

CITY OF CLEVELAND HEIGHTS  
BOARD OF ZONING APPEALS  
MINUTES OF THE MEETING  
JULY 18, 2018

MEMBERS PRESENT:	Denver Brooker George A. Gilliam Dennis Porcelli Liza Wolf Thomas Zych	Vice Chair
MEMBERS ABSENT	Benjamin Hoen	
STAFF PRESENT:	Vesta A. Gates Karen Knittel Elizabeth Rothenberg Richard Wong	Zoning Administrative Assistant City Planner Assistant Law Director Planning Director

CALL TO ORDER

Mr. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present.

APPROVAL OF THE MINUTES OF THE JUNE 20, 2018 PUBLIC HEARING

Mr. Zych stated that he had given Ms. Gates some corrections to the minutes before the meeting. He asked for a motion and second to approve the minutes of the June 20, 2018 public hearing as amended.

Mr. Gilliam moved to approve the June minutes as amended. Ms. Wolf seconded the motion which carried 5-0.

THE POWERS OF THE BOARD AND PROCEDURES OF THE BOARD OF ZONING  
APPEALS PUBLIC HEARINGS FOR REGULAR VARIANCES

Mr. Zych stated that the purpose and procedures for tonight's meeting are stated for all in attendance. The 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, City staff will make a presentation and then each applicant will present his or her case stating practical difficulty for which we are being asked to grant a variance. The Board will then open a public hearing to obtain testimony from any other persons 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. The Board may 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 by motion. The formal nature of these proceedings is necessary because each applicant is asking for an extraordinary remedy called a variance. A variance is formal permission by the City for an individual not to comply with a portion of the municipal Zoning Ordinances which is binding to all others.

In making its decision of whether to grant a standard variance, the Board will weigh factors set forth in the Zoning Code in Section 1115.07(1). The burden is upon the applicant to demonstrate by a preponderance of the evidence that the literal enforcement of the Zoning Code would result in a practical difficulty. Preponderance of evidence means the applicant proved his or her position is more likely than not true. The applicant must demonstrate circumstances unique to the physical character of his or her property. Personal difficulties, personal hardships or inconvenience are not relevant to the Board's determination.

The Board is the final administrative decision maker for all regular variances.

PUBLIC HEARING

JULY 20, 2018

CALENDAR NO. 3461

Lorna L. Rudolph, 3669 Fenley Rd., 'A' Single-family district, requests a variance to Section 1121.12(a)(9) to permit a parking area in the front yard (not permitted).

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

Mr. Zych stated that if there were no objections, the staff report dated July 9, 2018 shall be entered into the record. Hearing no objections, it was so entered as part of the record.

Ms. Knittel's report was as follows.

#### Context

3669 Fenley Road is a single family house surrounded by single family houses in an 'A' Single-family district.

#### Project

The applicant proposes to widen the driveway to be 19' wide at the garage, creating an area that would be 19' wide by 25' long and then the driveway would narrow back to 10' wide.

#### Facts

- This parcel is code conforming as it is 50' wide and 8,300 square feet (code minimum is 50' wide and 7,500 square feet)
- This is a single-family house with an attached one car garage facing the street.
- The housing style of this neighborhood is predominately single family houses with attached garages facing the street.
- There is distance from the side of the garage to the east property line varies is approximately 8' at the garage door and narrows to approximately 7' at the rear wall of the garage.
- The distance from the west side of the house to the west side property line is approximately 3.3' at the front of the house and widens to 4.7' at the rear of the house.
- The garage door width is 10'
- The current driveway is 10' wide.
- The distance from the garage door to the public right away is approximately 44.4'.
- Code Section 1161.11(a) states that a standard parking space is 9' wide by 20' wide and that a compact car space is 7'6" wide by 16' long.
- Code Section 1161.105 states that a residential driveway that provides access to a garage is limited to twelve (12) feet in width. A driveway apron, the width of the garage, as measured from the garage walls, is permitted to extend for a distance (depth) of twenty (20) feet. For garages located twenty-five (25) feet or less from the lot line, the driveway is permitted to be the width of the attached garage and no tapering is required on private property, however, the apron shall be a maximum of twelve (12) feet.
- There are 26 houses with attached garages facing Fenley in the block between Quilliams Road and Stonleigh Road, a few have driveways wider than 12 feet, including the following addresses (all

measurements were made on the County's GIS website):

- 3653 Fenley – approximant width 15' (1 car garage)
- 3659 Fenley - approximant width 14' (1 car garage)
- 3696 Fenley - approximant width 14' (1 car garage)
- 3636 Fenley – approximant width 16' (2 car garage)
- 3684 Fenley – approximant width 18' by garage narrows to 16' (2 car garage)
- 3714 Fenley – approximant width 20' by garage narrows to 15' (2 car garage)
- 3654 Fenley – approximant width 16' by narrows to 11' (1 car garage)

If approved, conditions should include:

1. Receipt of a Building Permit;
2. Landscape Plan approved by the Planning Director; and
3. Complete construction within 18 months of the effective date of this variance.

That concluded Ms. Knittel's report.

Mr. Zych asked the applicant to come to the microphone.

Lorna Rudolph, 3669 Fenley Rd., came forward.

Mr. Zych stated that the Board received an application dated June 13, 2018. He asked the applicant if, to the best of her knowledge, all the information contained within the application was true and correct.

Ms. Rudolph stated that it was.

Mr. Zych stated that without objection the application will be entered into the record. Hearing no objection, it will be so entered. He advised the applicant that she could add to anything already reported and if she could address as many factors in the standards for practical difficulty, it would help the Board in making its decision.

Ms. Rudolph explained that when she purchased the house she had been single and had only one car so there was no problem. When the homes in this area were constructed in the 1950's, most people had only 1 car. When she got married last year, between them they now have 3 cars and parking is difficult. When we do pull in, we have to move our vehicles so far over that when we exit the cars, we are walking on the grass. So the proposal is to extend the walkway down, during which time we are repairing the existing driveway which is buckling because of tree roots. We want to park the 3 cars side-by-side and when we have company there will be space for them to park. This is 2018 and these homes were built in 1950. Things

have changed and most homes have at least 2 cars. This proposal will bring the parking up to the 21<sup>st</sup> century. Some of the homes in the neighborhood that already have the widened driveway look very nice. I will still have grass between the new paving and the neighbor's home. It will not be going even close to their property. We need to repair the walkway along the side of the garage because it is uneven. We would like to extend it outward 1 foot and make it even.

Mr. Zych referred to the tree in the front yard and asked how close to that tree would the paving extend.

Ms. Rudolph explained that it would not come near it.

Mr. Zych asked if any effort had been made to look at the root system to make sure the paving would not encroach. One of the concerns the Board has is for existing greenery, especially if they are prominently featured and affect the value of the house.

