Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
Record of Proceedings
January 15, 2020 7:00 p.m.

(Editor's Note: These minutes are not actual verbatim transcript of the meeting but merely intended to be detailed synopsis of the discussion that took place during the meeting. It is the belief of the author of this document that all pertinent information has been included to represent an overview of the discussions and decisions reached.)

Members Present: David Maistros, Chairman; Laura LaChapelle, Bill Stone
Members Absent: Andy Hitchcock
Other Officials: Bridey Matheney, Solicitor; Mayor Bill Koons; Dave Hocevar, CBO/Inspector; Nancy Grattino, Board Secretary

Visitors: Hank Kassigkeit, 48 Daisy Lane, South Russell
Samuel Costiuc, 731 Beta Drive, Mayfield
Bryan Fetener, 46 Daisy Lane, South Russell
Chris Woofter, 400 E. Washington, Chagrin
Paige Rabatin, 1425 E. 15th St., Unit 9, Cleveland, OH 44114
Mike Mulloy, 991 Bell Road, Chagrin Falls
Mitch Herman, 52 Daisy Lane, South Russell
Gary Neola, 1151 Sheerbrook, South Russell

Chairman David Maistros called meeting to order at 7:02 P.M.
Board Secretary Nancy Grattino conducted roll call.

Chairman Maistros switched the order of the agenda.

CASE # 20-BZA-02: 1155 BELL ROAD – GURNEY ELEMENTARY – SIGNARAMA MAYFIELD, APPLICANT – 9' VARIANCE REQUEST FOR LOCATION OF NEW (REPLACEMENT) MONUMENT SIGN

Ms. Bridey Matheny swore in anyone speaking this evening regarding this case.

Mr. Christopher Woofter, Operations Director for the school district of Chagrin Falls stated they are grateful to be able to present to the Board tonight a new sign for Gurney School. This came about from their principal and superintendent having a decent amount of feedback from parents and the community not being able to see the sign well. The sign that is currently there was installed 10 plus years ago, it is worn and seen its better days and they are trying to update that. When they looked at updating the sign, they wanted to update the location as well. Mr. Woofter stated Signarama has worked with them and did

a lot of work at the intermediate school with the newer signs and they were impressed with their work; so had them take a look at this sign as well. For a matter of the communities' interest, the funding for this is paid out of residual funds from the bond fund from the intermediate school construction. They were below the budget on the construction of that building. Mr. Woofter stated he will have Sam (Signarama) speak on the work that he has done in planning this, they will look for the Boards input and the next steps.

Mr. Sam Costiuc, with Signarama- Mayfield stated they are seeking two variances. The first variance is the height of the sign, he thinks they are about ½ foot over what is allowed. Primarily they raised it up for esthetics reasons and for visibility. The second variance is moving the sign to the location that is proposed in the drawings. They are asking to basically be 16' off the curb. There is a stake out there now if anyone wants to go out and take a look; that is where the sign is going to start. Mr. Costiuc stated he took the liberty of putting together, a rendering of what the sign will look like from the two advantage points up and down the street (passed out). Mr. Costiuc stated as they can see it should not impede any visibility either way. In fact, it will help with the visibility because now you cannot see the sign until you are right up on it and in many cases if you are going to fast you are going to flow right past it. Mr. Costiuc explained where the sign is currently located right behind the transformer boxes and stated you cannot see the sign from the one side of the road, he believes it is east. A lot of the visibility issues would be solved by moving the location of the sign to where they are proposing.

Mr. Costiuc stated he believes the codified ordinance requires a sign of this size to be set back 30 or 40 feet, which would put it at the edge of the woods and would be less visible than it is right now. That is why they are proposing 16'. He went out there, had surveyed everything and thinks this is the most reasonable place to put it. They are far enough away from First Energy utilities here that it should not impede them if they had to service those.

Mr. Maistros stated to Mr. Costiuc that he had mentioned that a height variance is also required and asked him to address that. Mr. Costiuc stated to Mr. Hocevar that they are allowed 6' and asked if that was correct. Mr. Hocevar stated 7'. Mr. Costiuc stated with 7', the height variance is not needed.

Mr. Costiuc stated they are also looking to put ground lighting for the sign, they would like that approved also, it is part of the proposal. He is not sure if that is a zoning thing or a building. Mr. Maistros asked Mr. Hocevar, the ground lighting would not be part of this Board, is that correct. Mr. Hocevar stated correct. Mr. Maistros stated the sole issue before them is the 9' setback variance from the 25' that is permitted, is that correct. Mr. Hocevar stated yes, they also might want to have the Police Department take a look at a mockup of this sign, just to make sure it is not obstructing any views either way. He doesn't think it is, but it might be a good idea to have the Police Department take a look at it and say it is okay. Mr. Maistros stated okay. Mr. Maistros stated and that would be the exiting of the Gurney drive. Mr. Woofter stated they certainly can mock a sign up, probably out of some lumber of sorts and then have Chief Rizzo come look at it. Mr. Woofter stated he will do that in the next couple of weeks, whenever they can get that constructed and asked if that is okay with them.

Mr. Maistros asked if there are any questions from the Board Members. No questions.

Mr. Maistros asked if there was anyone else here in the audience to address the Gurney sign. No response.

Mr. Maistros asked Mrs. Grattino if we had received any objections, emails, letters, calls, concerning this sign. Mrs. Grattino stated no.

Mr. Maistros asked if Signarama or the Board of Education is the applicant. Mr. Costiuc stated Signarama is the applicant on behalf of the Board of Education. They are the contractor and will be doing the work.

Mr. David Maistros made a Motion to APPROVE Case # 20-BZA-02, Gurney School at 1155 Bell Road with the applicant being Signarama requesting a 9' setback variance for the location of the replacement monument sign; with the CONDITION that it is reviewed and approved by the Police Chief or his designee and such approval is sent to the Building Department to confirm that this was done. Seconded by Mrs. Laura LaChapelle. No discussion. A Roll call vote was taken (Maistros – Yes, LaChapelle – Yes, Stone – Yes). With Unanimous Vote, Motion Carried.

CASE # 20-BZA-01: 48 DAISY LANE – HENRY KASSIGKEIT, APPLICANT – APPEAL ARB'S DENIAL OF EXTERIOR MODIFICATIONS

Mr. Maistros stated before they get going on this he would like to request, normally the BZA deals with appeals of variances and setbacks, similar to what they just dealt with. An appeal from another Board or Commission is not something they usually deal with, even though it is part of the code. At this time he would like to call for a short recess so the Board can go into Executive Session with Legal Counsel and briefly make sure they are on the same page regarding their criteria, standard in reviewing this matter prior to that. Mr. Maistros asked Ms. Matheney if this is an authorized reason to have Executive Session. Ms. Matheny stated you can go into Executive Session to discuss pending or immanent litigation. You can also have a meeting outside of the public that is not Executive Session. Ms. Matheney stated if they are going to go into Executive Session, they should definitely state that reason. Mr. Maistros stated that would what it would probably fall under, it would be pending or potential litigation and if they could have a brief Executive Session regarding that.

The Board Members and Ms. Bridey Matheny took a short recess and went into Executive Session around 7:18 P.M. Chairman Maistros resumed the meeting at 7:38 P.M.

Mr. Maistros stated they had a meeting with Counsel and wanted to clarify an issue that they are struggling with. Mr. Maistros stated that is that this is an appeal from the Architectural Board of Review to this Board. It appears to be, they have two documents initiating this appeal; one being from the applicant himself dated 11-25-19; where the appeal is that the ABR doesn't like black. This is the reason for the variance, but he is assuming that this is the reason for the appeal because that is why it is here. Counsel on 11-27-19 on behalf of the applicant submitted a letter that has a little more detail to it as far as the reason for the appeal. All that being said, the November 5th ABR decision, which was documented November 7th, stated that it was denied for changes or modifications to the exterior, or something to that effect. Which could be much more encompassing because they don't know specifically the basis for the denial or what ABR was denying. Mr. Maistros stated because reading the minutes which are somewhat extensive in this matter, which go back to a number of different meetings. He sees where ABR has discussed a number of different exterior issues that appear to be modifications from an original approved plan. All that being said, this Board is not comfortable moving forward unless they have a clarification from the ABR, as far as what specifically was denied in this case. Mr. Maistros stated all they know is that there were modifications from an approved plan to the exterior. He thinks they can say color was just one of those modifications.

Mr. Maistros stated if that is the only issue of what they are here to decide, whether or not they are going to hear an appeal and whether or not black is or isn't an approved color. He doesn't think that solves anything because there are a number of different other issues that the ABR denied this application, but they don't have the specifics on those. So, trying to expedite this as quickly as possible, he would like to make a motion.

Mr. David Maistros made a Motion that they send this back to the ABR for not another hearing, but for clarification and have the ABR document what specifically was denied in this case. So, they know, what they are hearing as far as what they are reviewing. Mr. Maistros asked if there are any questions up here as what they are being asked. Mrs. LaChapelle and Mr. Stone both answered no.

Mr. Maistros asked the applicant and his representative if they could both stated their names. He would like to ask them both if they understand what he is requesting as the Chairman and what the Board is agreeing to here.

Paige Rabatin stated she is here on behalf of Mr. Kassigkeit. Ms. Rabatin stated she guesses her follow-up questions of several of the meeting minutes. They basically stated that this house could be the most beautiful house in the world but they are going to deny it because of the precedent it would set that he kept building and would be more comfortable with the building; something along those lines. Mr. Maistros stated okay. Ms. Rabatin asked would that not state that all of the esthetic issues seemed to be complete and resolved and that it is more of a precedent issue now of the reason for denied. Mr. Maistros stated he doesn't think so, because the way he reads it is that they are denying it because of changes that were made from an approved set of plans to a final as built. You have an approved set of plans and they you have an as built as they sit there and look at it today. Those changes from point A to point B were the reason. Now, would it set precedent, yes; but they need to know what those changes are. Is it just the color, the material on the roofing, is it the siding, is it all the siding, is it the faux stone? He read all of those at one point in time and then ultimately the final denial just said it is denied without specifics as far as what the issues were. That is in his opinion, what they need clarification. Ms. Rabatin stated there is also a portion where they said they realize now that they have no right to deny based on esthetics alone, there was an area where they discussed that as well. Mr. Maistros stated he doesn't recall that specifically, he is not saying it didn't happen. Mr. Maistros stated they are here on appeal of the denial and he thinks they need to know what they are hearing. The only thing they have from the property owner is that he is appealing the color change. Mr. Maistros stated his guess is that this is not the only issue. Mr. Maistros stated they could say yes that they override them or don't on the color but that doesn't change all the other issues that were raised.

Mr. Hank Kassigkeit, property owner of 48 Daisy Lane stated wouldn't it be as a property owner to expect a Board, yours included, to state their approval or denial at the time of submitting, not at the end of the project eight months later. Mr. Maistros stated he is not going to speak for them, but their argument might be they did approve a set of plans and those were the plans they reviewed and approved, and they weren't built that way. Mr. Kassigkeit stated he understands, the other side is the fact that everything was submitted in form to them, in sample form. Wouldn't that have been the appropriate time to say approved or disapproved and not at the end of the project. Mr. Maistros stated they are not here tonight and will not be here in the future to discuss how they did or didn't handle their meetings and their process. What they do want is to be in a position is to be logically and intelligently decide what they are to do. That is to review the denial and what was denied. Mr. Maistros stated, quite frankly, he is not sure what was denied and that everything was denied. All the changes, he doesn't know if that was their intent, maybe it was,

but they need to know that. Mr. Maistros stated he does not want to spend and inordinate amount of time discussing metal roof verses standing seam, verses this siding verses that siding if that is not an issue. Mr. Maistros stated all of that seems to be cloudy at this point. Mr. Maistros stated to Mr. Kaissigkeit that he doesn't think his only intention was to ask them only to decide on the color. Mr. Kaissigkeit stated no, he thinks his intention is he would like to have some quiet enjoyment and enjoy his house. This is his intention, and let this thing go away; this is what his intention was tonight. To say he would like some quiet enjoyment and live the fairytale, and everyone live happily ever after. Mr. Kaissigkeit stated if there were some mistakes made, and he is sure there were some on his part and he apologizes in advance but there were on both sides of the coin that there were mistakes made. Mr. Kaissigkeit stated he just wants everyone to live happily every after and he wants to enjoy his house and not have this cloud of dust hanging over him all the time. Where he shot, you shot, I shot; none of that. Mr. Maistros stated let's work through that. Mr. Maistros stated what they are going to ask is that the ARB proved them with findings of facts as it relates to their basis for denial and what in fact was denied. They are not asking them to have another hearing down there, you will not have to go down there and they are not terminating this hearing tonight. They are extending this hearing, continuing it, he will not have to pay. He hopes there is not any additional fee or application fee, they are simply going to extend this. Any homeowners or neighbors that are here tonight they will get notice when this meeting will be set. Mr. Maistros stated it is his understanding that Mr. Kaissigkeit is residing in his home, so he doesn't intend to delay this but from what he sees this doesn't cause any undue delay by them doing this. Mr. Maistros stated this puts them in a better position to be able to decide this. Mr. Maistros stated he does not know if they have any other objections to this or what is being proposed but that is what is being proposed at this point.

