

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
FEBRUARY 20, 2019

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

CALL TO ORDER

Mr. Hoen called the regular meeting to order at 7:00 p.m. at which time all members except Mr. Zych were present. Mr. Zych's absence was excused.

APPROVAL OF THE MINUTES FROM THE NOVEMBER 28, 2018 PUBLIC HEARING

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

Mr. Brooker seconded the motion which carried 3-0-1. Ms. Wolf abstained as she had not been present at the November meeting.

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

Mr. Hoen explained 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.

Tonight the Board is additionally considering a use variance. In making its decision of whether to recommend a use variance, the Board will examine all the criteria set forth in Zoning Code section 1115.07e(2). The burden is upon the applicant to demonstrate all 7 criteria by clear and convincing evidence. The evidence must show that the literal enforcement of the Zoning Code would result in unnecessary hardship. Clear and convincing evidence means that that the evidence is substantially more likely than not to be true. As in the case with standard variances, 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 not the final decision maker for use variances. The Board's decision will be reviewed by City Council at their next regular meeting.

PUBLIC HEARING

FEBRUARY 20, 2019

CALENDAR NO. 3474

Yuta and Karen Hsu, 2940 Berkshire Rd., 'A' Single-Family district, request a variance to Code Section 1121.08(a)(2) to permit a new addition with a principal use front yard less than the 56.8' minimum required.

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

Referring to the zoning map Ms. Knittel reported that this is a single-family home in an "A" single-family district and surrounded by other single family homes. The applicant would like to enclose the existing front porch of the home. The zoning code does not include an enclosed porch when determining the setback of houses. Enclosing this porch will result in the front of the house being located closer to the street than is permitted by code. This is a code-conforming parcel in terms of width and area. It is 61 feet wide and is 10,250 square feet in area. A code-conforming parcel in an "A" district is a minimum of 50 feet wide at the building line and a minimum of 7,500 square feet. The adjacent house at 2983 Berkshire Road is located closer to the street than the applicant's. This house is 40.5 feet from the Berkshire Road right-of-way and the adjacent house is 62.1 feet from the Berkshire Road right-of-way. The front yard of our applicant's property is established by drawing a line from the front corners of the two adjacent dwellings resulting in a minimum setback of 56.8 feet being required. Berkshire Road is curved in front of the applicant's property and the neighbor, 2940 Berkshire is not parallel to that road. The location of the addition enables the efficient expansion of livable space without increasing the footprint of the house.

The enclosed side porch is locate 1.6 feet from the side yard at the rear corner and the porch extends 4 feet in front of the house and is located 51.5 feet from the public right-of-way. Code Section permits front porches to extend 12 feet into the front yard provided they do not extend more than 6 feet into the required front yard which is 25 feet.

The proposed project only encloses this existing porch. Enclosing the front porch results in a front yard setback of 51.5 feet where Code requires a minimum setback of 56.8 feet.

If approved conditions may include:

1. The variance granted is to allow the front yard setback to be 51.5 feet as shown on the site plan dated November 27, 2018;
2. This proposal was approved by the Architectural Board of Review at the meeting on November 20th contingent on receiving the required variances;
3. Receipt of a Building Permit;

4. Complete construction within 18 months of the effective date of this variance; and
5. 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 length.

The applicant has submitted a statement of practical difficulty and is present tonight to review it with the Board.

Mr. Hoen asked the applicant to come to the podium, give their name and address and confirm that they have been sworn in.

Mr. Hall asked if the staff report had been entered into the record.

Mr. Hoen stated that it had not but it will be. Hearing no objection to entering the report into the record, it is now part of the record. He then asked the applicant to confirm that he had been sworn in.

The applicant confirmed that he had.

Mr. Hoen asked if he had submitted the statement of practical difficulty and could confirm that it is complete and accurate to the best of his knowledge.

The applicant answered affirmatively.

Mr. Hoen stated that hearing no objection, the applicant's statement of practical difficulty is so entered into the record.

Donald Terantino, 1802 Radnor Rd, represented the applicant and stated due to the needs of the family it would be nice to have this first floor addition. Regarding the discussion about how that lot was formed in the first place, it was thought that it might have been a side yard property that was re-deeded. If you look at the sides of the other properties and their shapes, you realize that this is really a tiny lot. The house was kind of maneuvered to fit on the lot which is why it has all these weird setbacks. I think Ms. Knittel did a good job of presenting the case.

