

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

MEMBERS PRESENT:	Denver Brooker George A. Gilliam Benjamin Hoen Thomas Zych Dennis Porcelli	Vice Chair Chair
MEMBERS ABSENT	Liza Wolf	
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. Zych called the regular meeting to order at 7:00 p.m. at which time all members were present except Ms. Wolf whose absence was excused.

APPROVAL OF THE MINUTES OF THE JANUARY 16, 2019 PUBLIC HEARING

Mr. Gilliam moved to approve the minutes of the January 16th public hearing as submitted. Mr. Porcelli seconded the motion which carried 3-0-2; Mr. Zych and Mr. Hoen were absent from the meeting.

APPROVAL OF THE MINUTES OF THE FEBRUARY 20, 2019 PUBLIC HEARING

Mr. Hoen moved to approve the minutes of the February 20th meeting as submitted.

Mr. Gilliam seconded the motion which carried 3-0-2; Mr. Zych and Mr. Porcelli were absent from the meeting.

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

MARCH 20, 2019

CALENDAR NO. 3477

Boss Dog Brewing Co., 2179 Lee Rd., C2X Multiple-Use District, requests variance to Code Section 1163.06(e)(2) to permit a rear entrance sign larger than the maximum 15 s.f. permitted.

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

Mr. Zych stated that unless there are any objections the staff report dated March 12 entered into the record. Hearing no objection, it is so entered.

Ms. Knittel staff report is as follows:

Context

- 2179 Lee Road is zoned C2X Multiple-Use
- Properties north and south are also zoned C2X Multiple-Use
- The property to the east is zoned C2X Multiple-Use
- Properties west across Lee Road are zoned C2X Multiple-Use

Project

Boss Dog Brewing Company is seeking a variance to permit a 19 square foot identification sign to be installed on the rear wall of the building facing the public parking lot. Zoning Code Section 1163.06(e)(2) permits rear entrance sign to be a maximum of 15 square feet.

Facts

- Section 1131.01(c) states that the C2X Multiple-Use District is to provide *...for dense, mixed uses along main thoroughfares and to concentrate mixed-use buildings to promote and encourage pedestrian activity. Parking and driveways are generally located so as not to disrupt the pedestrian activity.*
- 2179 Lee Road is located at south of the Cedar-Lee Mini Park
- The identification sign facing Lee Road that will be installed is 22 square feet where code would permit a 76 square foot sign.
- The rear of the building is approximately 93 feet from the parking lot driving lane.
- The rear wall of the building is 30 lineal feet.
- There is a patio located between the rear building wall and the public parking lot.
- The building is at a lower elevation than the parking lot.
- Many of the businesses located between Lee Road and the public parking lot creating two public entrances for their customers.
- The Architectural Review Board found the size, location and visibility of the 19 square foot sign to be appropriate and approved this sign contingent on the variance being granted at their November 6, 2018 meeting.

If approved, conditions may include:

1. An identification sign up to a maximum of 19 square feet on the rear wall;
2. Receipt of the appropriate Building Permit; and
3. Complete construction within 18 months of the effective date of this variance.

Ms. Knittel further stated that the applicant is present and can discuss his practical difficulty for the Board.

Joshua Sweet, owner of Boss Dog, 2179 Lee Road, came to the microphone.

Mr. Zych stated that an application was submitted on February 13, 2019. He asked the applicant if he was familiar with that application and to the best of his knowledge were the facts stated in the application are accurate and true.

Mr. Sweet answered affirmatively.

