

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
May 27, 2014**

Members present: Fricke, Williams, Freshman-Johnson, Loomis, Herdman
Also present: Himes, Lane, Lannon, Edwards

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

SWEARING OF WITNESSES

All were sworn in.

Mr. Fricke said we have had four or five meetings now to talk about the very serious issues of West Orange and West Cottage. We've got about 17 pages of record findings that we have already made at the BZA. I have been in town now twenty years in the village and I don't think I have ever seen a more controversial issue than what is happening on West Orange. I think everyone in this room wishes that things had gone differently in that area. I want to make sure that everyone gets a chance to speak their mind. If you haven't been before the BZA before, I try to run the meetings sort of informal/formal style. What we will do is have the applicant present their application, the board will ask questions of the applicant, and then we will turn it over to audience members. First I will ask for people who would like to speak on behalf of the application and then we will turn it to people in the audience who would like to speak against the application. The reason I mention that we have seventeen pages of fact in front of us, at least as to the Orange Street, we have heard a lot of great testimony and a lot of facts. We all want to hear what you have to say but please remember we have heard a lot of information before us several times. We will give everyone a chance to speak. I ask that you direct your comments to us. We have found that the process works better rather than having two people in the audience pointing at each other. If there are further questions of the applicant we will relay those questions through us. We are here again to have a fair, open hearing on a matter that there has been a lot of discussion on already. We welcome further discussion tonight.

ROBERT VITT, 47 WEST COTTAGE LLC, 47 WEST COTTAGE STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(e)&(f), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-12-010.

Mr. Himes explained that this is the former Mitchell property and the former dwelling was razed. Mr. Vitt was in front of you last April for a couple of variances. Those variances have now lapsed and there have been some modifications to the plans so he is back in front of you. The property is zoned R1-60 so that is residential, single-family, and 60' frontage. He is proposing one single-family dwelling on the parcel. Section 1125.03(f) of our code requires a 35' front yard setback and he is proposing a 22' setback. Section 1125.03(e) of our code limits lot coverage of the main building to 20% of the lot and he is proposing a lot coverage of 27%. This is a hillside lot and it is

approximately a 24% slope. The hillside ordinance was rewritten over a lengthy period of time but finally adopted by Council in June of last year and that requires a geo-technical report. It was changed more from a conservation type ordinance to a slope stability engineering geared ordinance so there is a requirement for a geo-technical report analysis of present and future slope stability. Then they have to propose an engineering strategy to keep the building and slope stable and that all has to be reviewed by the village's engineer.

Mr. Fricke asked, the variance of 13' to 22' it seems to me that the setback was before us last time; do you recall what the request was? Mrs. Freshman-Johnson said it is in the minutes, it says 18', a variance of 17'. Mr. Fricke said, so seeking a variance of 13' now and it was 17'? Mrs. Freshman-Johnson said that is correct. Mr. Fricke said, and the lot coverage I don't recall being, that wasn't on? Mrs. Freshman-Johnson said that was not a variance. Mr. Fricke asked, and the engineers strategy and the slopes study have not been done, correct? Mr. Himes said a geo-technical report was submitted. I am not sure whether it covers this lot or not. They have done numerous borings throughout the property. I think that there has been considerable geo-technical analysis of that slope. An engineered plan for the foundations would have to be submitted to our engineer for review and approval.

Robert Vitt said I was previously here a little over a year ago to request the setback of 17'. We are now requesting a setback of 22' and we are actually pushing the house a little bit further back. The reason for that is to get a clear parking apron in front of the garage without blocking the sidewalk. Mr. Fricke said I think we are already misunderstanding. You are requesting a variance of 22'? Mr. Vitt said no, I am requesting a setback of 22', which is a variance of 13'. Mr. Fricke said and previously I thought you sought 17' and I thought I just heard you say you are pushing the house further back. Mr. Vitt said we are pushing the house back and that is to be able to gain two off-street parking spots in front of the garage without blocking the sidewalk. This site plan shows an illustration of the house with the 22' setback. We also measured the prevailing setbacks on the street and they vary plus or minus about 5'. Flanking this starting at what would be the Williams Street extension the Clemens own the 17.3' setback, the GC Development parcel immediately to the east is 22.9', the Weingart property to the west is 20.5', and then the Manley house is 19.6'. Really we weren't using those setbacks to define what we were proposing to do; it really was to establish an adequate apron from the garage and this is how we came up with the 22'.