Ms. Rudolph explained that there was a section of the walkway that jutted out at that corner of the garage. The proposal is to go no further outward, just downward. We will not be close to the tree at all. She didn't know the measurements because she hadn't measured it.

Mr. Zych asked Ms. Knittel if staff knew how far this paving would extend in each direction.

Ms. Knittel, referring to the site plan, stated that to the right of the garage, the extension will be 5.5 feet and to the left of the garage the extension will be 3.5 feet.

Mr. Zych noted that there was a grade from right to left. He asked what will happen to that grade.

Ms. Knittel stated that there is a slight grade and the applicant is present and can discuss it.

Ms. Rudolph explained that it will be evened out with a structure on it. The contractor will build a retaining wall on top of that area to separate the properties.

Mr. Zych asked what would the approximate distance be between the retaining wall and the property line.

Ms. Knittel asked the applicant for clarification of what the distance was from the existing driveway to the property line and when the retaining is built what distance remains. If you extend your driveway over 5 feet, how much distance is there between that and the side property line?

Ms. Rudolph stated that there will still be a distance of 3 feet.

Mr. Zych noted that we now have a retaining wall as opposed to a gradual grade.

Ms. Rudolph stated that was correct.

#### PUBLIC HEARING OPENED

Roberta McNamara, 3666 Fenley Rd., stated that her house is directly across the street from this property. As was reported by Ms. Knittel, there are 28 houses on Fenley, only 8 of which have 2-car garages. The garages that have the wide driveways are mostly on the side of the street with the 60 foot front width as opposed to Ms. Rudolph's side which has 50 foot frontage. There are 20 houses on this street that have 1-car attached garages. We have lived on the street for 44 years and we also have 2 cars. Ms. Rudolph said she had 3 cars but we have only seen 2 cars parked there. There are 3 houses on the street that have what I call courtesy bump-outs where they have extended the drive to the right of the home approximately 2 to 3 feet to facilitate the ease of exiting and entering a vehicle. They are not for parking and no one can park on them because they are not wide enough. What the applicant is asking for is to widen the drive which would put it right up to the front door where there is an ornamental tree. On the other side the neighbor has a very old and expensive Japanese maple tree where Ms. Rudolph is talking about a retaining wall. Chopping roots to install a retaining would probably ruin that tree. I think aesthetically it is objectionable. We all knew when we bought our houses that we had 1 car garages. I've raised two boys in that house for 44 years. They went to graduate school from that house and we've always had to jockey 3 cars around. It's something you learn to live with. We've hosted many parties in this house and nobody parked in the driveway. They all parked on the street. The neighbors are lovely people and they are good neighbors. I just have to object to the widening of the drive on both sides. If they want to make a 1 or 2 foot extension on one side to facilitate getting in and out of the car, I have no objection. I do object to the widening of the drive in front of a 1 car garage.

James McNamara, 3666 Fenley Rd, stated we are directly impacted by what happens on that driveway. If you look out my front door you will see the first slide that was just shown. To the left is an ornamental tree that was there before we moved in, which has been there nearly 45 years. To the right, not quite as visible, is the Japanese maple tree. I enjoy that view. I am use to that view and I think someone who buys my house in future will also enjoy that view. The idea of seeing the grass and trees negatively impacted for a couple of cars is not good for the character neighborhood or for the whole design of the street. I am strongly against granting a variance in this case. Thank you.

Margaret Witt, 3673 Fenley Road, stated that she lives next door to this property. The property line is not correct on this drawing. I have 8 feet on each side of my

house. The lilac bushes between the houses were there when we bought the homes. If that pathway is widened toward the back, the roots of all those lilacs will be damaged. The same for the Japanese maple tree on the other side. The additional 5-1/2 feet will almost come to the base of the tree. I am against the widening on my side of the drive. Thank you.

Truman Witt, 3673 Fenley Road, read: We believe that Fenley Road residents should not park their cars or trucks on the front lawn of their property. This would be most unsightly and deter potential buyers of homes in the neighborhood, thus lowering home valuations. We have been Fenley Road residents for 57 years and we are grateful for the property use and maintenance regulations that have helped maintain our street as an attractive residential area. We must all abide by them. Thank you.

#### PUBLIC HEARING CLOSED

Mr. Zych asked the applicant to come back to the microphone and address any response to the comments to the Board.

Ms. Rudolph stated that when she and her husband thought about doing this, she spoke to the neighbor who asked how far over she would widen the drive and he said that was fine. When I originally spoke to someone at Cleveland Heights they told me I needed to speak with my neighbor, Mr. Witt, about this and I did. I don't know what has happened but originally he was OK with it. Because of my husband's work schedule, he has to leave early in the morning and we have to jockey cars around. We had 3 cars but recently got rid of one. We are now in the process of getting another. Trying to park all 3 is difficult and you can't park on the street before 5 a.m.

Mr. Zych asked for questions from the Board.

Mr. Brooker noted that in the application it stated that the reason for adding width is the need to walk around the vehicles without walking on the grass. Now we are hearing that it's to allow 2 cars to park side-by-side.

Ms. Rudolph stated that the need to park cars side-by-side and having the ability to walk around the cars was included in the application.

Mr. Zych asked if the intention of this proposal is to allow cars to park side-by-side in the drive.

Ms. Rudolph stated that it was.

Mr. Zych asked if there was a vehicle currently parked in the garage.

Ms. Rudolph stated there was not currently.

Mr. Zych asked why not?

Ms. Rudolph stated that we moved a power washer into the garage because we don't have a lot of space. The garage is currently being used for storage.

Ms. Wolf stated her understanding was that you needed a little more space for a walkway to avoid the need to walk on the grass to the front door. She asked if consideration had been given to just extending the paving to the left of the garage to provide the walkway.

Ms. Rudolph stated that she had not considered that.

Ms. Wolf asked if the full intention of this proposal was to park 2 cars side-by-side in the driveway.

Ms. Rudolph stated that it was. She pointed out that there were several homes, not only on Fenley, but on Quilliams also that have their driveways widened. The precedent is not only on Fenley but around the corner, within the same block. This was where she got the idea of widening her drive.

Ms. Wolf asked about the widening of the walkway along the side of the garage.

Ms. Rudolph explained that she had to repair the walkway anyway because it was cracked and uneven from the tree roots growing underneath it. When it rains the slope of the concrete directs the water to the base of the garage.

Mr. Brooker asked the applicant if she had considered a narrower width for the drive that would accommodate 2 cars. He realized that a width of 19 feet was a good width to accommodate 2 cars but you could also accommodate 2 cars with a width as little as 16 feet.

Ms. Rudolph stated that if that would work, it would be fine with her, as long as they could exit the vehicles without stepping on the grass.

