

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
November 24, 2015**

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

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

APPROVAL OF MINUTES

Moved by Mrs. Freshman-Johnson, seconded by Mr. Holdren that the minutes of the meeting held October 27, 2015 be approved. Carried. Ayes: Fricke, Holdren, Freshman-Johnson, Maersch. Abstain: Herdman. Nays: None.

SWEARING OF WITNESSES

All were sworn in.

NICO COTTONE, 390 NORTH MAIN STREET - REQUEST FOR A VARIANCE TO SECTION 1145.02(b), NONCONFORMING BUILDINGS, SECTION 1125.04(a)(2), AREA, YARD, AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, AND SECTION 1165.04(1), REQUIRED HILLSIDE CONTROL MEASURES, STANDARDS, AND PLANS, PERMANENT PARCEL NO. 931-02-005.

Mr. Himes explained that the applicant is proposing to reconfigure their driveway and add onto an existing garage. The existing garage is nonconforming. In their application they made an argument that it was part of the main building and therefore should not be considered an accessory structure. Our code, under 1125.03(n), states that at least 40% of a garage wall must be shared with the house to be an attached structure. So, because it is only attached by a small breeze way or hallway, it is not an attached structure for purposes of zoning.

Mr. Fricke asked, if it were attached then it just goes into the footprint of the house and they wouldn't have the requirement of 700 square feet? Mr. Himes said correct.

Mr. Himes said since it is a detached garage our code does not allow those in the front yard. It is located in the front yard therefore the structure is nonconforming. Section 1145.02(b) prohibits additions or alterations to nonconforming structures unless the entire structure is brought into compliance with the code. The addition to the garage brings its square footage above the 700 square foot allowance; they are proposing 888 square feet.

Mr. Himes said in our hillside protection ordinance there is a restriction on maximum grade of the

driveway. They are proposing a new driveway that would have a grade of 14% and the code allows for a maximum grade of 10%.

Mr. Maersch asked, 1125.04(a)(3) requires accessory buildings to be located in the rear yards, so wouldn't they also need a variance to that section? Mr. Himes said by giving them a variance to 1145.02, which covers nonconforming buildings, that captures all of those nonconformities so long as they are granted a variance to that they don't have to bring everything else into compliance. Mr. Maersch said in your cover letter it says the plan shows 888 square feet and as I look at page A102 it looks like 628 plus 264 equaling 892.

Justin Kapela, architect, said the overall scope of this project is to level off the driveway pad by building up the current grade and rerouting the current driveway across the front of the house to lessen the slope. Along with the extension of the new driveway pad they are also requesting to add a single-car garage bay to the front of the existing two-car garage. We understand that three variances for a garage addition and a new driveway seems excessive but we also feel that these new plans considerably enhance the value of the property maintaining the spirit and intent of the zoning code. In the case of the driveway slope, it considerably enhances the safety of the owners and drivers along that stretch of Main Street.

Mr. Kapela said our first zoning ordinance is 1164.04, which requires the driveway slope of no more than 10%. The current driveway is at a slope of 22% with a straight shot down into Main Street. By rerouting the driveway across the front of the house it lengthens the run and lessens the slope to 14%, which is the best we could get with the existing conditions. We feel that granting this 4% variance is a small request due to how far above the required slope the current driveway is of 22%. Mr. Kapela said the next zoning ordinance is 1145.02 and is the catchall for all the infrastructures that have been grand-fathered into the code. Unfortunately, due to the existing topography of the lot, we can not move the current garage to any other location and it requires us to request a variance to alter a nonconforming structure, which leads us into the third and final zoning ordinance of 1125.04, which states that detached garages shall not exceed 700 square feet. Our clients wish to add an additional single-car bay that will bring the total detached square footage to 892. Based on the extremely high cost to level the driveway pad and reroute the driveway for safety, we feel that the property's return will greatly be depreciated by only having a two-car garage. We feel that this 11 foot addition to a small low-pitched roof massing does not overpower the massing of the existing home like many courtyard style garages do. We feel that granting these three variances as a package to better the whole house are small requests that ultimately continue to honor the spirit and intent of the zoning code while creating a much safer means of egress onto Main Street.

Mr. Fricke asked, have you been before the ARB? Mr. Kapela said no. Mr. Fricke asked, you are making this a three-car garage? Mr. Kapela said yes. Mr. Fricke asked, is this the minimum size for three cars? How did you come up with an additional 8 foot 1 ½ inch? Mr. Kapela said it is actually an additional 11 feet. For code we needed a 2 foot corner then the garage door so 11 feet is the minimum we can go to meet building code standards for wind bracing. Mr. Fricke said when I went by the house it looked to me like it was going to be steeper. Mr. Kapela said the slope is

based on the overall running length and because we are so much longer by going across the front of the house it lessens the slope.

Mr. Fricke asked, were there any responses from the neighbors? Mr. Himes said no.

Mr. Holdren asked, is it possible to reach 10% driveway slope? Mr. Kapela said because we have to meet the garage doors right at that line we would actually have to take the entire structure down and lower it about 2 feet so, no.

It was asked when the house was built and the answer was 1971.

