

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
MARCH 21, 2018

MEMBERS PRESENT:	Gail E. Bromley	Chair
	George A. Gilliam	
	Benjamin Hoen	
	Thomas Zych	Vice Chair
MEMBERS ABSENT	Liza Wolf	
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 a quorum was present; Mr. Gilliam, Mr. Zych and Ms. Bromley. Mr. Hoen arrived at 7:07 p.m. and Ms. Wolf's absence was excused.

APPROVAL OF THE MINUTES OF THE FEBRUARY 21, 2018 PUBLIC HEARING

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

Mr. Gilliam seconded the motion which carried 3-0.

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 in nature and certain formalities must be followed as if this were a court of law. Anyone who wishes to speak about a case will first be placed under oath. For each case, following a presentation by City staff, each applicant will present his or her case, stating the practical difficulty on which we are being asked to grant a variance. The Board will then open a public hearing to obtain testimony from any other persons present and interested in the case. The applicant will have an opportunity to respond to any testimony from the public and will address those comments to the Board and only to the Board. The Board will then ask questions of the applicant. Based on all the evidence in the record, the Board will make findings of fact 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 from the city for an individual not to comply with the portion of the municipal ordinances which is binding upon all others. In making its decision in whether to grant a standard variance, the Board will weigh factors set forth in our Zoning Code in section 1105.07(e)(1). The burden is on the applicant to demonstrate these factors by a preponderance of the evidence and to show that the literal enforcement of the Zoning Code would result in a practical difficulty. Preponderance of the evidence means convincing evidence that is both true and accurate. The applicant must demonstrate circumstances unique to the physical character of his or her property. Personal difficulties, personal hardships, or inconveniences are not relevant to the Board's determination. The Board is the final administrative decision maker for all standard variances.

PUBLIC HEARING

MARCH 21, 2018

CALENDAR NO. 3446:

Cuyahoga County Land Reutilization Corp., 3949 Navahoe Rd., 'A'
Single Family District, requests a variance to Code section 1121.05 to
permit a fence with no principal building (not permitted).

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

Ms. Bromley asked that the staff report dated March 12, 2018 be entered into the record if there were no objections.

There being no objections, it was so entered.

Ms. Knittel's staff report was as follows:

CONTEXT:

North: Single family homes ('A' Single-family district)

South: across Navahoe Road, Single family homes ('A' Single-family district)

East: Single family homes ('A' Single-family district)

West: Single family homes ('A' Single-family district)

PROJECT

The Cuyahoga County Land Reutilization Corp. would like to install a fence on the vacant lot located 3949 Navahoe Rd (Permanent Parcel Number 682-27-033) and then sell the parcel to the adjacent property owner 3953 Navahoe, enabling an expansion of their side yard. The proposal is to build a 6 foot board on board fence along the rear property line and to build a 4 foot fence set back 34 feet from the public right of way and parallel to Navahoe Road with a 6 foot fence setback 4 feet from the side property line extending 32 feet towards the rear property line.

FACTS

- Zoning Code Section 1121.05 states that accessory structures are permitted on a parcel in association with permitted or conditionally permitted uses in the 'A' single family district.
- Section 1121.05 (g) lists fences as an accessory use.
- Cuyahoga County Land Reutilization regulations only permit improvements such as landscaping and fences on vacant property they own.
- 3949 Navahoe is a nonconforming lot
 - the parcel is 40' wide and 6,160 square feet
 - code conforming parcel in 'A' single family is 50' wide and 7,500 square feet
- 3949 Navahoe will be sold to 3953 Navahoe, also a nonconforming lot.
 - 3953 Navahoe is 50' but is just 7000 square feet in area
 - The result of the sale is that this vacant parcel that was formerly a blighted property will expand the side yard of this single family residence and will generate property taxes.
- A fence is an indicator of property ownership.
- The proposed fence is code conforming.

If approved, conditions should include:

1. Receipt of a Fence Permit;
2. Approval of a landscape plan by the Planning Director; and
3. Complete construction within 12 months of the effective date of this variance.

Mr. Hoen arrived at 7:07 p.m.

Ms. Bromley asked the applicant's representative to come to the microphone and explain why a variance is needed and how this request meets the standards for practical difficulty. She instructed the applicant to use the portable microphone if he needed to comment on visuals on the screen.

