

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
August 23, 2016**

Members present: Fricke, Holdren, Freshman-Johnson, Maersch, Kraemer
Also present: Markowitz

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 July 26, 2016 be approved. Carried. Ayes: Holdren, Freshman-Johnson, Fricke. Abstain: Kraemer, Maersch. Nays: None.

SWEARING OF WITNESSES

All were sworn in.

STEVEN HAMORI, 194 LOW STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(e), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-15-030.

Mr. Markowitz said there is one variance requested to Section 1125.03(e), coverage by main building. The applicant is proposing lot coverage by the main building of 25.85% and the zoning code allows lot coverage of 24% in the R1-50 district. They are over by 1.85%. If you have the plan you can see that their entrance would come in off of Low Street and they are showing that the post house and the area house and then there is a porch slab in the front and back, which are not included. They are calculating the foot print at 2,065.59 square feet and allowed is 7,991.4 so they are over by 1.85%.

Nate Barrett, Chagrin Builders, said there is also a study in there; we did try to shrink it down considerably to try to make that 1.85% smaller and it just made the rooms a little bit too small and the garage too small. We couldn't get below or at the 24% so we decided to leave it at the 1.85% overage. I think the main reason for this district is the homeowner did require a two-car garage and a first floor master so I think that is why the footprint is about as tight as we can get it for this lot and even the master isn't that big of a master. The kitchen, dining room, and open family room is all kind of connected and it is only a two-car garage. I even tried to take some square footage out of the fireplace but I did keep the fireplace as a masonry foundation so I didn't try to make any other shortcuts like that.

Mr. Fricke said what would you have had to take off? Mr. Barrett said I think it was like 180 square

feet roughly and I think with all the red-lining I got down 60 square feet and that was just taking 6 inches out of each wall each way and maybe a foot out of the garage so we did make an attempt. Mr. Fricke said from your original plan this is actually scaled back? Mr. Barrett said we tried to scale it back. This is still the original plan with the red overlay on it. When you look at the red locations down the wall and square footage you can see what I tried to take out and I still couldn't get down to that point.

Ms. Kraemer said what size lot is this again? Mr. Markowitz said it is 7,991.4 and it is 0.1835 acres. Mr. Barrett said it is one of the smaller lots down there. The two houses next to it are combined; there is a lot in between the two houses next to it so I think they kind of encroach on the next lot. I don't know how that all works out and I am not even sure of the footprint of the first floor master versus the two-car garage without that.

Mr. Holdren said there is no house here right now, correct? Mr. Barrett said there was at one time, it was demolished.

Ms. Kraemer said have there been any comments from other residents? Mr. Markowitz said I don't know. Ben didn't mention any when I talked to him.

Mr. Maersch said it looks to me like, if I am looking at the plan view, there are what I understand to be topographical lines that show the elevation off the back of the house and it looks to me like right off the back of the house it goes 957, 958, 959 and I take it that that means that that slope is going up at a pretty significant rate. Mr. Barrett said yes, the slope side is going up to Vincent Street. Mr. Maersch said so I take it that you've stuck the house back on the lot as far as you can. Mr. Barrett said we are right on the front building lot and then if you look at a two-car garage you pretty much have the laundry and the stairwell in between and then the master bedroom that is about as deep as we can go back. We are still a foot or two off the rear setback line so we are hugged at the front as much as possible. Mr. Maersch said I guess what I was driving at is there is no way, a common way to get more square footage on the first floor is to go with a detached garage and attach it with some sort of breeze way or awning. Mr. Barrett said not with the hillside. Mr. Maersch said exactly, so you agree with me that that would be unworkable. Mr. Markowitz said he would have a setback variance from the front. Mr. Barrett said even then if we did a detached garage I think the only way it would work is if you did a Colonial with a second floor master and then we would just stack everything on top of each other but then we would be a lot higher.

Ms. Kraemer so the comment on the plans regarding grading beyond the property line, is there going to be a retaining wall that is going to be a part of this project? Mr. Barrett said there may be a retaining wall and/or a yard drain if we can not get permission to swale it properly. Ms. Kraemer said and where would that be? Mr. Barrett said just along the property line, probably a foot or two, and it would probably gradually go up to 3 feet along the hillside and then back. It is mainly along the two neighbors.