Mr. Brooker stated that you might still step on the grass but maybe you could look to other solutions for walking on the grass, like stepping stones, which would reduce the pavement impact.

Ms. Rudolph agreed that would be a good solution.

Mr. Brooker stated that he had driven around this area and other immediate neighborhoods and this seemed to be a very common situation at many houses. There were also some 2-car garages where the drives were widened to

accommodate 3 cars. He asked staff if all of those properties had received variance, had this happened over time or had the zoning code evolved.

Ms. Knittel stated her belief that these were things that happened over time. Some of them, not knowing exactly where you were, could have received a variance. She recalled about 12 years ago a variance was granted at the other end of Fenley Road to widen a driveway to 16 feet. For many of these properties the driveway width would have been established prior to the zoning code. So they are grandfathered in.

Mr. Brooker asked when the zoning code that is being referred to was established.

Ms. Knittel guessed that it would probably have been the 1975 zoning code. She had not gone back to check on when the 12 foot wide requirement was established but she was sure it was after the 1950 code was established which was when these houses were built.

Mr. Brooker asked how often did this issue come before the Board, since this evening there are 3 of them.

Ms. Knittel stated that it was just coincidental that 3 applicants came in with the same request. Ms. Rothenberg has been here for 5 years and has never seen this type of coincidence before.

Mr. Zych pointed out that more often we see requests for the widening of the curb-cut.

Mr. Booker wondered if it was not common enough that you would consider rethinking the zoning code a little bit.

Ms. Knittel stated probably not and you have to remember that most of our community doesn't have attached garages. Most properties have detached garages in rear yards. This is a little bit of a different neighborhood.

Mr. Zych added that it is actually unusual to have a front-loading garage, such as in neighborhoods like Forest Hill. Even attached garages have entrances in the rear. There are different parts of Cleveland Heights and that is why we have the code.

Mr. Rothenberg added that we just updated the zoning code in 2017 and part of the process before that was to try and limit the repetitive variances. Someone went back over the past 10 years of cases and this did not come up as a common issue.

Mr. Zych added that City Council has looked at the zoning code line-by-line, as reported by staff, and the things that didn't change, didn't change.

Mr. Wong added that a lot of the real estate market is self-selecting, so if you do have 3 cars, although this doesn't apply to this applicant, you usually don't buy a property that has the capacity to hold 1 car.

Ms. Wolf confirmed that if the applicant widened the drive to 12 feet, it would be code-conforming.

Ms. Knittel stated that was correct,

Mr. Brooker commented that the code allows the length of the drive to be 20 feet while the applicant is requesting a length of 25 feet. I would question why an additional 5 feet is necessary since 29 feet is more than adequate for 1 vehicle length.

Mr. Gilliam asked if his understanding was correct in that parking was not allowed on the street.

Ms. Knittel clarified that parking is permitted during the day. It is only at night from 2 am to 5 am that it is not permitted. This is common throughout most of the city.

Mr. Brooker asked if one of the vehicles would be a commercial vehicle to be parked in the drive?

Ms. Rudolph stated that they would all be passenger vehicles.

Mr. Zych commented that this is why the Board is given to make the hard decisions. We always have great sympathy for the applicants and we are a city that tries to be welcoming. The difficulty I am having is what I described at the beginning of the hearing and that is a practical difficulty unique to the property. I complain because we have 3 cars and a 2-car garage at my house. I'm the first person out in the morning and guess whose car is parked outside 12 months of the year. My younger son will soon be off to college, so that situation will get better. He often comes in later than I do, so I park on the street but someone has to bring my car in so I don't get a ticket on the street after 2 a.m. It's not uncommon. We've granted variances when there is something about the property. The expectations are that people have cars, so we have to accommodate cars. We can't pass rules because some people have larger cars than others. That is not a practical difficulty for the reasons I've explained. Another concern we have is for the neighbors. I'm just unsure, because we haven't seen a survey, or more information about the trees and what a retaining wall will do. Last month we had a long discussion about how water moves from one property to another because we have to respect neighboring properties. The effect on greenery is not just aesthetic. This Board cannot take aesthetics into consideration. That is the purview of the Architectural Board of Review. So we have to look at the request as

stated and advertised to the public. We don't renegotiate these. We have to find that there is a practical difficulty based on unique circumstance of the property and then all the other considerations. So in the absence of evidence that there is something peculiar about this property as opposed to personal circumstances, our hands are tied and there is only so much we can do. That's just me. I'm only one member of this Board. That is an observation I'll make because we have to approach this job with humility.

As there were no further comments from the Board, Mr. Zych asked for a motion.

Ms. Wolf moved to deny the variance to Section 1121.12(a)(9) to permit a parking area in the front yard where it is not permitted after reviewing the application and other submissions and hearing the evidence under oath the Board finds and concludes that the applicant did not demonstrate by a preponderance of evidence that literal enforcement of the zoning code will result in a practical difficulty. The applicant did not prove special circumstances exist which are peculiar to the land/structure involved. There may be other options besides parking cars side-by-side, perhaps widening it to the code-conforming width so that you do have the ability to park cars behind each other but not have to walk on the grass to access the home. I did not feel that the applicant proved that the property in question would not yield a reasonable return without the variance as most of the properties in that area do have a one-car garage with a narrower driveway. The applicant did not prove that the variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure. Cars can be parked behind each other, you can widen the driveway to a point where you can accommodate a footpath and cars can be parked behind each other. In addition, you have the garage as well.

Mr. Gilliam seconded the motion.

Mr. Brooker stated his difficulty with this was that he understood the house was built a certain way and the code was set up a certain way, but as everything evolves, things change. When that house was built it didn't have central air. My own house didn't. You modify and change and update with things that happen over time. When this house was built, as the applicant stated, people might have had only one car, very few people owned two cars. It seems that there ought to be an approach that allows someone to update their house in a better way to accommodate two cars. I think that 19 feet is wide, particularly within the context of this neighborhood. I think that there are probably solutions for side-by-side parking that are better aesthetically, granted that is not our job here, to make it more appealing and less impactful to the front of the house. I am most troubled by the fact that there are so many other houses in Cleveland Heights that have non-compliant conditions that we would not recognize that in context with someone else who is asking for what so many other people already have. Again, that is stretching how we look at these variances but it is not like this is an uncommon

request. There are too many houses in this and surrounding neighborhoods that have double-wide parking and single-car garages.

Ms. Wolf added a suggestion that the applicant come back with something aesthetically reasonable to accommodate her needs but keeping within the needs of the neighborhood.

Ms. Rudolph stated that she loved the neighborhood and that is why she bought a house there.

There being no further comment from the Board, the motion carried 4-1. Mr. Brooker was opposed.

