

CITY OF CLEVELAND HEIGHTS
BOARD OF ZONING APPEALS
MINUTES OF THE MEETING
OCTOBER 30, 2019

MEMBERS PRESENT:	Denver Brooker	
	Benjamin Hoen	Vice Chair
	Liza Wolf	
	Thomas Zych	Chair
STAFF PRESENT:	Ben Lee	Planning Technician
	Karen Knittel	Planner II
	Natalie Thomas	Assistant Law 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 FROM THE JULY 17, 2019

Mr. Zych made several non-substantive changes to the minutes. Mr. Hoen moved to approve the July minutes as presented. Mr. Brooker 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 explained the purpose and procedures for tonight's meeting 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(e) (1). The burden is upon the applicant to demonstrate by a preponderance of the evidence 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

OCTOBER 30, 2019

Calendar No. 3489

Lorna Rudolph, 3669 Fenley Road, zoned 'A' single-family, requests variance to Code Section 1121.12(p)(2) to permit the driveway width to exceed 12 feet to the garage door.

All those who wished to testify were sworn in by Ms. Thomas

Ms. Knittel's report was entered into the record, and she proceeded with her presentation.

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

In July 2018 a variance to allow the construction of a 19' wide by 25' long parking pad in the front yard was denied 4-1. (Cal No. 3461 Final Determination document is attached.)

The applicant would like to install three additional feet of pervious brick material on either side of their 10' driveway, making the total width of the drive 16'. This would be 20' long and then taper back to the 10' wide driveway.

Facts

This parcel is code conforming. It is 50' wide and 8,300 square feet A code conforming parcel in the 'A' Single-Family district needs to be a minimum of 50' at the building line and have a minimum area of 7,500 square feet. (Code Section 1121.06). This is a single-family house with an attached one car garage facing the street. The majority of homes in this neighborhood are single family with an attached garage facing the street. The distance from the garage to the east property line is 8' at the garage door and narrows to 7' at the rear wall of the garage. The distance from the driveway to the east property line is 8'. The garage door & driveway width is

10'. From the garage door to the public right of way is 44.4'. A standard parking space is 9' wide by 20' wide. (Code section 1161.11(a)). Code Section 1161.105(a) limits a residential driveway that provides access to a garage to twelve (12) feet in width. A driveway apron, the width of the garage, is permitted to extend for a distance (depth) of twenty (20) feet. (Code Section 1161.105(a)). For attached garages located less than twenty-five (25) feet from the lot line, the driveway is permitted to be the width of the attached garage with no tapering required on private property. (Code Section 1161.105(a)). The apron can be a maximum of twelve (12) feet. (Code Section 1161.105(a)). There are 26 houses with attached garages facing Fenley in the block between Quilliams Road and Stoneleigh 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 (1 Car Garage) - approximant width 15'

3659 Fenley (1 Car Garage) - approximant width 14'

3696 Fenley (1 Car Garage) - approximant width 14'

3636 Fenley (2 Car Garage) -approximant width 16'

3684 Fenley (2 Car Garage) - approximant width 18' by garage narrows to 16'

3714 Fenley (2 Car Garage) -approximant width 20' by garage narrows to 15'

3654 Fenley (1 Car Garage) - approximant width 16' by garage narrows to 11'

The driveway and walkway at 3669 Fenley Rd. are very narrow. When my husband and I or even visitors park in the driveway, it doesn't allow enough room to get out of the car and to walk to the door without walking on the grass. GDE permits width of 12' or width of garage door. Since only single car garage was built in the 1950's, zoning codes

If approved, conditions may include:

A variance to permit the driveway width to be increased up to a maximum of 16' at the garage door by adding two 3' wide stripes of pervious material on both sides of the existing 10' wide driveway as shown on the site plan submitted with the variance application;

Receipt of a Building Permit; and

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

Mr. Zych asked the applicant to come to the microphone. Lorna Rudolph, 3669 Fenley Road came forward, having been sworn in.