Mr. Maersch said have you been to the ARB? Mr. Barrett said yes. Mr. Maersch said have they

approved these plans? Mr. Barrett said not yet; we have been through the preliminary.

Mr. Markowitz said if I am reading this right you are going to cut about 4 feet and tear this out behind the house. It looks like the current elevation is 961 here and you are running the line here at 957. Mr. Barrett said we are raising that out of the ground as much as we can while keeping the grade of the driveway as allowable. Mr. Markowitz said the finished floor of the first floor is 959, 2 feet above. Mr. Barrett said there is still plenty of room to swale around once we get the deck up.

Mr. Maersch said here is where I am on this. From my perspective this seems like a house that is going to have a fair amount of input from architectural review. I note that it says vinyl siding and there are some other architectural details that I know our ARB is going to weigh in on.

Mr. Maersch said at this point I would make a motion that we table this application pending review and approval by ARB because in my view they are likely to make changes which could affect the ultimate dimensions of the house and ultimately the issues that are before us. That is the motion that I would make at this point. Mr. Barrett said we've been through them before and nothing with the footprint of that building has been brought up. The siding has been brought up and some other architectural details but nothing with the footprint of the house has been discussed as far as shrinking or modifying the footprint. Mr. Maersch said and nor would it right because we deal with that. In my view, and I am just one person sitting on this board, where there are plans that look to me like ARB is going to have significant input I like to give the ARB the first shot at doing it because that is just the way I think the process should work in those instances. There are other instances where I don't think that is appropriate but that is where I am on this one.

Mrs. Freshman-Johnson said Karl I would like to disagree on this topic because ARB is irrelevant to getting a variance and the plans you submit before us. If something changes in the ARB and you have a different variance then you have to come back through for that different variance. I think we are here today to vote on the variance before us regardless of what ARB does.

Ms. Kraemer said can I ask you what you've had done with ARB? Are they just looking at just an initial look at the plans. Mr. Barrett said yes, preliminary and we are going to submit for final based on some architectural. Ms. Kraemer said I have been familiar with cases where you know oh well we will wait until ARB does their thing, we will wait until BZA does their thing. We don't want to get caught in that but I understand what Karl is saying. Mr. Barrett said we hope to get approved on the 6th and then if we have to come back to zoning it is going to push us back to October. Ms. Kraemer said it would September. Mrs. Freshman-Johnson said they have to get the plans and they have to fix it then they have to submit and they might miss the cut-off. He is right, you are pushing him out sixty days. Mr. Maersch said if we vote to table this the application process doesn't start over; you get on the agenda for our next meeting. Mr. Fricke said the next meeting is the 4th week in September which then would go to, if we pass, Council in October.

Mr. Fricke said we have a motion from Karl, is there a second to Karl's motion? Ms. Kraemer said I will second it just for purposes of having a vote but I would also like to hear from the owner.

Mr. Hamori said this is a really trying thing to go through with the ARB and all that. It seems like the last meeting we didn't have any architects there so it didn't really go anywhere with that meeting. The board there really relies on their expertise and it really comes down to now the only thing that is holding us up is just little details with the window or just something to put things together. We kind of had the drawings a little plain so that is what we are working on right now. We are going to bring it to them with a lot more detail so they can truly see the big picture of what we are trying to accomplish with this. Size never came up at all. Putting us off is just it will probably be next year. I am afraid of the next ARB meeting if the architects aren't there it just doesn't go anywhere it seems like. Mr. Hamori said we are fighting the weather to get on the roof before the weather hits. We would like to put this behind us and just worry about architectural review.

Mr. Fricke said we have a motion to table this and a second, is there anyone else who would like to speak on the issue of tabling? We are off the topic now of the substance of the application.

Jim Black, 188 Low Street, spoke in favor of the plans and the variance request.

Vote on the motion to table pending final approval by ARB:

Maersch: Aye.

Kramer: No.

Fricke: No.

Freshman-Johnson: No.

Holdren: No.