CALENDAR NO. 3462:

Jonathan Dailey, 3659 Fenley Rd., 'A' Single-family district, requests variances to Section 1121.12(a)(9) to permit parking area in front yard (not permitted).

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

Mr. Zych stated that the Board received a staff report dated July 9, 2018. He asked that it be entered into the record if there is no objection. Hearing no objection, it was so entered.

Ms. Knittel stated that if the Board was agreeable, she could review the particulars of this request that are different from the last case since this is in the same neighborhood and the code sections are the same.

Mr. Zych stated that was fine and from Calendar No. 3461, we will include the description of the neighborhood and the aerial view as part of the record of this matter.

Ms. Knittel's report was as follows:

Context

3659 Fenley Road is a single family house surrounded by single family houses in an 'A' Single- family district.

Project

The applicant proposes to widen the driveway by 10' at the house, creating a parking pad area that is 10' wide by 30' and tapering back to the existing driveway width at the public sidewalk.

## Facts

- This parcel is code conforming as it is 50' wide and 8,200 square feet (code minimum is 50' wide and 7,500 square feet)
- This is a single-family house with an attached one car garage facing the street.
- The housing style of this neighborhood is predominately single family houses with attached garages facing the street.
- There is distance from the side of the garage to the east property line is approximately 8'.
- The distance from the west side of the house to the west side property line is approximately 3'.
- The garage door width is 13'
- The current driveway is 14' wide.
- The distance from the garage door to the public right away is approximately 48'.
- Code Section 1161.11(a) states that a standard parking space is 9' wide by 20' wide and that a compact car space is 7'6" wide by 16' long.
- Code Section 1161.105 states that a residential driveway that provides access to a garage is limited to twelve (12) feet in width. A driveway apron, the width of the garage, as measured from the garage walls, is permitted to extend for a distance (depth) of twenty (20) feet. For garages located twenty-five (25) feet or less from the lot line, the driveway is permitted to be the width of the attached garage and no tapering is required on private property, however, the apron shall be a maximum of twelve (12) feet.
- There are 26 houses with attached garages facing Fenley in the block between Quilliams Road and Stonleigh Road, in addition to the applicant's property, a few have driveways wider than 12 feet, including the following addresses (all measurements were made on the County's GIS website):
  - 3653 Fenley – approximant width 15' (1 car garage)
  - 3696 Fenley - approximant width 14' (1 car garage)
  - 3636 Fenley – approximant width 16' (2 car garage)
  - 3684 Fenley – approximant width 18' by garage narrows to 16' (2 car garage)
  - 3714 Fenley – approximant width 20' by garage narrows to 15' (2 car garage)
  - 3654 Fenley – approximant width 16' by narrows to 11' (1 car garage)

If approved, conditions should include:

1. Receipt of a Building Permit;
2. Landscape Plan approved by the Planning Director; and

3. Complete construction within 18 months of the effective date of this variance.

That was the conclusion of Ms. Knittel's report.

Mr. Zych asked the applicant to come to the microphone and address any of the factors that would help the Board make its decision.

Jonathan Dailey, 3659 Fenley Road, came forward. He stated that he and his fiancé recently moved into the house. His fiancé works a different schedule than his and she gets home late at night. My car is usually parked in front of hers. I have a 45-50 minute commute. By the time I get up and get ready to leave, it's probably 7:00-8:00 in the morning. She doesn't leave until 10:00-11:00 in the morning. So I have to go around her car onto the driveway of neighbor's house, which is vacant. It is my understanding that the homeowner recently passed away and the home has been left to the kids. Since no one ever parks there, he didn't think they would be bothered by this. The neighbor at 3653 Fenley has what we want, which is paving to accommodate 2 cars side-by-side. He basically just added a parking pad, which is what we want to do. Also, when people have parties, it makes it very hard to get out of the driveway. They park very close to my driveway, making it hard to get in and out. As was mentioned in the other case, the houses were built at a time when people only had one car. I've tried multiple times to fit my car in the garage but way the garage is built, I cannot get the door to close and with her Jeep, it scrapes the top of the car, so that kind of rules out the garage.

#### PUBLIC HEARING OPENED

Roberta McNamara, 3666 Fenley Road, stated that she hated to be the street curmudgeon. They seem to be lovely people. I haven't met them yet, as they have lived there less than a month. Marian Barnes, owner of the house next door to them, recently passed away and her children are deciding what to do with it. I'm sure it will be on the market in the near future because they all have homes of their own. The Rudolph's are on the other side of this property, so this vacant house is between these two houses that want to widen their drives. I don't know whether that will impact the sale of the house or not. Everyone on the street has 2 cars. My car is in the garage and when I leave in the morning, my husband pulls his car out and parks on the street and walks back into the house. We've been doing that for years. After I come home at night, he pulls the car back in. That's just what you do when you have a 1 car garage. They already have a courtesy bump-out to their drive, which you can clearly see in the picture. It comes out almost down to the sidewalk. It's quite a substantial pad but it wouldn't allow two cars to park side-by-side. By widening it in front, the paving is almost to the picture window when you add 9 feet, which makes it look like a parking lot. So that is my objection. There are no trees or anything that would be impacted by the drive but just the fact that aesthetically it does impact the street to have two homes, actually

three homes in a row, where the cars are parked side-by-side. Also that area on the neighboring property that he drives over is not paved. He just does it and the neighbor's don't say anything because we all like him.

#### PUBLIC HEARING CLOSED

Mr. Zych asked the applicant to come back to the microphone. He asked the applicant to indicate on the picture of the house where the 10 foot extension on the left would be in relation to the front door.

Mr. Dailey indicated that the paving would end in the middle of the front door. The bay window is over another 8 feet. He did not believe the paving was over far enough to make a parking lot.

Mr. Zych asked Mr. Dailey to indicate on the picture the height of the entrance to the garage.

Mr. Dailey explained that there was some trim, about 3 inches, just inside the opening of the garage. He did not feel the proposal would affect the neighborhood aesthetically. The neighbor already has a parking pad so I feel if he was allowed to do it, why can't I. He did it for the same reason and he actually has larger cars than we do. If the neighbor is worried about aesthetics, my whole front yard was mulched and looked terrible. I took out all the mulch and am trying to let the grass grow back which will look much better.

Ms. Wolf asked staff about the house next door that has a 1 car garage.

Ms. Knittel stated that the house next door, 3653 Fenley Road has a drive that is 15 feet wide and has a 1 car garage. There was no record of when this drive was extended so she believed it had been that way prior to the code.

Mr. Zych pointed out that looking at the 2 cars parked in the neighbor's driveway, there is no way a person could get out of either car in between the two.

