

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
January 22, 2019**

Members present: Freshman-Johnson, Holdren, Lipp
Also present: Markowitz, Jamieson, Edwards

The meeting was called to order at 8:02 p.m. by Mrs. Freshman-Johnson.

ORGANIZATION

Moved by Mr. Holdren, seconded by Mrs. Lipp that Mr. Fricke serve as Chairman of the Board of Zoning Appeals for the year 2019. Carried. Ayes: Holdren, Freshman-Johnson, Lipp. Nays: None.

Moved by Mr. Newell, seconded by Mrs. Lipp that Mrs. Freshman-Johnson serve as Secretary of the Board of Zoning Appeals for the year 2019. Carried. Ayes: Holdren, Freshman-Johnson, Lipp. Nays: None.

Mrs. Freshman-Johnson said you need a majority of the five members for an affirmative vote so you would need everybody on the board tonight to vote in favor of your variance requests because there are only three of us here. You can continue tonight or you can postpone to another meeting.

SWEARING OF WITNESSES

All were sworn in.

GUS BUDIN, 295 NORTH CLEVELAND STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03, AREA, YARD, AND HEIGHT REGULATIONS: MINIMUM STREET DISTANCE, PERMANENT PARCEL NO. 931-08-029.

Bill Joyce, Joyce Building Company, said I am representing Gus Budin because he is out of town.

Mr. Jamieson said this is located in the R1-60 zoning district. The property has one house located on the lot now. It is my understanding that the owner acquired the property with a deed showing a frontage of 137.8'. He intended to have the property surveyed to apply for a lot split and after the survey was done the actual frontage came in at 118.38'. In order to split the lot and meet the requirements of the zoning district you would need to equal parcels of 60' each minimum so that would be 120' total. He is shy of that by 1.62' so he is asking for a variance to Section 1125.03, area, yard, and height regulations: minimum street distance, a 1.62' variance to allow for a second lot.

Mr. Joyce said Mr. Budin bought this property from his sister-in-law, who is downsizing and his brother had passed away, with the full intent of splitting it and building. It is a large lot and he did

some preliminary due diligence on square footage. Does it meet all the R1-60 requirements and they all said yes. The 118.38' threw a wrench in the machine, which brought the width of the lot at the building line down to 58.38' keeping the existing home on a conforming lot and then we are basically creating a nonconforming lot when we thought that we would have two larger than necessary lots.

Mr. Holdren said the existing house will stay? Mr. Joyce said it will. Mr. Holdren said looking at the map, it shows it going over the proposed new property line. Mr. Joyce said the single-garage was added on to and will be removed so it will meet the side yard setbacks of the existing lot. Mr. Jamieson said the ARB has granted permission to demolish that part of the garage.

Mrs. Freshman-Johnson said the depths of these lots are? Mr. Joyce said they are irregular. Mrs. Freshman-Johnson said they are very deep lot. Mr. Joyce said yes, like 290'.

William Robertson, 281 North Cleveland Street, spoke in opposition to the variance request.

Susan Robertson, 281 North Cleveland Street, spoke in opposition to the variance request.

Mr. Holdren said if you were to make the vacant lot 60' and the existing house smaller, would that encroach on the property line? Mr. Joyce said I believe that with an existing home you can not create a nonexisting nonconforming lot. Mrs. Freshman-Johnson said the question is, could you consider a variance in the opposite? So you create the new lot for somebody that is conforming, which would help with resale and then you need the variance for the current existing house. Mr. Joyce said you could, but in the long run it really doesn't change anything because I still have to conform to the side yard setbacks of the new lot. Basically if I give the extra foot and a half to the new lot I can still build as close to the neighbor as the requirements are. Going into it I would be designing a home that would meet the side yard setbacks so we would need a variance to build. Mrs. Freshman-Johnson said it just would be a hassle sometimes for is there are any adjustments made to that house you are always siting on a nonconforming lot and there are some rules that say you have to make something conforming or you are going to always have to get a variance on that. Mr. Joyce said in this case, if we are taking the one garage off and leaving the other single-car garage on it is very close to the side yard. Mrs. Freshman-Johnson said and we are talking about a foot.

