

**VILLAGE OF CHAGRIN FALLS  
BOARD OF ZONING APPEALS  
March 21, 2108**

Members present: Fricke, Holdren, Freshman-Johnson, Maersch  
Also present: Jamieson, Edwards, Rogoff, Markowitz

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

**APPROVAL OF MINUTES**

Mr. Fricke said they will table this until the next meeting.

**SWEARING OF WITNESSES**

All were sworn in.

**WEY CAPITAL, LLC, 95 SOUTH FRANKLIN STREET - REQUEST FOR A VARIANCE TO SECTION 1125.04(b)(3), AREA, YARD, AND HEIGHT REGULATIONS; ACCESSORY STRUCTURES, SECTION 1141.05, SCHEDULE OF REQUIRED OFF-STREET PARKING SPACES, SECTION 1145.02(b), NONCONFORMING BUILDINGS, AND SECTION 1145.03(b)(e), NONCONFORMING USE OF BUILDINGS; NONCONFORMING ACCESSORY USES, PERMANENT PARCEL NO. 932-16-004.**

Mr. Fricke said this is not going to be heard tonight. It has been tabled and they have not approached us. Whenever they choose to come back we will make sure that the requisite notice is given to the property owners who are approximate to that area.

**CHAGRIN FALLS EXEMPTED VILLAGE SCHOOL DISTRICT, 77 EAST WASHINGTON STREET - REQUEST FOR A VARIANCE TO SECTION 1123.04(a)(b), YARD AND BUFFER REGULATIONS, PERMANENT PARCEL NOS. 932-07-014A, 932-07-014B, AND 932-08-013.**

Mr. Fricke said we have a five-member board and tonight we have four. The code only requires three affirmative votes. I always let the applicant know that if you would like to reappear at another meeting and hope you get five members you may.

Mr. Jamieson said this variance request is for an encroachment into the 15' required buffer between the service parking area and the residential district line, specifically on the north side of the lot. This is an amendment to the September 26<sup>th</sup> BZA variances that were granted to site plan for this project. Due to the ramp construction required on the north side of the building the parking area must shift to the north. The encroachment involves a 5' encroachment at one point then tapering to zero foot

encroachment over a span of about 175'. It is the northern most row of parking spaces along the property.

Mike Carter, Stantec Architecture 3700 Park East Drive, Beachwood, said we were here last Fall to request several variances. At that time we were thinking that we did not need the north side variance. As the plan developed and looking at the grades on the back side of the building we needed to provide two different ramps; one at the east end of the building and one at the west end of the building. In order to get enough backing space for the parking spaces that were there it forced us to encroach a bit. We tried to hold it back as much as we could making it a zero out at the property line on Philomethian and then coming at an angle out to about 5' where it turns back and abuts the nonresidential zoning of the church. Mr. Carter said we did review this with the Planning and Zoning Commission.

Mrs. Freshman-Johnson said did you lose any parking spaces? Mr. Carter said no.

Mr. Maersch said the ADA ramp is how wide approximately? Mr. Carter said it is about 5' wide. Mr. Maersch said so if you didn't need the ADA ramp on the north side of the building you could have pulled the parking lot back 5' and you would have cleared it. And am I correct that it is a triangular variance because the property line is not parallel with the side of the building? Mr. Carter said that is correct.

Mrs. Freshman-Johnson said are these main entryways into the building or are they emergency exits? Mr. Carter said the one is the main service entrance that goes into the kitchen so all the deliveries will come in that way so we couldn't do it with stairs, we needed a ramp. In the back is a fire exit but it will probably be the staff entrance because the strip along the north property line will be for the teachers.

Mr. Fricke said is there an ADA compliance entrance at the front? Mr. Carter said yes. Mr. Fricke said and that was originally planned for. What caused the need for these or what changed? Mr. Carter said on the east end the kitchen is there and to get the proper layout of the kitchen the entrance door to it needed to slide to the west. As we started to analyze the grade, we are trying to maintain the grades as close to what they are now so that they meet the property line to the north. We had a big grade differential on that back side between the floor of the kitchen and the parking lot. Then at one point we were trying to put the main mechanical room in the basement level of the 1914 building but there were a lot of things that we encountered that wouldn't allow us to do that. So now the mechanical room is on the north side tucked underneath the classrooms and we needed to get access into those so that ramp on the west side is to access those rooms from the outside.