Mr. Brooker stated that 15 feet is a little tight but you could park 2 cars side-by-side, being careful not to ding the other car. I personally think that 16 feet is enough to make it work decently. I think what the applicant has proposed is too large for the scale of the house but 16 feet from a planning standpoint, 2 cars side-by-side, minimum dimension to get in and out, is plausible.

Mr. Gilliam commented that again, the request for the variance appears to be more to relieve their personal inconvenience rather than something that is unique to the property. If it is not unique to the property, we shouldn't be granting the variance.

As there were no further questions from the Board, Mr. Zych asked for a motion

Mr. Gilliam moved to deny the variance request to Section 1121.12(a)(9) to permit parking area in front yard where it is not permitted because the applicant did not prove special conditions circumstances exist which are peculiar to the land or structure involved which is not generally applicable to other lands or structures in the same zoning district, to the contrary the evidence demonstrated that special or circumstances do not exist.

Mr. Porcelli seconded the motion which carried 5-0. The variance was denied.

Mr. Zych pointed out that this did not mean nothing could be done on the property. Staff is available and you have heard a variety of options from the Board.

Mr. Porcelli commented regarding the drawing that was provided for this request stating, in the photographs it shows the extension going the side of the house but the drawing shows the driveway abutting up to the corner of the garage. I have a particular concern that when the requirements on the application say that the drawing is to be done to scale. I understand that people are not architects, but, they need to make an effort to accurately depict their property so we are not just trying to guess from photographs the relationships and dimensions.

Mr. Zych further commented that he also was not an architect, although his son is one, so anything the applicants can do to help us make precise decisions is always appreciated.

Mr. Zych also commented that the application for Calendar number 3462, hearing no objection, is now a part of the record.

CALENDAR NO. 3463:

Rozita Davis, 2378 North Taylor Rd., 'A' Single-family district, requests a variance to Section 1121.12(a)(9) to permit parking area in front yard (not permitted).

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

Mr. Zych stated that the staff report dated July 9, 2018, will become a part of the record if there is no objection. Hearing no objection, it was so entered.

Ms. Knittel's report was as follows:

CONTEXT:

North: Shell gasoline station and Reilly Painting & contracting (C-2 local retail)

South: Taylor Commons shopping plaza extends to Antisdale Avenue (C-2 local retail)

East: single family homes (A single family)  
West: across South Taylor Road, local retail (c-2 local retail)

**PROJECT:**

The applicant is seeking a variance to install a six-foot tall solid fence along the north property line. They propose that the six-foot tall fence would be 32 feet long and then change to a code conforming four-foot fence for the 16 foot segment closest to South Taylor road. This fence would replace the existing pipe fence that exists between Taylor Commons and the Shell gas station.

**FACTS:**

- The shopping center has a non-code conforming parking lot located in front of the commercial building.
- There is a grade change between Taylor Commons and the Shell gas station. The gas station is approximately two feet lower than the Taylor Commons property.
- The Shell gas station building is closer to South Taylor Road than the Taylor Commons or Reilly Painting buildings.
- The applicant has met with the Police Chief and has discussed a number of strategies that could be implemented at this shopping center to assist with security.
- Zoning Code Section 1131.08 (c)(1) states that in a commercial district the maximum height of a fence in a front yard is 4 feet; therefore a variance is required.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Removal of the current pipe fence;
3. Approval of a landscape plan by the Planning Director;
4. Receipt of a Fence Permit;
5. Complete construction within 6 months of the effective date of this variance;  
and
6. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the fence's height or length.

Mr. Zych asked to look at the aerial of the neighborhood again. He observed that there were other properties that have widened driveways and asked if staff knew how large the extensions were.

Ms. Knittel explained that they were various sizes based upon the garage doors. Some have wider garage doors than others, so the sizes varied from maybe 16 feet to 19 feet. You are permitted to match the width of your garage door for access.

That was the conclusion of Ms. Knittel's report.

Mr. Zych asked the applicant to come to the microphone and add anything that might assist the Board in making its decision.

Rozita Davis, 2378 North Taylor Road, stated that she was here to request an extension of her driveway. She was surprised to hear that parking is allowed on the street from 3:00 pm to 7:00 pm. Since the repaving of the street which included new lane striping, she did not see how anyone could park in front of our homes. Prior to that, we could call the Police Department to say that there was a special occasion going on and we would need on-street parking for a certain time period. Now there is no parking available on North Taylor Road. As to parking pads, I have seen them on both sides of Monticello Blvd. and North Taylor Road. My practical difficulty is that there is no room to park cars side-by-side. If we drove 2 smart cars they might fit in the garage but I don't know if either car could open their doors at that point. So I am requesting a parking pad that will not extend all the way over to my neighbor's property line. We do have 3 cars and need additional parking. When I first moved in as a single person, parking was not an issue. Now it is an issue because there is no parking allowed on the street. The lawn on the right side of the garage is deteriorating because of how cars are being parked. We do have bushes that separate the 2 properties. The extension will be 3 to 4 feet away from those bushes.

#### PUBLIC HEARING OPENED/PUBLIC HEARING CLOSED

Mr. Zych stated he was seeing an orientation of the grade from left to right. Obviously, water follows grade. If you go 10 feet to the right, where would that end?

Ms. Knittel stated that the applicant was saying that there would be 3 feet between the extension paving and the shrubs seen in the picture. The existing drive is 14 feet wide.

Mr. Zych stated that there is only 3 feet between the parking pad and the shrubbery and we've established that the grade slants toward the neighboring house.

Ms. Rothenberg pointed out that the car in the picture is parked on the grass.

Ms. Davis stated that was correct. The level of the driveway and the grass is not even.

Mr. Zych stated that he didn't want to beat a dead horse but looking at the picture of the applicant's house in relation to the neighbor's house, the applicant's house is higher.

Ms. Knittel agreed that the grade does change.

Mr. Porcelli stated that according to the staff report, the distance from the garage to the property line is 10 feet which means the applicant is proposing to take the pad up to the property line.

Ms. Knittel stated that the measurement in the staff report was taken from the My Place Cuyahoga website, but in conversation with the applicant, she corrected my measurement. I apologize. She says there is 13 feet as opposed to my 10 feet to the property line.

Mr. Zych asked if staff had seen a survey. One of the things we have to be careful about is someone else's property.

Mr. Wong stated that the Chair and Mr. Porcelli are on the right track. The car in the picture is about 6 feet wide so 10 feet is way wider than an ordinary car. If you extended the pavement toward the property line, it is pretty close.

Mr. Zych commented that in this case, we have heard something different about the parking conditions that may have changed.

Ms. Knittel stated that North Taylor is a much busier road than Fenley. It is posted that there can be no stopping from 3 pm to 7 pm, which includes parking.

Ms. Rothenberg stated that it also means that you can't pull your car out onto the street to let another car out.

