

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
September 25, 2018**

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

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

SWEARING OF WITNESSES

All were sworn in.

Mr. Fricke said we normally have five people on our board and tonight we have four. We are in the process of trying to come up with alternates to fill in for these occasions because in the Summer time we tend to have some absences on the board. Our code requires an affirmative vote of three so I mention this at the beginning of our meetings because it is your choice. You need three of the four of us as opposed to three of the five of us to vote in favor of your application. If you would like to wait with no promises that at next month's meeting we will five out of five you are welcome to do so. If you would like to proceed, you are welcome to stay.

KATE DAUGHERTY-GAULT, 154 BRADLEY STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(k)(2), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 932-15-049.

Mr. Jamieson said this is in the R1-50 zoning district. The applicant is proposing to construct a front and rear porch addition and a new 3-car garage. The rear porch and the garage are in compliance with zoning. The front porch is larger than the code allows. Section 1125.03(k)(2) states that entrance features not exceeding 48 square feet may project into a required yard a maximum of 6'. The proposed front porch is 266 square feet and it protrudes 9.5' into the front yard. That equates to 218 square feet over the 48 square foot level and 3.5' over the protrusion level. The final approval for the garage was given from the ARB and then the front porch has preliminary approval from the ARB.

George Clemens, architect, said essentially the whole porch is in the house front, which is this space on Bradley Street is built right on the lot on the setback line so 30' back. It is also very consistent with the neighbors who you see line up and they each have porches that are projecting into the front yard setback and are porches that go across the full width of the house, which is pretty typical up and down Bradley Street. This feature, this kind of overhang isn't serving Kate very well and she would like a place like so many people have there to be outside in the front. So, we are proposing a front porch. It is a full front porch that would be typical of the street. It has steps down the side and it is 9' in depth and that depth is also consistent within probably a foot or so of other porches on the

street. When you take away a railing about 8' in there is what you need to have a little seating area or a little table.

Mrs. Freshman-Johnson said so it is not enclosed and it is not screened. This is just a porch with a roof over it with columns. Mr. Clemens said correct, one story. We have double columns and we have a solid railing. This is pretty simple and we are asking you to grant this based on consistency with the architecture of the street and being in line with the architecture on the street. It is more attractive than the existing front overhang. Ms. Kraemer said that will be eliminated? Mr. Clemens said yes. Mr. Fricke said how much does that extend out? Mr. Clemens said it extends 3' and inches. Mr. Fricke said the reason this isn't 8' is because 9' is what you believe professionally is appropriate for movement of people and seating? Mr. Clemens said it is an appropriate depth and I think it will very similar to other adjacent porches.

Mrs. Freshman-Johnson said the square footage of the width, it is a significant amount of square footage over the code but the width of the house is the width of the house so a lot of time that is not as relevant as the depth that we are creating. The code seems like 48 square feet is a really small porch, not even a porch but an entry stoop. Mr. Clemens said the code was changed about five or six years ago. It was just a 6' exception so we would be asking for a 3' variance to that 6' exception.

Mr. Maersch said when you stand on Bradley Street and look at this property and the properties on either side and then you look at the properties across the street, Mr. Clemens is correct. They all have porches that extent across the whole front of the house. I stood in Ms. Daugherty-Gault's driveway and eyeballed both to the south and to the north and the 9' would line up with what is existing on either side.

Moved by Mr. Maersch, seconded by Ms. Kraemer that we approve the variance request for 154 Bradley Street. The applicant is proposing a front porch across the entire front of the property to replace an existing front overhang. Under our code in the R1-50 zoning district, Section 1125.03(k)(2) says the maximum distance that a front porch can extend into the front yard is 6'. The applicant is proposing a porch that extends 9.5' into the front yard. In terms of the Duncan Factors, the property will yield a reasonable return and there is beneficial use of the property without the variance. I do find that the variance is substantial. The proposed variance will be 3.5' of a 6' requirement, which is find to be substantial. I find that the essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variance. I find that based on the fact that as I stated the properties on either side have the exact same front porch that is proposed for 154 Bradley as well as multiple houses across the street from 154 Bradley. Under those sets of facts I find that the neighboring properties would not suffer a substantial detriment. The variance, if granted, would not adversely affect the delivery of governmental services. The owner said she did not purchase the property with knowledge of the zoning restriction. The property owner's predicament could feasibly be obviated through some means other than a variance, which would be not to put the 9' porch on, which I find would be unfair given that the neighboring properties all seem to have the same size porch. I find the spirit and intent behind the zoning requirement and substantial justice be done by granting the variance. The

neighboring properties all have received the same variance or preexisting nonconforming. The variance is not based on circumstances that are self-created. The property owner bought the property in its current condition. For those reasons I move that we approve the variance request for 154 Bradley Street.