Mr. Hoen asked for questions from the Board.

Ms. Wolf asked if the existing partially enclosed portion of the house was original.

Mr. Terantino stated that it was.

Mr. Brooker asked if the unenclosed portion of the porch is non-compliant.

Ms. Knittel explained that the front yard is measured from the enclosed portion of

the house and our code does permit you to have an open porch that can extend 12 feet in front of your house as long as no more than 6 feet of the open is in the required setback which is 25 feet. By enclosing this porch, it is virtually moving the front of the house up to where the porch frontage is. It is non-conforming in terms of the side-yard setback. The side that is only 1.6 feet from the property line is a non-conformity.

Ms. Wolf commented that the setbacks of the house next door are also non-conforming.

Ms. Knittel stated that those setbacks are existing and prior non-conforming.

Mr. Terantino had nothing further to add to his presentation.

Mr. Hoen opened the public hearing. There being on one from the public who wished to speak, Mr. Hoen asked for a motion.

Ms. Wolf moved regarding Calendar No. 3474, Yuta and Karen Hsu, 2940 Berkshire Rd., to grant the application for variance to Code Section 1121.08(a)(2), to permit an addition with a principal use front yard less than the 56.8' minimum required. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes that special circumstances which are peculiar to the land/structure involved which are not generally applicable to other land/structures in the same zoning district, in particular because of the curvature of the street and the two lot sizes surrounding this lot, it is more narrow so there really isn't more space anywhere else to add living space. The property in question will not yield a reasonable return without the variance. More living space and the most affordable way to do it is on an existing structure. The variance is insubstantial and is an existing structure and can be enclosed in the most affordable way possible. The essential character of the neighborhood would not be substantially altered as a result of the variance, also being that there are other homes built closer to the street. The variance would not adversely affect the delivery of government services. The property owners testified that they purchased the property without the knowledge of the zoning restriction. If granted the variance should have the following conditions:

1. The variance granted is to allow the front yard setback to be 51.5 feet as shown on the site plan dated November 27, 2018;
2. Approval of the Architectural Board of Review;
3. Receipt of a Building Permit;
4. Complete construction within 18 months of the effective date of this variance; and
5. 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 length.

Mr. Gilliam seconded the motion which was carried 4-0.

Mr. Hoen stated that the variance is granted.

CALENDAR NO. 3475

Autumn Oliver and Kimonius Henderson, and Rob Woodbridge, 1774 Lee Rd., 'MF2' Multiple-Family district requests a use variance to Sections 1123.01, 1123.02 & 1123.03 to permit a retail bakery in an existing structure.

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

Mr. Hoen asked if there was any objection to entering the staff report dated February 14, 2019 into the record. Hearing none, it was so entered.

Ms. Knittel stated just to give the Board a little context, 1774 Lee Rd. is zoned MF-2 multi-family. There is a single-story 2130 square-foot structure with a 10 space parking lot on the parcel. Most recently there was an office located in the building which was a pre-existing non-conforming use. The property to the north along Lee Rd. is zoned two-family. Behind the property is an "A" single family district and to the south, at the corners, the zone is multi-family. The applicant is requesting a use variance to permit a bakery with retail services to use the existing structure. The front of the building would be allocated to a showroom and retail area for walk-in traffic to purchase cupcakes, cake slices and beverages. The remainder of the building would be for the kitchen and offices of the bakery. The applicant states that the bakery would have between 5 and 7 employees who would work in the bakery on a rotation basis and 1 person would be dedicated to retail sales. The hours of operation are tentatively being proposed as Wednesday through Friday, 8 a.m. to 8 p.m. for pick-ups and retail sales and on Saturday from 10 a.m. to 6 p.m. To remind you about code section 1115.07e(2) which states that in making its determination the Board of Zoning Appeals must find that the applicant has demonstrated that the applicant will suffer unnecessary hardship if strict compliance with the terms of the code is required and that such hardship has been demonstrated by clear and convincing evidence to all 7 criteria. The Board of Zoning Appeals may grant or deny the variance or it may postpone making a decision to consider or seek additional information. It's the Board of Zoning Appeals responsibility to make the decisions based on the facts presented within the framework of the criterial set be the zoning code. Variances denied by the Board of Zoning Appeals are not reviewed by City Council and a use variance granted has effect only after approval by City Council.

