

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
September 22, 2015**

Members present: Fricke, Holdren, Freshman-Johnson, Maersch
Also present: Lane, Edwards

The meeting was called to order at 8:00 p.m. by Chairman Wade Fricke.

Mr. Fricke said rather than being a five-person Board tonight we are a four-person Board and what that means is that the code requires the affirmative vote of three of us to pass your issue on positively to Council. I always give the applicants the choice if you would rather take your chances that there will five members present next month you are welcome to continue and hopefully appear before all five of us. If not you will need to get three of the four of us tonight.

APPROVAL OF MINUTES

Moved by Mrs. Freshman-Johnson, seconded by Mr. Fricke that the minutes of the meeting held August 25, 2015 be approved. Carried. Ayes: Fricke, Holdren, Freshman-Johnson. Abstain: Maersch. Nays: None.

SWEARING OF WITNESSES

All were sworn in.

FREDERIC HENRY, 264 BELL STREET - REQUEST FOR A VARIANCE TO SECTION 1125.04(b)(4), AREA, YARD, AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, PERMANENT PARCEL NO. 932-10-004.

Mr. Edwards said the applicant is proposing a new driveway on the west side of the house. The proposed driveway will encroach into the 2 foot side yard setback, as required for driveways. It encroaches into the neighbor's property by about 1 foot, 6 inches.

Mr. Fricke asked, is the encroachment on both sides of the driveway? Mr. Edwards said yes, there is a 2 foot encroachment to the driveway closest to the foundation of the house and I believe it is 1 foot in so there is about a 1 foot encroachment.

Steve Ciciretto, Architect, said this a drawing that indicates the cite as it currently is. There is actually a driveway. This is a single-family residence and traditional, historically this has been a rental unit. This drive actually leads to the garage but because of the topography of this site as it drops off there is actually a basement level, a lower level and you actually enter on the mid level off of this drive and then there is a third level above it. This picture indicates the current situation and

both drives that are currently in place.

Mr. Fricke asked, there is no automobile in the current garage now? Mr. Ciciretto said no, and we would like to be able to park in the garage. I think the neighbors would appreciate not seeing all these cars on the property but the first floor is just a stick frame construction. In terms of getting actual access for parking cars, we want to do that down on the lower level. There has been some renovation work, not only on this house but on the neighbor's house directly to the west. And so in doing that, there has been some undermining of this existing driveway, both gravel drives.

Mr. Ciciretto said historically, like this property here has access, the driveway goes all the way through. You can get in from either Cleveland Street or Bell Street. When Cleveland Street was repaved and reworked there is a little piece that Chagrin Falls Village owns that is right in there. There is kind of a rough topography there. We approached Ben Himes asking about the possibility of obtaining an easement instead of this drive but he said the village was not in favor of encumbering their property. So, even though we felt that that would have been a satisfactory way to access this drive and this garage on the lower level, we would have to cut across the property. We approached them and we looked for alternate solutions to the variance but that didn't work.

Mr. Ciciretto said, as Harry had indicated, this drive is 18 inches over the property. You can see the existing curb cut on the survey that we presented. This section of drive has always been in play and is always intact. What we propose to do is to gain access to that lower level to get parking into the garage. Mr. Henry currently is looking at having his mother and the nanny live there so that is why we are looking at expanding the interior use of the garage. What we are proposing is that we would continue to drive along the property and go down the topography and enter from this western side of the garage. That would allow us to free up the drive here, eliminating the drive here, which we think is a benefit to the neighbors. It was received favorably by the Architectural Review Board because we create this green space to the property and open up the Bell Street landscape a little instead of so many drives along this property.

Mr. Ciciretto said we did some renovation work and alterations to repair the foundation. The foundation of the house was in bad shape so they rebuilt the masonry wall. There was a chimney on the side and there is only actually a little over 10 feet between the wall and the property line. The code says that the drive should be 10 feet plus there should be 2 feet of green space to the neighbor and I believe it is 1 foot or 2 feet off of the house also. I think there is an 8 foot drive required but we would be losing at least 3 feet off that 10 feet without the variance. We have approached the neighbor, Mr. Neimeier, and he has agreed to approve an easement; he likes the idea of the shared property. It is kind of a dangerous intersection because it is only two houses from Bell and Cleveland and so cars coming off that Cleveland Street intersection you really want to get off the street. You don't want somebody parking on the street there. Instead of parking on the drive we would have a parking pad that is down off the street.