Ms. Rabatin stated she thinks they basically stated everything that they thought for this. She understands that regardless she thinks it is going to move that way going forward. Ms. Rabatin stated her only other question would be, prior to it going back and them giving their reasonings, can she ask is the ARB, this administration code, is this solely what they have to go off of. Ms. Matheney stated she doesn't think so. Mr. Maistros stated he doesn't know that he can answer that. Ms. Matheney stated she thinks there is regulations on the website that are policy and not necessarily codified. Ms. Rabatin stated okay. Ms. Matheny stated she thinks she is right on that, she apologized she does not have that section with her and stated if she goes on the website there may be some more additional regulations. Ms. Matheney stated, again, they are not codified, that is chapter 264 is that right. Ms. Rabatin stated chapter 264, that is correct. Ms. Matheny stated there are other policies that they have made, that are not codified but definitely something that they follow-up with respective submission and she thinks of application and some plans. Ms. Rabatin, for guidance. Ms. Matheny stated she believes so, yes. Mr. Kassigkeit asked if they can get a copy of all that please.

Mr. Maistros asked Mrs. Grattino if they voted on this, they made a motion, but did they vote on it. Ms. Matheny stated it was not seconded.

Mrs. Laura LaChapelle seconded Mr. Maistros motion. A roll call vote was taken (Maistros – Yes, LaChapelle – Yes, Stone – Yes). With Unanimous Vote, Motion Carried.

Mr. Maistros stated they will notify everyone and get them back here as soon as possible. Mr. Maistros stated to Mrs. Grattino that if ABR has any questions or want him to be clear as far as what they are requesting, they can certainly contact him. Really, what they are requesting is just a basis for what they are specifically denying. What they specifically denied. Mrs. Grattino stated she will put this on the agenda for ARB's meeting next week and will just schedule this for next month. Mrs. Grattino stated

letters will not go out again to all the residents, but the meeting will be posted on the website. Mrs. Grattino asked Ms. Matheny, do they need to post the meeting in the paper again, or just the website. Ms. Matheney stated correct, just the website.

Mr. Kassigkeit asked, so this is going to be another 30 days out. Mr. Maistros stated it will be their meeting in February but was not sure the exact date. Ms. Rabatin asked if they need to request to be on that meeting. Mr. Maistros stated no, it will be the third Wednesday in February. Mr. Kassigkeit stated he may be in Florida. Mr. Maistros stated if he is going to be out of town, they can make adjustments to the meeting date. Mr. Kassigkeit stated it may not be until June as he may be out of town until then, depending on the weather.

Mr. David Maistros made a Motion to Approve the Minutes of November 20, 2019 as submitted. Seconded by Ms. Laura LaChapelle. A roll call vote was taken (Maistros – Yes, LaChapelle – Yes, Stone – Yes). With Unanimous Vote, Motion Carried.

OLD BUSINESS: N/A

NEW BUSINESS: Mayor Koons stated they are going to be working on a strategic plan for the Village and he is asking all the Boards and full-time employees, looking at 2019 he would like to know the things that went well and looking forward if they see things that they need to change or adjust to let him know. Every now and then you need to go back and start from the basics and work up. This is the time to go back and say look at what we are doing well and what we need to improve on. If in the next month, something comes to your mind, shoot him an email saying, do this or don't do that.

Mr. David Maistros made a Motion to Adjourn. Seconded by Mr. Bill Stone. Mr. Maistros adjourned the meeting at 7:52 P.M.

David Maistros, Chairman — Date: 6/24/2020

Nancy Grattino, Board Secretary — Date: 6/24/2020

Prepared by: Nancy Grattino

Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
Record of Proceedings
May 20, 2020 7:00 p.m. – Zoom Meeting

Members Present:	David Maistros, Chairman; Laura LaChapelle, Andy Hitchcock, Mike Mulloy, Bill Stone (7:06)
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons; Dave Hocevar, CBO/Inspector; Danielle Romanowski, Fiscal Officer
Visitors:	Thomas Rooney, 803 Sunridge Lane

Chairman David Maistros called the Zoom meeting to order at 7:03 P.M.
Fiscal Officer Romanowski conducted roll call. Maistros, Hitchcock, LaChapelle, and Mulloy were present.

Noting there were no changes or corrections, Maistros made a motion to approve the minutes of January 15, 2020, seconded by LaChapelle. Roll call – ayes, Maistros, LaChapelle, and Malloy. Hitchcock abstained. Motion carried.

Maistros advised that he was changing the order of the two items listed on the agenda and began with Case 20-BZA-03.

CASE # 20-BZA-03: 803 SUNRIDGE LANE – THOMAS & LINDA ROONEY, APPLICANTS – 7' SIDEYARD SETBACK VARIANCE & 7 ½' HEIGHT VARIANCE FOR PROPOSED 2ND GARAGE

Mr. Rooney was present via phone. Maistros stated that the application in the case proposed a second garage that would require a side yard variance and a height variance. The minimum side yard setback is 20 feet and the proposed addition exceeded the setback by seven feet therefore requiring a side yard setback variance of seven feet. He added that the maximum height allowance is fifteen feet, and the applicant has proposed a 22.5-foot garage and is requesting a 7.5 foot height variance.

Stone joined the meeting at 7:06 p.m.

Solicitor Matheney swore in Mr. Rooney regarding the case.

Rooney said the variance request for height was largely because it could be a usable space to have the garage on the lower level and then an artist's loft on the upper level. He advised that it would be 22.5 feet and visually would look appropriate for the house next door. Rooney referred to his "crude artist's rendering" of

the house and the garage and advised that the garage appeared larger than it would be. The actual garage would be about 50 feet further back from the front of the garage seen on the house. The total setback from the street would be about 140 feet. Rooney stated that the height restriction would be necessary for the visual appearance as well as to make it usable as an artist's loft. The setback on the west would be for the best placement of the garage. He explained that he had a 20-foot open space next to his lot, which was unused, and no other property was there. Rooney explained the front of the garage would be 20 feet from the property line. The back of the lot has a slight angle, and the back corner of the garage is the closest point and would be 13 feet from his lot line. It would be roughly 33 feet from the next property line.

Regarding the side yard setback and open space issue, Maistros asked if the open space to which Rooney referred was the space connected to the tennis courts on Sun Ridge. Rooney verified it was. Maistros asked if the garage sat further back than the tennis courts, and Rooney said it did and explained that the front of the garage was more in line with the pine trees that border the lot behind the tennis court. Maistros verified that including the 20-foot open space, the project was 33 feet from the next property line. He asked how far the project was from the residence on that property. Rooney stated he thought it was several hundred feet, and stated that the actual building was located off Bell Rd. La Chapelle asked if this was the green house, and Rooney verified it was the green house with maroon trim. He said he did not believe they were mowing the property beside where his garage would be.

Maistros indicated that Rooney's side yard setback would go to the backyard of this residence. Rooney asked for clarification. Maistros explained that Rooney was asking for a side yard setback requirement and generally side yards faced adjacent side yards, but it appeared that Rooney's side yard backed up to the Bell Rd. resident's back yard. Rooney explained that his property went back about 400 feet. He said that his house was not next to this residence. The 20-foot setback was past his property and past one of the flagpole lots in the back. No part of his yard butted up against the neighboring yard. He indicated that Lot 807 was the back of his property. Rooney further explained that the garage would be many hundreds of feet from this.

Maistros explained that the BZA considers the impact of the request as it relates to neighboring properties. Rooney was asking for the garage to be closer than was allowed to the property line which would put Rooney's garage closer to a neighboring property. The Board would consider the impact for the other residents when they were sitting in their backyards or on their decks. He was trying to determine what if any impact there would be to that particular piece of property. This clarified the line of questioning for Rooney. Rooney stated he had spoken to the owners of 801 Sun Ridge to explain his request for a variance. From this residence, Rooney stated it appeared the garage would not quite be visible. He referred to a picture in his application that showed a 197-foot marking on the tennis court and explained that there was a row of pine trees, and the front of his garage would be in line with these trees. Therefore, the residents in 801 Sun Ridge would only have their view of the back of his house changed. Rooney stated that the home across the street from his would have a view of the garage. He spoke to this resident, Lori Sferra, and was told she had no problem with the project. Rooney explained again that the garage would be roughly 150 feet back from the road, so the only residents who would be able to see it would be the neighbor across the street and the Revnew's, 805 Sun Ridge, who would be able to see Rooney's patio and one side of his garage. The Revnew's did not have an issue with the project either, according to Rooney. He added that the Revnew's signed off on the plan required by the Homeowners Association.

LaChapelle asked if Rooney was trying to center the project as far as the driveway was concerned as well as the placement. Rooney stated yes, and that he visually wanted it to look good from the front. It was somewhat centered and at a 90-degree angle from the existing garage. What he really hoped to do was have

the project look like it was built with the house. He planned to use the same siding, shutters, and roof so that it looked like it was built at the same time as the original house. This was why he ended up with the corner being nearer to the property line.

Hitchcock asked if Rooney had spoken to the residents at 807 Sun Ridge on the flag lot or the house on Bell Rd. and asked if these residents had any concerns. Rooney stated he had not heard from them but stated that when the Building Department sent out the letter, it was sent to everyone within 250 feet. These residents would have received the letter. Rooney said he does not see these residents. He added that there were 20 feet of woods where the neighbors do not mow at the back of his lot, and he thought they would not be able to see the garage. Regarding the HOA, Hitchcock asked if approval was required, and if so, had Rooney received it. Rooney stated it was required and he had spoken to Greg Vickers, the president of the HOA, who wanted to make sure the Brull's were ok, and after looking at where the garage was going to go, he said he saw no issues. Rooney stated Vickers signed off on it, but then Rooney received a call from Vickers on May 19. He told Rooney he was not able to sign off on it because he might not have the authority since it possibly conflicted with one of the HOA bylaws. As a result, Rooney still had to get HOA approval. Rooney advised that the Sun Ridge HOA requirements were similar to those of the Village of South Russell. He hoped to get approval from the BZA, and then he would speak to the HOA to determine if there were any objections.

Mulloy stated that he viewed the project site and he had no problems with it.

Stone stated he drove by the house earlier in the day and had no questions.

Maistros stated that the decision of the Board was based on the code of the Village of South Russell and did not inherently grant HOA approval. Rooney would still need to go through the process prescribed by the HOA regarding his project. Rooney advised he was aware of this.

Maistros stated that because the two variances were distinct, they would be separated for approval purposes. Maistros made a motion to approve the 7-foot side yard setback variance request for 803 Sun Ridge Lane, where the requirement is a minimum side yard setback of 20 feet, and the proposed addition exceeded the setback by seven feet, therefore requiring a variance request of seven feet for the side yard setback. The basis for his motion was that the variance request would not have a negative impact on the applicant's neighborhood specifically due to the 20-foot open space between Mr. Rooney's property and the next residential property, which gave an extra buffer to any residents. Maistros also noted that Rooney spoke to some of his neighbors who would be impacted visually by the project, and the neighbors provided no objections. Maistros verified with Building Inspector Hocevar that the Village had received no letters or complaints about the project. Maistros stated that the structure was compatible with other properties on the street. LaChapelle seconded the motion. No discussion. Roll call – ayes, Maistros, Hitchcock, LaChapelle, Stone, Mulloy. Motion carried.

Maistros made a motion to approve the 7.5 foot variance request for 803 Sun Ridge Lane to the 15 foot allowed height limit, allowing up to 22.5 feet on the proposed structure, which is a detached garage with an artist's loft on it. He reiterated his previous comments as they related to the height variance, that the distance of the structure from neighboring properties would not have a significant negative impact. Hitchcock seconded the motion. No discussion. Roll call – ayes, Maistros, Hitchcock, LaChapelle, Stone, Mulloy. Motion carried.

