

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
November 26, 2019**

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

The meeting was called to order at 7:30 p.m. by Chairman Wade Fricke.

Swearing of Witnesses

All were sworn in.

Neil and Jill Markey, 113 Church Street - Request for a variance to Section 1125.03(f)&(k)(3), Area, Yard, and Height Regulations: Main Buildings, and Section 1145.02(b), Nonconforming Buildings, Permanent Parcel No. 932-04-058.

Mr. Jamieson said this single-family residence is in the R1-50 zoning district. The applicants are proposing to add a new front porch to the house. The first variance is to Section 1125.03(f), requiring a 30' front yard setback. The front of the existing house is at 24.9 feet making the current house nonconforming. The proposed porch setback is 16.94 feet from the front line for a variance of 13.06 feet requested. The seconded variance is to Section 1125.03(k)(3), requiring porches larger than 48 square feet to meet the main building setback requirements. The proposed porch is 277.36 square feet and does not meet the setback requirements. The third variance is to Section 1145.02(b), additions, stating that a nonconforming dwellings may be altered, enlarged, or modernized provided that the changes must conform to all yard regulations and setbacks. The proposed porch is inside the front yard setback.

Mr. Jamieson said this project went before the ARB on November 5, 2019 and they asked the applicant to revise and resubmit with some requested design changes. Mr. Fricke said was that done? Mr. Jamieson said they are still in the process. David Ducas said we submitted those design changes but then a couple of other items came up. I submitted it to one of the architects on the board to see if they thought that was consistent with what they wanted. I think Harry told us then to wait for the final submittal until after we came here. Mrs. Freshman-Johnson said did the design change the size of the porch? Mr. Ducas said no.

Mr. Ducas said I am with Woodbridge Homes on behalf of the Markeys. This house and this house are both closer to the street than what our porch would be so there is some consistency for that setback from the right-of-way on the street already. This house adjacent would be about a foot back from where our porch would be. The Markeys unfortunately suffer from being the corner lot with their driveway on Hall Street and the front of the house on Church Street. Anyway you look at it, they are not in compliance and have not been in compliance since whenever the code was revised.

They couldn't do anything. They couldn't even do a small roof over the existing footprint of the porch and they have currently an approximate 6' x 8' wide porch at their front door, which would be removed. You will see that on Walnut Street, most of those houses if not all of them are not in compliance with the current zoning code and all have porches that approach the sidewalk in a manner that is significantly closer. Everything on Walnut Street is closer and in noncompliance more so than what the Markeys are requesting. The Markeys are not requesting something that is out of the norm for the neighborhood. I think it is something that is sort of a product of the history of the neighborhood. The code insists that they comply with the front yard setback so we are asking for relief from that and we are asking for relief in the matter that we don't think is inconsistent with the neighborhood.

Mr. Fricke said how did you settle on 8'? Mr. Ducas said it is a porch that allows them to put a chair on it and have someone safely walk in front of it. Mr. Fricke said is that "standard"? Mr. Ducas said yes, it is comfortable without being excessive.

Mrs. Lipp said with the porch addition, it will line up with the house next to it? Mr. Ducas said we will be a foot and a half to two feet further than the house that is adjacent to it. Mrs. Lipp said I know that the adjacent homeowner is in favor of the porch so I am not concerned.

Jill Markey said although the home is on the corner, we do have a sizeable lot in between our house and the Gottfried's house so it is not like they would be looking out the side of their house directly into our porch. There is quite a bit of air space there.

Margaret Brown, 118 Church Street, spoke in favor of the variances requested.

Gary Gottfried, 103 Church Street, spoke in favor of the variances requested.

Moved by Ms. Kraemer, seconded by Mrs. Freshman-Johnson that we approve the variance requests for 113 Church Street with respect to 1125.03(f), front yard setback, 1125.03(k)(3), porches, and 1145.02, additions to nonconforming buildings. I do believe that in looking at the Duncan Factors that the property would yield a reasonable return without the variance and I also believe that the variance is substantial. The front yard setback is 13.06 feet, the porch is a substantial addition, and the nonconforming building zoning requirement the addition is inside the front yard setback. However, I think that the other factors that we are required to review outweigh those two considerations. I think the character of the neighborhood would be enhanced by adding the porch to this property. I don't believe that it would adversely affect the delivery of governmental services. It sounds as though the property owner did not have knowledge of the multiple zoning restrictions related to this property at the time of purchase. Other than perhaps considering the porch in the side yard, which wouldn't enhance the visual aesthetics of the home, I don't think there is any way of doing something different than what is requested in terms of this variance. The spirit and intent of the zoning code I think is consistent with this variance because I think what we are doing is allowing the addition of a porch that sort of creates a more cohesive and aesthetic aspect to the front of the home and allows the homeowner to utilize that space in a neighborly way. I don't believe that the

variance is based on circumstances that were self-created by the homeowner at the time of purchasing the home. So, for those reasons, I would move that we approve the variances.