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

Mr. Sweet stated that we feel our building is unique on Lee Road. The front sign is important to us but we are not making it as large as we can. It is projecting from the building because we feel our presence will be better observed by people driving by on Lee Road. The majority of our guests come through the rear of the building because that's where the parking is. Unfortunately, since we do not have a noticeable sign back there now, many people are walking past our patio and walk around to the front door. We get quite a few people who enter through the alley that is at the rear of the building, go into the service door and into the kitchen, which can be startling at times. We feel that because we are not using the allowable square footage for a sign in the front and we were told that the side of the building alongside the mini-park is also allowable frontage on which signage can be installed. We don't want to put signage there because it serves no purpose because it's closed-in and is facing Heights Arts and there are a lot of trees in the mini-park that would block the sign. The intention is to have a sign that is large enough for people who park in the parking lot to know where the rear entrance is and know who we are. That is why we are asking for the variance.

Mr. Zych then opened the public hearing. As there was no one from the public who wished to testify regarding this request, the public hearing was closed. Mr. Zych then asked for questions from the Board.

Mr. Zych stated that one of the guiding influences in commercial districts is pedestrian traffic. In the case of Dewey's Pizza we addressed the issue of wanting to maintain a principal entrance on the street, that this is a walking cityscape. I've been in twice and if I'm coming from Cedar-Lee, I'm likely to come to the front door and if I'm coming before the movie, I'm likely to go in through the back door. Architecturally the principal entrance is facing Lee Road even though people come through the rear. Is it your intention to maintain that street entrance as it is.

Mr. Sweet stated that that was his intention although he agreed that he would like more foot traffic and for the majority of the customers to enter through the front door. It is easier for staff to handle but practically speaking, we don't have a lot of control over where they enter and because of where the parking is located; the majority of people enter through the rear. Then we have to point them in the

direction of the host. The way the building is situated it, just lends to people entering through that rear entrance and we are doing our best to make it as pleasing as possible with the patio and then with this sign to help people locate us.

Mr. Zych added, "Also the cool truck".

Mr. Sweet stated that it is called a 'beer ambulance'.

Mr. Zych explained that when the variances are granted they run with the land so subsequent owners get the benefit of the variance. While we understand the intention of the applicant but we have to think down the road. We would love to see Boss Dog there forever, but nothing is forever. Perhaps we could add a 4th condition, the owner maintain a principal entrance on the Lee Road side. As there were no other questions from the Board, Mr. Zych asked for a motion.

Mr. Hoen moved regarding Calendar 3477, Boss Dog Brewing Co., 2179 Lee Rd., C2X Multiple-Use District, to grant a variance to Code Section 1163.06(e)(2) to permit a rear entrance sign larger than the maximum 15 s.f. permitted. After reviewing the application and other submissions and hearing the evidence under oath I find and conclude that special circumstances and conditions exist at this particular property such as indicated the rear entrance is one of the primary a recognizable sign entrances due to the parking arrangement in this area and as such a recognizable sign is a necessity on the back of the building. This would be an otherwise code-conforming sign had it been the front of the building but due to the way the structure and the parking is arranged in this area the it's the back entrance subject to these restrictions. The sign also faces other business so it would not affect the essential character of the neighborhood. Those other businesses also have signs facing the rear. The property in question would not yield a reasonable return because of the fact that the patrons would have trouble location it and therefore this recognizable sign is a necessity above the rear entrance. The variance is insubstantial as I alluded to if this were the front of the building it would be a code conforming sign even though this is the primary entrance other than the foot traffic entrance. This is the primary entrance from the parking lot and is not code-conforming but is only a 4 square foot difference from the code-conforming sign therefore it is insubstantial. The spirit and intent behind the zoning requirement is being observed. The intent is to have an aesthetically pleasing environment. This sign certainly adds to the aesthetically pleasing environment of this commercial district and therefore there is certainly no adverse effect that would come from the addition of the sign. The variance does not adversely affect the delivery of government services and is not the result of an action of the applicant. If granted the variance should include the following conditions:

- 1 An identification sign up to a maximum of 19 square feet on the rear wall;
- 2 Receipt of the appropriate Building Permit; and
- 3 Complete construction within 18 months of the effective date of this variance.