Mr. Wong stated that another difference is that if you picture Fenley versus North Taylor where the cars are traveling 35 mph which means they are traveling 40 or 45 mph which is much more hectic when you are trying to back out to let someone else back out.

Mr. Zych stated that we don't negotiate but is it conceivable to grant a variance without re-advertisement for a lesser variance than the applicant has asked for.

Ms. Rothenberg stated that the Board could add a condition.

Mr. Zych clarified that the applicant is asking for a 10 foot extension. Could the Board grant a variance for an extension less than that without re-advertisement?

Ms. Rothenberg stated that they could. We may not have advertised the specific footage because under our code we just have to identify the code section.

Mr. Zych stated that what you are saying is that it would be appropriate to add a

condition to state the extension not extend something less than the proposed 10 feet.

Ms. Rothenberg stated that it would be appropriate because in this case the variance is not about the footage it is about the parking.

Mr. Zych advised the applicant that although the Board does not negotiate, he was trying to consider what would be a width that would still permit side-by-side parking without such an encroachment towards the neighbor's property. You will not be the only person that lives there forever and your neighbor will not be the only person that lives there forever. This will bind whoever lives there in the future.

Ms. Knittel, referring to the slide, asked the applicant if the vehicle shown in the slide was parked off to the side to let someone out of the garage or to let someone park side-by-side.

Ms. Davis stated that it was. There was also a third card that parked in the driveway as well.

Mr. Zych stated that means that a 5 foot extension would be safely away from the property line, leaving greenspace that could absorb water before it hits the neighbor's driveway.

Ms. Wolf added that 19 feet is sufficient for 2 cars parked side-by-side. It was established in the previous cases that even 16 feet was sufficient.

Ms. Davis stated that although she appreciated the consideration, she wanted to know if someone confirmed the measurement that 3 feet would actually be left between the paving and the neighbor's property line, could she have the extension as proposed.

Mr. Zych explained that we've heard from the Board that there is a certain amount of disquiet with going 10 feet. We could add a condition that reduces what you have asked for but we could still grant the variance. The other option is to continue the request because we don't want to rush you if another month would allow us to figure this out and you come back to have further dialog. The fact that this is on North Taylor is a unique circumstance and it's gotten more unique under our considerations. We've established from counsel that we could add a condition that limits the amount of the extension or we could continue another month and the record would still be the record and you may have some more particular information for us and a more definite request.

Ms. Davis stated that at this time she didn't know what other information she could bring. The diagram is there. I don't actually do the work. I can only explain what

would really make a difference.

Mr. Zych stated that he could only predict that it may make a lot of difference in the Board's decision, but I only speak for myself.

Mr. Brooker asked if that was a one and one-half car garage because it seemed particularly wide.

Ms. Davis stated that it may be, because she could park her car in the garage with all the lawn equipment in it.

Mr. Brooker stated according to his math, if you have 44.78 feet from the sidewalk to the garage, and you have a pad that is 20 feet from the garage, that leaves 24.78 feet from the front of the pad to the sidewalk. Taking concrete from the sidewalk to the pad for a distance of 24.78 feet seems very excessive. If we do reduce the width of the pad then that would reduce the size of that diagonal section even more and have even less intrusion into the yard.

Ms. Wolf asked if there was a difference of opinion in how many feet there is from the existing drive to the property line?

Ms. Knittel explained that from what she measured on the aerial on line which shows 10.75 feet from the garage to the property line and from the driveway it is 14. something feet. It's not 100% exact. It appears that the property line is angling a little as it goes out.

Mr. Brooker stated that although he was more lenient in terms of considering these cases, 24 feet is too wide for the scale of the house and the neighborhood. Mr. Chair, you seem to be towards an in-between solution which I would support.

Ms. Wolf asked what the process is if the Board were to grant a continuance.

Mr. Zych explained that the matter is neither approved nor denied. We set a date on which the applicant comes back for further consideration. We usually do that if there is incomplete information and if the passage of time would assist us and the applicant in reaching a solution or making an informed decision.

Mr. Porcelli stated that if that would mean that we could get a revised drawing with a different dimension to the pad and accurate dimension to the property line, I think we might all feel better about the issue.

Mr. Gilliam moved to continue Calendar No. 3463 this request for 30 days. The motion was seconded by Ms. Wolf.

Ms. Davis asked if there was something she was to bring back.

Mr. Zych stated that she should discuss that with staff.

There being no further comment from the Board, the motion carried 5-0.

Mr. Zych stated that the request is continued and it is still a live matter. He advised the applicant that staff is very helpful, and she had heard the Board's concerns about the scale and effect and so forth. We can't tell you what to do we can simply give our vote. I think there is some guidance in terms of how to think about the pad and its eventual dimension. Then the question should be for us to know how close to the property line we end up with whatever you decide.

CALENDAR NO. 3464:

Michael Devlin and Christie Lucco , 2375 Roxboro Rd., 'A' Single family district, requests a variance to Section 1121.12(i)(1) to permit 4.5' to 6' fence in front yard (4' max. ht.).

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

Mr. Zych stated that the Board received a staff report dated July 9, 2018, which without objection will become a part of the record. Hearing no objection, it is so entered.

Ms. Knittel's report was as follows:

#### Context

- This is a single family house in an 'A' Single-family district.
- There are single family houses to the north, east and west
- Roxboro School is to the south across Roxboro Road.

#### Project

The applicant would like to replace an existing chain link fencing that runs along their driveway with a wood fence that is scalloped. The fence will be 4' at the low point and the poses will be 4'6". There is an existing 6' tall fence that is parallel to Roxboro Road. The applicant proposes on section of fencing to transition from 6' tall to the post height of 4.5'.

#### Fact

- This is a code conforming parcel as it is 75 feet wide and has 12,275 square feet. A code conforming 'A' Single-family parcel is a minimum of 50' wide and has 7,500 square feet.
- The zoning code regulated corner side yards the same as front yards.
- This is a corner parcel being located at the north east corner of the Roxboro Road and West Saint James Parkway intersection.

- This parcel is driveway and the location of the proposed project is approximately where Colchester Road merges into West Saint James Parkway.
- Roxboro School is located across West Saint James Parkway from the applicant's property.
- The applicant has an existing 6' tall wooden privacy fence that is parallel to West Saint James Parkway.
- The adjacent house, 2374 Tudor, also has a 6' tall wooden privacy fence that is parallel to West Saint James Parkway.
- ABR approved the fence design at their June 5, 2018 meeting.

If approved, conditions should include:

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

That is the conclusion of Ms. Knittel's report.

Mr. Zych asked the applicant to come to the microphone and state anything else that might be helpful to the Board's decision.