Larry Trace, 108 Bell Street, spoke in favor of the variance request.

Moved by Mrs. Freshman-Johnson, seconded by Mr. Holdren to make a motion on behalf of our applicant Chagrin Falls Exempted School District requesting a variance to Section 1123.04 for buffer regulations. A 15' buffer is required for all surface parking and due to ramps being built on the north

side of the building they need to pull the parking out farther away from the building requiring a 5' buffer into the 15' requirement leaving the buffer at only 10' and that is at the maximum to note that the buffer decreases from 5' to zero as the property line continues down the north to the east. These ramps are required for two purposes. The design of the inside of the building required movement of entrance access ways which directly impacted the grade of the entry and would require either large steps and due to the access points being both emergency and service entrances a ramp would facilitate better traffic in and out of those areas. The requested variance is actually substantial if you look at the largest as far as a percentage of the total buffer. However, the substantiality it's not the entire side of the north side of the property it is only halfway and it continues to close as you get farther and farther east all the way to a zero variance at the end. So, it might start out substantial but continues to get insubstantial as it goes towards the east. The essential character of the neighborhood would not be substantially altered as this is part of a large construction project that includes a lot of changes and variances to a school. The governmental services would actually be positively impacted with easier access into the building for emergency needs. The zoning restrictions obviously came into play once they had to change the entrance way and the grade issues of the property so these were unknown at the time of the start of the project. They have obviated the impact of this by creating single ramp entrances that are located directly adjacent to the building rather than a winding ramp option. The spirit and intent behind the zoning requirement would be observed if it is granted for this variance. This was not self-created but noted that once the inside layout of the access was changed the grade of where those access points came in caused the need for this variance. For all those reasons I make a motion to approve this variance.

Fricke: Aye, for all the reasons in the motion.

Holdren: Aye, for all the reasons stated.

Maersch: I vote aye. My only difference with the way Mrs. Freshman-Johnson recited the Duncan Factors is I would not have characterized the variance as substantial. It is substantial a 5' variance and a 15' setback at the one dimension but over 175 it diminishes to a zero variance to I would not have characterized that as substantial. Also, I note that the adjoining properties would not suffer a substantial detriment. The testimony here tonight from a neighboring property owner is that he fully supports the variance. For those reasons I vote aye.

Freshman-Johnson: Aye.

Mr. Fricke said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

**KENNETH JOHNSON AND MARK BUTLER, 89 EAST COTTAGE STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(a)(e)(g)(h), AREA, YARD, & HEIGHT REGULATIONS: MAIN BUILDINGS AND SECTION 1145.02(b), NONCONFORMING**

## **BUILDINGS, PERMANENT PARCEL NO. 931-13-010.**

Mr. Jamieson said this is in the R1-60 zoning district. It passed preliminary ARB on February 20<sup>th</sup> with positive comments and there is no issue to go before P&Z. There are five variance requests. This is a nonconforming structure based on the zoning code for this district. Seeing that all additions to a nonconforming structures must conform to the yard regulations of the district that it is in. The second variance request is to area, yard, and height regulations requiring a minimum of 5' side yard buffer distance for a total of 12' on both sides added together. The proposed deck addition encroaches 4' into the side yard setback on the west property line. The third variance request is also area, yard, and height regulations requiring that the rear yard have a 40' rear yard setback to the main structure. The proposed addition and attached garage encroaches 5' into the rear yard setback. The fourth variance request is for area, yard, and height regulations relating to permitted coverage of the main building to not exceed 20% of the lot. The existing structure is nonconforming at 21% lot coverage and with the proposed addition that would put the lot coverage at 24.6%; 4.6% over the requirement. The final variance request is minimum lot size required in an R1-60 zoning district that is 9,000 square feet and the existing lot size is 6,726 square feet.