4. That the business maintain a front entrance facing Lee Road and appropriate signage.

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

CALENDAR NO. 3478

Grandview-Bellfield Development LLC, 2165, 2171, 2175 Bellfield Ave & 2172 Grandview Ave, "B Two-Family District", to develop a 64 space parking lot, requests variance to Section 1166.06(c)(2) to allow parking rows without interior landscape island (1 for every 10 spaces req'd.), and to Section 1166.06(c) for reduced interior landscape area (10% of parking lot req'd.).

Mr. Zych stated that he wanted to comment on this Board's jurisdiction and authorization. We are not an elected body. We have not been elected by the citizens of Cleveland Heights. We are appointed and serve only as directed by our code and by City Council. We have a very specific job. If there is a non-conforming use, we are asked to consider allowing the non-conforming use. That is what a variance is. We are not the Architectural Board of Review, we are not the Planning Commission, we are not the Building Department or enforcement. Our judgement and the only judgement we are authorized to make is whether specific variances requested are appropriate and meet the codes requirements. Other matters relating to the use are simply not germane to our decision. We love to hear from the citizens of Cleveland Heights. It informs our decision and gives us a broader perspective. That is why we have public hearings and why we welcome them. At the same time there are only 2 variances before us and both relate to landscaping of the parking lot. Staff can, as they always do, correct me if in any way I am mistaken. The understanding is that the remainder of that use is code-conforming. If a use is code-conforming, it's not this Board's job to prevent it. We have a specific lane. We will act specifically in that lane. We will protect the code, protect the neighborhood, protect the city and give due consideration to the applicant, as we are expected to do. But only to those variances that are before us. Facts are important to us and facts are helpful, but before us are the two variances that have been read that deal with the landscaping, so that is what the Board is most interested in hearing about and is the judgement we have to make. So after that long explanation we will go to the staff report dated March 14, 2019. If there is no objection it will be entered into the record. Hearing no objection, it is so entered.

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

Mr. Zych stated that the Board has received some communications regarding this request, that we can make a part of the record. An email dated March 13, 2019, from Mr. Saltzman and if there is no object it will be entered into the record. An email dated March 10, 2019, Kenneth Kowalski; email dated March 13, 2019, from

Sal Russo; email dated March 13, 2019, from Kay Lipman; and email dated March 13, 2019, from Bridgett Feable, Luna Bakery, hearing no objection, all the letters will be entered into the record.

Ms. Knittel's staff report was as follows:

Context

- These parcels are all located in a B Two-Family District
- The parcels to the north are commercial uses zoned C2 Local Retail
- To the East, across Grandview Avenues is the Dave's Market parking lot zoned C2 Local Retail.
- To the West across Bellfield Avenue is are single and two family homes B Two-Family District.
- To the South between Bellfield Avenue and Grandview Avenue are single and two-family homes zoned B Two-Family.

History

The existing small parking lot fronting on Grandview was once owned by the Russo's who, in the 1970s, transferred the two parcels (685-26-033 & -034) to the City to manage with parking meters and permit spaces. The Russo's/Grandview-Bellfield Development have regularly purchased employee parking permits in this lot #22 from the City for Dave's and their other tenants' employees. Some residents of nearby apartments park in the Dave's parking lot as well. Grandview-Bellfield Development acquired additional parcels: 685-26-035 (vacant), 685-26-077 (vacant), 685-26-076 (2171 Bellfield), and 685-26-075 (2175 Bellfield). Grandview-Bellfield Development is working with the City to reacquire the now-public parking lot #22.

Project

The applicants propose to expand the existing Lot 22 parking and it will cease to operate as a City lot and will instead be operated by Cedar Grandview as a private lot for the benefit of their tenants, patrons and residents. They have no plan to meter the lot, however some spaces may be reserved for exclusive use of certain businesses during specific hours. The proposes a 64-space parking lot to replace the existing 18-space lot, resulting in 46 additional parking spaces with landscaped buffers to the east, west and south. The proposed extensive landscaping includes a 15' landscape buffer adjacent to Grandview and Bellfield and a 10' landscape buffer and fence adjacent to the residential properties to the south. The expanded parking lot includes an access drive to Bellfield Avenue.