Jason Knauer, Cuyahoga County Land Reutilization Corp, 323 West Lakeside Avenue, Cleveland Ohio, affirmed that he had been sworn in and confirmed that the contents of the application are true and accurate. He explained that the Cuyahoga Land Bank acquired 3949 Navahoe Rd., as a result of tax foreclosure. It was a blighted and abandoned property and was therefore demolished. Part of the funds to do the demolition came from a fund called 'The Hardest Hit Fund' which is a state and federal fund that allowed us to spend up to \$25,000.00 on demolition and improvements. Part of those funds include when we have a qualified applicant to purchase the side yard, which would be a homeowner adjacent to the property and approved by the city, they may be eligible for some additional landscaping and fencing as a part of a program to improve the property before they purchase it. Then we meet with the resident and develop a site plan together, which in this case includes fencing in the front, side, and back. Then the fence is installed, free of charge to the homeowner, after which the parcel is sold to the property owner for \$100.00. The practical difficulty is due to the city not anticipating vacant land to be a factor in residential areas and therefore fencing is not permitted on vacant lots. The installation of a fence is imperative here because it shows a clear indication of ownership and also protects the lot. This parcel has had people driving on it so the fence will prohibit those things from happening. We will also be installing landscaping in front of the fence which will include shrubbery and some flowers. That is the end of the presentation and I would be happy to answer any questions the Board might have.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Ms. Bromley asked for questions from the Board. As there were no further questions or comment from the Board, Ms. Bromley asked for a motion.

Mr. Zych moved to grant a variance to Cuyahoga County Land Reutilization Corp., 3949 Navahoe Rd to Code section 1121.05 to permit a fence with no principal building which is not permitted on the following grounds: This is an unusual if not unique circumstance. This is a lot that was once occupied but because it fell into disrepair we were fortunate enough to have the corporation buy the land, demolish the building and now put it to good and productive use for the benefit of the neighborhood so that the unique condition is the removal of the house. Had it been there, the fence would be legitimate but it is not. That is the unusual circumstance. It is necessary to provide, as the applicant has said, a sense of ownership and a single lot which will become a combined parcel and the evidence is that the lack of a fence has caused damage to the property through inappropriate use by those who trespass on it. The fence is the minimally necessary solution to that problem.

Further finding that in the absence of the variance there would be continued damage not only to this property but to the neighborhood and the surrounding – properties. That the fencing would add a positive aesthetic and if properly maintained with appropriate landscaping will be a benefit to the neighborhood. Finding also that there is no other adverse effect on the surrounding neighborhood. If granted the variance will contain the following conditions:

1. Receipt of a Fence Permit;
2. Approval of a landscape plan by the Planning Director; and
3. Complete construction within 12 months of the effective date of this variance.

Mr. Gilliam seconded the motion.

The motion carried 3-0-1; Mr. Hoen abstained.

CALENDAR NO. 3445:

Aaron and Leah Mann, 3673 Berkeley Rd., 'A' Single Family District, request a variance to Code section 1121.08 to permit 2nd floor front addition to have a setback of 31.8' (min req'd 35.8').

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

Ms. Bromley asked that the staff report dated March 12, 2018 be entered into the record if there were no objections.

There being no objections, it was so entered.

Ms. Knittel's staff report was as follows:

CONTEXT:

North: single family houses ('A' Single-Family district)

South: across Berkeley Rd., single family houses ('A' Single-Family district)

East: across Staunton Rd., single family houses ('A' Single-Family district)

West: single family houses ('A' Single-Family district)

PROJECT:

The applicant proposes to build a second floor addition over the existing open front porch and existing one story rooms located along Staunton Road and the rear of the house. Only the front addition requires a setback of 35.8' where the proposed setback is 31.8'; the balance of the project is code conforming.