Ronnie Hawkins, On the Fence, 1259 Cordova Rd., Mayfield Heights, OH, represented the applicant. He stated that the applicant is just looking to replace the chain-link fence along their driveway. They have some dogs that can put their paws at the top of the existing fence. That is why they want to make the fence a little higher.

Ms. Rothenberg asked the Chair if he wanted the representative to authenticate the application.

Mr. Zych stated that the Board had received an application dated June 13, 2018. He asked Mr. Hawkins if the content was true and correct to the best of his knowledge.

Mr. Hawkins stated that it was.

Mr. Zych stated that hearing no objection, it will be entered into the record.

Mr. Hawkins stated that where the existing 6 foot tall fence meets the driveway we will drop down to 4-1/2 feet as it goes back along the driveway.

OPEN PUBLIC HEARING/CLOSED PUBLIC HEARING

Referring to the slide, Mr. Zych recalled the traffic pattern at various times of the day when, particularly early morning and afternoon, a great number of cars and children go by there.

Ms. Knittel stated that was correct with both Roxboro Elementary School and Roxboro Middle School being directly across the street.

Mr. Brooker asked staff if the 6 foot tall fences along St. James Parkway were granted variances.

Ms. Knittel stated that those fences existed prior to the code requesting a maximum height of 4 feet in the front yards. There is no record of when they were installed. They have been there a number of years.

Mr. Zych noted that speaking as one Board member, any time one replaces chain link with something else, I tend to be very happy about that. But it doesn't mean that the code doesn't apply.

Mr. Porcelli stated that he would like to know the height of the posts because they represent the legal height of the fence.

Mr. Hawkins stated that the posts are 4 foot 6 inches. Other cities say it doesn't matter how tall the posts are in relation to the body of the fence.

Ms. Knittel stated that the height of the posts count towards the variance.

Mr. Zych stated that in Cleveland Heights the height of the posts do matter. However, we will note that the variance request is up to 6 feet.

Ms. Knittel stated that this is something we've discussed. The post height does count toward the maximum height. The intent is to follow what was approved by the Architectural Board of Review.

Ms. Wolf asked if the posts would be 6 feet.

Mr. Hawkins stated that the new posts would be no more than 5 feet tall.

Ms. Wolf asked if the existing fence was 6 feet tall.

Mr. Hawkins stated that the existing chain link fence along the drive is 4 feet tall. The existing wood fence parallel to the sidewalk is 6 feet tall.

There being no further discussion, Mr. Zych asked for a motion.

Mr. Brooker moved to grant a variance to 2375 Roxboro Rd., to Section 1121.12(i)(1) to permit 4.5 feet to 6 foot fence in the front yard where a maximum height of 4 feet is permitted based upon the finding that it is a minor variance, the fence is barely visible from the street. It is an actual improvement to the property aesthetic value and it doesn't affect the character of the neighborhood. It doesn't adversely affect the delivery of governmental services. And while a 4 foot straight fence might serve the same purpose, I think the proposed fence is an aesthetic improvement over a minimum solution. If granted the variance should include the following conditions:

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

Mr. Porcelli seconded the motion.

Mr. Zych suggested an amendment to the motion to state a finding of the Board that adequate fencing in this location, especially given the busy street and the elementary school nearby and the typical uses of a house would require for safety, privacy and protection, that an adequate fence be along that driveway.

The motioner and seconder agreed to amend the motion.

There being no further discussion the motion carried 5-0. The variance was granted.

#### CALENDAR NO. 3465:

Michael and Karen Baldrige, 2611 Fairmount Blvd., 'AA' Single-family district, requests variances to Section 1121.12(a) to permit a swimming pool (not permitted) and to Section 1121.12(i)(1) for 6' tall fence (4' max. ht. in corner side yard along Tudor Dr.)

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

Mr. Zych stated that the Board has received a staff report dated July 9, 2018, which without objection will be entered into the record. Hearing no objection it is so entered.

Ms. Knittel's report was as follows:

#### Context

- Single family house located in an 'AA' Single-family district
- The 'AA' Single-family zoning district runs parallel to Fairmount Blvd., along both the north and south sides of the road. Single family homes

- are located here.
- Going North along Tudor is an 'A' Single-family district with single family houses.

#### Project

The applicant is renovating the house and would like to add an in ground pool and patio area. Swimming Pool regulations require that the pool be surrounded by a 6' tall fence. The zoning definition of front yard along Tudor Road results in a portion of the pool and fence being in the corner side yard, which is regulated the same as a front yard.

#### Facts

- This is a code conforming parcel being 115' wide and having 26,796 square feet. A code conforming 'AA' single-family parcel is a minimum of 100' wide and has a minimum of 15,000 square feet.
- This is a corner parcel, located on the north east corner of the Fairmount Boulevard and Tudor Road intersection.
- At its closest point, the house is 11.8' from the east property line.
- The house is 'L' shape with a portion of the house parallel to Fairmount Boulevard and a wing of the house parallel with the
- The house is cited so that the 'L' shape is parallel to Fairmount Boulevard and the east property line, resulting in usable out door space facing Tudor Road.
- 2281 Tudor Road, the first house on Tudor is set back 42.62' from the public right of way while the applicant's house closest corner to the public right-of way is setback 26.42'. This results in a large portion of the applicant's property to be classified as a corner side yard by the zoning code.
- The zoning code regulated corner side yards the same as front yards.
- Code Section 1121.12(h) permits swimming pools in the side and rear yards only.
- The garage of the house is attached and is located at the northeast corner of the structure.
- The parking area for access to the garage is located in the north east area of the parcel.

If the variance is approved, conditions should include;

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. The swimming pool must be completely enclosed by a wall or fence of at least 6' in height and have self-latching gates;
4. Obtain a fence permit for the fencing;
5. Any lighting shall be arranged so as to not shine on adjacent property; and

6. Complete construction within 18 months of the effective date of this variance.

That concludes Ms. Knittel's report.

Mr. Zych asked the applicant to come to the microphone and state anything he would like to add to assist the Board in its decision.