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

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

Kraemer: Aye, for all the reasons stated.

Maersch: 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.

GEORGE AND AMY BURNETT, 49 CENTER STREET - REQUEST FOR A VARIANCE TO SECTION 1148.05(a), FENCES, WALLS, AND HEDGES PERMITTED; RESIDENTIAL DISTRICTS, AND SECTION 1125.03(h), AREA, YARD, AND HEIGHT REGULATIONS; MAIN BUILDINGS, PERMANENT PARCEL NO. 932-03-034.

Mr. Jamieson said 49 Center Street is in the R1-50 zoning district. The first item is a front fence across the front of the property. They are proposing to put in a metal wrought iron fence with two sandstone piers with light heads above the piers. Section 1148.05(a) requires that fences in the front yard can not exceed 42". The two piers with the light heads are 66" tall (24" over). The ARB granted final approval for the fence on September 18th. The second item is that they are proposing to build a two-story addition to the south side of the house and a porch on the north side of the house. The north side porch has a rear yard setback requirement an encroachment of 10', 2" over the required setback. The south side addition also has a rear yard setback encroachment of 7', 2". The ARB granted final approval for those two items also on September 18th.

Mr. Jamieson said the first submittal for the fence, the main part of the fence, was 48" high and the pillars were 66" plus the light head. The plan was resubmitted with the fence brought down to 42" high and the total pillar height 66". Ms. Kraemer said it is only the pillars that are the issue? Mr. Jamieson said only the two pillars. Mr. Maersch said these are 66" at the corner column next to the front driveway? That is the only variance? Mr. Jamieson said yes, the two pillars. George Clemens said on the alley. The right hand pillar is in 49 Center Street and the left hand pillar is at 47 Center Street, which is technically their rear yard since they face Center Street. We are kind of dealing with a technicality here. Ms. Kraemer said so it is one pillar basically. Mr. Clemens said it is one pillar and it is mostly the light. The fence was 48" and the rule is 42". There are a lot of high fences on the alley because it is all rear yards and this is the only structure facing the alley and possibly the only one facing an alley in the village.

Mr. Clemens showed pictures and explained where the fence will be and where the nonconformity is.

Mr. Maersch said even though it is technically the front yard of 49 Center because of the uniqueness of 49 Center in the way you are designing this property and the fact that the properties are commonly owned, this is actually a rear yard as evidence by the fact that the connecting post on the other side doesn't need a variance because it is in the rear yard. Mr. Clemens said the purpose is to be light post which is an amenity to the alley. It is just an insignificant variance.

Moved by Ms. Kraemer, seconded by Mrs. Freshman-Johnson that we approve the variance request with respect to the 49 Center Street fence construction relative to construction of a fence and a variance for what appears to be only one pole that reaches 66", 24" higher than the code section allows. The property would yield a reasonable return without the variance being granted. The variance is not substantial. Certainly the character of the neighborhood would not be substantially altered or the adjoining properties would not suffer any substantial detriment by the granting of this variance. It would not result in adversely affecting the delivery of governmental services. The property owners say they haven't purchased the property knowing of this restriction. The only way to feasibly obviate this predicament through another method would be not to build a fence this high. The spirit and intent of the zoning code would be observed by granting the variance and it is not based on circumstances that are self-created. I think it is not a substantial variance and it might even be characterized as not a front yard use of this fence so for those reasons I move that we approve the variance requested.

Fricke: I would vote aye for all the reasons of the motion. I would also commend the applicant for lowering the height of the fence upon notice from the village that the fence itself was going to require a variance. I appreciate the work they did to do that. I vote aye.

Kraemer: Aye.

Maersch: I disagree with the motion that the variance is unsubstantial. It is a 24" variance on a 42" requirement so it is over 50% of the variance so I find it substantial. For me the two factors that outweigh the substantiality factor are I feel like the adjoining properties would not suffer a substantial detriment as there is evidence presented that all the adjoining properties have fences at least this high, if not higher. I also find that the spirit and intent behind the zoning requirement would be observed by granting the variance and substantial justice be done for the same reason the adjoining properties all have fences that are at least this high, if not higher. 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.

Mr. Maersch said you are essentially switching the front of the house from the alley to behind the Burnett's house. There is a front door in the alley that is being removed and you are replacing it with a center window and then putting the front door facing north. Mr. Clemens said right, and that allows the two houses to face each other across the back yard and it allows for a nice porch feature that doesn't crowd the alley. This lot is actually very small. It is 53/34 square foot lot.

Mr. Clemens said there are two aspects of what we are doing that require a variance. One is there is a hanging porch on the second floor of the existing structure. It was a carriage house. We are proposing on the same footprint of that, so we are really not changing in that sense what we are asking for from the setbacks we are proposing a little extra storage. We just have a one-car garage down here. That is just a very simple storage structure underneath what was the porch and we are also just altering the porch so part of it is an office and we took off part of the porch based on views out of the kitchen and light.

