

**VILLAGE OF CHAGRIN FALLS  
BOARD OF ZONING APPEALS  
November 7, 2016**

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

The meeting was called to order at 8:00 p.m. by Secretary Rachel Freshman-Johnson.

**APPROVAL OF MINUTES**

Moved by Mr. Maersch, seconded by Ms. Kraemer that the minutes of the meeting held October 12, 2016 be approved. Carried. Ayes: Freshman-Johnson, Holdren, Kraemer, Maersch. Nays: None.

**SWEARING OF WITNESSES**

All were sworn in.

**BELL NOBLE, LLC, 210 BELL STREET - REQUEST FOR A VARIANCE TO SECTION 114502(b), NONCONFORMING BUILDINGS AND SECTION 1139.04(a), YARD AND BUFFER REGULATIONS, PERMANENT PARCEL NO. 932-09-005.**

Mr. Himes explained that 210 Bell Street is in the Limited Industrial Zone. They are requesting a building permit for an access ramp on the front of the building. The existing building is legal nonconforming in that it sits in the front setback. In fact, it sits within a couple of feet of the right-of-way so they have virtually no front yard. The proposed ramp will actually encroach into the public right-of-way as well as the required front yard. That zone has a 30' front yard setback and Section 1139.04(a) of our code requires that 30' setback. Section 1145.02(b) of our code prohibits alterations of nonconforming buildings unless the addition and original building are brought into conformance with the area, yard, and height regulations of the district. Because of the encroachment into the public right-of-way there is another issue that Council will have to address should you grant a variance. They would also have to grant a licence to use the public right-of-way.

Steve Ciciretto, architect, said the renovations they were talking about the building was originally constructed in 1894, the Ober Machine Shop building, and it was originally used for woodworking. It is pretty much intact as it was in the original state. Over the years the building has been sided and change slightly but you can see that the front wall of this building is now about a little over a foot away from the property line. That stair that is there right now runs to the sidewalk and the sidewalk is about 5' off the property line. Right now the stair comes out and it dumps right out onto the sidewalk. In 1992 federal law enacted the ADA Laws and this building has never had the opportunity or the last 15 years it has been occupied by the Lyndall Insurance Company so they recently moved to larger quarters and now we are in the process of renovating and actually bringing

the back much closer to the original designs. But in doing that and when we renovate the building it is not only an opportunity but it is law that we have to provide access to that building for people with disabilities. Because of that three-story nature of the back of the property the most economically feasible way to do that is to turn the stair and put the stair and the ramp where the planting beds are now. Unfortunately, when they bought the building it was assumed that the stuff that they had was permitted but that probably happened over time predating zoning laws. This is about trying to take an old historic building bring it back to some standards that resemble much closer to what was originally there doing a lot of exterior alterations and making the inside of the building a lot more exciting for perspective tenants so sort of adaptively reusing the building for a permitted commercial use but the problem is you have to make it ADA compliant so that is why we are here tonight for you to grant us a variance to allow us to bring this into compliance with Federal Law.

Mrs. Freshman-Johnson said okay, so currently it is not ADA compatible? Mr. Ciciretto said it is not ADA compliant because you can see we are about 3' or so up above grade so you almost have to take the stairs to get in. When you get around to the back side of the building it is like a three-story structure and there is no elevator in it. It wouldn't be economically feasible to add an elevator. This is I think aesthetically pleasing to add some nice detail in the railing at the street and create a street front presence and still maintain some of that landscaping.

Mr. Markowitz said is there a side entrance? Mr. Ciciretto said there is a side entrance.

Mr. Maersch said I was just out there today. I thought there was a parking lot on the east end and there is a little wood deck with a door. Mr. Ciciretto said that one is also unfortunately 4' or 5' above the grade with stairs so the alternative was can you get a ramp to work on the side of the building. Because of the way the building is structured with the stairs in the center of it there is no practical way. This door is not really an exit and it can't really be used because people would have to go through other people's spaces. The east entrance there is an apartment building on that side of the building.

Mrs. Freshman-Johnson said the commercial space of this property has a central staircase that is really only accessible through this door that is on Bell Street because the east nor the west entrance can't service from a ramp to be a commercial building with tenants. You are not planning on getting rid of the apartment that is on the east side?

Mr. Maersch said what do you have to do with the interior of the building? Does the second floor have to ADA compliant? Mr. Ciciretto said no, it doesn't really require that depending on the use of the building so if it should be a medical building or something like that where patients would have to get upstairs then you would have to provide access but for spaces that are more typical business uses in a building that is three stories or less it doesn't have to be fully compliant. The laws look to try to make this as accessible as possible but even though the laws don't require this to be fully compliant as far as having to have an elevator to get upstairs.

Mrs. Freshman-Johnson said so for clarification, you want to make it ADA compliant on the

entrance? Because it is not today but yet you don't have to be? Mr. Ciciretto said once you start to renovate a building the ADA comes into place. Mrs. Freshman-Johnson said so in order to renovate this you have to create the access? Mr. Ciciretto said that is correct. Mrs. Freshman-Johnson said is it zoned commercial? Mr. Himes said it is Limited Industrial.

Ms. Kraemer said the drawing that reflects the ramp, that ramp wouldn't come out any further than the existing staircase? Mr. Ciciretto said that is correct. Ms. Kraemer said it is just that you are turning the staircase and putting a ramp on the other side? Mr. Ciciretto said that is correct.

Mr. Maersch said how far out does it project? Mr. Ciciretto said it goes 5'. It goes to the sidewalk line and there is a turning radius at the top of the stair that dictates a 5' turning radius for wheelchair accessibility. When you come up you have to be able to spin in that so you can't really push it back like 2' off the sidewalk because then it wouldn't allow for full wheelchair access.