Mr. Fricke said the thing I always wrestle with is what we are looking for is practical difficulty. If we don't give you the variance you can't build what you want to build. In your professional opinion is getting this house down to 24.0, getting it down to the lot coverage, is it impractical? Mr. Barrett said to make the rooms useable, I think it is impractical. For a two-car garage it would shrink the garage considerably where it would be really tight to park two cars in the garage and the master bedroom is where the majority of the square footage would come out. It would really be considered a guest bedroom because it wouldn't be big enough for a master bedroom. This is going to be their final home. They downsized, they want to live in the village, and they require a first floor master. They eventually might have their parents live with them so the first floor master is going to act as a suite for them as well. They do have a second floor master and a first floor master knowing that that could happen. I tried to take as much square footage out and I couldn't get to 24% so I figured if it is 1% or 1.8% it wouldn't be really a big difference.

Mr. Markowitz said if you were able to meet the 24% lot coverage do you believe it would have a material beneficial impact on the grading that you have to do? Mr. Barrett said we would still have

to do the grading and we would still have to swale around because we are digging into the hillside no matter what.

Rob Paradise, 188 Vincent Street, spoke in favor of the variance request.

Moved by Mrs. Freshman-Johnson, seconded by Mr. Holdren to make a motion for address 194 Low Street who have requested a variance to Section 1125.03 to build a new single-family residence requiring a 1.85% variance of the allowable coverage for a lot which is normally 24%. The property right now is vacant yielding no return and no value to the community at this point in time as a vacant lot. The original plan, the knowledge of the variance was there when the builder and the owners bought this lot and tried to work on the plan. The lot has a significant hillside portion to the back of the lot preventing some building into that side of the lot. Furthermore, they tried to scale it down and as we saw the practical difficulties to scaling this down prevent a normal, modern day two-car garage limitation as well as other practical conveniences of a modern home that being with a first floor bedroom otherwise this style goes to a Colonial home on a two-story stack which creates a higher view on a hillside where the lots above them might be impacted from the height. The variance is less than 5% of the total 24% lot coverage that they are asking for. The character of the neighborhood right now is actually having a vacant lot creates in an area actually where there is only one neighbor and then there is woods on the other side and there is a street on the other that right now currently is a river and a bridge and there are not a lot of neighbors where this which creates an empty lot enticing for those to come and vandalize and walk around the neighborhood and have a family there and establish a home would increase the value of the neighborhood in that area. The property owner knows of the burden of the variance and has worked with a builder to try to substantiate other options and they have shown that various options throughout the meeting today. The spirit and intent of the purpose of the variance would be met if passed. It will not adversely affect the delivery of governmental services. For all those reasons, I recommend this motion.

Holdren: Aye.

Freshman-Johnson: Aye.

Fricke: I would vote aye and I vote aye principally because I don't believe the variance is substantial. I think the character of the neighborhood will be improved. I think the nature of the lot is such that a variance is appropriate. The spirit and intent of the zoning code will be complied with and I don't believe that the owner created any of the requirements a variance by self action. But principally I believe that the variance is not substantial and helps the neighbors so I vote aye.

Kraemer: I would also vote aye for substantially the same reasons. I don't believe that this variance is a substantial one. I think that the attempts that have been made to try to reduce the footprint of the house indicates that it is not practical to do so. While there was some knowledge of the restrictions on the

property, I think the topography and the location with the hillside and with the fact that there is only adjacent property owner and there is a road and woods around it and not a substantial impact on adjacent property owners also makes it compelling. I think that it is within the spirit and intent of the zoning code that we would approve this small variance to allow this building to go forward.

Maersch: I vote aye. For me I find it sometimes difficult for an applicant to show practical difficulties with new construction. But, here I think given the slope of the lot in back, which takes up a lot of the useable space and ability to spread out the house. I think you have shown practical difficulties. I agree that the variance is not substantial and I credit the testimony of two neighboring property owners on the essential character of the neighborhood. For those reasons I vote aye.

Mr. Fricke said this will go to Council on Monday, September 12, 2016 for final action.

STEVE AND SUSAN OVERHOLT, 92 CHURCH STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(e)(f)(h), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, AND SECTION 1145.02(b), NONCONFORMING BUILDINGS, PERMANENT PARCEL NO. 932-04-085.

Mr. Markowitz said this is a variance to Section 1125.03(e)(f)(h). A lot coverage variance is requested, a rear yard setback is requested, and a front yard setback is requested.

Rick Siegfried, RSA Architects, said there are three components to the project. The existing house is closer to the street than the current code allows. There is a little notch in the front right corner where we want to add a porch so that is the expansion of the nonconforming use. We are not projecting any closer to the street. The architectural modification is over the northern half of the second house and then we are modifying a stairway in the back. The porch in the front adds about 100 square feet; that is in front of the setback.

