

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
SEPTEMBER 26, 2018

MEMBERS PRESENT: Denver Brooker
George A. Gilliam
Benjamin Hoen
Liza Wolf
Dennis Porcelli

MEMBERS ABSENT Thomas Zych Vice Chair

STAFF PRESENT: Vesta A. Gates Zoning Administrative Assistant
Karen Knittel City Planner
Elizabeth Rothenberg Assistant Law Director

CALL TO ORDER

In the absence of the Chair and Vice Chair, Ms. Rothenberg called for a vote in favor of Ms. Wolf as temporary Chair pro tem until the election of a Chair or Vice Chair. There being no nays or abstentions the vote was unanimous.

Ms. Wolf requested nominations for the position of Chair.

Mr. Hoen nominated Mr. Zych. Mr. Brooker seconded the nomination.

Ms. Wolf asked for any more nominations. Hearing none, she asked for a motion to close nominations for Chair.

Mr. Gilliam moved that the nominations be closed. Mr. Hoen seconded the motion which carried unanimously.

Ms. Rothenberg asked for all in favor of Tom Zych as Chair. All were in favor except for one abstention, Mr. Porcelli, who is an alternate.

Ms. Wolf stated that Tom Zych has been elected Chair of the Board of Zoning Appeals.

Ms. Wolf asked for nominations for Vice Chair.

Ms. Wolf nominated Benjamin Hoen as Vice Chair.

Mr. Gilliam seconded the nomination.

Ms. Rothenberg asked for any additional nominations. Hearing none she asked for a motion to close the nominations.

Mr. Gilliam moved to close nominations.

Mr. Hoen seconded the motion.

Ms. Rothenberg asked for all in favor of closing nominations for Vice Chair.

Hearing no nays or abstentions, the nominations for Vice Chair was closed.

Ms. Wolf asked for all in favor of Ben Hoen as Vice Chair. There were no nays and one abstention, Mr. Porcelli.

In the absence of the elected Chair, the Vice Chair, Mr. Hoen, conducted the meeting.

Mr. Hoen called the regular meeting to order at 7:05 p, m. at which time all members were present except for Mr. Zych, whose absence was excused.

APPROVAL OF THE MINUTES OF THE AUGUST 15, 2018 PUBLIC HEARING

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

Mr. Porcelli 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. Hoen 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

SEPTEMBER 26, 2018

CALENDAR NO. 3468:

Elizabeth & Thomas Brandt, 3559 Birch Tree Path, 'A' Single-Family district, request a variance to Section 1121.08(a) (1) to permit a one-story front yard addition with a setback of 23'11" (38.5' min setback req.)

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

Mr. Hoen asked, if there was no objection, that the staff report dated September 17, 2018 be entered into the record. Hearing no objection, it was so entered.

Ms. Knittel's staff report was as follows:

Context

- The property is zoned 'A' Single-family
- The properties surrounding this parcel are all single family houses zoned 'A' Single-family.

Project

The applicants would like to convert the existing attached garage into a multi-purpose room and then add a new 22' by 20'6" garage to the area directly in front of the existing garage.

Facts

- Birch Tree Path is a short cul-de-sac street.
- The four parcels on the north side of Birch Tree Path front the street and have a Birch Tree Path address.
- The three parcels on the south side of Birch Tree Path have a Glen Allen Drive address and the back of the houses and traditional rear yards of the property abut Birch Tree Path.

- Birch Tree Path is a curved street.
- 3555 Glen Allen Drive's driveway enters the property from Birch Tree Path and provides access to their attached garage. The garage doors are visible from Birch Tree Path even though they are at an angle to the street.
- The orientation of the 3559 Birch Tree Path parcel and house to the public right-of-way is unique due to the road being a cul-de-sac. Only a corner of the property abuts the right of way.
- 3559 Birch Tree Path's east side yard abuts the rear yards of 1304 and 1308 Yellowstone Road
- The applicant's parcel is the only property facing Birch Tree Path at the cul-de-sac. Back yards of the other two properties are located at the cul-de-sac.
- The applicant's proposed addition is located on what is now driveway, so the proposed addition will not change the current total coverage of the parcel, which is approximately 42%.
- The current garage is 5' from the side yard shared with 1308 Yellowstone Road and the addition would continue this 5' setback from the side property line.
- The current house's garage doors face the driveway which curves toward the house after entering the parcel. The proposed addition would have the same Kent OH 44240 right-of-way.
- When viewing the property from Birch Tree Path a landscaped garden including a tree is located between Birch Tree Path and the proposed location of the addition. The applicants propose to maintain this landscaped area.

If approved, conditions should include:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. Complete construction within 18 months of the effective date of this variance; and
4. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the addition's height or building footprint.

That concludes staff's presentation. The applicant's representative is prepared to provide a brief overview of the applicant's practical difficulty.

Mr. Hoen asked the applicant to come forward and give his name and address and affirm that he had been sworn in.

Thomas Stauffer AIA, 136 E. Main St. Suite 14 Kent, Ohio came to the microphone and stated that he had been sworn in.

Mr. Hoen asked if the application dated August 7, 2018, and its contents were true and accurate to the best of his knowledge.