Mr. Zych stated that the Board had received an application dated 9/11/2019, submitted by the applicant. He asked the applicant if she could affirm that the information contained in the application is true and correct to the best of her knowledge.

Ms. Rudolph stated that it was.

Mr. Zych entered the application and statement of practical difficulty into the record. She sat down, and the room was opened up for public comment.

Margret Witt, 3673 Fenley Road, (property that is immediately east of the applicant's property) began to speak.

She stated her issue with the proposal is that the ground slopes downward from her property onto Ms. Rudolph's. She believes for this project to proceed, they would need to build some sort of retaining wall to prevent erosion. She stated her property line was incorrectly displayed on the map shown, and that this would be encroaching on her home.

She presented no proof of this. Upon further questioning she referenced her home's 1961 blueprints that were received up construction of the home. She failed to present these materials to the Board.

Mr. Zych asked staff if this were the case. Ms. Knittel responded that this measurement had not been performed, as it was not anticipated this problem would arise. She had, however measured with the MyPlaceCuyahoga.us, and that it was eight feet away from the property line at the closest point, and that as the driveway led away from the home, its taper increases the distance from the neighbor's property line.

Ms. Witt maintained that she was in the right, stating that her home's blueprint, given to her in 1961, proved she was the owner of that land.

Mr. Zych answered that a blueprint is not a land survey. He stated that the official records of Cuyahoga County are not disputable, and that it is correct in its indication of where the property line lies. He asked for staff to confirm this. Ms. Knittel agreed, noting that it would likely not be off to the degree that Ms. Witt is alleging.

Ms. Witt continued, stating that a retaining wall is necessary, as well as absent from the proposal.

Mr. Zych thanked her for testifying about this matter, and asked for the applicant to return to the podium. Additionally, he noted that Ms. Rudolph would be allowed to respond to Ms. Witt's comments, but that they must be directed towards the Board.

Ms. Rudolph stated that previous investigations into this project have noted a retaining wall is unnecessary at this time. She added that there is a maple tree near the property line that Ms. Witt is concerned about, and that she is trying not to harm either the tree, or its roots.

Mr. Zych opened the floor to questions from other members.

Mr. Hoen asked if there was only eight feet between the garage and the property line, to which Ms. Rudolph answered yes.

Mr. Hoen suggested that this would be insufficient for building a secondary garage unit onto the home, also preventing her from being able to widen her driveway to that point.

Mr. Brooker asked Ms. Knittel to define the term sidewalk, seeing that this may be misleading to neighbors.

Ms. Knittel responded that she and Ms. Rudolph had spoken about this prior to the hearing, and that it was not Ms. Rudolph's intention to mislead her neighbors into believing that she had built additional walk ways to her home. That way, if a car did park on the brick portion, it would not be seen as obstructing pedestrians.

Mr. Hoen asked if Ms. Rudolph had received consultation from a contractor about this project, and if they believed a retention wall was necessary.

Ms. Rudolph answered that a contractor had been consulted, and that there was no need indicated for a retaining wall.

Ms. Wolf asked Ms. Knittel whether the pavers would go out beyond the current distance set by the garage walkway. Asking a follow up question, she asked Ms. Rudolph if the contractor believed she needed a retaining wall. Ms. Rudolph answered no to both.

Mr. Zych asked if there was any excess runoff or water issues related to the paved path adjacent to the garage was. Ms. Rudolph answered no.

Mr. Zych asked if there was a motion.

Mr. Brooker moved to grant the variance for Code Section 1121.12(p)(2) to permit the driveway width to exceed 12' at the single car garage door. After reviewing the application and other submissions, hearing the evidence under oath, the Board finds and concludes:

Special conditions/circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same Zoning District, in particular:

A number of residents' homes that have driveways that exceed 12 feet. There is a condition that is peculiar to this and likely other homes in the neighborhood in terms of being able to adequately use the driveway and get out of the car.

