

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL
CHAGRIN FALLS, OHIO

3845

IN RE: VARIANCE REQUEST OF) FINAL ORDER OF COUNCIL
JON AND DANA MATTA) AND CONCLUSIONS OF FACT
FOR PROPERTY LOCATED AT)
220 KENTON ROAD) ADMINISTRATIVE ORDER
) NO. 2014- 83

This matter is before the Chagrin Falls Village Council pursuant to the request of Jon and Dana Matta ("the Applicants"). The Applicants own the residence at 220 Kenton Road ("the Subject Property"). The Applicants propose to replace the roof structure on the existing, non-conforming accessory building. The existing garage is eight hundred thirty-seven (837) square feet and is located in the front yard of the Subject Property. The Applicants propose to replace the existing low pitch roof with a higher pitched roof.

Pursuant to Section 1145.02(b) of the Codified Ordinances, non-conforming buildings shall not be altered, added to or enlarged unless the additions and original building are made to conform to the yard, coverage and height regulations of the district in which it is located.

Section 1125.04(a)(2) of the Codified Ordinances state that the total area coverage for all accessory buildings on a lot shall not exceed seven hundred (700) square feet. Because the Applicants propose to modify structural elements of the garage, a legal non-conforming structure, they lose their grand-fathered rights and must obtain a variance to this restriction. The existing structure exceeds the limit by one hundred thirty-seven (137) square feet.

Section 1125.04(a)(3) of the Codified Ordinances require that accessory buildings be located only in rear yards. The existing structure is located in the front yard. Therefore, the Applicants are requesting a variance to this requirement.

The Village of Chagrin Falls Board of Zoning Appeals met on December 2, 2014, received evidence and testimony, and heard the arguments of the Applicants and comments from the neighbors. The Board of Zoning Appeals, on a vote of 4-0, recommended that Council grant the variances to 1125.04(a)(2) for lot coverage, 1125.04(a)(3) for location in the front yard and 1145.02(b) for nonconforming buildings.

This Council met on December 8, 2014 and considered the matter upon the record created by the Board of Zoning Appeals. This Order and the Conclusions of Fact are predicated upon all of the evidence and testimony on the record before Council and, in consideration thereof, the following conclusions of fact are made:

- 1) The Subject Property is located on the south side of Kenton Road.
- 2) The existing garage is eight hundred thirty-seven (837) square feet and is located in the front yard of the Subject Property.

- 3) The Applicants seek to replace the roof structure of the existing nonconforming detached garage with a new roof that has a steeper pitch.
- 4) The Board found that the existing garage predates the dwelling on the lot and is in need of major repair to the roof. It was noted that the existing roof has a very shallow, nearly flat, roof pitch and a more steeply-pitched roof is far more serviceable in this climate.
- 5) The Board noted that they received twenty-one letters supporting the variances and seven letters opposing the variances.
- 6) The Board found that the Subject Property will yield a reasonable return and there can be a beneficial use of the Subject Property without the variances, but the garage in its current condition degrades the value of the property.
- 7) The Board noted that the Applicants can continue to use and improve the building under their grand-fathered rights without the need for variances but with the sole exception of replacement of the roof structure. It was also noted that the objection from the neighbors is a matter of aesthetics which is the purview of the Architectural Board of Review.
- 8) The Board found that the variances are not substantial because the garage is already non-conforming due to its location in the front yard; the fact that it exceeds the size requirement under the Code by 137 square feet, is not substantial.
- 9) The Board found that the essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variances because the garage is pre-existing and requires repairs and maintenance. The repaired garage will be a substantial improvement to the Subject Property.
- 10) The Board found that granting the variances would not adversely affect the delivery of governmental services.
- 11) The Board found that the property owner did not purchase the Subject Property with knowledge of the zoning restrictions.
- 12) The Board found that the Applicants's predicament cannot feasibly be obviated through some method other than the variances because any structural change to the legal non-conforming structure requires a variance.
- 13) The Board found that the spirit and intent behind the zoning requirement is observed and substantial justice done by granting the variances and noted that the steeper pitch would discourage persons, especially children, from climbing onto the roof and thereby avoiding that safety hazard.

- 14) The Board found that the variances were not based on circumstances that are self-created because the existing garage is a pre-existing and non-conforming structure.
- 15) As a condition of these variances, the Applicants shall plant an appropriate evergreen landscape screen along the north and east sides of the structure. The planted area shall provide a continuous visual screen to an initial height of at least six feet. The screen shall, at a minimum, consist of evergreen trees planted at intervals of not more than ten feet on center and at an initial height of at least six feet.
- 16) This Council finds that the Applicants have demonstrated a practical difficulty in the use of the Subject Property, which is a result of the strict application of the Zoning Ordinance.
- 17) This Council further finds, as recommended by the Board of Zoning Appeals, that the requested variances are not substantial and notes that the Applicants' predicament cannot be feasibly obviated through some method other than the variances and that all proposed improvements could be done without variances with the exception of the structure of the roof.
- 18) This Council also finds that granting the variances will not adversely affect the delivery of governmental services.
- 19) This Council also finds and determines that the spirit and intent of the Zoning Code would be observed, and substantial justice will be done, by granting the variances.
- 20) This Final Order and Conclusion of Fact is further supported by the fact that the Subject Property will be improved by the proposed project if the variances are granted and appropriate screening will be provided to screen the structure from neighboring properties.

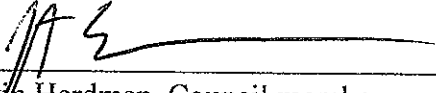
WHEREFORE, IT IS ORDERED, that the variances from Section 1145.02(b), Section 1125.04(a)(2), and Section 1125.04(a)(3) of the Codified Ordinances be and are hereby granted. The Applicants may construct the project in accordance with the proposed plans. This document is deemed by Council to be the final order in this matter.

IT IS FURTHER ORDERED, that the Clerk of Council shall mail a copy of this Final Order of Council and Conclusions of Fact to the Applicants, and any other parties requesting same, by first class mail, and note the mailing date upon this Order. The decision of this Council shall be deemed final upon the date the Clerk mails this document, as provided herein.

Adopted this 8th day of December, 2014, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.


Village of Chagrin Falls Council

Steven Patton, President of Council



Justin Herdman, Council member

Thomas Muscenti, Council member

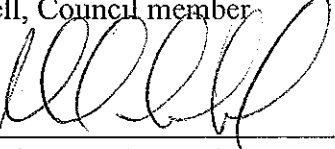


Janna Lutz, Council member

Jan Evans, Council President Pro Tem

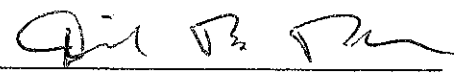


James Newell, Council member



Richard Subel, Council member

Notice mailed this 28 day of January, 2015



Clerk of Council