Ms. Knittel reviewed the zoning district and its history, including this parcel and

other MF-2 multi-family parcels at the intersection of Lee Road and Euclid Heights Boulevard. They are part of a rezoning that occurred in the year 2000 when that area became an MF2 multiple-family district. The adjacent properties prior to this were C-2 Local Retail. Looking back through the zoning maps as far as 1921, this area was zoning Local Retail. Across the street Euclid Heights town homes were developed, phase 1 and 2, located on Euclid Heights Boulevard. The construction was between 2002 and 2005. Phase 3 of the development was not constructed and the city now owns the vacant lot in the center of the two constructed phases. In 2012 the Board granted Calendar No. 3283, Simon Automotive 1830 Lee Rd., a request for a new non-conforming 6 bay auto repair Building to be larger than the existing building so this was a variance to expend a non-conforming use. They also received some setback variances in order to allow them to fit nicely on the site and into the neighborhood.

Code Section 1123.03 permits the following uses in a 'MF2' Multiple Family District: townhouses, multiple-family dwellings, cluster development, and public parking.

Code Section 1123.04 conditionally permits the following uses in a 'MF2' Multiple-Family District: planned residential development, places of worship, schools, colleges and educational facilities, public library, public safety facilities, public and private parks and playgrounds, public recreational facilities, parking decks and one-story garages as the principal structures, accessory parking for contiguous commercial districts, day cares and pre-schools, lodging, boarding or congregate living facilities, nursing homes, hospitals, public utilities, attached single-family dwelling units.

The structure at 1774 Lee Road was originally built to be a Mikveh. The structure originally housed four ritual baths and two beauty parlor booths. Zoning approval was granted in 1952.

The property transferred to 1774 Lee Rd, LLC (Rob Woodbridge) in December 2007. The BC Woodbridge Company office remained in this building through December 2018. This office use is a prior nonconforming use of this structure. Zoning Code 1173.01 regulates the continuation of nonconforming uses. Section 1173.02(a) states whenever a nonconforming use of land or structure is voluntarily discontinued for a period of two (2) years or more, its use shall be changed to a conforming use. The Master Plan Future Land Use Map shows this area of Lee Road to be Attached or Multi-family housing. Section 1123.01 (b) states the purpose of the district: *The MF-2 District is to establish or provide for medium density developments of approximately twenty-five (25) dwelling units per acre.*

Code Section 1123.06 Lot Area and Width Regulations states:

- (a) Minimum land area per dwelling unit is 1,750 square feet. Per this regulation, the parcel could support 5 units.
- (b) Minimum development area is 20,000 square feet. This parcel is nonconforming as it is 10,045 square feet.
- (c) Maximum dwelling units per acre is 25 units.

- (d) Minimum lot width at building line is 100 feet. This parcel is nonconforming as it is 49 feet wide.
- (e) Minimum lot frontage is 60 feet. This parcel is nonconforming as it is 49 feet wide.

To summarize, if it were possible to build a multi-family structure on this property, it would need significant variances in terms of setbacks and lot width and area.

Code Section 1123.07 Minimum Yard Requirements for Principal uses

- (a) Front Yard minimum is 30 feet. The building is nonconforming as it is set back approximately 9.5 feet from the public right-of-way.
- (b) Side Yard abutting a Multiple-family district is 15 feet. The building is nonconforming as it is located at the south property line.
- (c) Side Yard abutting a Two-family district is 25 feet. The building is nonconforming as it is 19 feet from the north property line.
- (d) Rear Yard abutting as Single-family district is 25 feet. The distance from the rear of the building to the rear lot line is approximately 95 feet.

The reason why these requirements would result in this building being 9 feet wide is this lot is actually zoned "AA" single-family which requires so it would have a 25 foot setback requirement from the north property line meaning nothing could be built in either of the side yard setbacks without substantial variances.

Code Section 1161.03(a)(4) requires multiple-family dwellings to have 1 space for each dwelling unit, of which not less than .5 spaces are enclosed. The parcel has 10 parking spaces including one handicap parking space located behind the building.

