the Board of Zoning Appeals for another variance should the property owners consider modifications that would increase the fence height or length or reduce the transparency of the fence.

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

Don Dakins, 2851 Edgehill Rd., confirmed that he had been sworn in. He stated that he didn't have anything to add to Ms. Knittel's presentation but he would be happy to answer any questions from the Board.

Before the Board asked any questions, Ms. Bromley opened the public hearing.

Frank Lewis, 2840 Washington Boulevard, confirmed that he had been sworn in. He stated that he not only did not object to the fence, he liked having it there. He felt that the cars in his driveway were safer at night. His cars had been broken into 3 times over the years, during which a GPS, change, CD's and similar things had been stolen. The cars used to be an inviting target because it was very easy to approach his driveway through Don's yard. They would sneak up on his cars and never be visible from my house. The fence now makes that impossible and the light color of the wood makes it easier to see someone walking up and down his driveway.

There being no further public comment, the public hearing was closed.

Mr. Zych asked staff if the proposed design yielded the desired 20% transparency.

Ms. Knittel stated that she had discussed that with the applicant and she thought the applicant could better answer that. She hadn't been able to determine from the drawing which of the panels were open and which were solid in the louvered top.

Mr. Dakins stated that he wasn't sure what the 20% meant or what it was measured against. He could say that the top is 18 inches tall and is something that can be bought pre-cut from a home improvement store. It has 45-degree angled slats drilled into it. The slats are 6 inches apart and 2-1/2 inches long. He hadn't bought it yet but you put the pieces together to create this panel.

Mr. Zych explained that it meant 20% of the area has a transparent feature to it as opposed to finding 20% of air in the design. The reason he asked was because the Board is going to put conditions on this and we just want to make sure you don't come back and we don't have to go through this one more time.

Ms. Rothenberg asked for further clarification about the 20%.

Mr. Zych stated that the proposed 1-foot 6-inch panel is not clear, it's not glass, but it has transparency to it. The question is are we saying that so long as that area, which is the louvered area, so long as it has transparency to it, all of it counts toward the 20%?

Mr. Wong stated that was the wrong interpretation. If the fence is 82 inches tall, 20% transparency means 16.4 inches of that fence, from top to bottom, is nothing. Or you could space the boards so they have a gap between them but that is not what the applicant is proposing. If you understand the concept of transparency, you can see through it 20% of the time. If you use graph paper and map this out, or if you shine a light on it, it means 80% of the light is blocked and 20% of that light gets through to cast a shadow.

Mr. Zych stated it seemed to him that 20% is the benchmark we have been using and since we are not fence designers it still is incumbent upon the applicant to make sure that what we end up with actually meets the 20% transparency.

Mr. Gilliam stated that the applicant originally came in with a 6-foot-tall fence that was erected without a permit and now the request is for a 6-foot 10-inch tall fence. Also, looking at the drawing of the proposed panel, it did not look to him as though it had 20% transparency. He wondered why the applicant was proposing to go 10 inches higher rather than coming closer to what is permitted.

Mr. Dakins stated that he didn't really have a good response. He supposed he was constrained by the existing structure. In a conversation last year with the Planning Director we tossed around an idea that was similar to this and I took it on my own to go with this. The horizontal nailing Board is the uppermost point that will support the additional structure. If you take off 8 inches from the existing structure and add on the additional structure, that is about as low as he could go without taking the whole thing apart.

Mr. Zych stated that although he wasn't a mathematician, if you take the vertical measurement which is 1 foot 6 inches, 21.95% of the height and as Mr. Wong noted that is not all transparent. It is not our job to do the design as we are not the Architectural Board of Review. I can see granting the variance but it will take some more creativity on the fence design.

Ms. Bromley stated that it seemed as though there was a disconnect between what our idea of what 20% is. She didn't know with whom the applicant spoke but she don't quite understand how he was advised or encouraged to do it this way. It doesn't seem consistent with what we've looked at before for 20%.