Mr. Maersch said is the porch considered part of the footprint of the house for lot coverage purposes or is it not? Mr. Siegfried said I believe that the addition of the porch would add space to the lot coverage calculation. Mrs. Freshman-Johnson said is this a closed in porch? Mr. Siegfried said it is an open porch. Mrs. Freshman-Johnson said so you are going to concrete slab something? Mr. Siegfried said right. Mr. Siegfried said the living room wall behind creates one wall. Mrs. Freshman-Johnson said so the current bay window goes away. Mr. Siegfried said it goes away. Mrs. Freshman-Johnson said so it will be to the right of the current front door coming out to where the front door is.

Mr. Maersch said so because the porch is covered and not enclosed it is not part of the lot coverage. They need a variance because it is a nonconforming structure but they are not increasing the

nonconformity. How far is the structure from the street? Mr. Siegfried said 23' 8". Ms. Kraemer said it is supposed to be 30'. Mrs. Freshman-Johnson said so that it also an existing setback, which they have already. Mr. Markowitz said they are just squaring it off.

Mr. Maersch said 1125.03(h) requires a 30' rear yard depth. Mr. Siegfried said it is 30' to the existing wall of the rear yard. Mr. Maersch said so the back wall of the house is 30' meeting the setback requirement but there is a chimney that was bumped out in a prior variance. Mr. Siegfried said right, so that is existing and then there is an existing kind of a deck stairway that goes down to the back yard and we want to modify that. Since we submitted this we have gone back on the design review. Your package shows it all being here and we want to extend that 3' across it. The front porch doesn't count, this porch doesn't count, but there was 8 square feet more of deck area here and if we add this little piece there it goes to 45 more square feet of deck space then there currently is. It is just deck out beyond that 30', not a structure, and there is no roof. It is not any farther out than it is right now, it is just longer.

Mrs. Freshman-Johnson said in other words, every variance is an existing variance that you are utilizing to expand a front porch and redo the back porch. Mr. Siegfried said exactly, we are just trying to enhance it a little bit.

Mr. Maersch said now we go to rear yard depth and there are two aspects to the rear yard depth in my view. One, they are adding on it says area of first floor addition and so that is going to be an enclosed porch. So that line does not increase the nonconformity because it is in line with the back of the house and it is within the 30'. There is no variance there. Mr. Markowitz said yes there is; it increases lot coverage. Mr. Maersch said the variance request with the rear yard depth with under subsection (h) is because of the depth and as I read AS-1 the line of the existing structure here we go again scaling off the drawings but it looks like they are increasing the nonconformity by perhaps a foot. Mr. Siegfried said about a foot. Mr. Maersch said the variance for the rear yard setback they need a 30' rear yard depth and they are proposing it be 19' 11 1/2". Mr. Fricke said part of it is even less than that. It is 4' 9" less than 19' 11". Mr. Maersch said the majority of it is not that, the outer most points. So what is that? A 33% variance roughly. Mr. Markowitz said approximately. Mr. Siegfried said but there is already an existing structure there. Mr. Maersch said you are increasing the nonconformity by a foot out of 30', which is some math that certainly no lawyer can do. And then we go to lot coverage and this is where it gets difficult. Is the lot coverage variance because it is a nonconforming structure and he already had a variance for that? Mr. Markowitz said no. The first floor addition is where the lot coverage variance is required. What we don't know is the percentage.

Mrs. Freshman-Johnson said this area in the back here in this back picture between the garage there is like cut-out here and this is going to be closed in as part of the first floor addition in that space. It is currently a deck so that is adding. Do you know how big that is? Mr. Maersch said that wing is going to be 18' north to south is my guess. Mr. Siegfried said 10' by 18'. That is the porch that is being enclosed. Mr. Markowitz said the new master bedroom upstairs is 19' by 6'. Mrs. Freshman Johnson said it is 180 square feet, how does that affect the lot coverage? Mr. Markowitz said I don't

know what it is today. It is obviously going to take it over 24%.

Mrs. Freshman-Johnson said we do have some information about previous variances. The existing main building is at 30% lot coverage. The previous owner submitted variances as well because this is preexisting and nonconforming and that was approved. They are already at 30% versus 24% and now you are asking to increase it more because of the 180 square feet you are adding. Mr. Maersch said that doesn't help necessarily because now we know why it is nonconforming. Mrs. Freshman-Johnson said now it is going to be even more than 30%. Mr. Maersch said even though we don't know what it is.