Mr. Stauffer stated that it was.

Mr. Hoen stated that hearing no objection, the application is entered into the record.

Mr. Stauffer stated that Ms. Knittel was very thorough and made the setback request quite clear. The lot is fairly similar to the other 3 lots on Birch Tree Path which is 70 feet by 140 feet. The house was designed by Philmore Hart and completed in 2002. The house has a pitched roof and the garage has a flat roof with 2 skylights. The rear and side yards are fairly heavily treed and there is a stone wall about 6-feet tall along the back property line. The wall is historic from the Severance Farm Estate. He indicated the patio, kitchen, and living room on the drawing and stated the house is 2 stories with 4 bedrooms. It is clear that this is the most efficient and obvious way to expand the floor area without increasing the lot coverage and allowing the existing garage to become a multi-purpose space. It will be used as a woodshop initially. The applicants have mentioned that they are going to add bay windows but the garage has an existing skylight. The garage already has water and heat and the addition would consist of 2 stalls with 2 doors. The current setback is 30 feet at one corner and the opposite corner is set back 24 feet. He stated that Elizabeth and Tom have been very thorough in assessing how they might add to this house to make it more livable on the first floor. Their conclusion together with our conclusion is that this is really the most efficient and direct way to resolve the applicant's predicament.

Mr. Hoen explained that the standard upon which the Board is to review the case is based on the practical difficulty. He asked the Mr. Stauffer to speak to the applicant's practical difficulty.

Ms. Rothenberg asked if there were something particular to the lot that would, for example, prevent you from putting the addition someplace else.

Mr. Stauffer stated that particularly with the use of the current garage as a woodshop, referring to the site plan, he stated that if another location were considered, such as the back of the house, he pointed out that the back yard is very compact and another variance would be necessary for the rear yard setback. It would also interrupt all the back yards of houses facing Yellowstone Road with an addition that would be equivalent to the existing garage. It would increase coverage of the lot and the access to the woodshop from the street. It would also increase the coverage of the internal access which would be through the master suite and a master bath. The aspect from the kitchen and living room is all glass, extending out to the patio. They are requesting this additional square footage to make this house more livable in their retirement. The purchase of the house will be closed in March but in the interim they will develop the architecture for construction immediately after they own the house.

Mr. Brooker asked if the house had a basement.

Mr. Stauffer stated that it did not.

Mr. Brooker commented that that certainly made a difference in terms of a space like this. He added that zoning setbacks were set up to create certain alignments on streets for continuity. In this particular case there is no continuity. It is not even part of a cul-de-sac with 3 or 4 houses on it. This house ends the block. In terms of a site with extenuating circumstances, this applies more so than any other setback variance requests we've heard.

Mr. Porcelli asked if it had been determined that there was enough maneuvering space for vehicles in and out of the new garage without expanding the driveway.

Mr. Stauffer stated that it had.

Mr. Porcelli asked if the existing garage square footage was the minimum that would be required for the new use, say if part of the garage was incorporated and then a smaller addition was put on. Would that work in a practical way.

Mr. Stauffer asked if he was suggesting a single stall might remain and then one behind it.

Mr. Porcelli explained or some portion thereof. He was just trying to get at whether the use of the space that's going to be gained for the house is what's required or is it excessive and you could have a smaller addition.

Mr. Stauffer stated that would mean you might have a vehicle in one stall and a vehicle behind it. That would be very inconvenient.

Ms. Knittel stated that currently our zoning code does not permit stacked parking. A variance would be necessary to have that type of parking.

There being no further questions from the Board, Mr. Hoen opened the public hearing.

There being no one from the public who wished to speak, Mr. Hoen closed the public hearing. He then asked for a motion.

Mr. Brooker moved regarding Calendar Number 3468, 3559 Birch Tree Path, to grant the application for variance to Section 1121.08(a) (1) to permit a one-story front yard addition with a setback of 23'11" where 38.5' minimum setback is required, after the application and other submissions and hearing the evidence under oath, the Board finds and concludes special conditions and circumstances exist which are peculiar to the land, structures involved that are not generally applicable to other land, structures in the same zoning district. In particular the location of this property at the end of a cul-de-sac is not used for access to any other home. There is no basement that lends this structure to the intended addition and additional space for finishing. And it does not in any way change the essential character of the neighborhood given its location and the nature of it being essentially backed up to back yards of other residents. The variance does not affect the delivery of government services and this variance could not be resolved

through any other method that would avoid a variance short of simply not putting the addition on. If granted the variance shall have the following conditions:

1. Approval of the Architectural Board of Review;
2. Receipt of a Building Permit;
3. Complete construction within 18 months of the effective date of this variance; and
4. A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the addition's height or building footprint.

The motion was seconded by Mr. Gilliam and carried 5-0. The variance is granted.

OLD BUSINESS

None

NEW BUSINESS

Ms. Knittel stated that the hearing in October may be a little longer than this evening. Once this meeting is adjourned I can briefly review the proposed agenda for next month.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:33 p.m.

Respectfully Submitted,


Tom Zych, Chair


Vesta A. Gates, Secretary