Michael Caito, architect, said the existing house was recently purchased. It is small, it is on a corner, and it is surrounded by a lot of land. The things we noticed about the house when we were going through it is that it is a substandard house. It is very tight inside and the spaces are non zoning conforming. The whole second floor the roof is really, really low. The knee walls are 4 foot 8 and there is a gradual slope up so you almost hit your head in the bedrooms upstairs and the bathroom upstairs. It has a two-car garage so if you look at the one sheet I showed you shows the existing house footprint with the existing open front porch and then there is a garage and mud room addition on the back. The garage is only 380 square feet so it is a substandard size garage. A normal garage is 20 x 20 which is 400 square feet. This garage was probably at one point a detached garage. It is kind of like a shack buried in the middle of this garage where they connected it back to the house. The floor is crooked and the walls are structurally unstable. I am not even sure if there is a foundation underneath that. When we first approached redoing this house we decided we were going to knock that garage down and we wanted to build an addition on the second floor to make the bedrooms a more normal size. We started doing some design work and we worked from the outside in. We knew we wanted to do a modest addition to the outside of the house so we drew elevation sketches and came for a very informal hearing with the ARB just to see if they would even entertain the idea of adding on to this house. We wanted to keep the character of the house because it is pretty cute. Right now it is wrapped in aluminum siding. We want to rip off the siding and restore the siding underneath. What we are probably going to end up doing is wood shape siding and fiber cement siding on the house and restore the stone foundation underneath. What we wanted to do is create an addition that not only gave us more space but also got us off the property line. Currently the house actually touches the property line. This back side of the garage is actually right on the property line and the balance of the house is about 1.9' off of that property line so that is one of the variances that we are talking about tonight. The rear of that garage that we want to knock down is 36.1' feet off of the rear property line. Our thought was to take that same box make it a building code conforming garage and slide it over to about 14.75' off that western property line. We are still

maintaining that 36.1' rear yard setback because that is where we are right now. It gives us room to have a two-car garage and a mud room entrance. We are also proposing a small family room addition off to the side of it because the rooms are very small. We have a minimum requirement of 10' off of a corner and we are proposing 15' and our garage is 20' back. With all of this we are able to create a more livable house and we are adding a small screened in porch off the front because the views from this house are actually quite beautiful.

Mr. Caito said in the application that we submitted we stated some of the hardships. The idea is that we are not changing the character of this house, it is still going to look like a cottage. A lot of the rooms in the current house are not only undersized but some of the doors are really low. The interior has pretty much been gutted and most of the plumbing has been removed. We are going to probably strip everything out on the inside, keep the wood floors, keep the staircase, and it will eventually be like a new side on the inside and outside. At the ARB, the last meeting they had, I was not in attendance but I heard that this house started off as a barn around 1886. The barn was updated in the 50's and now we are updating it now.

Mr. Maersch said with respect to the 40' rear yard setback, it's existing nonconforming at 36.1' today and you are proposing that the proposed addition would keep that at 36.1' so you would essentially need a 3.9' variance. With respect to the side yard, it says the side yard has a minimum of 5' with a total of 12'. So I have two questions. One, the letter that we sent to Mr. Johnson references a deck. I didn't think the deck was part of the variance request. The deck does apply to side yard setbacks? Mr. Edwards said yes. Mr. Maersch said so then when we say that it is a 5', the way our code is written 1125.03(g), it calls out a side yard depth minimum for an attached and detached garage. This house obviously is an attached garage so we go to that section. It needs 5' each side so you need 5' between the garage. Right now they have zero at one point and they are going to 14.5' so they don't need a variance for the garage setback? Mr. Jamieson said not for the side yard, no. Mr. Maersch said and then it says 12 total so what does that mean? Mr. Jamieson said that means that even though it says minimum of 5' they want a total of a 12' setback when you look at both side yards together on the structure. Mr. Markowitz said you have to have 7' minimum on one side and 5' on the other. Mr. Maersch said because the deck is 1' off the property line that is why they have a 5' side yard setback variance? Mrs. Freshman-Johnson said where is the deck? Mr. Caito said it is where the old garage was. We are going to leave the grade alone back there, put gravel underneath the deck, waterproof along the house, and the deck is going to be really right at grade. There isn't going to be a railing or anything there; it will almost be like a platform.