FACTS:

- 3673 Berkeley is a corner property located northwest of the intersection of Berkeley and Staunton roads; therefore, the property has both a front yard setback and the corner side yard setback considerations that are peculiar to corner properties
- Code section 1103.03 (104) defines "setback line" as a line established by the zoning Code generally parallel with and measured from the lot line defining the limits of the required yard in which no building, or structure may be located above ground, except as may be provided in the Zoning Code.
- The front yard setback for this property is 35.8'.
- Code section 1121.12(b) permits unenclosed porches to extend into a front yard 12' in front of the building provided it does not extend more than 6' into the required front yard.
- 3673 has an existing unenclosed front porch that extends 4' into the front yard.
- This is a code conforming parcel that is 63' wide along Berkeley and having 8,375 square feet (code conforming parcels are a min of 50' and 7,500 square feet)
- The second floor addition as shown on the drawing dated 02/12/2018 extends 4' into the required setback and is 14 feet long.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. A requirement to return to the Board of Zoning Appeals for another variance should the property owner, or subsequent owners, consider modifications that would increase length and/or depth of the addition from what is shown on the drawing dated 02/12/2018; and
4. Complete construction within 18 months of the effective date of this variance.

That being the end of staff's report, Ms. Bromley asked the applicant to come forward, state his name and address, and affirm that he took an oath to tell the truth to the Board. She asked if he or a representative completed the application and that he confirm that the answers contained in the application dated February 14, 2018 are true and accurate and, with no objections, that the application be made part of tonight's record. She asked the applicant to summarize why a variance is needed and how this request meets the standards for practical difficulty.

Rebecca Fertel, 3429 Blanche Ave., who affirmed that the content of the statement of practical difficulty is true and accurate, came forward. She also affirmed that she had taken an oath to tell the Board the truth. Ms. Firth stated that Ms. Knittel had explained what the applicants are planning on doing, now she would explain why. The existing house, in this area, has a shallow foundation that is not suitable to support a second floor. So instead of underpinning that front portion of the

house, we are proposing to support that portion of the addition on posts that will continue down away from the existing foundation so we don't undermine it. This is basically a constructability issue. The existing front porch needs to be replaced. The homeowner has received a violation notice that it is in need of some repairs. The plan is to demolish and rebuild it with enough strength to support a second floor in the front corner area. Other options, as mentioned, would be underpinning, which is a more costly approach or just not having the space, which would eliminate a bedroom and bath for them. Ms. Knittel mentioned that the second floor addition is otherwise in compliance with the zoning code. It is only that block face that we are asking for some leniency with so we can install the addition on the existing structure.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Ms. Bromley asked for questions from the Board.

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

Mr. Gilliam moved to grant a variance to Aaron and Leah Mann, 3673 Berkeley Rd., Code Section 1121.08 to permit a 2nd floor front addition to have a setback of 31.8' where the minimum setback required is 35.8' based on the finding that the variance is insubstantial and is the minimum necessary to make possible reasonable use of the land and structures demonstrated by the presentation and the essential character of the neighborhood would not be affected. If the variance is granted conditions will include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. A requirement to return to the Board of Zoning Appeals for another variance should the property owner, or subsequent owners, consider modifications that would increase length and/or depth of the addition from what is shown on the drawing dated 02/12/2018; and
4. Complete construction within 18 months of the effective date of this variance.

Mr. Zych recommended an amendment to the motion to state that it is an otherwise code conforming addition but given engineering challenges including the lack of a stable foundation sufficient to support the second floor, without the variance we would run into serious structural problems I would guess. He stated that he would second the motion if the motioner agreed to the recommendation.

Mr. Gilliam agreed to the amendment.

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

CALENDAR NO. 3447:

Gavin Andersen and Katherine Trostel, 3031 Berkshire Rd., 'A' Single Family District, request a variance to Code section 1121.08 to permit a box bay window to have a front setback of 41' (min req'd 45').

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

Ms. Bromley asked that the staff report dated March 12, 2018 be entered into the record if there were no objections.

There being no objections, it was so entered.

Ms. Knittel's staff report was as follows:

CONTEXT:

North: single family houses ('A' Single-Family district)

South: across Berkshire Rd., single family houses ('A' Single-Family district)

East: single family houses ('A' Single-Family district)

West: single family houses ('A' Single-Family district)

PROJECT: The applicants propose to renovate their home by building a box bay window to the front of their house to enhance the living space of the house. This renovation also includes adding a bathroom to the side of the house, which is code conforming.