CASE # 20-BZA-01: 48 DAISY LANE – HENRY KASSIGKEIT, APPLICANT– APPEAL ARB'S DENIAL OF EXTERIOR MODIFICATIONS – CONTINUATION

Maistros asked if there was anyone present to speak on behalf of the appellant. Hearing no response, Maistros stated that the last information he received regarding the appellant was that he left a voice message on May 14, 2020 at 6:49 p.m. at Village Hall indicating that he was aware of the May 20, 2020 hearing and stating for the record, "After review, we stand on our letter dated November 2019 as far as the facts on the case and the ARB's action, which we feel they do not have a basis for any action. They provided no codified reference whatsoever for their action. Second of all since this is not a zoning issue, we feel the Zoning Board's action, which they could have taken after 45 days and after the original appeal was submitted, should be a dismissal of the ARB action and overturned in this appeal in my favor. Thirdly, I will not be attending any electronic meetings due to health reasons. I am unable to do that. Thank you for your consideration."

Maistros concluded there was a reference to Kassigkeit's email address and other things. For the record, Maistros stated that the appellant had been notified of the meeting and indicated he was aware of it, and indicated he elected not to participate electronically as well. Additionally, the Board had no one else present on his behalf.

Maistros stated that the matter was brought to the Board's attention in January 2020 by way of an appeal. At that time, there was confusion by the BZA of the Architectural Review Board's (ARB) decision. There were a number of ARB meetings regarding the property over the course of months where there was discussion of design, material, approvals, and continuances of the ARB, which ultimately culminated in November. Then, the property owner appealed to the BZA. Kassigkeit's appeal pertained to the finish and color of the home and the ARB denial of such because the ARB did not like black. Maistros believed that the letter to which Kassigkeit referred was a letter from his counsel dated November 27, 2019 which had been submitted to the BZA in January. The Board then requested the matter be sent back to the ARB for clarification to determine what exactly was being presented. Maistros thanked the ARB for promptly meeting and addressing the matter. Maistros asked that the February 4, 2020 ARB minutes be submitted for the record. They were distributed to the BZA members.

Maistros summarized that there were a number of meetings with the property owner as he was in the process of constructing the home. At a meeting on February 5, 2019, the ARB did not approve using standing seam metal roofing on the walls and recommended that hardy board and batten siding be used instead. Drawings were resubmitted on February 19 by Kassigkeit, which were approved. The applicant also made a submittal April 16, 2019 that showed fake stone being used on the structure. The homeowner was told by the ARB that the fake stone would not be approved. A motion was made by the ARB to revise and resubmit, but it did not appear the homeowner submitted anything until November 5, 2019. At that time, he appeared with photos and indicated the home was completed with T111 siding and the fake stone, which was previously not approved. A unanimous no vote was given by the ARB at the time of the completed project for the following reasons: the homeowner ignored the ARB's April 16. 2019 request to revise and resubmit; their indication that they would not approve the fake stone; and the homeowner's submission on April 16. 2019 which did not comply with the 264.11c drawing requirements of the Village of South Russell. From the denial in November, the applicant filed an appeal, which Maistros stated was

timely. The Village set a hearing. and in January, the parties agreed to continue it until a clarification was received. It was further continued for COVID reasons and the applicant's inability to attend meetings when the Board attempted to schedule them.

Maistros asked the Board if any clarification was required on the matter.

He stated that the BZA had an appeal to address, which was part of its duty but uncommon. The appeal was to consider whether or not the November 5 decision of the ARB should be overturned. Maistros reiterated that the decision was to deny or vote against approving the as-built. The minutes of this meeting indicated that the ARB was not happy with the applicant and had expressed its concerns. The project was completed without approval. Maistros stated that in addition to being completed, the house had also been sold. The original applicant was not residing in the home.

LaChapelle stated she was aware the ARB raised concerns about the exterior modifications diminishing adjacent property values due to the aesthetic appearance. She stated there was no testimony or anything being provided to address the concerns of the ARB, so she thought for purposes of the appeal, it was within the power of the ARB according to Chapter 264, 11(a)(i). For all intents and purposes, Chapelle said it seemed to be a reasonable issue or concern. Regarding the stone and the issue that there was no product or testing data provided by the property owner, Chapelle thought this fell within the powers of the ARB under Chapter 264. She felt this was a legitimate concern. She stated it was the same issue with the drawing requirements, and said that it was another valid issue raised, but the BZA did not have any information one way or the other on this.

Hitchcock stated his questions were along the lines of a practical matter of what happens. If the BZA did not overturn the decision, he assumed there would be litigation involved because this was a route Kassigkeit could take. Since the property had changed ownership, Hitchcock asked if the new owner occupied the home and wondered what the Board or Village could do to stop someone from living in the house. The Solicitor asked Hocevar if the previous property owner ever received a certificate of occupancy. Hocevar stated he did not. The Solicitor asked if the new owner had a certificate of occupancy, and Hocevar stated not to his knowledge. Hitchcock asked if the new homeowner had been aware of this issue when purchasing the home. Hocevar did not know. Hitchcock did not know what disclosures were required by the State of Ohio but thought this should be considered as well as the potential to punish someone occupying the property for something with which he or she had no knowledge or involvement. The Solicitor stated that usually in the property residential disclosure forms, there is a section regarding local regulations and zoning issues. She did not know if the matter was disclosed because she did not see the property disclosure form. The Solicitor stated that this should have been disclosed, but it would be a private matter between the previous property owner and the new owner. Hypothetically, had the home not sold, it would have been up to the appellant to either continue through with litigation, and to appeal Board decisions. She advised that if the BZA were to affirm the decision by the ARB, the BZA could send the matter back to the ARB to revisit certain things that the homeowner could submit to see if he could obtain approval. If the BZA were to affirm the ARB's decision, the homeowner could also have appealed this to a court, but there would be a certain amount of time in which he could do this. If he did not, there would be an enforcement action to get rid of the aspects of the project that were not approved.

The Solicitor stated that this becomes more complicated with a new property owner. She thought the practical effect should be a consideration for the BZA.

Maistros stated that if the BZA were to affirm the decision of the ARB, it would put the new owner in a position where the new property owner did not have an occupancy permit due to the failure of the previous property owner to comply. They could appear before the ARB and request guidance on what was needed for approval. Maistros thought the ARB reached a conclusion about the fake stone, but he was not sure they reached a conclusion about the siding. He thought perhaps a compromise could be reached. This would be between the new owners and the ARB. Maistros reiterated that the task before the BZA was to affirm, overturn, or find some middle ground to the ARB decision.

Stone stated he understood that it would not really be within the scope of the Board's authority to provide an alternative or middle ground and asked if it would be up to the former property owner to provide options. Maistros stated he thought it would be up to the BZA to decide whether or not the ARB stepped out of its lane. The resolution would ultimately happen with ARB if the BZA sent the matter back. The Solicitor stated that the BZA could find some middle ground or modified decision which could be provided to the ARB for consideration. She thought the BZA had more power than simply affirming or overturning in this instance.

Mulloy stated he attended the meeting in January and was familiar with the issue. He thought it was a major concern that Kassigkeit proceeded without ARB approval. Mulloy said he would be interested to know what was disclosed in the sale but had no objection to the stance of the ARB.

Maistros stated he was troubled by Kassigkeit's actions and said it appeared to be a case of begging for forgiveness instead of asking for permission. He had been given all the signs by the ARB that he did not have approval, and apparently did it anyway. Maistros stated that ARB expressed this as well as concern for the precedent this action would take in approving something after the fact. Maistros agreed with the ARB on this.

The Mayor stated it was necessary to support the ARB, and he thought there had to be a consequence to Kassigkeit. He said the Village had $5,000 of Kassigkeit's money and proposed that the Village take a piece of it for punishment for ignoring the ARB and put it to bed. Maistros deferred to the Solicitor in determining if there was a mechanism for this. The Solicitor asked if the $5,000 was a construction deposit, and Hocevar said a major part was a construction deposit and a small part was the application to BZA. He thought it was $4,600 for the construction deposit. The Solicitor said there were fees that could be deducted from a deposit for administrative proceedings. As far as punishing the appellant, the Solicitor did not think this would be the route to take. She agreed with the Mayor in that if the ARB had followed the guidelines and the standards, it would make sense for the BZA to consider this and weigh it heavily, especially since the appellant was not present to provide any evidence or reasons as to why the decision should be overturned other than the letter provided. At the same time, she stated there was a practical piece of holding someone accountable for not following through with the procedure, failing to revise and resubmit, and simply completing the project. The construction deposit and fee for the BZA could be deducted for the proceedings, and time and cost for sending notice out to the 250 contiguous property owners. The Solicitor stated that this would not be a punishment. She clarified that the construction deposit was

refunded or used towards Hocevar's services. Hocevar stated in other cases, the construction deposit was forfeited if the contractor did not provide what was asked by the Village. In this case, Kassigkeit was the contractor for the job. The Village could subtract all the legal costs. The Solicitor stated she had forgotten Kassigkeit was the general contractor on the job. She said this would be an appropriate forfeiture. He did not receive the actual certificate of occupancy because ARB did not approve the plans. This would be the same situation as when a contractor puts up a deposit and never really followed through. She reiterated that this would be a proper forfeiture, but was not suggesting it was the whole amount, but explained that this could be part of the resolution for the BZA. Hocevar stated that the forfeiture would go before Council. The Solicitor concurred.

Maistros asked if Hocevar had an exact dollar amount of the deposit being held. Hocevar stated it was $4,645 for the construction deposit and $400 for the BZA application. Maistros asked if there was a calculation that still needed to be done concerning Village expenses that would be deducted. Maistros verified that the balance on the BZA application included all the mailings and postage that the Village had to do. He asked if there was anything that would have normally been involved in the construction deposit that would need to be deducted from the $4,645. Hocevar said he did not believe so.

Maistros stated he believed what the ARB did was proper and the decisions throughout the process, but specifically in November, was well founded, reasoned, and within the code. Unfortunately, Maistros said this was a situation where the Board has what it can assume is an innocent owner. By forcing them to remove the siding and the fake stone would put them in an unfair position having purchased the property. Perhaps this would be a resolution between the current and prior owners. He did not know that the problem could be solved without punishing someone who did not have a large role in creating the problem.

Maistros wanted to make it clear that his motion was to find that the ARB acted properly and appropriately in reaching its conclusion. However, Maistros proposed and made a motion that the Village move forward with the issuance of an occupancy permit if everything otherwise was permissible on the CONDITION that the construction deposit of $4,645 on file for the property is forfeited for the construction manager/owner's failure to comply on repeated occasions with the Architectural Review Board's requirements. Anything left from the BZA deposit of $400 which was not applied to Village costs could then be returned to the applicant. The Solicitor added that it is subject to forfeiture because technically the Council determines forfeiture. Maistros amended the motion to state the Board recommends forfeiture, which is ultimately Council's decision. This is a resolution that may address the wrong doer and not punish the current innocent owner. No discussion. Seconded by Hitchcock. Roll call – ayes, Maistros, Hitchcock, LaChapelle, Stone, Mulloy. Motion carried.

Maistros clarified that the Board's action moves the matter to Council. For the record, Maistros stated the BZA had and considered the letter of November 27, 2019 from Kohrman, Jackson, and Krantz LLP on behalf of the applicant.

NEW BUSINESS: Mayor Koons spoke for Stone whom he said wanted the Board members to look at Chagrin Heights to see the house that is being built to see how some of the homeowners are concerned

and trying to look for alternatives. There is a house there now that sits on four separate lots and according to the Mayor, Stone thought there should be a discussion of what is going on with Zoning and get it on the agenda for the future. Stone stated that more generally, it appears there are different codes for different parts of the community, and it felt right to review some of it on a higher level. Hitchcock asked if there was a house or particular project that was especially egregious, or was Stone just speaking about the area in general. Stone stated in this area, there are 50-foot-wide lots, and it is becoming a popular place to build the houses on the 50-foot lots. A lot of the houses have multiple lots, but by allowing a new house on a 50-foot lot, essentially the Village has side yard setbacks (unintelligible)…Russell Township. He thought they were 8 feet apart from each other, and said they were incredibly close, closer than Lakewood, Parma, and Euclid. He thought it went against the Village charter and feel of the community. La Chappelle asked if this was on Hazelwood Dr. Stone stated yes. She stated the Board had a case on Hazelwood Dr. Stone stated that with full disclosure, the property is across the street from his home. The Mayor clarified that Stone wanted this on a future agenda for BZA, and Stone stated he wanted the Board to look at the fact that South Russell has different codes for different neighborhoods, and questioned if there should be some consolidation of codes. He asked if codes written in the 1940's needed to change to be in line with today's standards and views and where the community wanted to go. Stone wanted to start a discussion on the matter. He thought there was a complex collection of Zoning books and he understood there were different books for different parts of the Village. He did not know if other communities were like this, but it sounded unusual to him. Hocevar stated that it was about when the property was platted. Hocevar addressed the Hazelwood property, and said it was platted in 1925 or 1928, which took it back to the 1947 zoning. At the time it was written, legal counsel said the Village could not deny building on the lots, so the zoning book was compiled. Hocevar explained there were six different zoning books depending on when the property was platted in the Village.

