

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL
CHAGRIN FALLS, OHIO

3699

IN RE: VARIANCE REQUEST OF) FINAL ORDER OF COUNCIL
TODD GOLDSTEIN FOR PROPERTY) AND CONCLUSIONS OF FACT
ON 49 WEST WASHINGTON STREET)
) ADMINISTRATIVE ORDER NO.
) 2013-20 v.1

This matter is before the Chagrin Falls Village Council pursuant to the request of Todd Goldstein ("the Applicant"). The Applicant owns the existing non-conforming residence at 49 West Washington Street ("the Subject Property"). The Subject Property is located on the southeast corner of West Washington Street and Crocker Alley. The Applicant has received a demolition permit and proposes to build a new single family residence with detached garage on the Subject Property. The applicant originally requested a variance from Section 1125.03(g) to permit a side yard setback of five feet nine inches (5'-9") on the west side abutting the alley. Under Section 1125.03(g), the required side yard setback is ten feet (10').

The Village of Chagrin Falls Board of Zoning Appeals met on February 26, 2013, and received evidence and testimony, and heard the arguments of the Applicant. The Board of Zoning Appeals, on a vote of 4-0 with one member abstaining, recommended that Council grant the requested variances.

Council considered the matter upon the record that was created by the Board of Zoning Appeals at its meeting that was held on February 26, 2013, and heard the matter, again, on March 11 and March 18. Prior to the March 18, 2013 meeting, Council was advised that the Applicant was reducing the requested variance by six inches (6"), and was requesting a setback of six feet three inches (6'-3").

This Final Order of Council and 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 at the southeast corner of West Washington Street and Crocker Alley.
- 2) The Applicant has received a demolition permit to demolish the existing dilapidated house and had proposed to build a new single family residence with a twenty-four feet (24') front yard setback, a five feet nine inches (5'-9") side yard setback from the alley, and an eight feet nine inches (8'-9") entrance feature projection into the front yard. Variances for the front yard and entrance feature were previously granted by this Council. Council is now considering a variance to permit the side yard setback to be six feet three inches (6'-3")
- 3) The Applicant also plans to demolish the existing detached garage and to build a new detached garage, but this structure does not require any variances.

4) The proposed dwelling and attached garage were reviewed by the Architectural Board of Review, and preliminary approval was granted.

5) The Applicant's engineer testified that he analyzed the side yard and the drainage at the Subject Property and determined that the challenge with the property is its narrow width. He explained that the runoff from the adjacent church property has caused water damage to the existing house on the Subject Property, so the drainage plan for the proposed dwelling must be designed to move water away from the house. This drainage issue is caused by the fact that the Subject Property is two feet (2') lower than the church property. The engineer testified that natural drainage features are preferred over piping or underground systems and that a one foot (1') deep drainage swale is necessary to handle the storm water runoff from the neighboring church property. If no variance is granted, the applicant will be required to construct the house within three feet (3') of the lot line, and the swale would become a ditch. The requested variance would allow sufficient room to have gentle side slopes to the swale and would create a maintainable side yard area (i.e., grass, plantings).

6) The Applicant's architect also testified that if the variance is not granted, the proposed dwelling will be constructed at a higher grade due to the contours of the Subject Property which will not be in keeping with the existing homes on the street.

7) The Board of Zoning Appeals found that the Subject Property yields a reasonable return, and there can be beneficial use of the Subject Property without the variance, but that the proposed dwelling improves the non-conformities of the existing house on the side yard setbacks and eliminates the existing encroachment on the east side yard, because the proposed dwelling will be narrower in width.

8) The Board of Zoning Appeals found that the variance was substantial at 40%, but this is mitigated by the fact that the proposed dwelling is narrower in width than the existing house and will be located one foot (1') further from the alley. In addition, this variance will create a larger side yard setback of six feet three inches (6'-3") than the current side yard setback of four feet nine inches (4' 9").

9) The Board of Zoning Appeals found that the character of the neighborhood was improved by granting the variance because while the proposed dwelling could be moved further east, this would result in the proposed dwelling being raised due to the existing grade which would not be in keeping with other houses on the street and, furthermore, drainage is improved by the proposed location.

10) The Board of Zoning Appeals found that the variance did not negatively impact the delivery of governmental services since there would be no greater intrusion on the alley than currently exists and, in fact, the proposed dwelling will be one foot (1') further from the alley than the existing residence.

11) The Board of Zoning Appeals noted that the proposed structure does not exacerbate any of the existing conditions, and that the proposed use is a reasonable use of the property, and the

health, safety and welfare of the Village is not enhanced by the strict application of the zoning code to this property. This Council finds that the Applicant, therefore, has demonstrated a practical difficulty in the use of his property, which is a result of the strict application of the zoning ordinance.

12) This Council finds, as recommended by the Board of Zoning Appeals, that the proposed dwelling is an improvement to the Subject Property and does not adversely affect the essential character of the neighborhood.

13) While one neighbor objected to the side yard setback along the alley, the Applicant considered other ways of situating the proposed dwelling and found that the proposed location makes better use of the small lot and allows for the creation of swales, rather than an unsightly ditch, to address drainage issues on the property.

14) This Council further finds that the reduction of the variance to

14) This Council also finds that the proposed project will not adversely affect the delivery of governmental services.

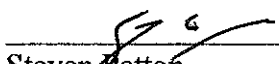
15) This Council also finds and determines, as recommended by the Board of Zoning Appeals, that the spirit and intent of the zoning code is observed, and substantial justice is done, by granting the variances. This conclusion is supported by the facts that the neighborhood will not be adversely altered by the proposed variances, the Subject Property will be improved by the proposed project, and the Applicant is seeking the minimum variances necessary to obtain a reasonable use of the property (i.e. the proposed residence).

WHEREFORE, IT IS ORDERED, that the variance to Codified Ordinance Section 1125.03(g), requested by the Applicant, the plans for which are on file with the Building Commissioner, be and is hereby granted. The Applicant may construct the proposed project in accordance with the 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 Applicant, 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.

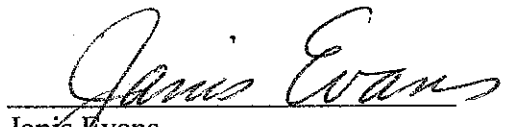
Adopted this 18th day of March, 2013, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

Village of Chagrin Falls Council



Steven Patton,
President of Council

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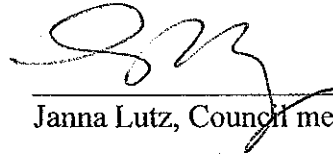


Janis Evans,
Council President Pro Tem

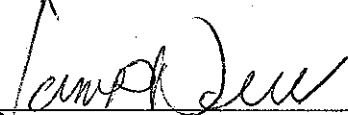
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Michael Chess, Council member



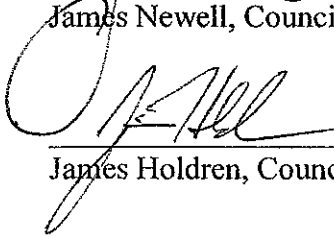
Janna Lutz, Council member



James Newell, Council member

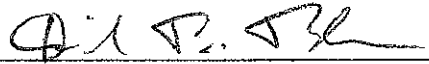


Richard Subel, Council member



James Holdren, Council member

Notice mailed this 30 day of April, 2013.



Clerk of Council