Freshman-Johnson: I vote aye. I also want to make note that as far as governmental services, it also enhances the Halloween Trick or Treat traffic flow at this property, which could be a serious enhancement to that street. It is a huge benefit for the neighborhood.

Fricke: I vote aye as well. I would note that I think a variance request of 13.06 feet out of 30' is indeed substantial but I find that the essential character of the neighborhood would be substantially enhanced as evidence by what the neighbors have testified to as well. So, for that primary factor, I would vote aye.

Holdren: I will vote aye, for all the reasons stated.

Kraemer: Aye, for the reasons stated.

Lipp: I would vote aye. I do feel that the variance is substantial, however, I do think it improves the home's functioning and aesthetically it would improve the home. I do know the ARB encourages front porches in the neighborhoods where they are prevalent, so I think it would be in accordance with their approach.

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

Tim and Mary Selhorst, 600 North Street - Request for a variance to Section 1125.03(h), Area, Yard, and Height Regulations: Main Buildings, Permanent Parcel No. 931-24-008.

Mr. Jamieson said this is a residential dwelling in the R1-100 zoning district. The applicants are proposing a new residential dwelling. They are demolishing the existing residential dwelling at the same location. The variance needed, or the nonconforming items to this project, is to Section 1125.03(h), area, yard, and height regulations: main buildings. The minimum rear yard setback has a requirement of 50' in our code and .7' is proposed, which is a variance of 49.3 feet. This is a unique property in that the original house was actually closer to the property line than this and they are proposing to move this back from the property line. This project went before the ARB on September 17, 2019 and preliminary approval was granted for the structure and final approval was granted for the demolition of the existing structure.

George Clemens said it was found to be not historically significant. It was built in the 20's but it had been pretty radically altered over time. There was a setback for both the pond and the river and those two things together kind of blanketed our lot. Mr. Markowitz said you are saying you are more than

125' from the river bank? Mr. Clemens said correct. Mr. Jamieson said when Harry and I reviewed it we did not find that it was not in a riparian zone so it is not applicable. Mr. Clemens said one dimensional clarification, it may be a fault of ours that it is a little ambiguous the way were showing this. Our house is 10' back from what is being shown as the rear lot line and our deck is 5' back so we are in fact asking for a 45' variance. The existing house is 27' from the property line and the existing deck is actually extended over the property line into Whiteburg Reservation by 6' or 7'. We are taking something that was over the lot line, in terms of the house kind of on the lot line, and we are moving it back 5' and 10' back. We are doing that to improve that situation but also the reason we haven't moved it further is because the lot does start to slope towards the pond and we are trying to deal with that. It is really kind of a narrow piece of land and so being that we are rebuilding. We are kind of rebuilding in the same spot and in doing that I think we are having the least impact that we could have on the site rather than picking a spot further back on the site or doing something else. We are using essentially the same driveway turnaround and adding an area of driveway. We are parking underneath the house as an attached garage so that kind of also makes for a more compact form. You can see that the blue, which is the new house, actually is pretty comparable in the area because it goes about 10' further in the back and it is 10' in on the sides but it is very similar to the old footprint of the house. That was our intention, it is a sensitive area, and we are trying to make it a little better. The house was pretty unworkable. They had created bedrooms on the front of the house and an old porch slab dropped down from the rest of the house and the whole plan was so upside down. This picture shows how that slopes down 35' to the pond. We will be doing the required soil engineering. Thirty five feet isn't too bad in terms of hillside issues because when you go down 10' for a foundation you are only 25' up. It is pretty reasonable to make a stable situation out it and not putting pressure on the slope.

Mr. Markowitz said what are you going to do with the existing garage? Mr. Clemens said we are going to maintain it.

Mrs. Freshman-Johnson said you can't see this from the street at all.

Ms. Kraemer said what is the square footage? Mr. Clemens said 3,725 total. Ms. Kraemer said are the elevations more? I would think that would have been increased from the previous. Mr. Clemens said I think it is a little taller.