Mr. Siegfried said the quality of the space that was there because of the deck that exists it is not like there is green space underneath there so we are not really having a negative impact on the lot. It is a pretty substantial improvement to the house because there really isn't a master suite in it and that is kind of one of the driving things to do because on the second floor we create that. So you have this notch that is in the back of the house already. There is a deck there. It is not the best space underneath there because it is only like 6' from the bottom of the deck to the grade down below. Nothing grows there. I don't think it would be a negative impact. Nothing bad happens on account of this, only good things happen.

Mr. Maersch said I haven't canvassed the neighbors but I will tell you that I know a lot about this house and I know a lot about this plan because this is substantially the same type of addition I put on my own house in terms of it is an upright wing and it has limited square footage on the second floor because of the upright design and so this is sort of a natural evolution for that style of house. I also know that what Mr. Siegfried said is exactly correct about the space that is being filled in in the back is currently a deck that is not in great repair. It is not like it is open green space and the deck that they have planned on the back follows the sort of plan that is existing there. I can also tell you that the back, this house has a walk-out basement because all of our lots slope towards Solon Road and Miles Road. Catacorner behind the structure is the former Floyd's gas station and there is also a single-family home behind it that is quite a ways over on Solon Road so this is not a situation, in my view, getting close to impinging on neighboring properties.

Mr. Siegfried said we did go to the ARB and were preliminary approved without any comments.

Mrs. Freshman-Johnson said so the only thing we are dealing with is that we don't have the exact variances. Can we make a motion to say not greater than an estimated number that we came up with today that we would approve? Mrs. Freshman-Johnson said did the owner purchase this house with this remodel in mind or was this something after the purchase and then some of these issues of how do we do the remodel? Mr. Siegfried said I think we always knew that we were going to do some things and then as we evolved through the process of what is the best was to do this this solution just sort of jumped out that this is really what should happen there. It wasn't like we have to go get this variance. It was like this is cool house, it is a great neighborhood, and it has a lot of good things for it. Then they bought it and we worked through the process of how do we really solve this master bedroom problem. We originally looked at making some modifications to the left side

of the house and it just didn't work right because it is narrow. We said well if we go up two stories like the house down the street we could do some really nice stuff. We could make a four bedroom house out of it and we can get this cool thing down on the first floor and it just really played out nicely to fill in that little notch.

Jen Wise said the existing lot area is 5,556 square feet. The existing structure lot coverage, which includes the area of the footprint that we are doing the first floor addition, is 2,056 square feet and that includes the deck. Mr. Markowitz said the number that I got from the county actually is a little bit bigger lot. It's got 55.5 feet wide and 100 feet depth. Because it is not exactly a straight line it came out to be 5,600 square feet. So, if you are at 5,600 square feet and you are at 30% coverage that would be a coverage of 1,680 square feet. What we then need to figure out is what is the real dimension of that addition on the first floor. I was just roughing it at 18' by 10' so that would be 180 so it is 33.214286%.

Moved by Mr. Maersch, seconded by Mrs. Freshman-Johnson that we recommend approval of the variance for the property at 92 Church Street. The applicant is seeking variances to Sections 1125.03(e)(f)(h). With respect to Duncan Factor one, will the property yield a reasonable return or will there be any beneficial use of the property without the variance? Yes, however the plans as proposed do improve the beneficial use of the property and do so in a way that is in character with the adjoining structures and other additions in the neighborhood. I find that under 1125.03(f) the applicant is seeking a 6' 4" variance to the front yard setback, which I find is not substantial and I also note that the applicant's plan is not increasing the nonconformity that is the plan as proposed lines up with the existing front line of the building. Under 1125.03(h) the applicant is seeking a 10' ½" variance. The variance relates to a deck that is being proposed to replace an existing deck. In this instance the deck as proposed increases the nonconformity only a foot and I find that variance request is not substantial. Under 1125.03(e) the existing structure is nonconforming at 30% lot coverage. The plans as proposed seek a variance of 3% for a 33% lot coverage. In a close call I find this to be substantial. Under Duncan Factor three, would the essential character of the neighborhood be substantially altered or would adjoining properties suffer a substantial detriment as a result of the variance? I find that the essential character would be improved because this addition, as proposed, is similar to other additions on that street and for similar style and size construction houses. The variance will not adversely affect the delivery of governmental services namely fire, police, water, and sewer. Did the property owner purchased the property with knowledge of the zoning restrictions. The testimony tonight is that they did not. Can the property owner's predicament feasibly be obviated through some method other than a variance? In a close call I find that the property owner is seeking a reasonable variance and given the style of the uprighted wing there is not many other ways their predicament of increasing the square footage and making use of the second floor of their house to be done. 1105.03(a) lists some of our objectives and intents behind our zoning requirements. The testimony tonight and under (a) one of the goals of our zoning requirements are to provide and protect adequate open spaces. The testimony tonight is that the area that is for the addition is not currently green space. It is an area that is currently tucked in between the upright portion of the house and the garage so I find that the plans would observe the spirit and intent behind the zoning requirements. I find that the variance is not based on circumstances that