Mr. Ciciretto said there is a full historic barn, outbuilding structure, that has historically been used for storage. The second floor is kind of set up as a wood shop and the living quarters are upstairs.

This mid floor would become useable for his nanny to live and then this would be the garage. The barn has some historical qualities and we don't want to lose the barn because an alternative could have been to tear the barn down and then build some kind of garage structure but we feel like this is workable for the neighborhood and a great solution for the community because it creates green space. Once we get past the existing drive we are no longer on the neighbor's property. In terms of meeting the intent of the code, I think it works a lot for us to get cars protected. It allows this property to be competitive with the neighboring properties that have garages and usable parking spaces.

Mr. Fricke asked, why are you proposing to leave the western driveway, that top part as gravel? Mr. Ciciretto said it could be surfaced. Mr. Fricke said I assume from the drawing that it is gravel and then it picks up and you will still be out of code when you get off of the neighboring property. Mr. Ciciretto said correct. Mr. Fricke asked, that will be paved as you are proposing? Mr. Ciciretto said I think we would be glad to pave the whole driveway. I was just indicating that it is currently gravel. The reason we can't really change that is because you can see that there is an existing curb cut that leads to that drive. The neighbor has agreed in terms that as long as Frederick will pave the drive he doesn't have an issue with it and that part of the easement agreement.

Mr. Maersch said Section 1125.04(b)(4), driveways may be located in any required yard with the exception of side yards less than 10 feet in width. Mr. Ciciretto said we have 10 feet side yard so we actually meet that section. Mr. Maersch said each driveway shall be setback a minimum distance of 2 feet from any residential building. Mr. Ciciretto said that is the problem. Mr. Fricke said it is 2 feet on both sides. Mr. Maersch said it says 20 inches here. Mr. Ciciretto said you are supposed to have 2 feet off the house and you can see that the drive never was closer to the house than what we are proposing, although we could pave it right to the house now because we took the fireplace down so the 2 feet we are talking about is really off of that. Mr. Maersch asked, so you are 8 feet 9 plus 2 foot 6 on the driveway? Mr. Ciciretto said correct. Mr. Maersch asked, it is 11 feet, 3 inches? Mr. Ciciretto said correct.

Mr. Fricke asked, we currently have 20 inches between the driveway and the house so the variance request is for 4 inches on the house side. Mr. Ciciretto said correct, we even investigated paving to the house line as a way to protect water collecting and it is hard to landscape in 20 inches.

Mr. Maersch asked, is there a minimum width for a driveway? Mr. Edwards said 8 feet. Mr. Maersch said, so it is 20 inches if you went 8 feet, which is the minimum, you would need less of a variance but you wouldn't match the existing curb cut and you would also not match the existing gravel drive. Mr. Ciciretto said correct.

Mr. Fricke asked, has the police or fire chief looked at this from a safety standpoint? Mr. Edwards said no, they have not. We could always have the police look into it from a safety standpoint and make it a condition.

Mr. Holdren asked, there currently is access to Cleveland Street? Mr. Ciciretto said there is not.

Frederick Henry said Mark Gebler grew up in that house and he is the one that actually told me that there definitely was a curb cut on Cleveland Street and it has historically always been used as a driveway. I also bought the house completely on the fact that that was a driveway so I don't know if that is considered as a grand-fathered situation.

Mark Gebler said that curb was actually driveway cut at one time when they redid Cleveland Street when they put Commons Court in. They poured a curb that was a driveway curb there. Since then it has been re-curbed so that there is no access. My Mom and Dad bought the house in 1973 and until about 2010 the majority of that time there was a curb cut for a driveway down at that lower end and we used it as a driveway on a regular basis.

Mrs. Freshman-Johnson asked, there is not an existing easement today so you didn't buy it with an easement? Mr. Henry said correct but there is not one driveway there in that neighborhood that is conforming to the code rules. My neighbor's driveway is 60% on his property and 40% on the other neighbor's property and it is one after the next. The first four houses all connect between Cleveland Street and Bell Street. He said no, there was no existing easement. I had an easement already in the works with the previous owner and then I found out the property was sold so I had to go back to square one and talk with the new owner. The way I see it in a very summarized format, I have 10 feet of property between the house and the property line. There is 14 feet between the two properties. My neighbor is fully endorsing the driveway to be on the property line. He doesn't require the 2 feet setback so we can be completely code compliant having 2 feet from the house and then an 8 foot driveway. I have poured a ton of money into this property already and I want to fix up the bottom as well. I am just counting on your cooperation.