Code Section 1161.03(c)(1) requires 1 space for each 300 square feet of floor space. Should this use be granted a variance, the applicant would need to provide 7 parking spaces; the current parking lot has 10 parking spaces.

Properties in Cleveland Heights are governed by the city's zoning code. A property only may be occupied by land uses that are explicitly permitted by the code in the zoning district in which it is located. Property owners wishing to use their land for a use not permitted by the code must apply to the Board of Zoning Appeals for a use variance. The Board of Zoning Appeals must find, and City Council approve, a finding that the applicant will suffer unnecessary hardship if strict compliance with terms of the code as required. The applicant has the burden of demonstrating such hardship by clear and convincing evidence to all 7 of the criteria.

If approved, conditions may include:

1. This use variance is conditional on the use of the current building which the exterior cannot be substantially altered or the building demolished;

2. The showroom/retail sales area accessible by the general public shall be a maximum of 550 square feet.
3. Approval of the Architectural Board of Review for any exterior repairs that may be required;
4. Receipt of a Building Permit;
5. Complete construction within 18 months of the effective date of this variance.

The applicant is present and has submitted a statement of hardship and is prepared to review that statement with the Board tonight.

Mr. Hoen asked the applicant to come to the microphone, state his name and address and confirm that he had been sworn in.

Rob Woodbridge, 1265 Inglewood Drive, came forward.

Mr. Hoen asked Mr. Woodbridge if he had prepared the statement of hardship that was presented to the Board and to the best of his knowledge it was complete and accurate.

Mr. Woodbridge stated that he had and it was.

Mr. Hoen stated that hearing no objection the statement of difficulty will be made part of the record.

Mr. Woodbridge stated that as was reported in the staff report this property is zoned MF2, rezoned from retail in 2002. The property dimensions really make a code-conforming multi-family use impossible. It's half the size required so it doesn't make many of the required setbacks, parking requirements or size requirements. The existing building is really not located in an area or the type of construction that can be redeveloped as housing. It's a 1-story block building with no basement, 2100 square foot. I don't see there is a possibility of either building new or redeveloping the current building into anywhere close to a code-conforming multi-family use. Even if there was a way to do that, I don't think it's economically feasible. There is a city-owned lot meant for condo's that they haven't been able to sell for development. I think the last request for proposal the city put out was in 2013 and it did not get any response. We advertised the building extensively and almost all the interest we get is for retail use. We did not get any non-conforming office grandfathered-in use interest in the building. What we have found is a Cleveland Heights resident who has a current business, who is looking to expand. It is basically a cake shop with light retail use. I don't think this light retail use will be significantly different than the use that it has had for the last 10 years, which is basically a meeting/showroom space for a residential construction company. We are proposing up to 25 to 30 percent, 520 square feet, be allowed for showroom/retail, which is about the break down that we have now. Most of the

applicant's business will be preordered, and less of it will be in the retail section. The showroom space will for customers to come in and plan their cakes and cupcakes for their events. I don't believe it will bring anything negative to the neighborhood. It's a very positive business. The number of deliveries, the amount of traffic will be very similar to what was here previously, which as 1 or 2 deliveries a week by Fedex or UPS. We have a code-conforming amount of parking space available. Most people park in the back and enter through the rear entrance. The front entrance is rarely used. I think it's a positive thing to have a bakery in the neighborhood. It isn't much of a difference in traffic or use than what has been done before.

Ms. Wolf asked how long had the property been marketed as office space.

Mr. Woodbridge stated that it was marketed for general use for about 4-1/2 months, for sale or lease. We received no inquiries regarding non-conforming office space. All inquiries had a retail component. Of all the inquires that were made, this seemed to be the best fit for the neighborhood.

That being the end of the applicant's presentation, Mr. Hoen opened the public hearing.

Jackie Ciesla, 3167 Euclid Heights Blvd., right next to the corner house, facing Simon's Automotive. She stated that half of the subject building and the parking lot abut her rear yard. She had no problem with the building being occupied by a bakery. The smells will be wonderful and it doesn't sound like they will get much foot traffic. Her question is do they anticipate a lot of foot traffic from the front of the shop since they will be opened for 6 or 8 hours per day Wednesday through Saturday. They have plenty of parking space, so that won't be a problem. I just wondered about additional foot traffic in the neighborhood.