were self created or exist as a result of the actions of the property owner.

Holdren: I would vote aye for all the reasons Karl stated.

Freshman-Johnson: I vote aye. I want to go on record as saying this variance is material and I don't take that lightly because in this town it really does set presidents. However, I think it is really important to know that the space that they are going to use, which increases the variance, is already utilized as deck and living area. It is just not enclosed. And, furthermore, the more significant portion of this variance already exists prior to this owner that was approved by a board none of us were a part of so other residents in this community had already approved that. But, this is a special circumstance, special lot, special house in the way that they are enclosing this in it causes the significant variance. However, even though that is material, for all the other reasons that Karl stated I approve. Aye. And there is no opposition from neighbors.

Fricke: I vote aye mainly because I believe the essential character of the neighborhood will be enhanced by the proposals. I do not think that the rear yard setback is insubstantial or I should say it is potentially substantial and I would note that but I do recognize that many of the features are already on the house and it is just replacing those features with better features so predominantly on the essential character factor I would vote aye.

Kraemer: I would also vote aye. I think the biggest issue in this case is that there is already a nonconforming use and the variance that was granted in 2006, which increased the lot coverage allowed from 24% to 30% was how this sort of materialized. But in terms of what is already existing on the property I think that the construction will replace existing deck with more appropriate additions to the property and while it is, I agree, a substantial variance I think there are reasons which relate to the spirit and intent of the zoning requirement that allow us to approve this variance request.

Maersch: I vote aye.

Mr. Fricke said this will go to Council on Monday, September 12, 2016 for final action.

ROBERT AND AMANDA PARADISE, 188 VINCENT STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(h), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-18-034.

Mr. Markowitz said Section 1125.03(h) requires a 30' rear yard setback and the property owner is proposing a setback of 21.1' from the rear yard. If you take a look at the drawings it looks like there were existing posts and that is the area where the deck is going to be installed.

Rob Paradise said we purchased the home in 2014 and I think this variance for a setback came into effect in 2014; that is what Harry told me. There was an existing patio there that wasn't very usable and was in disrepair. Instead of replacing it we would have had to dig it up and go out a little further. There is a tree there and by going in and expanding that patio we would have damaged a lot of the roots. Our thought process was let's put a ground-level deck. It is not even 12" off the ground and not even 6" off the ground at some point. It is a very low profile deck that would not affect the roots of the tree. It was about 12 1/2' off the back of the house and this would extend an extra 2 1/2'. Where that patio was before it was already in violation of that setback. I think prior to that rule in place. We've tried to do a lot to kind of beautify that back yard. We have support from every single neighbor around us. They are all in favor of it and you should have the letters that support that.

Mr. Maersch said how high off the ground is the proposed deck. Mr. Paradise said there is a little bit of a negative grade coming towards the house so at the height it is about 15" and then we will get to about 6" once it reaches full max.

Mr. Holdren said you said these 4 X 4 posts are existing above the patio or below? Mr. Paradise said what happened on that was there was a little miss communication between Harry and myself and I had my landscaper go ahead and drill the holes not knowing that there was going to be a setback issue so I had fourteen 4' holes in my back yard and Harry said I'd rather you not have those. Go ahead take pictures and document all the work. I filled them in set the posts and got everything right and then paused it for three months.