The proposed parking lot is code conforming except for two landscape regulations: Section 1166.06(c) (2) requiring one landscape island for every 10 parking spaces in a row and Section 1166.06(c)(3) requiring the interior landscape area of a parking lot to be a minimum of 10% of the parking lot.

Facts

- The Desman Parking Study of the Cedar-Fairmount District documents a need for additional parking.
- Section 1161.13 provides exceptions to off-street parking requirements stating that new uses in an existing building shall not be required to provide off-street parking.
- Since the opening of restaurants in the Cedar Fairmount District, there have been numerous complaints to the city about commercial-use parking along Grandview and Bellfield.
- Antidotal evidence of statement made by residents at multiple public hearings held over the past year also indicates a need for additional parking.
- The 64 parking spaces provide additional off street parking is proposed to alleviate some of the commercial district parking shortage.
- Code 1121.04(k) states that, in a "B" Two-Family District, accessory parking for a commercial use, contiguous to a commercial district, is conditionally permitted.
- At the March 13, 2019 meeting, the Planning Commission approved the lot consolidation for this project.
- At the March 13, 2019 meeting, the Planning Commission approved the conditional use permit for the parking lot contingent on the variances being approved. (The Planning Commission action sheet is attached.)
- The proposed parking lot is 24577 square feet. (site plan measurement)
- The proposed parking lot conforms to the front yard setback as established in Section 1121.08(a)(2).
- The proposed parking lot conforms to the required parking space size of 9'by20' established in Section 1161.11(a).
- The proposed parking lot conforms to the minimum required circulation aisles established in Section 1161.11(c).
- The proposed parking lot conforms to the drainage regulations specified in Section 1161.11(e) which requires underdrainage and disposal of storm water. The project includes an underground storm water detentions system.
- Section 1166.06(b) Perimeter Parking Lot Landscaping provides for the enhancement and screening along public streets and requires a minimum of 15' in width. Along Bellfield Avenue and Grandview Avenue the perimeter landscaping area is 25+ feet wide.
 - The proposed plant selection is code conforming. If the variances are granted, a condition could include a requirement that the final landscape plan should be approved by the Planning Director.
 - The perimeter parking lot landscaping area is protected with curbs and code conforming.
- Section 1166.06(c) (1) requires parking lots with 10 or more parking spaces to include interior parking lot landscaping. The plan does have interior landscaping.

- Section 1166.06 (c) (2) requires a parking lot island to be provided for every 10 contiguous parking space. The plan has one interior landscape island located in the center row of parking. VARIANCE REQUIRED
- Section 1166.06(c)(3) requires that all rows terminate in a parking lot island and that the total interior landscaped area is 10% of the parking lot area.
 - The proposed plan does have the row of parking terminated with parking islands meeting the first part of this code.
 - The total interior landscape area is 1.9%, less than the required 10%. VARIANCE REQUIRED
- The landscape buffer along the south side, adjacent to the residential properties is 11 feet wide where a minimum of 10 feet is required by Code 1166.07(b).
- The property slopes from the southeast towards the northwest corner.
- The residential properties to the south are at a higher elevation than the proposed parking lot.
- The landscape buffer along the south side, adjacent to the residential properties will slope down from the residential properties to the parking lot.
- Lighting conforms to the regulation stated in Section 1165.07 Exterior Lighting Requirements.

If approved, conditions may include:

1. The interior landscape area of the parking lot shall be a minimum of 1.9% of the total parking lot area site plan February 13, 2019;
2. The interior landscape area shall have a minimum of three landscape islands as shown on the site plan February 13, 2019;
3. Applicant shall obtain City Engineer and Cuyahoga Soil & Water Conservation District approval of plan;
4. Landscape Plan approved by the Planning Director;
5. Architectural Board of Review approval of the fence as required;
6. Receipt of applicable building permits; and
7. Complete construction within 18 months of the effective date of this variance.