Mr. Maersch said so is it fair to say that, with respect to the side yard, you are improving the current conditions in three respects. One, you are taking down a fence that is over the property line. Two, you are taking down right now there is a structure, a garage, that sits right on the property line and that garage is being moved 14.75' the other direction. Third, irrespective of what the structure is, right now there is a structure right on the property line and you are moving it and now you are going to be 1' off the property line but you are essentially improving it by a foot. Mr. Caito said correct.

Mrs. Freshman-Johnson said also if they were to do a grade level patio they wouldn't need a variance

at all because that is considered landscaping. So because of the drainage issues you have to go to a deck here because otherwise you are going to have a pool instead of a patio.

Mr. Maersch said so it looks to me from looking at the plans and from what the applicant Mr. Caito said that the lot directly west of this is actually part of the lot that sits also north of this so the only way that anyone would build next to this property is they would have to essentially subdivide that lot into a second lot.

Mrs. Freshman-Johnson said I think what is also important to note here though about this lot is you have this weird "L" shaped lot around it to the west but to the east it is a street and there is nobody over there. It is actually, even for a small lot you typically find them crammed between other lots and this one is on a corner, which allows it with higher lot coverage allows it to feel less covered. Mr. Maersch said the point I am making is we have these side yard requirements so that our houses aren't too close together and that we maintain the area between houses but in this instance because Mr. Santage already has a house up on Summit and wouldn't build on this lot that is next to this property, the "L" shaped portion of this lot, the likelihood that this is going to encroach on another structure is nil because Mr. Santage would have to essentially split that lot, which we shouldn't do.

Mr. Fricke said what would it take to get the house, the coverage is 20% and the existing structure is 21% and you have 24.6%. Was there any effort or thought about the footprint of the house and trying to bring that within compliance of the code? Mr. Caito said yes, the lot coverage is 20.7% exactly coverage. Making the garage larger that automatically increased the garage to 200 square feet just to get to a 20 x 20 standard garage size. Even a 20 x 20 in today's age you really need a 22 x 22 exterior perimeter walls for that. We tried doing it very minimally. In fact, we had a larger version of this house the very first time we went to an informal ARB meeting. We had it about 26% and we had the addition sticking out a little bit and was longer by about 4'. The ARB said it looks too big of an addition, let's cut it back. I thought okay, I can do that. We redid the floor plan and I think we got it to a point where it is a very livable house, it will be very attractive, and we got it down to 24.6%. That is about as minimal as we can get to still have a liveable house that is suitable for a modern family. We are going to be spending a lot of money renovating the house so we have to make sure we can spread the cost of construction across the square footage of the property to make it economically make sense. The current first floor plan is 810 square feet, not including the garage. Our new first floor is 1,294 square feet of space and that is really not that huge. Mr. Maersch said what is the total square footage? Mr. Caito said the first floor is 1,294, the second floor is 1,533, and then the total is going to be 2,827 square feet. Mr. Maersch said that owes to the fact that you are building living space over the garage? Mr. Caito said we are building over the garage, yes. There aren't any neighbors in front of us either because we have a down hill slope that goes to the church parking lot. There is really no one really near this house. Mr. Maersch said it is surprisingly wooded in there too.

Hal Pray, 111 East Cottage Street, asked if this house is going to be owner occupied? Mr. Caito said I don't think he is intending on living there. I would imagine that he is probably going to sell the house after he is done redoing it. Mr. Pray asked what kind of action would be taken in order to

convert it into a rental property? Mr. Caito said I don't think he would rent this out after doing all of this work; it is going to be too expensive to rent it out. Mr. Pray asked if Council or somebody have to approve rental occupancy? Mr. Markowitz said no. Mrs. Freshman-Johnson said typically if you are going to spend this kind of money on a renovation you can't recoup it in rental. Ken is not here to speak on this but this is not typical what you would do to rent a property. So if that is a concern it is not likely in this situation. Mr. Pray said I am super impressed with the plans.