Mr. Fricke said we have letters from Mr. Rowel, 196 Vincent Street, Mary Rozhon, 187 Columbus Street, Gregory and Nancy Glick, 179 Columbus Street, Julia Bradley, 178 Vincent Street all in support of the deck and the variance.

Mr. Maersch said you said there was a slab and you also said there is a negative grade. Did you make a design choice to use a deck because you can control the drainage better with a deck whereas with a slab you'd have water essentially, potentially running up against your foundation? Mr. Paradise said absolutely and right now that happens.

Moved by Ms. Kraemer, seconded by Mrs. Freshman-Johnson that we approve the variance. I see this as being an enhancement to the property. I think that based on what was previously existing and the fact that the property owner purchased the property before the setback issue was actually in place is a condition that impacts his ability to fully utilize the property. I think that the fact that the neighbors are in support all around him is a positive. I think the character of the neighborhood won't be adversely affected and I think in fact it will be enhanced and I don't think that there are other alternatives that are better for him to utilize the property. I think it does comply with the spirit and intent of the zoning requirements and these are not self-created circumstances.

Maersch: I'll vote aye. On factor three, the essential character of the neighborhood, I find that I credit the letters from the neighboring adjoining property owners and I would say that I think this is a really good example of how I think our

zoning process should work and I enjoy it when property owners take it upon themselves to contact adjoining property owners and share the plans with them and allow them to show their support for the projects. For those reasons I vote aye.

Kraemer: Aye.

Fricke: I vote aye for all the reasons in the motion.

Freshman-Johnson: Aye.

Holden: I would also like to add that it would not adversely affect the delivery of governmental services and I vote aye.

Mr. Fricke said this will go to Council on Monday, September 12, 2016 for final action.

MELISSA KING, 373 EAST WASHINGTON STREET - REQUEST FOR A VARIANCE TO SECTION 1125.04(a)(2), AREA, YARD, AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, PERMANENT PARCEL NO. 932-11-004.

Mr. Markowitz said Section 1125.04(a)(2) provides that all accessory buildings including detached garages for each lot shall not exceed 700 square feet in total area and shall not occupy more than 30% of the required rear yard. We do have a calculation that gives you the total of the existing structures, besides the house, and it is 2,579. The current maximum is 700. The 30% of the required rear yard wouldn't be an issue. It is just the total amount of square footage of the accessory building.

Mr. Fricke said the proposed shop roof extension is 192 square feet. Are you saying the total max is 700 square feet and there is currently 2,579? Mr. Markowitz said correct. Doug King said it is important to note that the barn itself is grand-fathered. Mr. Fricke said but for our purposes it is nonconforming. We are 1,800 square feet already over nonconforming and we are adding another 192. Mr. Markowitz said even though the barn is nonconforming or grand-fathered, you still have to comment for consideration how much total accessory buildings but if you removed it you'd still be about 824 and then you would be adding another 192 if you expand the shop.

Mr. King said one fact is that there is just short of 5 acres there. The square footage on 1 acre is 43,560 square feet, which times five and whatever objections might be made to the percentage of lot coverage the proposed extension to my shop itself is on the north end of the barn, which was built in World War II is not visible from either the neighbors to the east or the neighbors to the west. It is certainly not visible the neighbors because there is 5 acres of woods between my house and Bell Street. The only way you would be able to see this is if you were standing behind the barn and looking at it. In terms of creating a hardship myself, I didn't build the barn. My reason for wanting that is I have a \$150,000 fire in my place last November and quite frankly this modest extension to

my shop is off the record now. I've had a plainer that for twenty years that I would like to install in this particular spot to use to plain cherry wood and locust wood and the cherry that is standing dead I will cut into 8' lengths, have it cut by one Amish sawyer into 4' slabs and then run them through the plainer to send out to my son in Montana who builds furniture. You can't buy cherry or walnut in Montana because they don't have it. I also make furniture myself. Doing so in this modest addition to the facility that is out of sight, out of sound range, out of mind, and it really doesn't offend anybody.

Mr. Fricke said is there an existing structure there that you are filling in? What is this picture? Mr. King said the existing structure in the top picture is existing. The roof on the existing structure leaks. The new roof doesn't leak. Mr. Fricke said are you talking about replacing this structure? Mr. King said no, the structure that is inside.