Moved by Mr. Holdren, seconded by Mrs. Lipp to grant the variance for 295 North Cleveland Street. They are requesting a variance of 1.62'. This house is in the R1-60 district and the minimum frontage allowed is 60' and with the lot split it will be 58.32' so that is Section 1125.03(c). Will the property yield a reasonable return or will there be any beneficial use of the property without the variance? No, because it will be unbuildable if they can't split the lots. This is a big one to me, is the variance substantial? I don't believe so, it is 1.62'. It is probably less than 2% or 3% so I don't think that is substantial. 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 don't think the neighborhood would be altered substantially. This street has other homes built this size, the R1-60. I don't believe the adjoining properties would suffer a substantial detriment. Would the variance adversely affect the delivery of governmental services? No. Did the property owner purchase the

property with knowledge of the zoning restriction? Yes, they did, but they believed that the property was 137' so they did not believe they needed a variance to split the property. Can the property owner's predicament feasibly be obviated through some method other than a variance? No, it can not. Would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting a variance? Yes, I believe so. Is the variance based on circumstances that are self-created or exist as a result of action of the property owner? No. I think we also talked about other options to get around this and either way they are requesting a variance of a foot and a half to either of the properties so I think they have looked at all of the other angles.

Freshman-Johnson: I vote aye. I understand that it is hard to look at an empty lot and I understand your opposition. However, they thought that this could have been a plan all along. They are owners of the property and this variance is very minor and could have been done the other way. It would not be out of the ordinary for us to grant a small variance and they could have then built on that lot. So by not granting the variance the neighbors are really desiring to keep that vacant land. There are a lot of options that these land owners will have or a buyer would have to do this eventually and it just is the way that that property is. For the reasons stated in the variance, I vote aye.

Lipp: For the reasons previously stated, I vote aye as well.

Holdren: I vote aye. I also wanted to add that the other requirements for the lot size, this lot being split, that is the only one that requires a variance and it well exceeds the minimum square footage of that lot and all the other depth and all that stuff. That is why I vote aye.

Mrs. Freshman-Johnson said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

LINDA HARPER, 550 SOLON ROAD - REQUEST FOR A VARIANCE TO SECTION 1151.02, ESTABLISHMENT OF BUFFER AREA AND BOUNDARY, PERMANENT PARCEL NO. 932-24-016.

Mr. Jamieson said this is a project in the R1-100 zoning district. They are proposing to construct an accessory structure in the rear yard of the property approximately 16' x 18'. The property abuts the river in the back of the property. There is a 120' river buffer that comes off of the edge of the river. It comes into their property. The proposed structure encroaches in that 31.8'. The proposed structure is high up on an embankment about 30' plus so there is a pretty large grade difference between the proposed structure and the river bed.

Rick Siegfried said this piece of property is what we refer to as a flag lot because it has a narrow driveway access. You don't know the house is back there. It is a very nice house, the views are amazing and it sits on the river. It was built a long time ago, before there was ever a river buffer.

The house, as it sits, does not conform to the buffer. I think that is a big part of our discussion or why we think this is a viable thing. From the site plan you can see this relatively small piece of construction that is not really any closer to the river than the existing house is; it is up high on the bluff sort of. When the surveyer measured this, because it says to the low water line and it is almost impossible to know where the low water line is, it was measured at the water line that day when he was there, which is probably kind of average. Mr. Siegfried showed pictures of the house and the location of the structure. He said we are calling this an accessory structure because you have to go outside to go back in. We have 114 from that point out to where they measured the river to be that day and 114 from the existing house and then 99 or so to where the river is at.

Mrs. Freshman-Johnson said what is the size of the variance requested? Mr. Siegfried said I thought it was 17', which is what the original rejection letter said. Mr. Jamieson said it was but then I re-measured it and I have 31.8' into the buffer. And that is just to the point too, because the river curves so where the structure is it dips down.

Mr. Siegfried said this structure is going to sit on four piers. Four holes will be drilled into the ground and concreted. It is going to sit very lightly on the land not that we ever think the river is going to get that high. Mr. Holdren said it looks like it is about 30' higher.