OLD BUSINESS: None.

Maistros made a Motion to adjourn the meeting at 8:07 p.m.

David Maistros, Chairman — Date: 6/24/2020

Nancy Gattino, Board Secretary — Date: 6/17/2020

Prepared by Leslie Galicki

Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
Record of Proceedings
November 18, 2020 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Mike Mulloy, Bill Stone
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons; Dave Hocevar, CBO/Inspector, Ruth Griswold, Board Secretary
Visitors:	Matt Peters, Chris Bell, Ross Golden, Mr. & Mrs. Alan Fry, Mr. & Mrs. Joe Tenebria, Holly Mihalek, Mary Jo Mc Elyea

David Maistros called the meeting to order at 7:03p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros asked Ms. LaChapelle if she would like to make a motion to approve the minutes from the meeting on September 16, 2020, since he was not in attendance. Ms. LaChapelle made a motion to table the minutes until the next meeting.

CASE # 20-BZA-07: 11 KENSINGTON DRIVE – KRISTINE HULL, OWNER/ APPLICANT-APPEAL OF THE CITATION TO REMOVE A TWO STORY TREEHOUSE BUILT, WITHOUT A PERMIT, BEYOND THE ALLOWABLE CODE HEIGHT OF 15'

Mr. Maistros asked Ms. Matheney to swear in anyone present at the meeting who may like to speak, indicating if they later choose not to speak that is okay as well. Ms. Matheney swore in the members present.

Mr. Maistros asked Dave Hocevar to give a brief rundown of what brought us here tonight. Mr. Hocevar said an accessory structure was put in at 11 Kensington and that it exceeds the height limits. Upon notifying the homeowner, the homeowner took care of the application and that they agree to appear before the Board of Zoning Appeals. They did not realize it was an offense in the Village.

Mr. Maistros clarified with Mr. Hocevar that the variance request would be 10". Mr. Hocevar responded that he did not actually measure the structure, that he was going on what the applicant told him, but he feels that is pretty close. Mr. Maistros noted in the case, as presented, it is

mentioned that the treehouse was built without permit. He asked if the issue of whether or not it was permitted is before them. Mr. Hocevar said that was not the issue, but if the BZA approves it, he would issue them a zoning permit. They were not aware they needed one. Mr. Maistros asked how this was brought to the Village's radar. Mr. Hocevar indicated that there were complaints.
Mr. Maistros referred to the submittal of a letter received from a Michael Miller, 20 Kensington Drive. He wanted it known that Mr. Miller's letter has been received and considered a part of the record. The letter indicates that he is requesting that conditions be set prior to granting a variance. He would prefer the color of the structure remain a natural wood color, since the structure is huge, and if painted would be blaring and in direct line of sight from his driveway. Mr. Miller prefers the lower portion of the treehouse not be enclosed, since that would make it a storage facility and would not meet the requirements of the architectural and property standards set forth in Section 5 of Kensington Green Code of Regulations, as amended April 18, 2010. Mr. Maistros indicated Mr. Miller lives across the street from 11 Kensington Drive. Mr. Maistros then referred to correspondence received today from Mr. Brown, speaking in favor of the treehouse.

Mr. Maistros asked the applicant, Ms. Hull, to then speak to the board.

Ms. Hull thanked the board for hearing her case and apologized for not doing this with the required permits, and also apologized for any confusion as to what type of structure it was. She went on to say that they have every intention of painting the treehouse a natural color; they did not want to do it if there was a possibility they would have to remove it. Ms. Hull said she realizes it seems kind of stark right now, with all the leaves gone, but that she is happy to have a discussion with the Village, or the HOA, or anyone who wants to have a conversation.

Mr. Maistros asked Ms. Hull how she determined the height of the structure; a variance of 10" is being requested; did she actually measure it or is the height just an estimate. Ms. Hull responded that she believes somebody from the Village came and measured it and told her it was over the allowable height.

Mr. Maistros asked Andy Hitchcock if he had any questions for the applicant. Mr. Hitchcock asked if the applicants received Homeowner's Association approval for the structure itself. Mr. Matt Peters, homeowner, responded that they had a conversation with the HOA to make sure it was not in violation, and they also spoke to their neighbors on either side of them, who had no objections. Mr. Hitchcock stated he asked some of his friends who also live in that development about the Association's requirements. He was told that accessory structures have to conform to the appearance of one's house. Taking that as face value, that causes a little bit of a challenge. The one neighbor who is directly seeing it does not want it painted white. Mr. Hitchcock asked for the applicant's thoughts on that. Ms. Hull stated that their house was white-ish, and the treehouse will not be, due to the more natural color planned. She said they could plant tall arborvitae which do not lose their leaves, and that would keep people going by on Kensington Drive from seeing it. She said she is open to any suggestions. Mr. Hitchcock asked Bridey and the board, since the treehouse is out of conformance, does the Village ARB need to weigh in. Ms. Matheney asked Mr. Hocevar to weigh in, and Mr. Hocevar stated he would like the ARB to take a look at it due to the uniqueness of it. Ms. Hull said she had been told it would go to ARB, so she is aware of that requirement.

Mr. Maistros confirmed with Ms. Matheney that whatever action the board takes today does not override the HOA, and that the HOA approval does not necessarily give the Village approval; that they are independent, and the board is not acting on behalf of the HOA, the homeowners still have to go through the HOA process and any appeals they need to do have to go through them. Ms. Matheney answered that that is correct.

Mr. Maistros asked Bill Stone for any questions or comments for the applicant. Mr. Stone commented that about five years ago, a friend that lives near him had a treehouse that was required to go before ARB.

Mr. Maistros asked Laura LaChapelle for any questions or comments for the applicant. Ms. LaChapelle referred to the letter from the neighbor asking that the lower portion of the treehouse not be enclosed per regulations. She asked if the applicant had any plans for the lower portion of the treehouse. Ms. Hull and Mr. Peters stated there is a ladder to get up into the treehouse, but no other changes would be made to the lower portion. Mr. Peters said the whole point of this was for the treehouse to look natural, up in the trees. They did not remove any trees, just trimmed back a few, to accommodate the structure. The intent was to hide it up in the trees. Ms. LaChapelle asked for details about providing a natural barrier or planting of trees next to the structure. Ms. Hull said they would only obviously do it if it was suggested or required to do so. She went on to say that when the treehouse went up, it was summer, and while you could see it, it was somewhat hidden by the leaves. Now with all the leaves gone, you can see it, it is stark. They would probably put some tall arborvitae up to hide it. Ms. LaChapelle asked what they had in mind as far as placement of the trees; would they be around the entire structure, or just in one location. Mr. Peters responded it would be wherever it was best to be able to hide the, for lack of a better word, eyesore.

Mr. Maistros asked Mike Mulloy for any questions or comments for the applicant. Mr. Mulloy said he had driven by and saw the treehouse. He feels the board has addressed all the questions he had, from the enclosing of the lower section, to the painting of the structure in a natural color. He said it looks nice and well-built. A good alternative would be a natural barrier. He said it seems very straight forward and he has no other questions.

Mr. Maistros said he noticed a number of other people at the meeting, and he asked for comments starting with Chris Bell. Mr. Bell said he lives at 24 Annandale, and that he is currently the president of the Kensington Green HOA. He said Ms. Hull had reached out to the HOA with a basic idea of what they wanted to do. In the photos he saw, the treehouse did not look quite as tall as it is, which Ms. Hull admitted as well. Other than that, the HOA felt it was a play structure, not different from other large play structures in the neighborhood. He indicated that as far as external structures, the current by-laws in place only talk about distance between property lines, and that things maintain a Western Reserve tone, whatever that means. We advised them to talk to the neighbors, which they did. Mr. Maistros asked from the HOA's perspective, are they giving a thumbs up. Mr. Bell indicated they did receive one complaint, one call with questions, and a lot of others complimenting it. From an HOA standpoint, he said there is nothing they could say no to, leaving it up to the Village. Mr. Maistros asked the HOA's position regarding the color and the issue that Mr.

Hitchcock brought up, that it should be similar to the house. Mr. Bell said traditionally there has been a request that a shed would match the tone of the home, but in checking with the by-laws, he did not actually see that in there. Mr. Maistros asked if it would be his feeling, if this board conditioned the approval to keep the structure in a natural tone, and to make it blend in more with the landscaping, that it would not be in violation with the HOA rights. Mr. Bell said he didn't think it would be. The coloring, together with the addition of shrubs or trees to block it, would be a great middle ground for everybody.

Mr. Maistros asked Ross Golden if he would like to speak. Mr. Golden said Kristy and Matt had approached him mid-summer. His daughter and their children play constantly together, and he obviously had no objection to it. He said quite frankly he would never really object to anybody putting up a play structure on their property. Mr. Maistros asked Mr. Golden where he lives in relation to the applicant. Mr. Golden said he lives next door, at 12 Kensington. Mr. Maistros said he is probably the house closest to it, to which Mr. Golden responded yes.

Mr. Maistros asked Mr. & Mrs. Alan Fry if they would like to speak. Mr. Fry said they live at 13 Kensington Drive, next door to Ross, two houses away from the treehouse. He said they do see the treehouse, and that they do enjoy having the kids in the neighborhood. They are well behaved and have fun. What they would ask is that there be landscaping around the treehouse as Laura mentioned. He went on to say that they have one in their backyard form 30 years ago, and at that time the ARB did ask that they put bushes and trees on all four sides to blend in. He found that to be reasonable. Mrs. Fry said they didn't want it to be an eyesore. Mr. Maistros asked if they felt the screening should be on all four sides, as it seems there is some natural screening on the northeast side. Mr. Fry said that now that the trees have all lost their leaves, he feels the screening should be on all four sides. They had planted white pines and other bushes around theirs on all four sides, even though theirs backed up to a field and was in a more hidden area. He feels that would be good for the neighborhood. Mrs. Fry said they really are like a permanent structure.

Mr. Maistros asked Mr. and Mrs. Joe Tenebria if they would like to speak. Mr. Tenebria said after he got the notice, he wanted to come on and say they cannot see the tree house unless they are in their backyard. He recognizes that kids need a place to play, he had a treehouse as a kid himself. He agrees that some trees are in order, but it doesn't have to be a grove of trees. A little landscaping around the bottom, spruce it up a bit, it'll be fine. He recognizes that they went over on the height a little bit. He said that they added onto their home and last year, and their addition may be an eyesore to Alan and Laurie, because it's a pretty good size, although it's within code. He went on to say it was an innocent mistake, they were doing something for their kids, and it's nice to see the kids in the neighborhood. Mrs. Tenebria said they are a family friendly neighborhood, and the kids have to be kept busy, especially now. She said the treehouse is in a grove of trees; when the trees are out, when you drive by, you have to slow down to even be able to see it. It has trees on three sides. She also said that Ms. Hull has to be able to see the kids from the house to keep an eye on them, and that that is more important than having it where you can't see the front. Mr. Maistros asked their address, as he wanted to picture where their house is located. They responded they reside at 113 Dorset.

Mr. Maistros asked for comments from Holly Mihalek and Mary Jo Mc Elyea, 66 Potomac, and 39 Westover, respectively. Ms. Mihalek said while she does not have visual to the treehouse, her daughter is obsessed with playing in the treehouse, so she definitely lends her support. Ms. Mc Elyea said there has been a lot of nice commentary from others, and that it's very true that kids are looking for places to play more than ever this year. She feels the natural wood treehouse is well built natural wood, and a nice structure. Ms. Mihalek also agrees with the last couple that when the trees are full, it is kind of hard to see.