Mr. Fricke said what is going to happen to this structure? This stays and you are talking about back in here? Mr. King said where the framing is that you are pointing to that is it period. It gets no bigger than that. Mr. Fricke said so there is an existing structure that you are proposing to turn into your workshop? Mr. King said yes. The structure inside the framing is what is already there and that would be walled in so to speak. Mrs. Freshman-Johnson said that is the additional 192 square feet. Ms. Kraemer said this is what was started when Harry came by and said stop. Mr. King said the view point from inside the structure looking out enables me to enjoy the property more without any negative impact on government services. No neighbors to the north and to the rear can see it nor can the neighbors on either side of it, each of whom I have spoken with.

Mr. Maersch said so the drawings show the barn and it looks like you have the Hopkins shed, the Little shed, a cabin, a garden shed, and a bid shed all interspersed in various locations throughout the five acres. Mr. King said the cabin was there during World War II as well.

Mr. Holdren said so as far as I just did quick math the 30% allowable currently is 1.2% coverage and with the variance he requests it will be 1.3% so a .1% coverage looking at 4.9 acres. Mr. Maersch said except that that is an or. Accessory buildings for each lot shall not exceed 700 square feet and shall not occupy more than 30% of the required yard. Mr. King said it doesn't exceed the lot coverage, obviously, it exceeds the 700 square feet but then you are looking at a lot that is just short of 5 acres. Ms. Kraemer said it is not the typical lot that is anticipated by this code.

Mr. Maersch said why are we not listing nonconforming as a variance request? Mr. Markowitz said if we had a cover letter he would have said you exceed 700 square feet for the accessory building.

Moved by Mr. Maersch, seconded by Mrs. Freshman-Johnson that we recommend that Council approve the variance request for 373 East Washington Street. I find that the property would yield a reasonable return but the property owner is improving the beneficial use of the accessory structure as the testimony showed here tonight. The variance is substantial. Under 1125.04(a)(2) all accessory buildings for each lot shall not exceed 700 square feet and currently there is 2,579 square feet of accessory structures and the applicant is proposing an additional 192 square feet for a total of 2,771

square feet. I find that the essential character of the neighborhood would no be substantially altered given the unique nature of this lot. It is a 5 acre lot and there are no property owners that will see this addition given that the 5 acres is directly behind the addition to the accessory structure as proposed. I walked the property this afternoon and there is a large ravine and a pond at the bottom and the entire 5 acres is wooded and I couldn't, as I stood there, see any neighboring structures. The variance would not affect the deliver of government services. The property owner arguably purchased the property without knowledge of the zoning restriction given that he started construction before he was told he required a variance. The proper owner's predicament could feasibly be obviated by some other means other than a variance. I find that the intent of our zoning code under 1105.03(b) is to not impinge on open spaces and given the unique nature of this lot as described earlier in the motion it being 5 acres I find that the spirit and intent would not be affected if we granted this variance. I find that the variance is not based on circumstances that are self-created.

Maersch: I am going to vote aye. I note, as Mr. Holdren noted earlier, that this is 1125.04(a)(2) is a compound zoning requirement and it sets forth that all accessory buildings shall not exceed 700 square feet and then notes that it should also not occupy more than 30% of the required yard. Than speaks to me as the intent of that particular provision of our zoning code is to not have accessory structures dominate the required rear yard. In this the testimony and math that was done tonight show that the approximate 1.29% is the percent of lot coverage that will be covered by the accessory buildings as proposed and for me that is notable and the reason I would vote aye.

Kraemer: I also vote aye and I think the most compelling aspect is the unique nature of this property and the lot coverage is the compelling factor as opposed to the size of the accessory buildings. I think the other requirements of the variance have been met as articulated by Karl. For those reasons I would vote aye.

Fricke: I would vote aye. I would add that while I think the nonconformity is substantial I think the lot itself is very unique and that alone pervades my thinking so I would vote aye.

Freshman-Johnson: I would like to that this does not adversely affect any delivery of governmental services and I would like to add that the opportunity to do this renovation came about my a significant fire that came to the building the structure is attached to and the opportunity to make room for some machinery and other things that were stored outside as well as appropriate roofing and flow of environmental factors. For all those reasons I vote aye.

Holdren: I vote aye.

Mr. Fricke said this will go to Council on Monday, September 12, 2016 for final action.

The meeting adjourned at 9:38 p.m.

Wade Fricke, Chairman
lgb