Mr. Ciciretto said regarding safety, what you would notice is that in the current drive situation there is really no turnaround so you now have to back out onto Bell Street and that is an adventure.

Steven King, 291 Bell Street, spoke in favor of the variance request.

Margie Carpenter Welder, 272 Bell Street, spoke in favor of the variance request.

Moved by Mrs. Freshman-Johnson, seconded by Mr. Maersch to approve the variance request submitted by Frederick Henry at 264 Bell Street regarding Section 1125.04(b)(4) of the code for area, yard, and height regulations. We have a situation of an existing gravel driveway that is requiring a 4 inch setback variance on one side of the driveway and approximately 2 feet on the other side of the driveway. In order to create a new driveway access from Bell Street to replace what seems to be a historically previous access that has been since cut off from Cleveland Street and to allow a renovation and improvement of an existing barn building to allow for indoor garage parking and renovation of the floors upstairs in order for living space and other desirable amenities. The review of safety is also a concern. The ability today to back out onto a busy road has been impaired and with an addition of a new driveway down to the lower level topography of the property would allow room for a turnaround and then forward entry back onto Bell Street. They have looked at significant options even going to the city to ask for an easement to reopen the access from the Cleveland Street

entrance as once was historically provided to the property. However, that was not an option. All the neighbors in the community have spoken in favor of this renovation that will improve the look and feel of the neighborhood in allowing the cars to be removed from the front of the property and adding green space. This variance should be approved with the assumption that the neighbor would provide the easement to provide the existing driveway to be put in the curb structure that exists today. For all those reasons I make a motion to approve the variance.

Freshman-Johnson: Aye.

Fricke: I would say aye. I also can't imagine that the police or fire would have any negative opinion. It seems it is only positive but I would request that they review and my vote on aye would be subject to their approval of the plan from a safety and fire standpoint.

Holdren: Aye.

Maersch: I vote aye. I find that the variance is not substantial. I find that the central character of the neighborhood is improved and I find that the spirit and the intent behind the zoning requirement is observed by this variance.

Mr. Edwards said this will go to Council for final action on Monday, September 28, 2015 at 8:00 p.m.

LARRY SHIBLEY, 41 NORTH MAIN STREET - REQUEST FOR A VARIANCE TO SECTION 1137.03(c)(1), AREA AND HEIGHT REGULATIONS, AND SECTION 1145.02(b), NONCONFORMING BUILDINGS, PERMANENT PARCEL NO. 932-06-019.

Mr. Edwards said the existing building is 42 feet in height and the applicant is proposing a 7 foot height addition for a parapet bringing the overall height of the building to 49 feet.

Larry Shibley, said we are not trying to create anything fancy, we are restoring the building to what was originally there. We have all of the historical records that show that that cornice exactly the way it is drawn there was the original cornice on the building that probably was not built substantially enough and was compromised and the cheapest thing to do was to take it down and put a new sandstone lateral cap over the brick that was there and not to deal with it. It is part of the original design and we are working to restore the main level of the building to the original look. The current look is some cheap Home Depot style siding that covers the old trims and windows and a very colonial look to a non colonial building. We will ultimately be replacing the windows to the original style, a single-pane window, and hopefully adding the cornice and doing some restoration on the side to some windows that got covered up there as well.

Mr. Fricke said the challenge for me, that I would appreciate you addressing, is I have personally in the past voted against aesthetic changes because I think the code speaks to finding a practical

difficulty and there is a whole series of tests. I just had a hard time in many cases with purely aesthetics. Could you address that concern? You touched on the historic significance maybe you could expand upon that. That building seems to indicate 1875 and 1910, what are those dates? Mr. Shibley said we researched this totally. The Tenney Family built a building in 1875 for a department store and outgrew it, temporarily moved away, tore the building down, and in 1910 completed the building that is there so that is why the two dates exist.

Mrs. Freshman-Johnson said the question is, what made you want to do this all of a sudden? What is the difficulty or what caused this topic to come up? Mr. Shibley said I know that you have rules of practical difficulty and all that but this is probably not that situation. Our passion is to restore to what the building originally was and I think it should be looked at differently if we were trying to make the building more brand or different than what it was originally intended. We are basically making a repair of something that has been ruined many years ago and never got repaired. This building was approved and built with a permit and proper architect and it is still marked that way.

Mr. Fricke asked, is there any evidence when the parapet went away? Mr. Shibley said I don't know that. I would guess that probably in the 40's or 50's.