Mr. Maersch said so are we calling that a rear yard? Mr. Clemens said it is a rear yard in the sense that this area of the storage does encroach on the rear yard setback. It doesn't encroach on the side so if you look at the setbacks for this house you've got a 30' front and then you've got the rear setback cutting right through the middle of the house. Mr. Maersch said as the house is currently situated the front is on the alley so you've got the 30' front yard setback then why are we calling the right side, the south side? Mr. Clemens pointed out the rear yard and the rear yard setback, which cuts right through the middle of the house. Mr. Clemens said this is a side yard setback, which is only 3' and this a 5' side yard setback. Mr. Clemens said the porch is not there at all at present and we are basing the size of the porch on utility for David and for architectural congruity. We think this porch essentially does no harm but adds a real benefit to the house. In its location, which is essentially facing this house but also behind a garage of another back of a rear yard really has no impact.

Moved by Mr. Maersch, seconded by Ms. Kraemer that we approve the variance request for the house addition and porch for 49 Center Street. Our code under 1125.03(h) in the R1 zoning district requires that the rear yard setback be either 30' or 30% of the lot depth, which is less. This lot is a very narrow lot so 30% of the lot depth is where we get the number and it is 19', 2". The applicant is proposing a front porch that is actually a side porch that extends north and requires a variance of 10', 2". It is a proposed porch on the north side of the building that does not encroach into the side yard setback but the building already exists into the rear yard setback and because this is new construction in a nonconforming use it requires a variance. 1125.03 as I stated also requires 30% of lot depth and also impacts the proposed addition on the south side of 49 Center Street where the applicant is proposing to enclose the first floor of an existing second floor overhang and that two is new construction in a an existing nonconforming rear yard setback and requires a variance. The variance for the porch on the north side of the building is 10', 2" and the variance for the enclosing of the porch on the south side is 7', 2". With respect to the Duncan Factors, the property will yield

a reasonable return and there is beneficial use of the property without the variance. The variance is not substantial and this is a close call for me. Even though from a numbers perspective the variance is substantial, the applicant is not increasing the nonconformity. That is due to the unique conditions on this lot. The house itself, as it exists, already encroaches into the required rear yard setback more than either one of the proposed additions on the north or south side. For that reason I find that the variance is not substantial. I find that the essential character of the neighborhood would be substantially improved by this if we grant this variance request. For one, the house as it exists right now front on the alley which the testimony tonight was that this is the only house in Chagrin Falls that fronts on an alley. If the applicant were going to put a porch on the front they would require a variance from the front yard setback because as the house currently sits it is right on the front yard setback line so by no doing so they are actually decreasing the variance request they are asking of us. The variance would not adversely affect the delivery of governmental services if we grant it. The property owner said she did not purchase the property with knowledge of the zoning requirement or zoning restriction. The property owner's predicament could be feasibly obviated by not putting the porch or addition on the south side. The spirit and intent behind the zoning requirement would be observed and substantial justice be done by granting the variance. In both instances because of the uniqueness of the 49 Center Street and in fact that it fronts on an alley this porch and enclosure of the overhang on the south side would actually improve the neighborhood and I find that the intent behind our zoning requirement would be met if we grant the variance. The variance is not based on circumstances that are self-created. The property owner bought the property in its current condition. For those reasons I move that we approve the variance request for the porch addition and the house addition at 49 Center Street.

Kraemer: Aye, for the reasons stated.

Maersch: Aye.

Freshman-Johnson: Aye, for the reasons stated.

Fricke: Aye, for the reasons of the motion.

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

WILLIAM WEBER, 9 EAST SUMMIT STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(k)(3), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-05-005.

Mr. Jamieson said this is in the R1-60 zoning district. The applicant is proposing to build a new rear deck and fireplace structure and demolish the existing chimney. Section 1125.03(k)(3) requires all decks larger than 48 square feet to meet the main building's setback requirements. The proposed deck is 208 square feet. The rear setback requirement is 40' and the house has a rear wall existing, nonconforming at 36'. So the entire proposed deck and fireplace is encroaching in the rear yard

setback. The dimensions of the proposed deck are 26' wide by 8' deep with a small little section for the fireplace.

George Clemens, architect, said we have 10 square feet of fireplace and we need a variance for the little bit of chimney. The reasoning behind this is practical. The chimney is kind of its own thing. Normally we would have a patio out there, which would not require a variance. Bill was not aware of quite where the setback line was so we were investigating this during the purchase process. Maybe you could say he was aware of it by the time he actually purchased the home. Bill would like this deck for a purpose of being able to get out onto the deck instead of stepping down two steps to a patio to have a grill and be able to use the outside a little bit and that is just a practical difficulty. You could make it down the steps but it is uncomfortable now and could be more difficult or impossible later. It is a single story house that will serve his purposes very well.