Mr. Fricke asked, a retaining wall will be needed along the front? Mr. Kapela said there is a structural retaining wall that is in there but then to hide all of that it is landscaped.

Mr. Fricke asked, Ben is it common for police or fire to opine on a private driveway like that? Mr. Himes said not frequently, but they did in the case of the Webber house because it was a steep drive and very, very long and they would have to get fire trucks in and out. In this case a fire truck would not go up the driveway to access the house; they would park in the street. An ambulance would potentially go up the driveway or a police cruiser potentially.

Mr. Holdren asked, if it did share 40% of the wall they wouldn't need any variances except for the driveway? Mr. Himes said correct. Mr. Fricke asked, do you know what percentage of the wall is actually shared? Mr. Himes said it is about 20%.

Moved by Mr. Maersch, seconded by Mrs. Freshman-Johnson that we recommend approval of the variance requests by the owner of 390 North Main Street. The owner is requesting variances to three sections of our code. First is to section 1145.02(b), which prohibits alterations to nonconforming buildings unless the alterations conform to the regulations of the zoning code. The second is to section 1125.04, which requires that accessory buildings not exceed 700 square feet and the proposed garage is 892 square feet so the applicant is requesting a variance of 192 square feet. The third variance request is to section 1165.04, required hillside control measures, standards, and plans. Section (i) provides that the maximum grade on driveways shall not exceed 10% and the driveway in the proposed plan has a grade of 14% so the applicant is requesting a variance of 4%. The applicant has requested variances based on finding practical difficulty as to the factors we apply, the reasons for granting variances. Will the property yield a reasonable return or will there be any beneficial use of the property without the variance? The answer to that has to be yes; it will yield a reasonable return. The variance to 1125.04(a)(2) of 192 feet has been represented to be insubstantial by the applicant. The variance to 1165.04(i) of 4% is probably also insubstantial but the existing nonconforming grade is 20% so the proposed plan will actually move the subject property closer to compliance with the code. The changes as proposed will not substantially alter the essential character of the neighborhood nor will would adjoining properties suffer substantial detriment as a result of granting these variances. The variance will not adversely affect the delivery of governmental services. If anything, the lower slope of the proposed driveway would improve the

ability of governmental services such as police and ambulance to reach the dwelling. Did the property owner purchase the property with knowledge of the zoning variance? The applicant represents that he did not, although you probably buy the property with constructive knowledge of any zoning restriction. Can the property owner's predicament feasibly be obviated through some method other than a variance? We've talked about several of those including moving the garage to the back yard, changing the plan to obviate a slope requirement, and shrinking the garage to obviate the square footage variance. The owner has tried to obviate the predicament and is left with nothing but the zoning variance request. Would the spirit and intent behind the zoning requirement be observed and substantial justice be done by granting a variance? The answer is yes, it would be. Is the variance based on circumstances that are self created or is this the result of the actions of the property owner? The answer to that is no, the circumstances exist because the garage starting from the house and the existing slope causes the variance request for the driveway. For those reasons I move that we recommend approval of the variance requests for 390 North Main Street.

Maersch: I vote aye. I also note that the variance of 192 square feet to the extent that someone views it as substantial I don't view it as substantial and I find it squarely in line with other variances that this board has granted for other similarly situated property owners and, for that reason and all the reasons stated in the motion, I vote aye.

Herdman: I also vote aye and I was going to make the same point with respect to the 192 square foot variance. I worked it out in my head and I maybe off a little bit but it is somewhere around 21% over the allowable square footage under the code. I think that is what is being requested. I do agree with Mr. Maersch that it is in line with other variances that we have granted. So, I will vote aye.

Fricke: I vote aye as well. I am not sure I come out at the same place that this is insubstantial but I don't think we need to look at that because all of the other factors are substantially in favor of granting the variance and I would also note, just for the record, I think Karl in your motion you said the current slope is 20% and I believe they said 22%. We can correct that and I would note that in my voting aye for the motion.

Freshman-Johnson: I will vote aye. I would like to note that we would like to make this contingent on approval from the ARB as we always do. Secondly, we didn't talk much about this but usually we are granting variances on properties that are smaller. This is actually a larger property located in our village so this substantial nature of the extension of the garage is irrelevant based on how this lot is larger than most lots. The neighboring houses are not near nor would be affected by this whatsoever. We didn't talk about the slope but this house does sit high on a hill. It doesn't look like it in the picture but I have driven up and down this driveway many times and because of the slope they are obviating 6% of the previous variance by significantly and financially

adding to this residence and with a package deal, with the extension of the garage making it modern living, and some enhancements to the house and the neighborhood. It all goes in line together and I think it was best presented by a package of the whole front yard, the landscaping, and adding to that entry way to this house, which actually is off of a very busy main road kind of blocking it from an easy access right to that main road with three young children, the house, and other things. So, for all those reasons I approve, aye.

Holdren: I vote aye for all those reasons.

Mr. Himes said this will go to Council for final action on Monday, December 14, 2015 at 8:00 p.m.

The meeting adjourned at 8:25 p.m.

Wade Fricke, Chairman
lgb