The variance is insubstantial and is the minimum necessary to make possible the reasonable use of the land/structure as demonstrated by the fact(s) that:

The proposed driveway improvements are made of a material as such that it doesn't actually like a driveway, even though it can be used as one. It will appear as two sidewalks made out of a brick-like material.

The essential character of the neighborhood would not be substantially altered as a result of the variance, due to the aesthetic value of the additional pavement.

The variance would not adversely affect the delivery of government services.

If granted, the variance shall have the following conditions:

A variance to permit the driveway width to be increased up to a maximum of 16' at the garage door by adding two 3' wide stripes of pervious material on both sides of the existing 10' wide driveway as shown on the site plan submitted with the variance application;

Receipt of a Building Permit; and

Complete construction within 18 months of the effective date of this variance;

The pervious material should be brick-like, or a brick-like material. This doesn't allow for a gravel, or other pervious material.

Mr. Hoen seconded the motion, and all voted in favor.

The motion carried and the variance was granted 4-0

Calendar No. 3490

Tim & Genevieve Kenealy, 2328 Lamberton Road, zoned 'A' Single-Family, requests variance Code Section 1121.12(i)(1) to permit the fence to be taller than 4-foot maximum height permitted in the corner side yard along Corydon Rd.

All wishing to testify were sworn in by Ms. Thomas

Ms. Knittel gave her presentation.

2328 Lamberton Road is a single-family home adjacent to other 'A' Single-Family houses on the North, South, and East sides. The homes west of the property are zoned 'AA' Single-Family.

The applicant proposes to construct a 6' tall fence running parallel to Corydon Road beginning approximately at the rear of their house to their driveway as shown on the site plan submitted with their application. The fence will have posts that are 6'7" tall. The applicant will maintain the existing shrubs that are located adjacent to the public sidewalk along Corydon.

2328 Lamberton is a corner property located at the northwest corner of the Lamberton Road and Corydon Road intersection. It is a code conforming parcel with 83' of frontage along Lamberton Road and an area of 18,260 square feet. A parcel in the 'A' Single-Family district needs a minimum of 50' at the building line and have a minimum area of 7,500 square feet. (Code Section 1121.06). There is approximately 12' from the side of the house to the property line shared with the Corydon public right-of-way. There is approximately 40' from the rear of the house to the driveway. The distance from the rear of the house to the rear property line is 140'.

The corner side yard is defined as the yard between the principal building and the side lot line adjacent to the street and extending from the front yard to the rear lot line. (Code Section 1103.03(b) (119)).

A fence located in the corner side yard may be a maximum of 4' above ground level. (Code Section 1121.21(i)(1). A fence located in the rear yard may be a maximum of 7' above the ground level. (Code Section 1121.21(i)(2). The arbor in the rear yard is 8' tall; the maximum height of an accessory structure is 15'. (Code Section 1121.12 (g)). The portion of the applicants' fence is located in the corner side yard, requiring the variance as the fence is 6' tall and the posts are 6'7" tall. The distance from the fence to the rear property line is approximately 94 feet.

The applicant intends to maintain the existing row of shrubbery located adjacent to Corydon Road. The location of the fence and the current shrubbery comply with the visibility at driveway regulations. (Code Section 1165.03(e)(2). The fence was reviewed and approved by the Architectural Board of Review at their October 17, 2019 meeting.

The applicant has submitted a Statement of Practical Difficulty with their application and it is attached to this staff report.

If approved, conditions may include:

A variance to permit a 6' tall fence with 6'7" tall posts as shown on the site plan submitted with the variance application;

Receipt of a Fence Permit;

Compliance with Code Section 1165.03(e)(2) visibility at driveways regulations;

The existing shrubbery or a landscape plan approved by the Planning Director shall be maintained along the fence parallel to Corydon Road.

