



**Village of South Russell  
5205 Chillicothe Road  
South Russell, Ohio 44022  
440-338-6700  
BOARD OF ZONING APPEALS  
MEETING MINUTES**

**December 15, 2021 7:00 p.m.**

**Members Present:** Laura LaChapelle, Acting Chairperson, Andy Hitchcock, Chris Bell, Mike Mulloy

**Member Absent:** David Maistros

**Other Officials:** Bridey Matheney, Solicitor; Mayor Bill Koons, Dave Hocesvar, Building Official, Ruth Griswold, Board Secretary

**Visitors:** Christian Kalinyak, 447 East Washington Street, 44022;  
Ryan Scanlon, 5260 Chillicothe Road, 44022; Dan and Amy Taussig, 50 Ridgewood Rd, 44022; John Buda, 106 Leaview Lane, 44022

Ms. LaChapelle called the meeting to order at 7:00pm. Ruth Griswold conducted roll call.

**Ms. LaChapelle asked the board members if they had any changes or modifications to the minutes from October 20, 2021. Hearing none, she made a motion to approve the minutes. Mr. Bell seconded. On roll call vote, the motion carried.**

**AGENDA ITEM 1: CASE #BZA 21-07: Mr. Christian Kalinyak and Mr. Ryan Scanlon of PonyBoys LLC are seeking a Use Variance from Section 5.06(3)(d) of the Zoning Code to allow an existing pole sign to remain in place for a new sign at 506 East Washington Street.**

Ms. LaChapelle asked the solicitor to swear in anyone who may speak. Ms. Matheney swore in both applicants and visitors.

Ms. LaChapelle asked Mr. Hocesvar to provide some history surrounding the remnants of the old sign frame that remains in place at 506 East Washington. Mr. Hocesvar said before the previous

tenant moved out, the sign was very deteriorated and eventually, after the tenant vacated the premises, the sign face was removed. Ms. LaChapelle asked if pole signs were permitted when the sign was initially installed. Mr. Hocevar said yes that is correct, and that was around 1979. Ms. LaChapelle asked if there were any variances on the property. Mr. Hocevar said a side yard variance was granted for the location of the pole sign. Ms. LaChapelle clarified that there has been no variance granted allowing the pole sign. Mr. Hocevar said that is correct.

Ms. LaChapelle said the Zoning Code was amended to no longer allow pole signs in 1989, and asked Ms. Matheney to provide some background on Ordinance 1989-57. Ms. Matheney said South Russell decided that some pole signs on East Washington and in the Village in general were considered blighted and a nuisance. There were also concerns about the signs obstructing traffic and views. She said a Supreme Court case in 1987 said if zoning regulations exist that become a nuisance, municipalities are able to regulate that, declare a nuisance, and provide measures for compliance to be reached within a certain amount of time. She said the Supreme Court case allowed a time period of three years. She said normally zoning laws and amendments are not able to be retroactively applied, but in this instance, it was different and South Russell allowed a period of five years to comply with the new Zoning Code. During the five-year period from 1989-1994, all owners of properties that had pole signs received letters, either hand-delivered or mailed, advising them that they had to remove their pole signs or alter them to comply with the new code.

Ms. LaChapelle asked Mr. Hocevar if the pole sign use was ever discontinued at 506 East Washington. Mr. Hocevar said it is currently a skeleton of the former sign, with only remnants remaining, and not operating. Ms. LaChapelle asked how long the sign has been in its current state. Mr. Kalinyak said it has been since May of 2021.

Ms. LaChapelle asked Ms. Matheney, in regard to a use that has been discontinued, would a 30-day timeline apply. Ms. Matheney said other than the fact that the pole sign was supposed to have been taken down, and there is no known special exception to that required removal per the 1989 ordinance, a non-conforming use discontinued for a period of 30 days shall thereafter conform to the regulations of the Zoning Code, per Chapter 9(d). Ms. LaChapelle asked Ms. Matheney if, in her opinion, the use of this sign had been discontinued. Ms. Matheney said yes, based on the testimony heard tonight from Dave Hocevar.

Ms. LaChapelle said since the use is not grandfathered in as a prior non-conforming use, they are basically starting from scratch and must apply the current Zoning Code. She asked the applicants, with that background in place, to provide testimony in support of their application.