The applicant is present and prepared to discuss the practical difficulty.

Mr. Zych asked the applicant to come forward and give his name and address.

Brian Uhlenbrook, 6405 York Road, Parma Heights, came to the microphone.

Mr. Zych stated that the Board has an application dated February 13, 2019. He asked the applicant whether to the best of his knowledge the content of the application was true accurate and current.

Mr. Uhlenbrook answered affirmatively.

Mr. Zych stated that if there was no objection the application will be entered into the record. Hearing no objection, it was so entered.

Mr. Uhlenbrook stated that he want to talk about the special conditions of the lot. Looking at the layout of the lot, he referred to the row of parking to the north, the middle and a row to the south. Based on the dimensions of the lot they look at different configurations trying to maximize the number of parking spaces. There is an established need for parking in this area and this will help although it won't completely solve the problem. Every parking space is very critical in this lot. The dimension of the lot only allows one row of parking in the center of the lot. Typically, two rows of parking with two driving aisles, you should be able to stack your parking in the middle. So the efficiency of this parking lot reduces already, so we are not getting as many spaces as we would like. We've tried angled parking and several different scenarios. The owners also looked into obtaining additional property to the north but that didn't work out. We've done our best to maximize the number of spaces within these dimensions. Through the years the owners have obtained some abutting properties and the code has changed over the years. We have done our best to conform to the current code in order to provide the best product in the end. One of the things we have tried to do is to compensate for the loss of the required interior parking is to provide additional buffering to the east and west along Bellfield Road and Grandview Avenue and additional buffering to the south. He showed additional slide to the Board indicating the additional 25 feet of landscaping further screening the view of the public of the parking lot. The public will only view well-established landscaping from the street. The landscaping requirement of 1 tree every 25 feet on center. Along the south perimeter 11 trees is required and 14 trees will be provided. Along the south buffer of shrubs the code requirement is 1 shrub every 3 feet on center which equals 92 shrubs, where 109 shrubs will be provided. Along the buffers to the east and west, 19 trees and 117 shrubs will be provided respectively. We are exceeding these minimum requirements to compensate for the loss of the required interior landscaping. Regarding the character of the neighborhood, there is an existing parking lot in this location and retail to the east and to the north.

Mr. Zych asked the applicant to address the drainage issue as it relates to reduced greenspace.

Mr. Uhlenbrook explained that the site drains from the east to the west. There are inlets on the west side of the site that will pick up any runoff before it leaves the site. It will go from there into underground storm water chambers so as not to overload the storm sewer systems. The chambers selected are open bottom. Although we haven't done any infiltration testing on this site, the open bottom provides more opportunity for the water to infiltrate into the soil.

Mr. Brooker asked the applicant if he had considered having no access off of Bellfield, having only access from Grandview.

Mr. Uhlenbrook stated that option was discussed but it was felt there was a need for access on Bellfield. One reason is that there is a traffic light on Grandview. Rather than back up traffic at the light, people can go onto Bellfield, avoiding stress at the Grandview intersection.

Mr. Hoen asked since the code requires 10% of the total interior area to be landscaped and the proposal is for 1.9%. Does the 1.9% include the additional frontage or is the additional frontage in addition to the 1.9%?

Ms. Knittel stated that we did not include that additional frontage. We only counted the 3 islands that are shown as interior.

Mr. Hoen asked if the dimensions are known of the additional frontage and does that equal approximately 8% of the area to be landscaped.

Mr. Uhlenbrook stated, referring to the colored site plan, that the lighter green area is the interior landscaping which equals the 1.9%. When the darker green areas, the additional buffering, is added, it brings the percentage up to 10.4%. So the requirement is exceeded by .4%.

Mr. Porcelli asked if the issue of snow removal had been considered in terms of landscaping as to whether it could stand up to where the snow would be put when the plows come.