FACT:

- Code section 1103.03 (104) defines "setback line" as a line established by the zoning Code generally parallel with and measured from the lot line defining the limits of the required yard in which no building, or structure may be located above ground, except as may be provided in the Zoning Code.
- The front yard setback for this property is 45'.
- Code section 1121.12(b) permits unenclosed porches to extend into a front yard 12' in front of the building provided it does not extend more than 6' into the required front yard.
- 3031 Berkshire has an existing unenclosed front porch that extends 10' into the front yard.
- This is a code conforming parcel; it is 50' wide and has 7,500 square feet
- The adjacent property to the west, 3027 Berkshire has a bay/bow window
- 3021 Berkshire located two houses to the west has an enclosed front entry that extends in front of the established setback.
- The Architectural Board of Review (ABR) approved the additions and alterations at their February 22, 2018 meeting

If approved, conditions should include:

1. Receipt of a Building Permit; and
2. Complete construction within 18 months of the effective date of this variance.

Ms. Bromley asked the applicant to come forward to the microphone and to state his name and address for the record.

Lewis Trostel, 22700 Douglas Rd., Shaker Heights, OH, represented the applicants.

Ms. Bromley asked Mr. Trostel to affirm that he had taken an oath to tell the truth to this Board.

Mr. Trostel stated that he had taken an oath to tell the truth to the Board.

Ms. Bromley asked if he had submitted an application for the Board of Zoning Appeal's consideration, dated February 23, 2018,

Mr. Trostel stated that as a representative of the applicants he had submitted the application.

Ms. Bromley asked him to confirm that the answers contained in that application are true and accurate.

Mr. Trostel so affirmed that the answers were true and accurate.

Ms. Bromley asked that, unless there were any objections, the application dated February 23, 2018 be made a part of tonight's record. She then asked the applicant to summarize to the Board why a variance is needed and how this request meets the standards for practical difficulty.

Mr. Trostel explained that he was the father-in-law of the new owners of this house. In addition to remodeling the kitchen and installing a code-conforming bathroom on the first floor, we are proposing to put a box-bay window in the front. It is a beautiful house but the living-room is 11' wide and 28' long, a little like a bowling-alley. Moving further into the house there is a load-bearing wall on the stairway in the dining room so there is no way widen that living area to the south. Then we came up with the box-bay idea. I think the box-bay improves the appearance of the house because it currently has a very flat façade. If you go up and down the street, there is a tremendous variety of homes with bay windows, and many enclosed entries that extend past the front setback. The house next door has a bay window. Two houses away there is an enclosed front entry that is 5 feet beyond the setback line. 5 houses down, the whole second and third floor extends about 6 or 7 feet beyond the setback. If you go up and down the street there is a tremendous variety of homes with elements extending over the setback line. This

proposal will be a nice improvement to the house and to the neighborhood. That is the end of the presentation and I will answer any questions the Board may have.

PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

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

Mr. Hoen moved to grant the variance to Gavin Andersen and Katherine Trostel, 3031 Berkshire Rd., to Code section 1121.08 to permit a box-bay window to have a front setback of 41' where the minimum required front setback is 45'. After reviewing the application and the other submissions and hearing the evidence, I find that there are special circumstances that exist pertaining to this property particularly that the existing structure is such that any upgrades would require additional space to make the living room more livable in a modern sense in addition to the other upgrades that have gone on in this house. Therefore the house would be more in line with other houses in the neighborhood, specifically on this street. No evidence has been suggested that this particular structure will be blocking the site lines and there has been evidence submitted of other houses being similar in kind and therefore this would fall in line with the other houses in the area. It is an insubstantial variance in that the request is only for 4 feet and that 4 feet will blend in with the existing footprint of the house because there is already a side porch that juts out beyond that area. The essential character of the neighborhood will not be substantially altered as this would cause this house to be similar to other houses in the neighborhood. If the variance is granted the following conditions will be attached:

1. Receipt of a Building Permit; and
2. Complete construction within 18 months of the effective date of this variance.

The motion was seconded by Mr. Gilliam and carried 4-0.

OLD BUSINESS

None

NEW BUSINESS

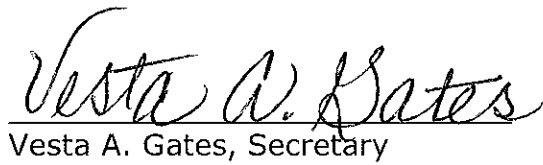
Ms. Knittel advised the Board that there will be 6 new cases next month.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:38 p.m.

Respectfully Submitted,


Gail E. Bromley, Chair


Vesta A. Gates, Secretary