Maistros asked the board, based on what was heard from the neighbors and everyone else, if there were any questions. Mr. Hitchcock asked Bridey; is the board approving a treehouse, or are we approving an accessory structure that's 10" above the code. In thinking it through, it may change in the future, with this homeowner or someone else, he just wants to be sure they are true to the intent of approving it as a treehouse and not an accessory structure. Ms. Matheney said she thinks a treehouse is an accessory structure; she doesn't know that the code has separate rules for a treehouse. so you are correct, the board would be approving a height variance on an accessory structure. Mr. Hitchcock asked Mr. Bell if it would be a concern of the HOA if the board approved it as a treehouse, that it could become something else in the future, or would the association more than likely weigh in and say no barns, sheds or whatever. Mr. Bell said he would assume that future boards, if they saw a change in the structure, they would approach the homeowner, or any future homeowners. Mr. Hitchcock asked if adding 10' of mulch underneath would change the fact it is 10" over the height. Mr. Hocevar said height is measured from ground level.

Mr. Maistros asked Ms. Hull if she had any questions or anything she'd like to add. Ms. Hull asked if the ARB is where they discuss the painting and trees, as she wants to be respectful of all complaints and suggestions; she wants to know what the next step is. Mayor Koons told her the two meeting dates in December: the 1st and the 15th at 5:30, in person at Village Hall. Mr. Hocevar said she can contact the Building Department and we would walk her through the procedures to appear before the ARB. Ms. Hull understood.

Mr. Maistros motioned to approve the height variance, not to exceed 1' for an as-built accessory structure, a treehouse at 11 Kensington Drive, on the following conditions:

1. **The finish color of the structure be a natural color designed to blend in with the trees and the shrubbery;**

2. **With the understanding of winter on its way, this does not have to be done immediately, but include screening of a year-round nature, some sort of evergreen, around the treehouse in order to screen it as much as possible from the neighbors. Screening should be of sufficient nature to preclude the neighbors from being able to see it.**

Ms. LaChapelle asked if the motion should include not enclosing of the bottom area of the treehouse per the request of the neighbor. After discussion, Mr. Maistros amended the motion to include number three.

3. **Amend the motion to include that the lower portion of the structure not be enclosed and that it remain in its current as-built condition.**

Ms. LaChapelle seconded the motion.

There being no other discussion based on the motion, Mr. Maistros asked for roll call. On roll call vote, motion carried.

Mr. Maistros thanked the applicants and wished them luck on their next step, and said it was nice that they have the support of so many neighbors.

Ms. Hull thanked everyone for being at the meeting and for their support.

Mr. Maistros asked about the December meeting. Mayor Koons asked if the meeting could be moved up from December 16 to December 9th. All members agreed.

OLD BUSINESS: None

NEW BUSINESS: None

Mr. Maistros made a Motion to adjourn the meeting at 7:41p.m.

David Maistros, Chairman — Date 9/15/2021

Ruth Griswold, Board Secretary — Date 9-15-2021

Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
Record of Proceedings
December 9, 2020 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Mike Mulloy, Bill Stone
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons; Dave Hocevar, CBO/Inspector, Ruth Griswold, Board Secretary
Visitors:	Emilie Unkrich, Stephen Peplin, David Rust, Sarah Richard, Bob Darden, Valerie Mariola, Sue & Tom Bretsch, Mark Mikolanis, Richard Kondas, Mali Rini, Jami Phillips, Ray Schloss, Wayne, Katie

David Maistros called the meeting to order at 7:01p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros asked Ms. LaChapelle if she would like to make a motion to approve the minutes from the meeting on November 18, 2020. After Ms. LaChapelle requested two typographical error corrections, Mr. Maistros made a motion to approve the minutes of November 18, 2020, as amended by Laura. Mr. Hitchcock seconded. On roll call vote, motion carried.

Mr. Maistros questioned why the minutes from September 16, 2020 were not approved at the last meeting. Ms. LaChapelle said she has not received a copy yet. Ruth Griswold indicated she had a copy of the minutes prepared by Carolyn Blake, and that they would be sent out to Ms. LaChapelle for review. Mr. Maistros tabled the minutes from September 16, 2020 until the next meeting.

Mr. Maistros asked Ms. Matheney to swear in anyone present at the meeting who may like to speak on either of the two agenda items, indicating if they later choose not to speak that is okay as well. Ms. Matheney swore in the members present.

CASE # 20-BZA-08: 22 FOREST DRIVE – STEVE PEPLIN & ROBIN PEAVY APPLICANTS-SIDE YARD SETBACK REGARDING ROOF STRUCTURE OVER SIDE PORCH

Mr. Maistros asked Ms. Peavy to please explain to the board what she is requesting, and why she needs the variance for this project. Ms. Peavy said she currently has a side deck on the side of the house and she wants to put a roof over it so she has a covered porch. She would like a roof over the existing deck, which is within the 25'. Mr. Maistros referred to the technical drawings submitted to the board. He asked if the proposed roof over the existing deck is the same footprint of the existing deck, or is it larger. Ms. Peavy said the footers will be right next to the deck, so the roof would overhang the deck a little bit. Mr. Maistros confirmed that the roof would be slightly larger; Ms. Peavy responded that she did not want to rip up the deck to put the posts in, so she would put the posts right next to the deck. Mr. Maistros indicated for the record an email received from Mr. David Rust, in favor of the roof, and recognized his presence at the meeting. Ms. Peavy said Mr. Rust is her neighbor on the side of the house right next her, the neighbor most affected. Mr. Rust said he is supportive of the proposal, indicating it goes toward his back yard, and that the porch area does not face his house, the porch faces toward a remote part of his lot. Mr. Rust said Ms. Peavy is making great upgrades to her house, and that he is in favor of this.

Mr. Maistros asked the board members for questions or comments, starting with Bill Stone. Mr. Stone asked if the house had an empty lot and some wooded land to the left of where the deck is. Ms. Peavy clarified that it would be on the other side of the house, next to David Rust. Mr. Stone acknowledged Mr. Rust's support and had no other questions.

Mr. Maistros called on Andy Hitchcock for questions or comments. Mr. Hitchcock asked if, relative to the roof going over an existing structure and not much further, he said it appears the existing structure already is encroaching into that setback, and whether it's been approved in the past or not is immaterial here, when you say you are putting the new roof over the existing structure, it's really nothing more than the small amount for the footers and the posts. Ms. Peavy said that is correct. Mr. Hitchcock said it is certainly not the whole 6' that she might need. Ms. Peavy said the existing deck does encroach on the 25', so whatever the architect drew in the plans, that is what the final measurement would be. Ms. Peavy went on to say that the deck was built by the previous owner and is in good shape. She wants a covered porch so she could sit outside when it's raining, and so she would not have to put away her cushions all the time. Mr. Hitchcock said he can appreciate that, and he had no further questions or comments.

Mr. Maistros said the point Andy was making was a good one; while it is a request for a variance of approximately 6', part of that 6' already exists, as far as an encroachment. He said the number of what the overhang would be is too small to read on his copy, but that it looks like it's an additional 1 ½' to 2' from what currently exists.

Mr. Maistros called on Laura LaChapelle for questions or comments. Ms. LaChapelle said she noticed, looking at the plans, that there is a significant existing tree line on that side of the house, although it is hard to tell at this time of year with no leaves on the trees. She asked Ms. Peavy to

speak to the nature of the natural boundary that is there; the trees that exist between the structure and the property line. Ms. Peavy responded that it's a wooded area. Ms. LaChapelle asked if the trees provide a significant amount of privacy on that side when the leaves are on the trees, Ms. Peavy responded that they do, and they also provide a significant amount of leaves on the porch and furniture too. Ms. LaChapelle had no further questions or comments.

Mr. Maistros called on Mike Mulloy for questions or comments. Mr. Mulloy was having technical difficulties at the time.

Mr. Maistros then asked if any other residents that are present, other than Mr. Rust who already spoke, would like to speak on this project. No other residents came forward.

Mr. Maistros then made a motion for case #20-BZA-08, property located at 22 Forest Drive, to grant a variance of 6' 1" to the side yard setback for the proposed roof structure, as submitted on the plans presented to the Board of Zoning Appeals. Mr. Stone seconded. With no other discussion on the motion, Mr. Maistros asked for roll call. On roll call vote, motion carried.

CASE # 20-BZA-09: 103 HAZELWOOD DRIVE-WILLIAM JOYCE OF JOYCE BUILDING COMPANY-APPLICANT- SIDE YARD VARIANCE AND LOT COVERAGE VARIANCE FOR PROPOSED NEW RESIDENTIAL HOUSE

Mr. Maistros introduced the next case as a request from William Joyce. The application indicates he is requesting a side yard setback for a new house to be 6'11" which would require a variance of 3.89'. Per South Russell code, the side yard setback must be a minimum of 10'. The applicant also requests a lot coverage variance of 2%. The maximum lot coverage of 35% is required by code, and we are looking at a lot coverage of 37%. Mr. Maistros asked Bill Joyce to explain to the board what the nature of the variances are and why he needs those variances.

Mr. Joyce said he is proposing new construction of a single-family home, on a pre-existing, non-conforming lot, where the side yards are 10'. In order to get the house on the lot and not make it look like it's all garage, there is a front porch and a front door, as well as a staircase, that encroaches into the westerly side yard by 3.89'. He said they are holding the house 10' off the easterly property line because when he built the house to the east, the board had granted a variance on the westerly property line but asked that 10' be maintained from the existing home, and to do the same thing to the next home that would be proposed, because the existing home at 101 Hazelwood already has a 10' side yard on the driveway on their easterly line. That is why they are holding the east wall of the house at a minimum of 10', and it steps back to 11.34' as indicated on the site plan. Referring to the site plan, he pointed out that as soon as you get past the front foyer and staircase it immediately gets back to an access of 10' to create as much side yard as possible to the neighbors. He addressed the lot coverage request, saying that when they designed the home, they did not have an exact site plan at the time. When they did the calculations, they found that the shaded area of the driveway is the 2% overage on the lot coverage. It is a total of 240 sq ft.

Mr. Maistros asked Mr. Joyce to clarify the 2% on the driveway and asked him to confirm that it is both the driveway and the structure that compose the lot coverage. Mr. Joyce said that is correct. He said they had talked about perhaps doing a narrower curb cut at the road and swimming it out to the 16', but from the standpoint of the setback and the ease of exiting the driveway, they would like to use the 16' driveway to the road. Mr. Maistros clarified with Mr. Joyce that he also built the house to the east; Mr. Joyce confirmed that as correct. Mr. Maistros acknowledged the inclusion of the minutes from the BZA meeting on December 5, 2013 and clarified with Mr. Joyce that the reason he wanted it presented at this meeting was because that was when they discussed 105 Hazelwood. Mr. Joyce said that is correct. Mr. Maistros confirmed that Mr. Joyce's understanding of the impact of that variance request for 105 Hazelwood was that we wanted, when this current lot was developed, for 10' be maintained on that side. Mr. Joyce agreed, and went on to say that he had a lot to do with the design of this house, so he was able to narrow it down. He has a proposed buyer for the home, and she added on a screened in porch on the back, and also made some changes inside the foundation while maintaining the foundation to minimize the variance request and to maximize side yards for the neighbors. The house to the east, 105 Hazelwood, was custom designed with the customer. It is at least 3' and up to 11' wider than this home. This was all taken into account, and they made it as narrow as possible to try and fit it on there without any variances.

Mr. Maistros then turned to the board members for questions and comments, starting with Bill Stone. Mr. Stone asked Mr. Joyce for the foundation-to-foundation and then overhang-to-overhang measurements with the house to the southeast. Mr. Joyce said the foundation-to-foundation measurement is 16.73', and gutter-to-gutter is 14.73'. Mr. Stone also asked if South Russell had any drawings for 105 Hazelwood. Mr. Joyce responded yes that he had stopped into the building department and viewed the file. Mr. Stone asked where the driveway at 101 Hazelwood is in relation to the property line. Mr. Joyce said the driveway at 101 Hazelwood is on the property line. It was originally encroaching on 103 Hazelwood, but it was replaced and put back 100% onto the property. Mr. Stone clarified that the foundation would be 6'9" at the closest part, and the overhang would probably bring that a little closer. Mr. Joyce said that would be correct. Mr. Stone likened the proposal to fitting a size 13 foot into a size 5 shoe. Mr. Stone indicated that he lives in the neighborhood and spoke to the last time Mr. Joyce was before the board, how his proposal was voted down due to concerns over the emergency services being able to put ladders up. He recalled the Fire Chief in Russel Township speaking extensively on the situation, and he was wondering if the board would look into having the Fire Chief from Chagrin Falls comment on this before moving. Mr. Joyce said he proposed this lot in 2015, but pulled it off, and it was never voted on. Mr. Stone said he does have concerns, and that the board often consults with the Police Chief regarding sign placement within the Village for safety reasons, and that zoning pertains a lot to safety and not just aesthetics. He is interested in what they would think about that. Mr. Stone then asked about the placement of the air conditioner condenser, indicating that with these houses so close together, it should not be placed under someone's window. Mr. Joyce said the unit would be placed in the back, within the foundation area, and does not encroach into the side yard. Mr. Stone clarified that it would not be seen from the street, Mr. Joyce said that is correct. Mr. Stone said, for now, those are his only questions.