Mr. Maersch said on the plan view (A-1) you have an approximate adjacent building location. I walked behind this house before I came to this meeting and there is no building back there. Mr. Clemens said maybe we are inaccurate in that. That is the back yard of a house on North Main Street. Mr. Maersch said there is a road back there that goes to the properties to the east but I didn't see a building. In that almost exact location I saw an enclosed garden with a fence. Mr. Clemens said that could be our mistake. My Sense of it is that it is probably 25' or even 30' from Mr. Weber's rear property line of grass to an asphalt driveway and then any houses sit on the north side of that driveway. Mr. Clemens said it is potentially private property with an easement. Mr. Weber said there are three homes back there. I was talking to the neighbor who owns the property in back of me and he had no problem with it.

Mrs. Freshman-Johnson said the variance is both for the square feet coverage and the rear setback? Mr. Clemens said I think it is the entry deck issue. Because it is an entry feature that projects and there is that 48 square foot allowance for projections I think that is what was being measured versus the square footage of the entire deck and then in addition to that you just got the dimension 28.9' versus the 40' setback. Mrs. Freshman-Johnson said but the house is only at 36 so you are already at 4' where the house is and then you are adding the 8' deck so there is only one variance. Ms. Kraemer said what is the actual amount of the variance? Mr. Maersch said 12'.

Mr. Clemens said the fact that it is an open deck with a railing not have a roof structure also makes the variance less significant. Mr. Fricke said how did you come up with only 8'? It seems like a small number. Mr. Clemens said usable width. We could have asked for more but I was trying to ask for the least possible deck that is usable. I was afraid to ask for too much but I knew that anything less really wouldn't be useable.

Mrs. Freshman-Johnson said do you have steps off the deck to go into the yard back there too? Mr. Clemens said we do; they are recessed back into the deck so that they don't project further. The bottom step is flush with the back of the deck.

Moved by Mrs. Freshman-Johnson, seconded by Mr. Kraemer in regards to 9 East Summit Street

requesting a variance to Section 1125.03(k)(3) stating that structures such as porches, balconies, platforms, decks, patios, and similar architectural projections which in this case includes a fireplace. When they exceed 48 square feet they must fall within the rear setback of 40'. In this particular case we have a nonconforming house that is within 4' of that setback to begin with and adding on a 8' rear deck, which would create a 12' variance request to this section. The property needs to require this deck because instead of having two steps down to grade it allows the resident to keep on platform with as it of the house for usable outdoor space before going into the yard. It makes it a practical difficulty choice on behalf of the owner. The variance is somewhat substantial if you just look at the setback. However, when looking at the surroundings and approximate adjacent buildings the back yard of this residence is actually is on an easement with no existing buildings which adds another several feet across the easement until a neighborhood yard would come into play which adds to the perceived setback of this setting of this residence. It does not adversely affect delivery to the house for governmental services in case of need. The property owner did not purchase it originally with this but during the purchase process realized they would need this variance to really set their living access to the way that they need to live at this residence. It could be obviated by creating steps down to grade but as we discussed before the resident, for practical difficulty reasons, would like to keep on the same grade as the house exit rather than stepping down. And the spirit and intent of the code would met and observed because it is a modest deck, it is a minimum amount required to have a simple table and potentially a grill. It has no roof, so it is modestly designed. The variance is not based on circumstances that are self-created on purpose but would like to add this for value and enjoyment of the property residence. For all those reasons I move to approve this variance.

Maersch:

So, I would add that I find that adjoining properties would not suffer substantial detriment as I noted in my comments earlier. One of the reasons that we have rear yard setback requirements is to make sure that we don't neighbors encroaching on other neighbors. Because of the uniqueness of 9 East Summit Street there is no rear neighbor for quite some distance because there is actually a driveway that goes behind the property to access several properties to the east and north. And, for that reason, there is no backyard neighbor which for me lessens my interest in strictly construing the rear yard setback. With respect to the Duncan Factor on circumstances being self-created I note that the plan view A-1 shows, and I know from walking this neighborhood, that all the properties on East Summit were built far into the front yard setback. In fact, this property is probably on a 35' front yard setback is probably another 35' before the front of the house. And, all the houses on this street are set far back on the lots and so if the applicant here wants to put any sort of deck or structure in the back of the house it would require a variance just because the way the house is situated on the lot, which is not self-created because he bought it that way. For those reasons I vote aye.

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

Fricke: Aye, for the reasons of the motion and for Karl's comments as well.

Kraemer: Aye, for the reasons stated.

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 8:58 p.m.

Wade Fricke, Chairman

lgb