Mr. Fricke said there is a retaining structure on the back side on the hill? Mr. Clemens said it is existing. We don't have final soil engineering so we will have a plan when we go back for final review. Mr. Fricke said that is Whiteburg property, right? Mr. Clemens said it is not. The previous owners had done something over the property line but I actually don't have a plan for that. I guess for the purpose of tonight probably the safest thing to say would be we will assume it will stay just because if we rip it out I'm not sure what the implication of that would be. Mr. Fricke said the village didn't put that in there, right Rob? Mr. Clemens said no. Mr. Fricke said the previous homeowner put that in there on Whitesburg property? Mr. Clemens said yes. The Selhorsts just did purchase this property month ago, they have not done anything. We didn't know where that property line was. We had to get the survey done and it was pretty surprising to find that the house was

basically just missing the property line and that the deck was over. They were purchasing it assuming that some part of the hill, at least, was their property.

Mr. Clemens said this is a significant rear yard variance but I submitted with the thought that this is the front of the house, that this is a side yard, and that is a rear yard. I think we are asking for 5' off just for the deck.

Mr. Jamieson said when calculating setbacks, all the other houses on that street do face the private driveway. When we researched this property we looked at it has to be as it is considered facing North Street. I think the other houses have enough room around them that they clearly meet all the setbacks because they are pretty well spaced apart. Mrs. Freshman-Johnson said but the rear yard faces the bluff that goes down. It is not like there are houses there.

Mr. Fricke said you will have to do some kind of engineering study on the back. Mr. Clemens said you guys have to approve this location before they do the engineering. We are moving it 9.3 feet away from that line and the deck will be 5' back from that line.

Mrs. Freshman-Johnson said so it is because the deck is going to be 5' that we are at the 45'? Mr. Clemens said correct. Mrs. Freshman-Johnson said and not the 41' variance. Mr. Clemens said correct. Mrs. Freshman-Johnson said but it is only a portion of it that is 5' and the rest of it is at 41'. So it is not like the whole 50' of house is 5' from that. Ms. Kraemer said what portion? Do you know the distance? Mr. Clemens said the width of the deck is 20'. Mrs. Freshman-Johnson said how long is the house from north to south? Mr. Clemens said 90.6 feet. Mrs. Freshman-Johnson said and it is a deck, it is not covered? Mr. Clemens said correct. Mrs. Freshman-Johnson said it is open air. You have to have the deck because of the bluff otherwise you can't get out of the house; you would have to parachute out the back. Mr. Clemens said correct.

Ms. Kraemer said is it conceivable that the engineering study would render this not practical? Mr. Clemens said no. It is conceivable that we would put some extra money into caissons that would extend a little deeper on the hillside underneath the footers. But that would not be a deal breaker on this house.

Rick Siegfried, RSA Architects, said about fifteen years ago we did the house directly north of this and we did the engineering and that house has not moved. I don't think your circumstances change too much, other than you are a tiny bit closer, but that house is right on the edge too and it has been fine. Mr. Clemens said the house that is there now has done quite well for ninety years.

Moved by Mrs. Freshman-Johnson, seconded by Mr. Holdren in regards to the variance requested at 600 North Street, a variance to 1125.03(h) of the code for the rear yard setback required 50'. A variance is being required for approximately 25% of the house to be at a 45' variance as the porch that backs up into the rear will only be 5' from the rear yard and then the rest of the house will be at a 40' variance approximately from the rear yard. The property is going to be new, however, it is replacing an existing footprint that actually was even closer to the rear yard making the

nonconforming variance slightly better than it was before. It is a complicated, unique lot that is very private and not around a lot of other houses to be seen. The rear yard doesn't back up into any other living space but the natural bluff land. On the other side of the house there exists a pond so there is no other way to really obviate and set this house on this unique property. There will be no further existing environmental changes done to the placement of the existing house. The variance, although substantial, has a unique nature to this lot and although significant does not impact any other living areas or neighbors around it. The character of the neighborhood would be enhanced by a new house in this area not affecting any other further natural settings for the pond or the wooded nature around it. It would not adversely affect government services because the driveway will exist as is. The owners did purchase the property knowing that the existing house was nonconforming but with the new property it will make it less nonconforming of a variance. We have talked through many reasons why the house can't be placed to obviate the variance any other way on this existing lot. The intent behind the zoning would be observed by approving this variance and they were not self-created. And therefore, all these reasons to approve the variance.