Mr. Maistros then called on board member Andy Hitchcock for questions and comments. Mr. Hitchcock asked if Mr. Joyce was anticipating any sort of issue with the property being located within two different townships, from a zoning or a construction perspective. Mr. Joyce said the front yard determines which building department a submittal goes through for permitting, and that a project such as this must meet the zoning for both municipalities. There are no variances needed in Russell Township, and Dave Hocevar would be permitting and inspecting the house because it fronts in South Russell and is mostly in South Russell. He went on to say that 105 Hazelwood also had Russell and South Russell ownership on parcels, but the house itself was entirely in South Russell. A house two doors down is the opposite, where the house is in Russell. Although the frontage is in South Russell, the foundation was 100% in Russell, so zoning was through Russell and permitted through Geauga County. Mr. Hitchcock asked if Russell Township has the same side yard setback requirements as South Russell. Mr. Joyce said that they do, but that he is not encroaching on any of those. Mr. Hitchcock clarified that his focus is the part of the house that is in Russell conforming with that portion of the Township Code; Mr. Joyce said that is correct. Mr. Hitchcock asked, relative to the lot coverage, has Mr. Joyce considered getting a variance from Russell Township on the rear setback, and putting square footage back there, eliminating the need for a side yard variance through South Russell. Mr. Joyce responded that it is a consideration, but South Russell looks at it as a whole, and he is presently meeting South Russell's rear yard requirement. Therefore, it would be an additional variance, if he pushed the house back or added square footage. It would be the lesser of two evils, to put the foundation closer to the rear lot line. Mr. Hitchcock said with a 25' setback, and some open space in the back, he feels the potential impact to that neighbor is a lot less than encroaching another 3' towards 101 Hazelwood. Mr. Joyce said he totally understands that and went on to say that 105 Hazelwood owns the half acre green space behind this lot; never to be built on, so there is a lot of green space to be built on back there. But from an architectural standpoint, if he were to narrow the house down that 3', it would basically be a garage and a front door, with no curb appeal to the neighbors.

Mr. Maistros then called on board member Laura LaChapelle for questions and comments. Ms. LaChapelle said that since Andy already got the clarification regarding the split between the Township and the Village, she has nothing else at the moment.

Mr. Maistros then called on board member Mike Mulloy for questions and comments. Mr. Mulloy questioned if the house to the west, 101 Hazelwood, is a resident of South Russell or Russell; and if we had heard from them. Sarah Richard of 101 Hazelwood then spoke, and said she is the owner and as far as she knows, she is considered a resident of South Russell. Mr. Mulloy asked her if she was aware of this plan and if she was okay with it. Ms. Richard said she is aware of it, but she is not okay with it. Mr. Maistros redirected, saying they have not gotten to that part yet. Mr. Mulloy then said he agreed with the safety issues raised by Mr. Stone, and that that angle should be considered as well. He stated he has no further questions at this time.

Mr. Maistros then recognized the large number of residents at the meeting and began calling on them in the order they appear on his screen. He began with Emilie Unkrich. Ms. Unkrich said she is presently just interested in listening regarding the use of this lot and will raise her hand if she would like to comment.

Mr. Maistros then called on Wayne's iPad, but the resident was having technical difficulties and did not speak. Mr. Maistros said he would circle back later and check with Wayne, which he did several times throughout the meeting.

Mr. Maistros then called on Richard Kondas. Mr. Kondas said he lives at 139 Fairview, directly across the street from Sarah Richard and the lot being proposed for the new home. He said he agrees on the importance of the need for safety issues being flushed out, due to the distances between the homes as well as the Fire Department's comment about water availability and their hydrant. He recalled that the same issue had come up the last two times homes were getting ready to be built here.

Mr. Maistros then called on Mark Mikolanis. Mr. Mikolanis, of 7570 Hazelwood, said he is new in the neighborhood, on the other side of 101 Hazelwood, in the most recent new house built by Joyce Construction. He said he is in favor of it, as much as he can be, being a newcomer to the neighborhood. He said several variances, at least the side yard one, were required to construct his home, but all of that had been settled before he became engaged in the project. He said that consideration was evident throughout the process in making sure that the neighbors on either side were satisfied with what was going on and making sure there were no problems with either side as far as scraping the land out. He said he speaks with absolute certainty and experience in working with Bill Joyce, that those prime considerations were evident. He said they were not allowed to do anything that would negatively impact the neighborhood. He went on to say that having been there a few months now, they have had several comments from folks who have stopped by to say hello, as to how well the house seems to fit in the neighborhood aesthetically. He said from a safety perspective, the issue has not come up. He said he would encourage any board member to stop by and see what Bill is able to do when he receives the zoning consideration he asks for.

Mr. Maistros then called on Sarah Richard. Ms. Richard said she lives at 101 Hazelwood, the house directly next to the proposed new build. She said she is against this variance on the side yard setback; she would prefer the 10' setback be maintained. She went on to say that she did not have any input on the house right next to her, which was constructed before she moved in, and that house is 9'or less from her house. She said that to now have another house that close to her is something that she is definitely against. Mr. Maistros asked her if there is any natural screening or vegetation on the east side of her house, between her house and the proposed new house. Ms. Richard said there is nothing. Ms. Richard then introduced a neighbor sitting with her, Bob Darden. Mr. Darden said that he lives at 120 Fairview, and he is there to support Sarah in this matter. He said they have not yet looked at the plans for the new house, but that the neighbor's house to the west is 9' away from her house. He feels that it is way too close. He mentioned Mr. Joyce's comment about homes being aesthetically pleasing. Having lived in the neighborhood several years he has driven around the entire Chagrin/old Chagrin Heights area. He said Sarah's house and the house to her west are by far the houses closest to each other in the entire area, and it is not aesthetically pleasing. Then to have another house squeezed in between these two houses on the east side, it's just not acceptable. The variance previously granted to 105 Hazelwood has no bearing on this variance they are going for, from his understanding. Mr. Darden went on to say that they have not seen the plans, and he has concerns if the grading plan will show the shedding of all the rainwater that will come off the new

house. Mr. Darden also said there needs to be a correction on the document, in that the 3.89' is actually 3'10 ½" so they would actually have the house sitting 6'2" off the property line, not 6'9", so it will be actually closer than is being thought. There is no screening on her property line right now. He went on to say that there is concern about what Mr. Joyce is doing; Sarah bought this house from him a few years ago, and there are still some things that have not been completed per their signed agreement. While building the house to the west, they accessed and got permission from Sarah to utilize her back yard to cut into the neighbor's yards, and they said they would restore the landscaping, which is still a mess and not acceptable. Mr. Darden says he is questioning everything that is going on around here as a neighbor and a friend. He said he is also a commercial builder, and that he is actually building a house on Bell street right now, following all the rules that they can. Someone else brought up the point of making the house a little longer so as to not need the variance requested on the side yard, and he feels that would be a more agreeable alternative.

Mr. Maistros then called on Ray Schloss. Mr. Schloss was having technical difficulties and did not respond.

Mr. Maistros then called on Valerie Mariola. Ms. Mariola said she resides at 15911 Hemlock, which is three houses to the west of the proposed house, and next door to Mark Mikolanis. She said she is not going to speak to the side lot variance request because that is not in her area of expertise, and she is aware that it affects Sarah a lot more than it does her. She went on to say that she is strongly against the proposed 37% lot coverage being requested. She is concerned with protecting green space, and securing snow, sleet and rain falling from the sky. Water from the sky has two options; it can either be absorbed by the grass, or it can hit a non-permeable surface, i.e., asphalt, roofs, concrete, and it runs off. It runs off into green space and it is absorbed, or it is funneled into storm water, drain tiles, or storm drains. She said this community is sitting on storm sewers that were put in probably in the 1950s. She went on to say that the storm drains are not big enough to handle any of the run-off, and that many neighborhoods in South Russell have flooding issues. She said the zoning board has the capability to stop overcrowding and avoid additional stress on storm water by insisting that properties stay within the 35% land coverage requirement. She named several areas that have issues as a result of overpopulating in the area so that storm water cannot be absorbed. She ended by saying she does not care what or where Mr. Joyce builds, as long as it stays within the 35% maximum lot coverage per code. She said there are flooding issues now, and unless South Russell is putting larger storm sewers in, there is cause for concern. She went on to list four items of consideration when talking about area variances: 1. *Whether there is still a rate of fair return on his property without a variance*. Bill Joyce can build a house on this property; he doesn't need the variance for a fair rate of return; 2. *Whether the property owner knew of the restrictions.* Mr. Joyce has owned four properties in this community in the last six years; he knew what the requirements were before he bought the property. He also developed two other houses further down the street. He knew what the restrictions were. 3. *Whether a predicament can be handled by some other means.* This absolutely can be handled by some other means. Build a smaller house. 4. *The spirit and intent of zoning would be observed by granting the variance.* The land coverage restriction is to protect storm water and its ability to be absorbed back into the community, and she asked that the board continue to protect that by not granting this land coverage variance.

Mr. Maistros then called on Jami Phillips. Ms. Phillips said she lives at 114 Hazelwood, and she is here to listen to the pros and cons. She referred to the issue just brought up regarding storm sewers. She said she recently had to repair crushed pipes on her property, in her driveway, and get everything repaved. She had never thought about the overflow aspect being a factor. She said she doesn't know what that means as far as building more homes, but she thought a good point had been made. She is interested in hearing what everyone has to say, and thanked everyone for their input.

Mr. Maistros then called on Katie, who lives at 137 Fairview. Katie said she is just here to listen and has no comment.

Mr. Maistros then called on Sue Bretsch. Tom Bretsch said she is out of the room at this time. He went on to say that he agrees with what Valerie said. They live on Countryside Drive, which is downhill from that area. As a result, a lot of the water that drops there ends up in their neighborhood and said that it was an excellent comment from Valerie.

Mr. Maistros then called on Mali Rini. Ms. Rini said she is the proposed buyer of this lot. She extended her appreciation to everyone who is attending the meeting tonight. She completely understands and respects everybody's concerns and she want to work together to create the best house and meet all those requirements. She said at the beginning of the process, the neighbor who has the half acre lot in the back had offered to maybe sell her more of the land. She thought maybe that would be an option to be able to meet the 35% lot coverage requirement. She went on to say that the staircase is the reason for the encroachment onto Sarah's property. She is open to any ideas and suggestions as to how to resolve the issue. She thanked everyone for their comments and time.

Mr. Maistros again checked with Wayne, who was still on mute, but was able to indicate that he did not have anything to say. Mr. Maistros asked if there was anyone he had missed and did not get any response. Dave Hocevar said he wanted to comment on the lot coverage variance that was requested by the applicant. He referred to the 1947 zoning code and said the Village did not institute the current lot coverage limitations until 1993. Mr. Maistros asked Mr. Hocevar if he is saying that the lot coverage should not be part of the variance request, since we must revert to the 1947 code. Mr. Hocevar said yes, that is correct. Mr. Maistros then clarified with Mr. Hocevar that the only issue needing consideration tonight for a variance is the side yard setback. Mr. Hocevar said that is correct.