Mr. Vitt said the second part of this is lot coverage. In this section of the zoning it requires a maximum of 20% and we are asking for 27%. What is driving that is that this particular house has a double garage and most of the houses on that street don't have any garage. The house, although it appears larger in the footprint, it has a double garage, it doesn't have a formal dining room, it doesn't have a family room and a living room, but it does have a first floor master so the two elements of this house that drive that area of the house on the main floor, a double garage and a first floor master, which are very highly desirable features in a house typically because first floor masters don't exist that often in homes in Chagrin Falls and obviously there is a need for a garage. I think under the zoning it is either required or highly desired. The calculation of the first floor enclosed area, by the calculation or the requirements of the zoning book, is that this house is just shy of 27%

of the actual lot area, which is 7% greater than the 20% allowable.

Mr. Fricke asked, Ben, if the garage were detached does that change the calculation at all? Mr. Himes said yes, the main building is exclusive of a detached garage so there would be a limit on the detached garage itself, that 700 square feet, but it would not be included in the main building coverage.

Mr. Williams asked, Ben, does our code favor garages? Mr. Himes said yes, a garage is required for every dwelling.

Mr. Herdman asked, the front yard setback on the original demolished house, is that reflected in this? Mr. Vitt said yes, we are actually several feet further back.

Mr. Fricke said on our drawing there are a series of lines behind to the south of your property, what exactly is that? Are those decks? Mr. Vitt said those are deck projections. Mr. Fricke asked, and that obviously is not included in the calculation? Mr. Himes said right, the coverage is bound by the exterior walls of the main building.

Mr. Fricke asked, when you were before us previously you didn't request a coverage variance; what has changed? Mr. Vitt said we hadn't really designed the house. Now that we have a design we can clearly measure and identify the footprint of the house.

Mrs. Freshman-Johnson asked, have you worked with a geo-technical engineer or do you work with a special building company? Mr. Vitt said we are a general contractor. Mrs. Freshman-Johnson said and so just because of the nature of the hill and building on this hill, I was just curious of what you've designed now that you have clearly worked with engineers to design the foundation here? Mr. Vitt said we have, on this particular site since I have owned it, done two core drills and the most recent last week. So we have core drilled right in the front of the house and immediately behind the house. In each case we went down about 70' so we understand more about that particular hillside than probably any time in its history. The investigations have been rather extensive. It will then be reviewed by a geo-technical engineer, Rizzo and Associates, and the foundation will be designed by a structural engineer here in town. After the structural design it will go back to the geo-technical engineer for his review, approval, and comments if there are any further revisions required. We are giving him the basic tools to be able to design the foundation. We have very good solid data from these two core drills that were done. Mrs. Freshman-Johnson asked, is it a metal foundation of some sort, steel, or is it wood? Mr. Vitt said it will be a combination of poured concrete, heavily reinforced with rebar, and then it will have a structural steel framework and then wood framing. Mrs. Freshman-Johnson asked, is it two stories? Mr. Vitt said it is two stories with a basement. Actually it is a story and a half because two thirds of the square footage is on the main floor and then one third is on the top floor and the basement is actually smaller than the first floor. Mr. Fricke asked, is it a walk-out basement? Mr. Vitt said technically no. The lot slopes so much that it really isn't being designed to have a walk-out. Mrs. Freshman-Johnson asked, is it going to be finished as a first go or just left for storage as a first go. Mr. Vitt said probably left for storage initially. Mrs.

Freshman-Johnson asked, the garage is on the first main floor not in the basement walk-out? Mr. Vitt said because of the slope the garage is on the main floor of the house.

Mr. Herdman asked, what is the procedure for the hillside control measures and the geo-technical report? Is that something that is, the variance is requested before that? Mr. Fricke said we have done both; we can do it conditional. Anything we do is conditional upon approval of all the other things. Mr. Herdman said here is why I ask, because in this particular proposal if you look at the structure in line with the other structures on the street it extends further back into a deeper lot than any other building on that street. That to me, considering the fact that we are taking into account the coverage issue here, seems directly linked to what I would desire to see is the geo-technical report or some results of that before I feel comfortable voting on this variance because of the coverage issue linked with the depth of the lot at that particular place. I am a little hesitant to vote conditionally on it. Mr. Fricke said this is an issue we wrestle with all the time.