Mr. Kalinyak asked, in light of everything just said, if there would be any restriction to the height or width of the sign. Ms. LaChapelle said with all things considered, it is a pole sign, and they are prohibited. Mr. Kalinyak asked if he were to encase the bottom of that sign and in theory, make it into a monument sign, would that be permitted. Ms. LaChapelle referred to Chapter 2 and noted that no reference is made to a monument sign but a *“Ground sign includes any sign supported by uprights or braces placed upon the ground, which sign is not attached to a building and the bottom of which sign does not exceed 3 feet above ground or grade level and the top does not exceed 7 feet above ground or grade level.”*

Mr. Kalinyak said the issues they are up against, as far as the height goes, are the telephone pole and the AT&T box. He said the AT&T box is about 4 ½ feet tall, and a ground sign that would have to be 3 feet above grade would therefore not work for them, as it would be clearly blocked, as evidenced by the photos submitted.

Ms. LaChapelle said the issue before the committee is their application for a pole sign. If they would like to propose something other than a pole sign, it is possible it may comply with the Zoning Code. She asked if Mr. Kalinyak has had any conversations with Mr. Hocevar about that. Mr. Kalinyak said when they leased the building, they were given the impression that the sign was grandfathered in. They would have liked to keep the sign as it is and were not aware of the 30-day rule.

Ms. LaChapelle asked Mr. Kalinyak what type of sign he would propose. He said he would like to modify the sign presented, have it encased and illuminated from the inside, and have it cut down by approximately 2 ½' to create a smaller rectangle.

Ms. LaChapelle asked for any further comments or questions from the applicants, visitors, or the board. Mr. Bell asked Mr. Hocevar if the applicant were to pull their variance request for a pole sign and go with a ground sign, would that location meet the required distance of 25' from the curb. Mr. Hocevar said the property was granted a side yard variance for the installation of the pole sign.

Mr. Hitchcock asked if the variance given in 1979 would allow another sign to be less than 25' from the curb. Ms. Matheney said that is a good question. Mr. Hitchcock said having driven up and down East Washington Street, together with the pictures presented to the board, it is very clear that having a sign set back from the road is not ideal. He said there are plenty of obstacles in place that make practical compliance with the Zoning Code very challenging, and he doesn't know what the middle ground is. He said in his mind, that would potentially be one way to think about it.

Ms. LaChapelle asked Ms. Matheney if it would be appropriate for the board to address the setback issue tonight, since the setback was not part of the legal ad or the notices to the neighboring properties. Ms. Matheney said that is a good point, and the applicants are permitted to amend their plan, even just orally, at the meeting. She said she feels it would be up to the board to decide, as the required notices did only indicate the variance request was for a pole sign.

Ms. Matheney then addressed Mr. Hitchcock's earlier question and said the minutes of the meeting in 1979 said that the applicant presented plans for a new sign proposed at a certain location. She said the side yard variance was granted based on those plans, and there is the assumption that the variance is per the plans reviewed at that time. She went on to say that variances do run with the land, but technically if it were for whatever was proposed in those plans, one would think it would be what those plans specified. She said the board could table this and notices could go out indicating that the applicants are revising their plans, but they don't have an affirmative statement that the applicants are revising their plans.

Dan Taussig said he and his wife Amy live directly across the street from the new PonyBoys restaurant, and that they are both in support of any variance from the height restrictions and have no issues with the location or design of the proposed sign for the restaurant. Ms. Taussig said they are very familiar with the property, and she said the requirement of 25' from the curb would place the

sign in the middle of their parking lot. She went on to say that snow piling up could impact visibility of the sign if a ground sign was required in that particular location.

Mr. Mulloy referred to the photo of the mock-up sign that was just above of the AT&T box, and asked Mr. Kalinyak if he knew the height of that sign, and if it would fall within the requirements of a ground sign. He said he feels if the board required that height for a ground sign, it may create an issue with visibility as people are exiting the parking lot. He said he feels the pole sign may allow for more visibility.

Mr. Kalinyak said for traffic heading westbound on Washington, the AT&T box would completely block any ground sign. Mr. Hitchcock asked if the AT&T box was in use; Mr. Kalinyak replied yes, it is currently in use.

Mr. Scanlon said, to Mr. Mulloy's point, traffic exiting the parking lot would lose sight lines from a ground sign. Ms. LaChapelle asked if the sign could be located on the other side. Mr. Scanlon said there are other hinderances to locating it on the opposite side of the driveway.

Mr. Bell referred to the rendering of the new sign and asked Mr. Kalinyak to clarify the height. Mr. Kalinyak said the new proposed sign face would be located where the bottom of the existing frame is. Ms. LaChapelle asked how far the bottom of the sign would be from the ground. Discussion followed and it was determined that the bottom of the sign would be 111" from the ground and the top of the sign would be 126" from the ground.