Mr. Zych recalled some other properties where the Board granted fences with 20% transparency, one on Euclid Heights Boulevard by Berkshire and others. They had some height but as long as we were satisfied with the transparency we have lived with taller fences. He was familiar with this area because this house is at the end of his weekend cigar walk from Edgehill Road on the other side of Coventry. He understood the need for privacy when there are things going on at Peace Park or things going on in Coventry and all the parking in the area beginning with Thursday night. Because of that he could be comfortable with this fence height. In terms of what we've advertised and what we can vote on he could see his way to approving the variance with the conditions stated as long as we all understand there has to be some more design work done.

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

Mr. Zych moved to grant a variance to Don Dakins and Fen Zharo, 2851 Edgehill Rd., to Code section 1121.12(i)(4) to permit a 6'10" tall wood fence in a corner-side-yard along Washington Blvd. and property line shared with 2840 Washington Blvd. where a 3-foot maximum height is permitted on the grounds that given the location of this site and as mentioned during the hearing the safety concerns voiced by a neighbor with regard protecting his property and things stored on that property. That in general a fence of this size is justified given the special characteristics of the neighborhood. That it would not substantially detract from the surrounding neighborhood or adjacent properties. That these are sufficient reasons that are applicable generally to anyone living in this home as a principal residence with regard to safety and privacy. Also finding that there are appropriate circumstances and if the variance is approved the conditions include:

1. A requirement that the fence be a minimum of 20% transparent;
2. Approval of the Architectural Board of Review;
3. Approval of a landscape plan by the Planning Director;
4. Receipt of a Fence Permit;
5. Complete construction within 18 months of City Council's approval of this resolution; and
6. A requirement to return to the Board of Zoning Appeals for another variance should the property owners consider modifications that would increase the fence height or length or reduce the transparency of the fence.

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

Ms. Bromley reminded the applicant that the variance must be reviewed by City Council. She also encouraged the applicant to work with staff to meet the transparency requirement.

OLD BUSINESS

Ms. Knittel informed the Board that all the variances considered and approved last month by the Board were confirmed by City Council. The use variance has gone before the Planning Commission and received approval from that Board.

Speaking as the staff person to the Architectural Board of Review, Mr. Wong stated that he was obligated to convey ABR's disappointment with the Cube Workspace sign. The Board may remember the second floor sign Cube Workspace sign where there was a big fuss over having a comprehensive second floor sign plan. The Board approved it, City Council approved it and it got ABR approval. During all that there was some administrative tweaking and the actual installation of the sign happened. When completed it only resembled pieces of what was approved but overall it did not look like what ABR thought it would. It is too big and not precisely located per ABR's guidance. ABR just wanted the Board to know how disappointed they were.

Ms. Bromley asked "Disappointed with whom?"

Mr. Wong explained that they weren't disappointed with this Board, but just the whole process. They just didn't realize a sign could look so different from what they thought it would look like. They approved something much smaller than what was granted by BZA and City Council. The disillusionment stems from the rendering approved by ABR and the actual sign as constructed.

Ms. Bromley asked Mr. Wong to convey the Board's appreciation in hearing feedback always.

Mr. Gilliam commented on the topic of second floor signage, that he was always apprehensive that eventually the City will receive complaints that the trees are blocking the signs. This summer he noticed that the Big Fun sign is partially obscured by the trees in full bloom but as far as he was aware, the city has not received any complaints about those trees.

NEW BUSINESS

Ms. Rothenberg reported that Taylor Road Synagogue did not settle but came up with a 60 day plan that the synagogue will have to comply with. So it may come to the Board in February.

Ms. Knittel informed the Board that there were no applications received for January so the Board will have no meeting in January.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 8:23 p.m.

Respectfully Submitted,

Gail E. Bromley, Chair

Vesta A. Gates, Secretary