Moved by Mr. Maersch, seconded by Mr. Holdren that we approve the variance requests for 89 East Cottage Street. The applicant is requesting a variance to 1125.03(g). Our code requires a 5' minimum side yard setback and they are asking for a variance of 4'. Under 1125.03(h) our code requires a 40' rear yard setback and the applicant is requesting a variance of 3.9'. Under 1125.03(e) the code requires a 20% maximum permitted coverage of a main building and the applicant is requesting an addition that would but the lot coverage at 24.6% so they are requesting a variance of 4.6%. With respect to 1125.03(a) the minimum lot size in the R1-60 zoning district is 9,000 square feet and this existing lot is 6,726 square feet so the applicant is requesting a variance of 2,274 square feet. Section 1145.02(b) of our code requires that any alterations to a nonconforming building bring that building into conformance with our code. This plan as proposed is not doing that thus the applicant requires a variance to 1145.02(b). With respect to the Duncan Factors, the property will yield a reasonable return and there is beneficial use of the property if we don't grant these variances. Whether the variance is substantial has to be dealt with on a variance by variance basis. With respect to 1125.03(g) and the 5' setback requirement, the variance of 4' of a 5' setback is substantial. The reality here is that the applicant is actually improving the situation on the side lot because as the property currently exists there is a zero foot setback for the side yard. With respect to the 40' rear yard setback the variance that is requested is 3.9' and I find that to be insubstantial. With respect to 1125.03(e), which is the lot coverage, I find the variance request to be substantial. With respect to 1125.03(a), the lot was platted prior to adoption of our zoning code in 1963, which likely explains why there is a lot of only 6,700 square feet in a district requiring 9,000 square feet and the variance there is insubstantial. Any building on a lot that doesn't conform to our zoning code would be somewhat substantial. The essential character of the neighborhood would not substantially be altered, in fact, the testimony here is that the essential character of the neighborhood would be improved. The variance would not adversely affect the delivery of governmental services. The property owner did purchase the property with knowledge of the zoning restriction. The owner's predicament could be feasibly obviated through means other than a variance although I know that the testimony here today and the acknowledgment is that it is a very small house on a very small lot. In a modern society it is difficult to justify investing like this in a house of that size. I find that the spirit and intent behind the zoning requirement would be observed and substantial justice be done by granting the variance. I note that the property directly to the west, which is the property most affected by any variances we grant is not a lot that currently has a structure and likely is a lot that would never have a structure because that is an "L" shaped lot and the structure already exists neighboring to the north of this property. I find that the variance is not based on circumstances that are self-created or exist as a result of the action of the property owner. For that reason, I move to grant the variance requests for 89 East Cottage Street.

Freshman-Johnson: Aye, for all the reasons noted in the motion.

Fricke: Aye. The only thing I might have missed, Karl, in the motion but I would just add that the variance request with respect to 1125.03(h), 3.9' is the same as the existing structure so they made every effort to make the existing structure in the same footprint with respect to that particular variance request. I vote aye for all the reasons in the motion plus what I just added.

Holdren: I vote aye for all the reasons stated.

Maersch: I vote aye for all the reasons stated. The one thing I didn't note is that this is a significant number of variances. This is essentially four or five variances depending on the way you look at it. The thing that changes the calculus for me in this instance are things that I noted in the motion and also the fact that this lot is already a small lot with a small house and so if this were arguably a 9,000 square foot lot as required by our code the applicant probably would not need as many variances as they are seeking, which for me tips the balance in favor of voting aye even though the number of variances is significant.

Mr. Fricke said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

The meeting adjourned at 9:05 p.m.

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Wade Fricke, Chairman  
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