David Ducas, Woodbridge Homes, 132 Miles Rd. Chagrin Falls, represented the applicant. He stated that the Baldridges purchased this property about a year ago with the intent to move their family from Chagrin Falls to Cleveland Heights. Their intent was also to build a pool at the house. We were not aware of the code regulation regarding side yards being treated as front yards. They probably would not have purchased the house had they known that they might not be able to install the pool where they wanted. Referring to the site plan he stated that the pool is well away from the road and as close to the house as it could be. He pointed out the location of the garage and where the underground utilities were located, prevents installation of anything closer to the garage. Also, people with children or grandchildren don't want their pool directly adjacent to the egress of their house for safety reasons. The ability to use the pool and enjoy the privacy of their back yard entertainment areas would logically indicate those area would precede the pool as you exit the house. What we are asking is in place in many situations in Cleveland Heights already. Of the houses on Tudor Road, 12 of them have enclosed back yards with fences. There are within a 4 block area and as seen in the last agenda item, there are 24 houses with 6 foot tall front yard fences. We are asking for what would be a side yard, except for the code which indicates most of the area is in a front yard. The practical difficulty is that the Baldridges have the right to privacy the same as anyone else who is not on a corner lot. There are many other corner lots in Cleveland Heights that already enjoy having a fence around their property. It would be their intention to have a 4 foot tall fence but the pool regulation requires a 6 foot tall fence so they are pushed into that category. I think what they are proposing benefits the neighborhood. There are no neighbors present to object although they have been notified of what is going on. I believe completion of the project as a whole benefits the neighborhood and benefits the city of Cleveland Heights as a significant tax benefit. It takes a house that was in a state of foreclosure and brings back a 1917 house into a grand dame of Fairmount Boulevard.

Mike Baldrige, 47 East Orange Street, Chagrin Falls, stated that we were not aware of this ordinance. Maybe we were negligent in not checking it out but driving up and down Fairmount other street in the area, we saw there were many instances of tall fences and even instances of swimming pools that were visible through those fences, so we just thought it would be OK. The neighbor behind us on Tudor Drive has asked when she can come over to swim. She is aware of this and has no problem with this proposal at all. He also wanted to point out that the house shown

across from us on Tudor Drive is about 4 feet lower than this house. So we really had a problem with installing a 6 foot tall fence but when we looked at it from the privacy standpoint in the back yard, it's probably a good thing because the actual house is quite raised up. Also, we found out that the house is built on bedrock. Not where the pool would be but next to the house itself, so we are concerned with the stability of the structure itself if we build too close to the house. We have some window wells that we are replacing and reinforcing and it has turned into a money pit. We are talking about hornbeams and professional landscaping and in our opinion it will be quite beautiful but we also understand these are regulations and we are real followers and hope you will make an exception for us.

#### OPEN PUBLIC HEARING/CLOSED PUBLIC HEARING

Mr. Zych asked the applicant to show, for the record, on the drawing where the pool will go and where the 6 foot fence will be.

Mr. Ducas indicated the pool on the drawing and the fence that was approved by the ABR begins about 8 feet out from the rear of the house. It has brick piers that match the brick on the house. It is 6 feet 2 inches off the sidewalk to allow the homeowners to install a landscape berm and grass between the fence and the sidewalk. On the back side it is their intention to install hornbeams at 6 feet tall which will create a softening behind the fence. There is no way put the pool closer to the house and still have a fence but not have the fence in the side yard area. There is no way to have a pool and a fence on the property and allow the Baldridges any reasonable, practical, use of their property. If you put a fence within the code-conforming line, you have now negated the private use of the rest of their property. Also being on Fairmount Blvd., there is a fair amount of traffic. They do have grandchildren and would like to have a fence even if there was no pool and the fence was 4 feet tall.

Mr. Zych commented that this is a quirk that the Board runs into repeatedly. The Board has taken that into consideration many times with specific requests and we understand what that does to property. He then asked for questions from the Board.

Mr. Porcelli asked how far the fence from the sidewalk is.

Mr. Ducas stated that the fence is 6 feet 2 inches from the sidewalk.

Mr. Zych stated that although it is not a rule, but a convention of the Board that when we grant a fence height variance the fence must be set back at least the same distance as the height of the fence.

Mr. Ducas stated that we have gone back 2 more inches.

There being no further questions from the Board, Mr. Zych asked for a motion.

Ms. Wolf moved to grant variances to 2611 Fairmount Blvd., to Section 1121.12(a) to permit a swimming pool where it is not permitted and to Section 1121.12(i)(1) for a 6' tall fence where a 4' maximum height is required in the corner side yard along Tudor Drive. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that special circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other land/structures in the same Zoning District, in particular the lot is irregular in the sense that it is a side yard where there is no real back yard in which to put a pool. Definitely for safety purposes it is a necessity for a 6 foot tall fence surrounding the pool area. I do not believe this would affect the essential character of the neighborhood. As stated, there are many other homes with 6 foot tall fences very close to the applicants' home. This would not affect delivery of government services as it does not block any public thoroughways. The applicant did not purchase the property with the knowledge that this was a zoning restriction. The applicant was not aware of the unique requirements of a side yard in regards to it being considered almost as a front yard. Again it cannot be resolved through a method other than a variance. There is no other location in which a pool can be placed and a 6 foot tall fence is required and I believe for safety purposes necessary, to be around a pool. If granted, the variance should have the following conditions:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. The swimming pool must be completely enclosed by a wall or fence of at least 6' in height and have self-latching gates;
4. Obtain a fence permit for the fencing;
5. Any lighting shall be arranged so as to not shine on adjacent property; and
6. Complete construction within 18 months of the effective date of this variance.

Mr. Gilliam seconded the motion.

Mr. Zych added that we have been advised by staff that a 6 foot fence with a self-latching gate around a pool is required so 6 feet is a justified height.

There being no further discussion, the motion carried 5-0. The variance was granted.

#### CALENDAR NO. 3466

Taylor Road Synagogue, 1970 South Taylor Rd., 'A' Single-family district, requests a variance to Section 1121.12(i)(1) to permit a 68" tall fence that varies in height from 64" (5'4") to 69.5" (5'9.5") in the front yard (4' maximum height permitted).

Ms. Knittel stated that the final applicant has asked for a 30 day continuance.

Mr. Gilliam moved to continue consideration of this request for 30 days as requested by the applicant. Mr. Porcelli seconded the motion which carried 5-0.

Regarding this request, Mr. Gilliam asked if staff had a copy of the study from the Department of Homeland Security the file.

Ms. Knittel stated that staff did not.

Mr. Gilliam asked if it might be possible for the Synagogue to submit a copy. I think it is important to know and is pertinent to the situation.

Ms. Knittel stated that we can request that.

Mr. Zych recalled that there is an unclassified version of it somewhere.

#### OLD BUSINESS

Ms. Rothenberg stated that on July 30<sup>th</sup> City Council will be hearing the Use Variance from last month.

#### NEW BUSINESS

None.

#### ADJOURNMENT

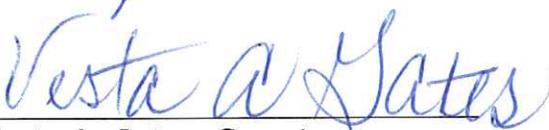
There being no further business to come before the Board, the regular meeting was adjourned at 8:57 p.m.

Respectfully Submitted,



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Thomas Zych, Vice Chair



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Vesta A. Gates, Secretary