Mr. Fricke asked, is there any evidence that the village is, there is an ongoing effort to try and go back to the historic structure in the downtown area? Mr. Edwards said no, there is not an effort by the village. Mr. Shibley has restored some of the buildings on North Franklin Street and taken them back to their original fabric. This did go in front of the Architecture Review Board and they were highly pleased at what they saw and what he was doing and they approved his submission.

Steven King, 291 Bell Street, spoke in favor of the variance request.

Mr. Shibley said we have probably done eight or nine buildings and there has always been extensive research to find out what was there and what was covered. Some of that comes through demolition, which the village has helped us with giving us before we have ARB approval to let us do demolition to find out what was there and then restructure these things the best way possible. We've sourced the exact brick that will match, the sandstone that will match, and we have engineered a structure that will be permanent and can't be compromised by weather.

Mr. Fricke asked, will you match the lettering as well? Mr. Shibley said yes, from the actual pictures that we worked off of not the computer generated picture. We have been at the historical society and looked at their pictures and documents and a lot of the information we got was from the Chagrin Falls Exponent where they had articles about the store closing and being rebuilt and where the temporary store was.

Mr. Fricke said I assume that the size of the sign is not an issue.

Mrs. Freshman-Johnson said a lot of times in our code we have exemptions for certain commercial spaces in our downtown area, parking is one example, and I was surprised that this would not also

meet some code exemptions. There is nothing in there for this commercial space? Mr. Edwards said no, because he is not really expanding the footprint or the use; this is just a parapet. Mr. Shibley said it is grand-fathered on all parking. The parking has changed recently in that district where for whatever the usage is in the interior there is no parking requirement.

Mrs. Freshman-Johnson said more for record of discussion is the materiality of the 7 foot variance might seem significant at first but it is really only that one piece at the very height because of the shape of the parapet there and so the space is really not a 7 foot square foot type of block, it is just one piece of the height and those pieces are much less significant in the 7 foot. The variance sounds significant on paper, however in actuality it is really a very small piece of that that has that significance.

Mrs. Lane said I think that the variance would have to be 9 feet because I understand that 42 is existing but the requirement is 40. Then that addresses the existing nonconformity as well.

Mr. Shibley said it is in general with other taller buildings in the village it is not out of range. He said his problem with the code is if the village's codes for these buildings fulfilled themselves you would have about thirty kiosks in town and no buildings. Mr. Fricke said and no houses.

Mr. Fricke said we have each been given an e-mail from Fire Chief Frank Zupan to Harry and to Ben Himes where the fire department is suggesting that there is no objection from a safety standpoint to the proposal.

Moved by Mrs. Freshman-Johnson, seconded by Mr. Maersch to approve the variance to Section 1137.03(c)(1), area and height regulations and Section 1145.02(b), alteration of nonconforming buildings a requested variance of 9 feet for the height for a historical building. Much discussion is spent that the passion and intent of this variance is to restore the historical nature of Chagrin Falls, which is essentially known for its historical value and neighborhood. The intent is to follow the exact historical nature with significant research done to insure that significance is restored to fact and historical nature. The Architectural Review Board has reviewed the plans and is favorable upon this request. The safety concerns addressing a roof that has a parapet has been addressed by the letter from Fire Chief Frank Zupan regarding the firefighting life saving operations would not be hindered. In addition, although material of 9 feet seems significant because of the shape and the size of the parapet there is only one point at which the 9 feet is reached and the other points are significantly less making the variance much less significant than the number it represents. For all these reasons I make a motion to vote aye.

Freshman-Johnson: Aye.

Fricke: I would make a statement first. I have in the past voted nay on the aesthetic issues which I don't think meet the definition of practical difficulty. I would, in this case however, vote aye because I believe that there is history involved in this. I believe that the essential character of the neighborhood would be

altered for the better on the downtown area with restoration and the evidence of the historic nature of the building. We have evidence from the Fire Chief that there is no adverse impact on their safety issues and there is no evidence that the variance was based on circumstances that were self created that Mr. Shibley bought the building when it was in its secondary state. I would vote aye but this one gets close to being an aesthetic issue for which I would vote nay but because of the historic significance I vote aye.

Holdren: Aye.

Maersch: I vote aye. I do find that the variance is substantial. I find that is easily outweighed because this change will substantially improve the essential character of the neighborhood. I also note that it will not adversely affect the delivery of government services on the record and I find that the spirit and intent behind the zoning requirement will be observed by granting this variance.

Mr. Edwards said this will go to Council for final action on Monday, September 28, 2015 at 8:00 p.m.

The meeting adjourned at 8:50 p.m.

Wade Fricke, Chairman
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