Mr. Uhlenbrook stated that was always a challenge. The plant materials selected, a lot of grasses and things that will fall over when snow is plowed onto it. On the west side an effort is being made to provide as much screening as possible. There are a lot of evergreen trees and larger shrubs that are in that area. Those wouldn't handle the snow plowing as well, so we have to be careful on that side. When there is a lot of snow they will have to manage it as best they can within that space.

Mr. Zych opened the public hearing. Hearing no one who wished to speak, Mr. Zych closed the public hearing. There being no further questions from the Board, Mr. Zych asked for a motion.

Mr. Hoen moved regarding Calendar No. 3478, Grandview-Bellfield Development LLC, 2165, 2171, 2175 Bellfield Ave & 2172 Grandview Ave, to grant the application for a variance to Section 1166.06(c)(2) to allow parking rows without interior landscape island (1 for every 10 spaces is required, and to Section 1166.06(c)3 for reduced interior landscape area where 10% of parking lot is required after reviewing the application and other submissions, hearing the evidence under oath, I find and conclude that there are special conditions and circumstances which exist for this particular property. First of all this is an existing parking lot, number 22, which is being extended to include neighboring and

contiguous parcels in order to alleviate some of the parking congestion in this now heavy business district which is also abutting a residential district and this particular plan takes into consideration the fact that abutting a residential district and so provides additional frontage above and beyond the required amount to buffer the residential lots. In addition the code-conforming amount of landscaping would require 10% of coverage on this particular lot. We have 1.9% on the interior however the design does provide for excess of 10% coverage of landscaping which although not to the letter of the code does certainly conform with the spirit of the code. There would not be any adverse effects on the neighborhood. This is already an existing parking lot, a portion of this lot is a parking lot but the portion that is being converted into a parking lot is taking into consideration sufficient buffering between the residential areas and the parking lot so as to leave the residential areas unaffected. There won't be any adverse effect on delivery of government services. This action is not the direct of the actions of the owner. The owners intention is to relieve the desperate need for additional parking in this area. A number of letters of support were submitted by neighboring business owners who are feeling the pinch when it comes to parking in this area and certainly all of us who have been to this area and experienced the difficulty in finding parking. Very un-Cleveland-like but we still do have some areas that have a serious lack of parking. This would not confer any special privilege on the applicant because the intent is to provide a benefit for the public at large. If granted conditions should include:

1. The interior landscape area of the parking lot shall be a minimum of 1.9% of the total parking lot area site plan February 13, 2019;
2. The interior landscape area shall have a minimum of three landscape islands as shown on the site plan February 13, 2019;
3. Applicant shall obtain City Engineer and Cuyahoga Soil & Water Conservation District approval of plan;
4. Landscape Plan approved by the Planning Director;
5. Architectural Board of Review approval of the fence as required;
6. Receipt of applicable building permits; and
7. Complete construction within 18 months of the effective date of this variance.

Mr. Gilliam seconded the motion. The motion carried 4-1, Mr. Brooker was opposed. The variance is granted.

OLD BUSINESS

Ms. Knittel reported that City Council held a public hearing on Monday night for 1774 Lee Road use variance to allow a bakery operation in a multi-family district which BZA approved. City Council approved this variance.

NEW BUSINESS

Ms. Knittel stated that we have received one case for April so there will be a meeting. She asked Ms. Gates to share her news.

Ms. Gates stated that this would be her last BZA meeting as she was retiring from the city.

Mr. Zych said "Ms. Gates, you have been an immense asset to this Board. You have made our work immensely easy, and have brightened all of our meetings. We are afraid of how we are going to get along without you. We wish you well. Your service has been long and excellent and much appreciated. You retire with our respect and our gratitude and our deep affection."

Ms. Gates said "Thank you so much."

ADJOURNMENT

There being no further business to come before the Board, the regular meeting was adjourned at 7:52 p.m.

Respectfully Submitted,



Thomas Zych, Chair



Richard Wong, Secretary