Mr. Maistros then asked the board members if they had anything additional to add. Ms. LaChapelle did not have anything to add. Mr. Stone said he likes the idea of pushing the house back; he knows it is a little forward of the house to the right, 105 Hazelwood. He said the house to the right of 105 is also considerably further of the house to its right, kind of starting this trend of moving forward. He said he thinks pushing it back would help. He said he didn't know if it would alleviate the issue of how close it is to the house at 101 Hazelwood. He also expressed concern about excavation next to the driveway, which is on the property line. If there is just 6'9" clearance, and a basement foundation has to be dug, excavating will be happening just feet from that driveway. He went on to say that he knows it happened to 101 Hazelwood on the other side; the excavation was probably about 3' from the foundation. This would possibly undermine the driveway at 101 Hazelwood. He

then talked about screening requirements. He said if something like this were to happen, he thinks there should be some screening requirements. The board spent a considerable amount of time last month talking about screening a treehouse that was in a back yard. If there is opposition from the neighbors and residents here, he feels screening should be a part of the consideration. He said the most important thing is that he feels the board needs to hear from the Fire Department. Having not seen the plans, he can only assume the proposal is for a two-story house. That being the case, he wants to know what the Fire Department thinks about possibly having ladder issues on the sides. Mr. Maistros asked Mr. Stone to clarify what his particular safety concerns are if the side yard setback variance is granted. Mr. Stone said he recalls when the case was in Russell Township, there were equipment set-up issues and manpower issues involved in the spread of fires when houses are this close together. It's like building in an old Cleveland neighborhood; fire spreads up under the eaves from side to side when the eaves overhang. The Russell Chief also made a point about the flow rates of the fire hydrants in the neighborhood, that they are 100 years old. Insurance rating issues were brought up as well. He ended by saying he is not an expert on those matters and he would defer to a member of the Fire Department, he just has questions. Mr. Maistros said he did not think the variance would impact the flow rate of the fire hydrants one way or another. Mr. Stone said he thinks it's a density issue, Mr. Maistros said yes, but a house could be built there without requesting any variances. Mr. Stone agreed.

Ms. Rini said she would like to comment. She referred to the house plans, indicating that the area they are requesting a variance for is the staircase going up to the second floor. The staircase is on the left, and all the bedrooms are on the right. That is where there would be a larger space between the homes. She thinks if emergency equipment needs to get in there, that is where all the bedrooms are. Mr. Stone said he is not sure if even that's enough, with the zoning laws that were laid down in the 1940s.

Mr. Maistros called on Andy Hitchcock. Mr. Hitchcock stated he was quite sympathetic to Mr. Joyce's commercial viability of the property and trying to put a house there. But he said he is struggling with how close it is to 101 Hazelwood and the owner's significant concern. He said he thinks a smaller house could be built, if lot coverage were an issue it could be mitigated somehow. He said moving the property back would address some of the other questions and concerns. His biggest concern right now is the side lot variance. He feels it is really close. Whether it's a safety, aesthetic or privacy concern, that is where he is really struggling to see this one making sense as is.

Mr. Maistros called on Mike Mulloy. Mr. Mulloy said he shares in Mr. Hitchcock's comments. He said as a real estate developer, he understands Mr. Joyce's position but that it is also important to take into consideration the concerns of the residents and how very close the houses would be to each other. Those are his major concerns. He went on to say that not knowing the run-off that the other neighbors would have to deal with, together with the close proximity to the neighbor to the west are his major considerations.

Ms. Mariola asked to address the board, Mr. Maistros agreed. Ms. Mariola referred to Dave Hocevar's comment regarding the 35% land coverage not being an issue, due to the 1947 Zoning Code. She then quoted a section of the zoning code regarding non-conforming lots, and non-

conforming lot of insufficient size. Mr. Maistros advised her that there is no indication that this is a non-conforming lot; it is a conforming lot. The issue is the house and the structure being placed on the lot, including the driveway, and whether that exceeds the lot coverage. Mr. Hocevar has indicated that that issue is no longer before us. He went on to say that he appreciates Ms. Mariola's comments and her knowledge of the code, and her excellent recitation of the criteria that he would have talked about shortly. He said he relies on Mr. Hocevar's expertise in this area that the land coverage is no longer an issue.

Mr. Maistros asked Mr. Joyce why he wouldn't build this new house closer to the house he built six to seven years ago at 105 Hazelwood and request the variance on that side, instead of asking for a variance next to101 Hazelwood. Mr. Joyce responded that a much larger variance was granted for 105; they took into account the existing lot to the right. Because of Ms. Richard's driveway being 10', they said as you move down the road it would be practical and feasible to keep the 10' to the westerly side of each home. Therefore, the houses would look centered and the distances between the homes would be maximized. Mr. Joyce went on to say from the standpoint of fire safety, which really doesn't affect zoning, it is still considered it when they build. A 10' side yard is in excess of fire rating distance, which is why the code says 10'. When building in Cleveland, for example, they use fire rated drywall when homes are much closer together. As for undermining the driveway during excavation, Mr. Joyce said they go to great lengths to avoid having the neighbors suffer any damages to their property, since his company has to replace it anyway, and it also creates tension between neighbors. He then referred to the foundation on the plans and directed the board's attention to the front porch. He said the porch is 9.67' wide, and it consists of a front door, front hall closet, and a staircase. These elements are all minimized in order to minimize the width of the home. He said they immediately stepped it back to exceed the minimum side yard setbacks. The encroachment is for 20', and he said it is up against 101's property, and the foundation of that property is furthest away. Without the variance of 3.89', the house would become narrower in order to fit, variance-free. Basically, that would reduce the front of the house to a garage door and a front door. From a practical and design standpoint, the curb appeal is for the homeowner as well as the neighbors. He said he also must appear before the Architectural Review Board and get the project approved from a curb appeal standpoint. He spoke to the suggestion of acquiring some additional land, he said if he were to buy a strip of land, it would then become a non-conforming lot, and he would have to meet the 2-acre minimum. Ms. Rini can do that at a later date, but from a permitting standpoint, Mr. Joyce said he has to work within the bounds of the zoning as is. When he was designing a house to meet Ms. Rini's needs, she wanted a rear porch and that was why he put the front yard at the set-back point. He said to sliding the house back would not hurt any neighbors to get a rear yard variance in that respect. He said he understands Mr. Stone's idea of sliding the foundation back. He also wanted to note that the foundation steps back 8" to 1' in several areas where the rooms change. That was done not only for design reasons, but also for side yard reasons. The lot is a little wider at the front and pinches down as it goes back. He said the further the house gets pushed back, the closer it would get to Sarah Richard's driveway. This was another motivation as to why the foundation was set where it is. Ms. LaChapelle asked Mr. Joyce how far back would move he house. He said since 105 Hazelwood is 37' and 103 Hazelwood is at 40', they would put it between that to so as be gently stepped back. This way from the road it would look like they are lined up. He said it would probably be pushed back about 4' or so. Mr. Maistros said that would

then increase the need for a side yard variance, and Mr. Joyce agreed. Mr. Stone asked about the possibility of a single car garage. Mr. Joyce said a two-car garage meets the needs of today and while it could be a design consideration it is not a practical design at this point in home design. Mr. Maistros asked what the smallest two car garage would be. Mr. Joyce said 20' on the inside, with a 16' door. Mr. Maistros confirmed that Mr. Joyce needs 3'; either 3' with the variance requested, or you could get the 3' by narrowing the porch entryway as discussed, or obtain the 3' by reducing the garage. Mr. Joyce agreed that those are his options.

Mr. Mikolanis suggested an additional option of obtaining the 3', and that would be in moving the house eastward. He said perhaps requesting a variance of 1.5 feet on each side. Mr. Maistros agreed, and said that was where his thoughts began; that if there must be an encroachment, his preference would be to have the side yard encroachment be on the house that was built closer to the lot 6-7 years ago, versus on the house that Ms. Richards lives in, which has been there for a long time. He said personally, he would feel better if Mr. Joyce's new house was encroaching on the other house he built, versus giving them the full 10' and encroaching on Ms. Richard's property.

Mr. Maistros asked for any other comments of questions from board members. Mr. Stone asked if Mr. Joyce needed the 10' on the right for logistics, since excavating a house that is 6' off a driveway would present challenges. He said he knows that with the house to the west of 101 Hazelwood, that Mr. Joyce used the back lots, going through the lot being proposed for building now, to gain access and went through the back yard of 101. He asked Mr. Joyce if that was one of his considerations for trying to keep the 10' on the east side of the house. Mr. Joyce said that is correct; when the homeowners that live at 105 Hazelwood were in this same position years ago, the board said that 10' offers you access with a mini excavator or a bobcat, dragging a shed back there at a later date without interrupting the neighborhood. The lesser of two evils is digging 6' from a driveway, since it is a lot easier than digging 6' from a house, because you don't have the height next to you. He said he is just finishing up a house now where he is 3' off the neighbor's driveway and there was no underpinning, it sits on a sandy lot in downtown Cleveland in Ohio City and that Geauga County clay is a lot easier to work with. He said the way it stands right now, the foundation is almost dead centered in the lot, which works well for both neighbors. Mr. Maistros reiterated the situation created 7 years ago when Mr. Joyce built the house at 105 Hazelwood. He said the choices were set in stone to build the house at 103 a little smaller to fit on that compressed lot within the setback requirements, or to come before the board again asking for a variance for the next house. He recalls some discussion about that at the meeting 7 years ago. Mr. Joyce said that they have done a great job in answering that call, in that the house at 105 is 32' wide all the way back, and Mr. McClains's house is 34' all the way back, and the new foundation is at 26', then 24' and then 14', so the house has been narrowed dramatically over the other two foundations. It is just the foyer that comes back to haunt them.

Mr. Maistros went back to Mr. Stone about the safety issues he brought up, also acknowledged by other board members. He asked Mr. Stone if he was prepared to vote one way or another on a motion, without hearing from the Fire Chief, or would he rather have that prior to making any decision. Mr. Stone said it is preferable to have the information from the experts. Mr. Maistros asked the other board members if they agreed and they all did. Mr. Maistros said he also would like

to delay any decision and consideration until the safety concerns are addressed. Mr. Maistros said he does not want to delay the project for the homeowner or builder, and he would agree to a meeting earlier than the regularly scheduled one in January if all board members are available. Mayor Koons said the next regularly scheduled BZA meeting is January 20, 2021. Mr. Maistros indicated that if the response from the Fire Chief was available prior to that, he would be willing to move the meeting up to January 13, 2021. All board members agreed to the earlier date.

Mr. Maistros told Mr. Joyce he would be more than willing to make a conditional motion if Mr. Joyce preferred that. Mr. Joyce said he would prefer that the board have all the information available from the Fire Chief. He referred to a similar situation at sublot 51, two doors west, and that it was not an issue from a fire safety standpoint.

Mr. Maistros asked Mayor Koons about contacting the Fire Department, and Mayor Koons said he would get the information from the Chagrin Falls Fire Department.

He said with no objection from Mr. Joyce, they would continue this hearing and continue this specific appeal to the next available meeting date. All neighbors will be notified again. At the next meeting, new issues will be discussed; what the Fire Chief's presents, and if Mr. Joyce and Ms. Rini decide to propose any changes based upon what they heard tonight, in any regard, that would be presented as well. Mr. Maistros asked Mayor Koons to notify the board so they would be available for an earlier meeting date.

Mr. Maistros expressed appreciation and thanks to all the residents for their participation. He suggested keeping in touch with the Building Department as to the next meeting date, but that as of tonight the next meeting is January 20, 2021.

OLD BUSINESS:
Mr. Maistros asked for any old business to consider. Mayor Koons said there was none.

NEW BUSINESS:
Mr. Maistros asked for any new business to consider. Mayor Koons asked if the blueprints and/or the site plan for the proposed new house should be made available for viewing in the Building Department. Mr. Maistros agreed that would be a good idea; Mr. Koons said the blueprints and site plan would be available for review by interested parties by Monday, December 14, 2020.

There being no other business, Mr. Maistros motioned to adjourn the meeting at 8:28pm. Mr. Hitchcock seconded.

David Maistros, Chairman — Date 9/15/2021

Ruth Griswold, Board Secretary — Date 9-15-2021

Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
Record of Proceedings
September 16, 2020 7:08 p.m.

Members Present: Laura LaChapelle, Andy Hitchcock, Mike Mulloy, Bill Stone
Members Absent: David Maistros, Chairman
Other Officials: Bridey Matheney, Solicitor; Mayor Bill Koons; Dave Hocevar, CBO/Inspector.
Visitors: Mike Cipriani

Laura LaChapelle called the meeting to order at 7:09 p.m. Board Clerk conducted roll call, Hitchcock, LaChapelle, Stone and Mulloy were present.