Mr. Vitt said it costs tens of thousands of dollars to do the engineering report. If I don't have the variances and I spend that money it could be wastepaper. With the variances in place we then can give that information to the engineers that specifically locate the house, which specifically identifies the location of the foundations. It is then submitted to the village's engineer for his review and approval. There is a very deliberate reason why the back of the house is where it is. It happens to hit the area of the lot that is the least amount of slope and that is where the rear row of foundation is located. It is actually south of the old retaining walls, garden walls that were up and are still visible on the site.

Mr. Williams said we have been through a lot of these engineering reports over the years in great detail, is there any reason for us to be concerned about the process that is conducted and the conclusions that are reached by our village engineer? Mr. Himes said no, if he was proposing a house that didn't require variances he wouldn't even be here but he would still have to meet the requirements of the hillside ordinance, which require the engineering review of the foundation system and hillside stability. Regardless of what you do tonight, regardless if you make your variance contingent or have him come back, he is going to have to satisfy those hillside ordinance requirements.

Mr. Herdman asked, if it were made conditional what is then the recourse for the BZA? Do we still play a roll in considering it? Mr. Fricke said if we approve something conditionally then it is out of our hands. We've said if you meet all the other engineering then you are done and if they say no, then Res judicata.

Chris Manley asked, what is the rationale for the 20% coverage requirement? Mr. Himes said most zoning codes have coverage limits that controls massing on the property so the size of the footprint of the house controls what is going to project above ground. Typically I think that is the primary reason. Mr. Manley asked, so does the fact that this is actually 35% larger than the 20% requirement concern the board at all? Mr. Vitt said one of the things in the course of doing this geo-technical analysis of the site the engineer said we have to design a house that has neutral weight meaning the

house can't weigh anything. It can't weigh more than what we removed off the site to build it. Disbursing the weight of the house over a greater footprint lessens the load. In the course of an analysis to an entire hill there are several things you look at. It is the amount of weight that you impose on the top of the hill and how concentrated it is. That came back to me as kind of a surprise that the term that the house is to be designed with literally no added weight to the hillside where the previous house had weight on the hillside. That is defined by the footprint of the house and how much material is removed from the top of the hill. They will do a calculation and actually determine what the house weighs and they will calculate how many cubic yards of dirt that will come off of the site to achieve a balance point. Regarding water runoff, the major negative elements to the structural condition of a foundation or of a hillside is water and controlling water. On this particular site, in the course of building the house, literally we will collect almost all the water that falls on that site, comes off the roof and comes from the yard, and it will go into a storm management system rather than letting it flow across the site. This level of engineering probably hasn't ever been done in Chagrin Falls.

Mr. Fricke asked, what happens if you don't get your variances? Mr. Vitt said if the house is pushed back to 35' the whole house would be in the air by at least 15', the front of the house. Without the variances the lot is not buildable. Mr. Fricke asked, why can't the house meet the 20% lot coverage required by the code? Mr. Vitt said I guess I could detach the garage and probably comply with that.

Ellen Takas, 140 Division Street, spoke in opposition to the variances requested.

Jim Weingart said his wife owns the property at 51 West Cottage Street and he spoke in opposition to the variances requested.

An audience member suggested that they table this until they have had a chance to review the geo-technical report and the engineering report so that they can make an informed decision rather than putting the cart before the horse.

Mark Puianno, 58 West Orange Street, spoke in opposition to the variances requested.

Mr. Fricke said in the twenty years I have been here I have never seen a project that has generated more emotion and difficulty and challenges than any I can certainly remember. My reaction, speaking only for myself, is that I would feel better having had the experts opine as to the buildability of the property. My own personal preference would be that we table consideration of the variances until we get the experts to weigh in at the beginning of the process.

Moved by Mr. Fricke, seconded by Mr. Herdman to table this and have the engineering experts review and sign off before we can serve the variances.

Williams: I am going to vote nay for the simple reason that I believe that the engineers that the village has hired to represent them do good work and if for some reason they can not resolve the engineering challenges or get comfortable

with how those engineering challenges are going to be dealt with the project isn't going to happen anyway. I also believe that the Board of Zoning Appeals should focus on the variance that is before us granted taking in all the evidence that is relevant to it but also taking into account how that variance process is managed as directed by the code.

