

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
April 23, 2019**

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

The meeting was called to order at 8:06 p.m. by Chairman Wade Fricke.

SWEARING OF WITNESSES

All were sworn in.

LAWRENCE SHIBLY, 30 NORTH MAIN STREET - REQUEST FOR A VARIANCE TO SECTION 1138.05(a), DETAILED REGULATIONS BY TYPE OF ESTABLISHMENT, AND SECTION 1145.03(b), NONCONFORMING USE OF BUILDINGS; NONCONFORMING ACCESSORY USES, PERMANENT PARCEL NO. 932-07-031.

Mr. Jamieson said this is located in the Central Shopping District. Mr. Shibly is proposing an “L” shaped rooftop outdoor dining deck constructed of wood. One section of the proposed deck actually touches the second floor space of the building. One section of the “L” will be 10' wide by 37' long and the other section will be 8' by 16' long adjoining the first section. Section 1138.05(a) requires that outdoor service shall be limited to seating areas which are not located in required yards. The side yard setback distance of the required yard for this area is 20'. The proposed rooftop outdoor dining deck encroaches into the required yard a total of 19'. So, what you have is about a 1' distance from the edge of the building before the deck actually starts and the actual wall of the building in right on the right-of-way so you go in 20' from that and that covers 19' of encroachment in that area for that side yard setback requirement. This is kind of a new interpretation because we don't have any rooftop outdoor dining patios. All of our outdoor dining areas are on the ground floor so some of the setbacks are more easily describable on a first floor. There is no addition to the building. This is a stand-alone wood type structure that will be built on top of the existing roof. Mr. Shibly said not even an attached structure; it is just a deck that sits in there. Mr. Jamieson said Section 1145.03(b), expansion of use, states that a nonconforming use of part of a building may only be expanded or extended throughout those parts of the building which were manifestly arranged or designed for such use at the time of adoption or amendment of this code but no such use shall be extended so as to occupy any land outside such building. The proposed deck encroaches into the required 20' side yard setback a total distance of 19' outside of the building. Mr. Shibly said it already encroaches. We are not really going any further, we are just going higher. We are basically fitting on the same setback as the dining tables outside in the back, which are actually there (going way back in history) at the request of the village. Before even Park Side Grill was there, the village asked, when the ATM building went up, if it could be made public outside dining. Lyndall Hughes put picnic tables up and agreed that it would be public dining because of the ATM building going

up, which was a photomat at the time. We have never restricted it from that, it has always been public. It is basically on the same setback situation.

Mrs. Freshman-Johnson said I was just curious what the use of the deck was for? Are tables going up there? Is it for casual drinks and waiting? Mr. Shibly said we are doing something similar to what Jekyll's has. They have some lounge-type love seats and cocktail tables, which people can eat on. It will also enhance when we rent the upstairs for private parties that they can spill over outside.

Ms. Kraemer said how much seating are you going to have? Mr. Shibly said it is about 20 seats.

Mr. Fricke said how did you come up with this configuration and this size? I know you have limitations because you have skylights, right? Mr. Shibly said the two skylights and then that other rectangle that is in between them is the main HVAC unit for the restaurant so we really weren't able to go any further east than that. The 10' was as close as we could come to the skylights and then going to the south is the main exhaust equipment for the restaurant. Mr. Fricke said what are you going to be able to fit on the northern side of the "L" that is 8'? Mr. Shibly said there is going to be an 18" rail against the fencing and some stools. Mr. Fricke said what is the fence and how high is the fencing? Mr. Shibly said the fencing is 51" and is compatible with the fencing at the back of the building that is for screening. The village approved it for screening purposes for all the equipment because it is mechanical up there. We put some fencing on the main roof and on the high roof. There is fencing that the state required us to put in because of the danger of mechanics falling off from up there. Mr. Fricke said so you won't be able to see it, it is not a railing? It is going to be a solid fence? Mr. Shibly said it is open railing, which is already up.

Mrs. Lipp said what is the total square footage of this area? Mr. Jamieson said 498 square feet.

Mr. Fricke said are there any windows over here that people are looking down this way? Mr. Shibly said only from our offices.

Mrs. Freshman-Johnson said this part of the roof is lower than the other part of the attached building. It is not the highest point on the street.

Mr. Fricke said is this just going to be for clear weather, are you going to put heaters up there? Are you going to do anything else? Mr. Shibly said there is a possibility that in the future we might have heaters or maybe portable umbrellas but we are not contemplating an awning or closing anything in.

An audience member asked if there are going to be any speakers on the rooftop deck? Mr. Shibly said there is one speaker that has been there since we reopened last August. The volume is not going to change; you can't hear it from the ground.

Moved by Ms. Kraemer, seconded by Mr. Holdren that we approve the two variance requests for Section 1138.05(a), regulations by type of establishment and Section 1145.03(b), expansion of a use. In terms of what we have heard with respect to this very unusual situation of a rooftop deck that is

to be added to an existing property that already exists going up instead of out of the encroachment is de minimis, not because of the amount of encroachment but because the property already exists and in a footprint that wouldn't allow any kind of a deck if you took that portion of the code literally. We are not talking about a first-floor addition we are talking about something that is going on a rooftop. With respect to the reasons for granting a variance, I believe the property would yield a reasonable return without granting these variances but it would, under both of those circumstances, because it is an existing viable restaurant but I also don't believe that the variance requests are substantial when you look at the totality of the particular building that is being added to. I think there is no change in the character of the neighborhood other than it would be a positive addition to that existing restaurant and I don't think there would be any detriment to adjoining properties as a result of the variances being granted. I think there has been sufficient evidence that the deck itself and the surrounding fencing is not really even visible to a large extent from the ground. I don't believe there would be an adverse affect on the delivery of governmental service. It is an existing restaurant and I don't think that this addition was contemplated at the time that the restaurant was first opened or expanded. I don't think there is another way to provide this kind of a rooftop deck without granting the variances. I think it does meet with the spirit and intent of the zoning requirement because we sort of had to shoehorn the characteristics of this particular property into these variance sections in order to sort of explain what is going on here. I do think that it is a self-created circumstance because the owner is requesting that a rooftop deck be added, which I think would be a benefit to the restaurant and to the patrons.

Mr. Fricke said I assume the fire department has weighed in on the safety and the egress? Mr. Jamieson said yes, they had no objections. When asked about the structural strength of the roof below, that falls under the state's review and not under our review. But, for safety reasons, Mr. Shibly said that roof was designed for this kind of weight load.

Freshman-Johnson: Aye, for the reasons stated in the motion. I'd also like to add to the motion that this is not the highest point building in town so the height issue of seeing a rooftop access with music or whatever there is not a lot of impact to the village. Secondly, it is pretty small. Twenty or less people in an environment where it is Winter nine months out the year. The usage of it is minimal so it is pretty insubstantial.

Fricke: I would vote aye as well. I do think that the variance request to Section 1138.05(a) is substantial but I think that there is evidence that we have substantial variances like that pretty much everywhere we have outdoor dining in the Central Shopping District. I find it to be substantial but I think all the other factors far carry the day, so I would vote aye for the reasons stated in the motion.

Lipp: I'll vote aye for the reasons stated in the motion and also the reasons stated by Mrs. Freshman-Johnson.

Holdren: I will vote aye for the reasons stated by Mr. Fricke, and everybody else.

Kraemer: I vote aye for the reasons that everybody 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 8:33 p.m.

Wade Fricke, Chairman

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