Mr. Hoen stated that we can certainly allow the applicant to come back to respond.

Kimonius Henderson, 2124 Marlindale Road, and who had been sworn in, came to the microphone. She stated that he did anticipate some foot traffic. This bakery would be second generation for them. We had a bakery on Cedar and Taylor, Baby Cakes Bakery. Mr. Brisket kind of pushed us out so we needed the space. We needed a bigger space because the business picked up and initially we were interested in a building at Cedar and Taylor, the KFC building, which is in University Heights. It also had a parking lot but the owner was not interested in doing anything with the building. We waited until we could find a free standing building of which there are not many in Cleveland Heights. Again, we anticipate some foot traffic, but currently the most of the business comes from internet, and by ear. Parking space is necessary for when customers come to pick it up because the street will become a little too busy with cars coming in and out.

Mr. Hoen pointed out that with the school across the street, the store could become a snack stop.

Ms. Henderson agreed that would be nice. She stated that at their old location, they were right in front of a bus stop and people would get off the bus and come right in. We are hoping we get bus traffic at this location, and people driving by.

Ms. Knittel stated for the record that Board received a written comment from Katherine Price, at 1788 Lee Road.

Mr. Hoen stated that hearing no objection, that the letter will be entered into the record.

Ms. Wolf asked if the exterior of the building would change in any way. No added structure of anything like that.

Mr. Woodbridge stated that a sign and an awning would be the only change.

There being no further comment from the public, Mr. Hoen closed the public hearing.

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

Mr. Brooker moved regarding Calendar No. 3475, Autumn Oliver and Kimonius Henderson, and Rob Woodbridge, 1774 Lee Rd., 'MF2' Multiple-Family district requests a use variance to Sections 1123.01, 1123.02 & 1123.03 to permit a retail bakery in an existing structure where such use is not permitted. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes; the property cannot be put to any economically viable use under any of the permitted uses in the zoning district as evidenced by the following: the existing building, configuration, size, construction, does not lend itself to a multi-family use or any of the other uses that are permitted in this district. The size of the property, its dimensions, don't lend itself to a zoning compliant construction of a zoning compliant use. The variance request stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district, specifically, the same reasons I stated before with respect to economic viability. The hardship condition is not created by actions of the applicant but rather the condition was actually created in 1952 when the building was constructed and again compounded by the zoning change in the year 2000. The granting of the variance will not adversely affect the rights of adjacent property owners or residents because the proposed property use is not substantially different than the current property use. The granting of the variance will not adversely affect the public health, safety or general welfare because it does not change the level of activity associated with the property. The variance will be consistent with the general spirit and intent of the zoning code because it keeps the building active

without changing it materially so it could easily become something else or be developed into something else but at least the property is in use. Finally, the variance sought is the minimum which will afford relief to the applicant, as demonstrated by the fact that there has been no other identified zoning compliant use for the property. If granted this use variance should have the following conditions:

1. This use variance is conditional on the use of the current building which the exterior cannot be substantially altered or the building demolished;
2. The showroom/retail sales area accessible by the general public shall be a maximum of 550 square feet.
3. Approval of the Architectural Board of Review;
4. Receipt of a Building Permit; and
5. Complete construction within 18 months of the effective date of this variance.

Mr. Hoen asked if he heard a second.

Mr. Gilliam seconded the motion.

Mr. Hoen stated that there being no further discussion of the motion, the motion carried 4-0.

OLD BUSINESS

None

NEW BUSINESS

Ms. Knittel stated that we do have a couple cases for the March 20th meeting. We are going to go forward with that date although it is a date that we traditionally not have met because it is a Jewish holiday and we try not to schedule public meetings on those dates. We polled the members and determined that we will have 4 members who can attend. We need to move forward because of the two applicants who have made submissions.

Mr. Gilliam stated that he was considering resigning from the Board, not for any specific reason except that he had been on the Board a long time. The timing of his retirement from government service will be predicated on how soon someone can be found to take my place.

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:53 p.m.

Respectfully Submitted,



Benjamin Hoen, Vice Chair



Vesta A. Gates, Secretary