Mr. Hitchcock said, as Laura had mentioned, there is the potential for re-doing this as a ground sign, which may need a 1 ½' - 2' variance in order to be seen above the AT&T box, rather than a more significant variance or getting something that is not permitted. Mr. Hitchcock asked if the Village had heard from the safety forces relative to what has been submitted or other possible options that may have been considered. Mr. Hocevar said no, the safety forces have not discussed the issue.

Mr. Bell asked if any neighbors submitted anything in writing. Mr. Hocevar said no, nothing has been received by the Village.

Ms. LaChapelle asked if the applicants or attendees had anything further to add. They did not.

Ms. LaChapelle said the request before the board is a Use Variance, and whether the variance of a pole sign may be granted or not granted. She said a Use Variance is different than an Area Variance, in that you must have all the elements for the variance to be granted, as opposed to having a majority of the elements for an Area Variance. She said for example, if you have seven requirements for an Area Variance, four in favor and three against, an Area Variance may be granted. Whereas, a Use Variance, the first element is: "*The property cannot be used for any permitted use within the district*". She asked the applicant if there was a sign on the building now. Mr. Kalinyak said there is not, but they are planning to have one. Ms. LaChapelle asked where the building sign would be located and if they had a drawing of the proposed building sign. A rendering of the proposed logo for the building was brought up on the big screen. Ms. LaChapelle asked if the name of the restaurant would be anywhere on the building. Mr. Kalinyak said no, it would just be the logo.

Ms. LaChapelle went back to addressing all three elements needed for a Use Variance. She said the second element is, *"The variance would not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located"* and the third element is, *"The variance shall be the minimum necessary in order to provide adequate relief to the property owner."*

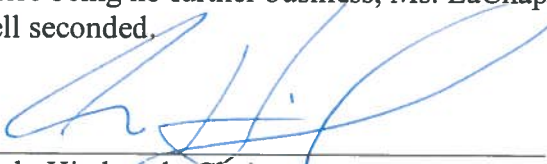
**Ms. LaChapelle made a motion to grant a Use Variance to allow a pole sign as proposed, at 506 East Washington Street, the overall height being 126.05" or 10'5", and the height from the bottom of the sign would be 111", or about 9.25', and conditioned upon the approval of the Architectural Review Board. Mr. Mulloy seconded.**

**On roll call vote, Mr. Hitchcock said he feels the pole sign is really out of character for the neighborhood, and he thinks a ground sign with a smaller variance would be more amenable, therefore he is voting No. Ms. LaChapelle-No. She stated the reasons being the threshold for granting a Use Variance are much higher than an Area Variance, and she concurs with Mr. Hitchcock's statement. Mr. Bell said he is having trouble with 1(a) under Use Variance, therefore he is voting No. Mr. Mulloy-No. On roll call vote, motion unanimously denied.**

Ms. LaChapelle addressed the applicants and advised them that the motion did not pass, and their request for the Use Variance has been denied. Mr. Kalinyak asked if they should ask AT&T to move their box. Ms. LaChapelle suggested consulting with Mr. Hocevar and exploring their options. Ms. LaChapelle said they could resubmit a different proposal to the building department, and if a variance is required, they could appear before the board again. Mr. Hitchcock said board members would like to allow businesses in the Village the ability to promote themselves, and they are sympathetic to the challenge, but he believes there can be a workable plan. Ms. LaChapelle said it sounds like a wonderful restaurant.

Under **New Business**, Mayor Koons thanked Ms. LaChapelle for the nine years that she has served the Village of South Russell as a member of the Board of Zoning Appeals. He said he believes the BZA to be one of the most difficult committees, as they must act as judge and jury, and oftentimes applicants appear before them to ask for forgiveness instead of having first obtained permission. He said he appreciates the professionalism, preparation, diligence and thought that is put into each applicant's submittal. Ms. LaChapelle said many times, as she did earlier today, she has consulted with Bridey and Dave prior to meetings, and that their helpful knowledge assists her in being well-prepared. She thanked Mayor Koons and a round of applause followed.

There being no further business, Ms. LaChapelle motioned to adjourn the meeting at 7:40pm. Mr. Bell seconded.

  
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Andy Hitchcock, Chairman

Feb 16, 2022  
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Date

  
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Ruth Griswold, Board Secretary

2-16-2022  
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Date