Loomis: I am going to vote aye.

Fricke: Aye.

Freshman-Johnson: Nay. I am prepared today to take into consideration the facts at hand and keep in mind that the role of the board is far different than what people might believe it is. We have the evidence before us today to make decisions on what has been given to us. If Bob Vitt was not the one presenting these variances today, these variances are very normal in the normal course of what happens in this town including the coverage variance. We see these variances all the time and the geo-technical issues even if presented to me in a one hundred page packet in detail, and I am in real estate and have been for twenty years, I will not know how to make a better decision based on geo-technical data. That is not what the zoning board is meant to do so I vote nay. I was prepared to make a decision tonight.

Herdman: I will vote aye. I feel quite strongly that the presentation has a lot of merit to it. I agree that these are fairly routine requests, however, the site of the building and the location that is being proposed is not routine. For that reason I think that we would all benefit from additional information before we cast a final vote on the proposal.

ROBERT VITT, RIVER WALK AT CHAGRIN FALLS II, 44 WEST ORANGE STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(j), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS AND SECTION 1125.04(b)(3), AREA, YARD, AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, PERMANENT PARCEL NO, 931-12-020.

Mr. Himes explained that this was before you last March and the plan has since changed. Mr. Vitt is now proposing one single-family resident in what is zoning R2F (residential two-family). The current proposal requires a couple of variances. Section 1125.03(j) of our code allows a 35' height and he is proposing a 46' height. Section 1125.04(b)(3) of our code allows 25% driveway coverage of the front yard and 60% is proposed. This is also a hillside lot that slopes approximately 21%. The hillside ordinance requires the geo-technical report and the engineering that we discussed earlier. Mr. Fricke said, if I recall correctly, this Phase II was before us and Phase II had previously been three single-family units and a wall and now we are down to one single-family.

Mr. Vitt said the revised proposal before you tonight is a single unit as a single-family residence on a single-family lot R1R2 as far as minimum lot size. We are requesting two variances to build on that lot. The variances are the height, which would be compatible with the height variance that was granted on three previous occasions. The reason we are here tonight is because the height variance expired about four or five weeks ago. The second variance that we are requesting is a similar variance that we had previously for percentage of front yard area covered by impervious surface. It is similar to the paving that we have on Phase I for water to run through it into this underground retention basin. We are not required to have any setback or side yard or rear yard and we also do not need a density over site square footage. It is strictly height, we are asking for 46', and the front yard coverage. The reason we are asking for the front yard coverage for the driveway is so that you don't back out onto West Orange. You can back out of the garage and turn and enter West Orange driving forward.

Mr. Fricke said noticeably missing is there was lots of discussion when you were last before us on a retaining wall of some sort in the hill and we talked about building nothing and just grassing it in. Where are you now? Mr. Vitt said there is a wall associated with this, it is a different wall. We spent nearly a year having a different type of wall designed and a number of letters that went back and forth between our consultants and the city's engineer, and the city's consultant. Literally in going back and forth with all those letters we ran right through the twelve months and that is why I am here today. The variances that were previously granted, the same ones that I am asking for today, have expired. The rule is that you have to have substantial construction and unfortunately a substantial amount of time was involved in correspondence between the various engineers to design a wall that would permit the construction of three additional units. Then we had to find a contractor who was willing and capable of undertaking that wall. We were literally within a day of awarding a contract when we were notified by the contractor that he would no longer build the wall.

Mr. Fricke asked, what is the wall now? What are you proposing? Mr. Vitt said the wall on this single unit is a wall that puts a massive amount of weight at the toe of the hill. It will go over to Rizzo & Associates for their review and analysis. This design evolved in the last week after we had the opportunity to read the inclinometers that have been in place for four years. They were read about two weeks ago so we have very current data about that hillside. Two weeks ago our consultants, along with the consultants for the plaintiffs, jointly participated in the reading of the inclinometers.

Moved by Mr. Fricke, seconded by Mr. Herdman that we table our discussion until we get this data considered by people who know what they are talking about, the engineers and other folks.

Williams: Nay for the reasons I previously said.

Loomis: Aye.

Fricke: Aye.

Freshman-Johnson: Aye.

Herdman: Aye.

The meeting adjourned at 9:25 p.m.

Wade Fricke, Chairman
lgb