Fricke: I would vote aye. I think that this is about as substantial variance request as you can get. However, I think it is a very unique piece of property and I think the evidence is overwhelming that the property owner is doing everything they can to build a house within all the constraints of the property.

Mr. Fricke said do we need to do anything about the retaining wall? From the village's perspective, is that something that is worked out though the engineers? Does it need to be a condition upon the village getting the proper assurance or studies or whatever it might be? I would assume the village doesn't want liability; they didn't build it there. Whatever needs to be worked out I would make my approval subject to whoever needs to be approving whether it is the law director with the engineer. I vote aye, but I would make that a requirement, compliance with engineering.

Mr. Markowitz said you are really amending the motion. Mr. Fricke said I guess I would amend if that is even possible. I am moving to amend the motion and voting aye with my amendment, seconded by Ms. Kraemer. Mr. Fricke said so the motion has been amended to be everything that Rachel stated. Mr. Markowitz said you have to vote on the amendment.

Holdren: I vote aye. I think that is fine.

Kraemer: Aye.

Lipp: Aye.

Freshman-Johnson: Aye.

Fricke: Aye.

Fricke: As amended, I vote aye for all the reasons I stated before the amendment.

Holdren: I vote aye.

Kraemer: I vote aye. I think the important thing about this project I think it meets the criteria even though it is an incredibly substantial variance. But, I think the important thing is the environment's sensitivity that needs to be exercised in that case at the edge of Whitesburg and there are issues of wetlands and a riparian so I think to keep it at that footprint or move it back a little bit from the existing footprint is the sensitive thing to do environmentally and I vote aye.

Lipp: 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.

Rod Fitts, 86 West Street - Request for a variance to Section 1137.02, Permitted Uses, and Section 1145.02(b), Nonconforming Buildings, Permanent Parcel No. 932-06-050.

Mr. Fricke said we had an initial reference to a use variance but that is not so. There is only one variance that you will get into. Mr. Jamieson said there is no change in use whatsoever. This is the new office of W. Design. It is a one-story commercial office building in the Central Shopping District. They are proposing to add five additional windows to the north facing wall of the building. The variance needed is to Section 1145.02(b), nonconforming buildings and structures, additions. The addition of the five new windows is considered an alteration and that code section states that a nonconforming building shall not be altered unless the original building is brought into conformity. The building currently has a 3' setback to the side yard facing the north and the code requires a 5' side yard setback. This project went before the ARB on November 5, 2019 and the final plans were approved.

Rick Siegfried, RSA Architects, said there are offices along this wall and some natural light in there would be kinda cool. The State of Ohio also has an issue with putting windows less than 5' from a property line. This is a permanent easement to prohibit Mr. Shibley from building on. I think he has 2.2 feet for something like that, his property the parking lot there. They are not going to build there and then he gets to put parking signs on the wall that is already there but he won't put them over the windows. Once we say we got the 5' no build easement then the State of Ohio kind of has to let us. We are going to have up to 10% glass and that was so they are not very big but they will let some light into those offices. We think putting the windows in will help the building and the neighborhood. We request that you approve our variance. We don't think it really hurts anybody or anything. Noone anticipated this when Mr. and Mrs. Fitts bought the building.

Mr. Fricke said and this whole thing looks into Larry Shibley's property? He is the only property

owner? Mr. Siegfried said he is the only one and it is a parking lot.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson for 86 West Street so they are requesting a variance to Section 1145.02(b), nonconforming buildings. Pretty much this is because it is within 5' they need a variance to put windows in. The property will still return a reasonable return without the variance. I do not think this variance is substantial at all. It is not encroaching any further, it is just removing bricks and adding glass. The character would actually be improved. This does not affect the delivery of governmental services; it might improve it. If there is a fire you can exit through the window. The property owner did not purchase the property with the knowledge of the zoning restriction. The property owner's predicament can not be obviated through any other method without this variance. The spirit and intent of the zoning requirement would be observed by granting this variance. This variance is not self-created by the property owner. For all these reasons, I would like to make a motion to approve this variance.

Holdren: Aye.

Kraemer: Aye.

Lipp: Aye.

Freshman-Johnson: Aye.

Fricke: Aye, for all the reasons in 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.

Mr. Fricke said right now we have nothing for the December meeting but if something comes up we will have to come up with another date because the forth Tuesday in December is Christmas Eve. If we don't get anything on the agenda I'd like to thank Julia Lipp, because this will be her last meeting. She was a wonderful help, a great addition, and we wish her well.

The meeting adjourned at 8:33 p.m.

Wade Fricke, Chairman
lgb