Complete construction within 18 months of the effective date of this variance; and

A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the height of the fence or post or increase the length of the fence in the corner side yard.

Mr. Zych entered the application and statement of practical difficulty into the record.

Mr. Kenealy stated that he had wished to put in landscaping initially, hiring two landscape architects to suggest flora and designs. But both had suggested the tree canopy would be too dense to provide adequate sunlight.

He stated there is a precedence in the neighborhood, noting a nearby home on a corner lot with a fence along their corner side yard.

Mr. Zych asked him to speak about the need for a 6' high fence and the style proposed.

Mr. Kenealy stated the allowed building height of 4' would not be adequate and would rather not build a fence if prohibited from building higher. It wouldn't be enough to provide the privacy that they're looking for. He described the fence as a 5' high fence with a foot of lattice on top, with a half-inch space between each board. It is not meant to completely enclose the space; its intention is to be more of an 'open' fence.

Mr. Hoen asked whether Mr. Kenealy considered this corner side yard as his backyard, asking if there would be any need to go before the Board of Zoning Appeals for this same request were he not on a corner side yard.

Mr. Kenealy stated he would not.

Mr. Zych asked staff if he would need to go to BZA for this variance were his yard not located on a corner side yard. Ms. Knittel answered it would not.

Ms. Wolf asked for clarification about the location of the fence. Ms. Knittel stated that the fence would go along the property line and, were this property located on a non-corner lot, would be permitted to build the fence without going before the board.

Mr. Kenealy stated that the fence is going to be located along the immediate or patio backyard.

Mr. Hoen move to grant the application for the variance to Code Section 1121.12(i)(1) to permit a fence to be taller than the 4-foot maximum height permitted in the corner side yard along Corydon Road. Special conditions/circumstances exist which are peculiar to the land/structure involved which are not generally applicable to other lands/structures in the same Zoning District, in particular: This property is a corner property on the corner of Corydon and Lamberton roads, with the front of the house facing Lamberton. The corner side yard is effectively the rear yard

and therefore this would be a code-conforming fence if it were a rear yard, but for the fact that it is considered a corner side-lot. It will not alter the essential character of the neighborhood. It is an insubstantial variance, and therefore it should be granted.

If granted, the variance shall have the following conditions:

A variance to permit a 6' tall fence with 6'7" tall posts as shown on the site plan submitted with the variance application;

Receipt of a Fence Permit;

Compliance with Code Section 1165.03(e)(2) visibility at driveways regulations;

Ensure existing shrubbery or a landscape plan approved by the Planning Director be maintained along the fence parallel to Corydon Road;

Complete construction within 18 months of the effective date of this variance; and

A requirement to return to the Board of Zoning Appeals for another variance should the property owner consider modifications that would increase the height of the fence or post or increase the length of the fence in the corner side yard.

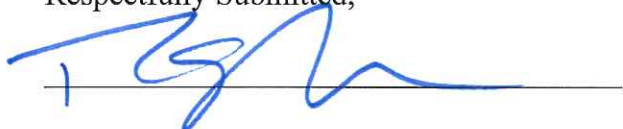
The motion passed 4-0.

Mr. Zych asked if there was any old or new business. Hearing none he made a note to commend our professional staff for the work they do. Our jobs are made easier, the citizens of this city are well-served in the process. It is the desire of this chair to take the opportunity to note that our professional staff serves this community quite well, and it is much appreciated.

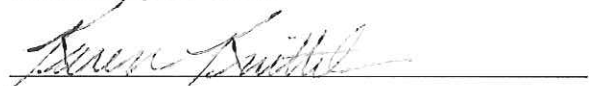
Ms. Knittel relayed her appreciation for Mr. Zych's recognition.

Mr. Zych adjourned the meeting at 7:42 PM.

Respectfully Submitted,



Thomas Zych, Chair



Karen Knittel, Secretary