Mr. Siegfried said the idea of this thing is create a little retreat to go hang out read a book, have your coffee in the morning, and your glass of wine in the evening. There is a little fire place in there and there will be a sofa or a love seat and it just a cool place to hang out and enjoy the view and the wonderful scenery. It is not a real big house; this is kind of a neat space. It will be heated and cooled. The existing deck is going to remain. There is this connection that is built across here and we are going to put a roof on it. In the Winter it will be like a drop down vinyl panel.

Mr. Siegfried said I think the structure that they are proposing is very much in scale with the rest of the house. The ARB did grant preliminary approval.

Mrs. Freshman-Johnson said can you talk a little bit about why not just make a real addition? This is an accessory structure. It meets all lot coverage, it meets accessory structure limits, it has no variances to that so there is no problem with creating an accessory structure. I am more just curious why not just create another room off of the house? Just for the board to make sure that they understand that accessory structure, the intent, living area, fire place, you can have sanitary, electricity, and gas to an accessory structure. You can not cook or sleep in an accessory structure. Not that we would police this. There is no kitchen planned for this area and obviously if somebody falls asleep on the couch you are not going to get arrested. It is a living area and I was just curious having the flexibility resale etc. why you wouldn't just attach it to the house? Mr. Siegfried said when you come across from inside the house, this is the garage, and there is a deck here that has this little bench around it and a stairway down to the lower level because he has a little tool room underneath there. It is just when the weather is nice outside we kind of want to keep this area open. We don't want to shrink the side of the deck. We didn't want to enclose it and make it that rigid. It is only an accessory structure by the way the code is written, I guess. It makes sense to make that

open during the Summer time and then put the little panel in there.

Mrs. Freshman-Johnson said isn't part of this house in the river buffer anyway? Even if they attached it to the house you would need a variance to the river buffer. Mr. Siegfried said right. Mrs. Freshman-Johnson said so they can't obviate the river buffer issue by attaching it to the house. Mr. Siegfried said no. There is nowhere else to do this. If we go out off the back of the house not only is it twice as steep, but we are blocking other views from the house, which we really don't want to do, and we have talked our way through all of that. Behind the garage is really the obvious place to do it. It will be partially behind the garage and partially off to the side. We think we minimized it the best we can and we don't feel there will be any impact to any neighbors. It is not an easy place for a fire truck to get to now but we are not making it any worse.

Mrs. Lipp said is it on stilts or is that just the construction of it? Mr. Siegfried said they are masonry piers; I wouldn't say stilts. You couldn't walk under the structure but you could crawl underneath it and there will be gravel underneath it.

Moved by Mr. Holdren, seconded by Mrs. Lipp to grant a variance for 550 Solon Road. They are requesting a variance to Section 1151.02, which is the river buffer. Part of our code says you have to be 120' away from the minimum, the normal low water mark of the stream. They are requesting a variance of 31.8' within that 120' setback to build an accessory structure, living quarters. The new structure will not be any closer than the existing house to the river. Will the property yield a reasonable return or will there be any beneficial use of the property without the variance? I believe it will. Is the variance substantial? I think 30' is substantial but when it comes to this property I don't think it is substantial taking into account that the existing house is already within the river buffer and this is just an addition of a living quarters still within that current setback. 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 don't believe many people would even be able to see it and it won't affect the view of anybody else. Would the variance adversely affect the delivery of governmental services? No. Did the property owner purchase the property with knowledge of the zoning restriction? No. Can the property owner's predicament feasibly be obviated through some method other than a variance? No, we already talked about if they had to make it 120' from the river it would put the addition in the front yard, which would require another variance and there would be no point to do that. Would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting a variance? Yes. The river is about 31' below this proposed addition so that does come into account as far as high water/flood issues. Is the variance based on circumstances that are self-created or exist as a result of action of the property owner? No.

Mrs. Freshman-Johnson said I would like to add to the motion that it is important that we list in the motion that this variance would be granted with the knowledge that cooking or sleeping may not be permitted in the accessory structure and should the plans change to desire a kitchen other use of this accessory structure an additional variance would be needed.

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

Lipp: Aye.

Holdren: Aye.

Mrs. Freshman-Johnson said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

MISCELLANEOUS

Mr. Markowitz swore in new member of the Board of Zoning Appeals, Julie Lipp.

The meeting adjourned at 8:47 p.m.

Rachel Freshman-Johnson
Secretary