Mr. Maersch said so right now there is a stoop that comes out and then stairs that go straight north and dump on to the sidewalk? Mr. Ciciretto said that is correct. The stairs that go that way are going to come out and you are going to have stairs that go west and a ramp that goes east? Mr. Ciciretto said correct. Mr. Maersch said but because of this 5' radius that you described the entire landing in front of that door is going to come all the way out to be essentially the same. Mr. Ciciretto said that is exactly right. We are fortunate that there was enough space that you can actually handle a turn radius.

Mr. Maersch said it is a legal requirement that it be ADA compliant on one floor? Mr. Markowitz said yes.

Mrs. Freshman-Johnson said does this have to go to the Architecture Review Board? Mr. Ciciretto said it has been and they said that this is the ideal situation that you could consider a variance for.

Ms. Kraemer said can you talk to us about the license issue? I don't really understand. Mr. Markowitz said the staircase right now encroaches in the right-of-way and they want to continue to do so and it has been the practice of the village, and for most municipalities, is that if you are encroaching in an alley way or a street or something that is owned by the government you can't get adverse possession so you only can do it by either an easement or a license. We don't want to do an easement because then we have to go through bidding and get an interest in the land. Ms. Kraemer said so it is a licence to have an encroachment into the right-of-way? Mr. Markowitz said right, but we can terminate the license at any time and so if you were going to grant the variance and you conditioned it upon the license being in effect and in the future if Council would revoke the license then they would have to remove it. Ms. Kraemer said so it would be appropriate for us to do it that way if we were going to approve a variance? Mr. Markowitz said yes. The license will in essence say that it is at will and there will be requirements from insurance of the indemnity of the village. If the fire or police departments thought that it created onset condition we wouldn't grant the license. Have either the fire or police departments chimed in on these plans? Mr. Himes said they have not. Ms. Kraemer said but it is not encroaching any further into the right-of-way than what

is already there although it is for a longer extended portion. Mr. Ciciretto said I would argue that. It is actually probably a little more dangerous now if someone were coming down the stairs immediately to the right-of-way to the sidewalk. Now we would be landing off to the side so it would relieve any congestion that could happen on the sidewalk.

Ms. Kraemer said so at both ends of the new construction you have to turn to get to the sidewalk so if you are in a wheelchair how do you negotiate that? Mr. Ciciretto said you could go out the front door and you could turn 90 degrees in that 90 degree circle, come down the ramp and turn again to go out to the sidewalk. Because we don't want to continue to run it like at an angle because we do want to maintain some landscape.

Moved by Ms. Kraemer, seconded by Mr. Holdren that we approve the variance request. In looking at the criteria I think because the encroachment into the right-of-way already exists and because the attempt is being made to actually improve and reuse the building and hopefully the whole project will be something that is a net positive. I don't believe that it goes against the intent of the zoning code to grant a variance. I don't believe it is substantial. I mean I think the cat was already out of the bag in terms of what is existing there and what is being done here is to create accessibility as per the ADA Act. I certainly don't think it would change the character of the neighborhood base on what is already there and the existing encroachment. I don't think it would adversely affect the delivery of governmental services. I mean the property owner I think probably assumed that there was the ability to use the existing stairway and therefore maybe adapt it to a handicapped accessibility because the existing stairway is already in an encroaching position. I am not sure that there is any other mechanism based on their discussions of the east and west entrances to the property to do something else other than the construction that is proposed. I don't think the request violates anything related to the spirit and intent of the zoning requirements and that this was an existing building with existing encroachments that I think this is a relatively minimal I guess given where the location of the existing steps are encroaching into the existing right-of-way. So, for those reason I would move that we approve the variance request conditional upon a license being granted by the village for the use in that encroachment subject to their conditions and requirements that the village would impose relative to safety and insurance and all those things.

Maersch: I am going to vote aye. I disagree with Ms. Kraemer that the variance is insubstantial. I think the variance is very substantial. Any time the village has to issue a license for somebody to use part of the right-of-way I don't think you can say the variance is insubstantial. For me what tips the balance in terms of the Duncan Factors is the fact that they are trying to make the building ADA compliant, which is not currently, and they are not going any further into the right-of-way as then what currently exists. From my perspective if the front stoop didn't exist and they were adding this and asking us for this variance I would be voting no but because the stoop does exist and it is a historical building which they are tying to make ADA compliant that for me tips the balance.

Kraemer: I am going to vote aye and I would say that the reason I characterized it as insubstantial is based on the fact that the existing stairs already encroach into the right-of-way and I would say further that it is an exciting project to see what may be a building that is adaptively reused and made, I mean it is not a hugely attractive building as it currently exists and what I am seeing here, no offense, I think will enhance the building. So I vote yes.

Freshman-Johnson: This is an interesting building because it is awkwardly placed on the street. It is actually in a high traffic area which is concerning about the entrance. It is unfortunate that we weren't able to find another route into this building that would detour traffic actually from Bell Street. But, as we discussed in our meeting today, they would like to keep the portion of the building as a residence and the other portion of the building won't be reworked inside to allow for that western side entry. So, in order for the owner to facilitate any financial use out of this structure I feel it is necessary we allow the variance to enter the ramp under the condition of the licence of the easement as well as all the other factors that we discussed tonight. So I vote aye.

Holdren: Aye.

Mr. Himes said this will go before Council for final action on Monday, November 14, 2016 at 7:00 p.m.

The meeting adjourned at 8:23 p.m.

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Rachel Freshman-Johnson, Secretary  
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