CASE # 20-BZA-06: 5210 CHILLICOTHE ROAD – CIPRIANI PLAZA – BRIAN BECKER, BECKER SIGNS - APPLICANT – PROPOSED MONUMENT SIGN – 10' SETBACK VARIANCE FOR SIGN LOCATION AND 5 SQ. FT. VARIANCE FOR SIGN AREA

The application indicates the proposed monument sign will require a setback variance of 10' for location and a 5 sq. ft. variance for sign area to allow for a 30 sq. ft. multi-tenant sign. South Russell Village Zoning Code Chapter 5.06 requires monument signs to be at least 25' from the road right of way.

Laura asked Brian Becker why his client wants a change in the sign. Brian said the sign is for a strip center, and he wants the sign to become more attractive to the public, and the current sign is further from the road which makes the sign invisible to the public. Laura asked if what Brian's client submitted is still accurate, which is to have 30 sq ft in the area labeled "electrical cabinets" in the plans. She also noted there will be 2 sq ft of brick to the right and below the sign and confirmed the brick area would not be considered part of the sign area for purposes of the variance. Brian stated that is correct. Laura noted there does not appear to be an issue with the height of the sign as the sign is not over 7 ft. Laura asked Dave Hocevar if the setback variance request creates any issues for him. Dave said the sign will not create any issues. However, he suggested to Brian that his client place a mockup of the sign in the proposed location and have the police department confirm the sign will not cause any traffic hazards. Brian stated that the location of the present sign is 14 ½ ft from the road. Laura asked David Hocevar if he knew how far some of the other

businesses signs in that area are from the road. Dave stated that unless they applied for a variance, the signs would have to meet the 25' setback requirement.

Laura asked if any of the board members have any questions regarding the proposal. Andy Hitchcock stated he has some reservations about the sign because the present sign is already in compliance with the zoning code and wanted to know how the change of the sign location will be different from where it is currently structured. Brian stated he wants the sign to be closer so the sign can be visible to public traffic. Laura confirmed the location of the sign, and what Becker wanted. Laura also confirmed with Ms. Matheney that the sign follows the guidelines for the Zoning Code. In the midst of that discussion, Laura also asked if the sign proposal has to go through Planning Commission review and approval. Ms. Matheney stated yes that any sign is a structure and that it first must be approved by the Planning commission for their developmental approval before a zoning permit can be issued.

Brian understood that process but was confused on why there needed to be multiple steps when it was never needed in the past. Ms. Matheney stated that in order to obtain the zoning permit those steps have to be taken. Brian understood that and will start the process of obtaining the zoning permit. Ms. LaChapelle restated the concern that they make sure the police department will allow the new sign if the motion is granted, and asked if there are any questions concerning the condition.

Ms. LaChapelle made a motion to grant the location and it will be a 10 ft setback variance for the proposed monument sign at 5210 Chillicothe Rd. with the following conditions: 1) the South Russell Police Department does not find the sign creates a safety hazard to the traveling public; and 2) if Planning Commission review and approval is necessary under Section 3.04 of the South Russell Village Zoning Code, the applicant obtains the required approval of the Planning Commission. Ms. LaChapelle asked for a roll call of the motion. All members voted in favor of the motion, and the motion passed.

Ms. LaChapelle presented a second motion to grant a 5 sq ft variance to allow a 30 sq ft multi-tenant sign at 5210 Chillicothe Rd. known as the Cipriani Plaza with the following conditions: 1) the South Russell Police Department does not find the sign is a safety hazard to the traveling public; and 2) if Planning Commission approval is necessary under Section 3.04 of the South Russell Village Zoning Code, the applicant obtains approval of the Planning Commission Board. Ms. LaChapelle asked for a roll call of the motion. All members voted in favor of the motion, and the motion passed.

Brian was satisfied with the passing of the motion and inquired about what steps he needed to take to get police department approval of the sign. Mayor William Koons gave him the information he needed. Dave Hocevar explained the process to Becker on getting the permits. Brian stated he will start the process. Ms. Matheney informed Becker that there may be a meeting that needs to take place with the Planning Commission before an official decision is made. Brian stated he understood the process.

APPROVAL OF MINUTES: None

OLD BUSINESS: None

NEW BUSINESS: None

Ms. LaChapelle made a Motion to adjourn the meeting at 7:36p.m.

Ms. LaChapelle, Acting Chairperson — Date 9-15-21

Board Secretary — Date 9-15-2021

Prepared by Carolyn Blake
Edited by R Griswold 3-25-2021

Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
Record of Proceedings
January 13, 2021 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Mike Mulloy, Bill Stone
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons, Ruth Griswold, Board Secretary, Sean Davis, Fire Marshal
Visitors:	Emilie Unkrich, Sarah Richard, Valarie Mariola, Mark Mikolanis, Mali Rini, Katie, Richard Renton

David Maistros called the meeting to order at 7:01p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros stated that the minutes from December 9, 2020, and the minutes from tonight's meeting will be part of a combined review and approval at the next Board of Zoning Appeals meeting.

CASE #20-BZA-09A 103 HAZEWOOD DRIVE-WILLIAM JOYCE OF JOYCE BUILDING COMPANY-SIDE YARD VARIANCE-REVISED AND RESUBMITTED FROM MEETING ON 12-9-2020

Mr. Maistros summarized the case before the board, stating that Mr. Joyce has revised the plans from the previous meeting on 12-9-2020, and that there is no need for a variance on lot coverage. Mr. Joyce is now requesting two side yard variances, one on both the east and west sides of the proposed new residential dwelling.

Mr. Maistros asked Ms. Matheney to swear in anyone present at the meeting who may like to speak on the agenda item. Ms. Matheney swore in the guests present.

Mr. Maistros asked Mr. Joyce to proceed with his presentation. Mr. Joyce said due to the suggestions and concerns brought up at the last meeting, they took the time to look at the proposed plans more closely. He said they took some of the suggestions and made some changes to the plans.

He said Mr. Maistros had asked him if he considered moving the house a little further east. Originally it was set at the 10' mark, because the 5 ½' variance had been given to the house at 105 Hazelwood five years ago, he was under the understanding this house had to be at 10'. He went on to say that because the house bumped back several times, he approached the neighbor to the east, Mr. Turchin, and asked him about the change, which he was totally fine with. Therefore, he said he was able to push the house 1' east to attempt to relieve Ms. Richard of some of the burden that would be on her property. He then sat down with the future homeowner, Mali Rini, and the architect. They worked together on reducing the house size even further. Mr. Joyce referred to the revised site plan, pointing out the minimum garage size, and that the porch and foundation was revised but still presents a nice entryway with curb appeal to the neighborhood. The width of the house was reduced by 16", thereby reducing the variance request of 46" on the west side to 18 ¾" at its closest point. When looking at the site plan, the front of the house where the porch is, the lot does pinch a little bit over the depth, so that the left side variance is 2 ¾" and then at the rear of the staircase where it juts out it is a maximum of 18 ¾". In order to do that and maintain the rear yard setback, they reduced the size of the porch from 14' to 13.33' to keep the house within the other setback requirements. He said he also spoke to the neighbor to the west, Sarah Richard, who is impacted most by the 18 ¾", and she had asked that they make sure there would be a swale on the property at 103 Hazelwood to prevent water from coming onto her driveway. Mr. Joyce assured her that there would be a swale and went on to say they would also consider landscaping the property line alongside the building. He said Ms. Richard had requested perhaps some tall, narrow arborvitae type trees, and that they are also open to other suggestions such as intermittent fencing or other planting.

Mr. Maistros asked if Mr. Joyce has anything else he wanted to say at this point. Mr. Joyce said that, from the standpoint of being thorough, variances are usually given if the design and purpose of the lot is not being changed, and although it is a very restrictive lot, they took all of that into account. He said of all the new homes that are being built, he believes this house is the narrowest, to try and reduce the amount of variances necessary while still maintaining the nice look of the home and having it be very usable for the homeowner. This house will not have any effect on the school system, snowplow access, garbage pick-up, mail delivery, or any other governmental services.

Mr. Maistros acknowledged and quoted from an earlier email received from Nick Turchin, of 105 Hazelwood, stating that he was planning on attending the meeting, but thought it was next week. He did have a conflict and was unable to attend but "wanted to let the building department know that I have no issues with the variance that Bill Joyce is requesting. Hopefully this matter is resolved tonight, and Bill can proceed in building this new house."

Mr. Maistros recalled the meeting on December 9, 2020, and how many residents attended and spoke, and that their input was very appreciated. He noted many are present again tonight, and he asked that the focus at this meeting be on new issues only, or things that were not said at the last meeting. He said everyone would be given the opportunity to speak, but he wanted to call on Sarah Richard first, her being the neighbor most impacted, as Mr. Joyce said. He wanted to hear her position on the proposed site plan.

Ms. Richard said she had talked with Bill and Mali, and she knows ultimately that there will be a house there, so it's best to agree and get everybody on the same page She said the main issue for her is being able to keep her privacy. She said since the house butts up right to her driveway, she can't do anything, she can't put anything down. She said she wants to make sure that that is put into writing, and indicated on the plans, that she will have that privacy, whether it's from the arborvitae or fencing. Mr. Maistros said that is certainly understandable, and asked Ms. Richard if it was her understanding that the fencing would be on her property or the 103 Hazelwood property. Ms. Richard said the fencing would be on 103, since there is no room for her to do it on her property, adding that her property ends within an inch or two of her driveway, which is why she wants to make sure they do it on their property, since she has no ability to do anything on her property. Mr. Maistros asked her if that becomes a condition of approving these variances, does she feel comfortable that she would be able to work out the details with Ms. Rini and Mr. Joyce, as to the exact nature of that screening when the time comes, or would she like the board to work out the specific details of the screening now. Ms. Richard said she feels that the three of them could come up with something.

Mr. Maistros then called on board members for questions or comments, starting with Bill Stone. Mr. Stone said he appreciates the changes made, and the impact, in siting the house, centering it more and moving it away from Ms. Richard's driveway. He asked Mr. Joyce what the total finished square footage of the house would be. Mr. Joyce said the first and second floor totals 2,402 square feet. Mr. Stone asked what the total would be when adding in the basement. Mr. Joyce said he is not 100% sure of that, but basically the basement would be a finished rec room and maybe a half bath, maybe 600 square feet. Mr. Stone said with that, it's basically closing in on 3,000 square feet. He asked what the foundation-to-foundation measurement is on the rear, east side, between the proposed house and 105 Hazelwood. Mr. Joyce responded 14.58'. Mr. Stone said that Ms. Richard had asked many of the questions he was going to ask regarding fencing and screening but wanted to know if Mr. Joyce would be able to put a swale or a yard drain in between the houses. Mr. Joyce said more than likely there will be plenty of room for a swale, but if the water doesn't flow, they would need to put a yard drain in. Mr. Stone stated that he likes the idea that the screening has been brought up, and that he also likes that the house was pushed back further because the house at 105 is roughly 25' out from the house to its right, so it protrudes quite a bit, and to bring them back in line would be good. He asked if there has been any consideration or planning regarding front yard trees and screening, seeing as though there seems to be quite a wall of houses on these lots. Mr. Joyce said as of right now, there is no landscape plan, but that Ms. Rini has been considering landscaping ideas, but he's not sure if there will be a big tree in the front or foundation plantings. Mr. Stone said that might help with decisions. He went on to recall past issues with air conditioning units being disruptive to neighboring houses and asked that it be put into the plans that the air conditioning unit be situated in the back of the house within the footprint of the foundation. Mr. Joyce said he believes that it could be done that way. Mr. Stone then noted the increase of density in the area and asked if Dave Hocevar could comment on the condition of the storm sewers on the street. Ruth Griswold said that Mr. Hocevar was not in attendance but reachable by phone if need be. Mr. Stone said he just voiced his questions and considerations and is interested to hear from the other board members.

Mr. Maistros then called on Mike Mulloy. Mr. Mulloy said he has no additional questions, and that he appreciates the changes and revisions that were made, and the efforts by all parties to come to a resolution. He went on to say that he does like the idea of the screening, a natural barrier right on the property line, and he hopes it proves to be substantial.

Mr. Maistros then called on Andy Hitchcock. Mr. Hitchcock said looking back over where things were just a few weeks ago, such substantial progress has been made through conversations between the neighbors and the builder. He said that is fantastic, and that it makes the board members' job a lot easier. He said in looking over the code and trying to understand the pros and cons of ruling one way or another, there were a lot of things that stacked up against this. Whether it's the fact that Mr. Joyce knew he would need a variance before he purchased the property, and a number of other things. But chief amongst them was the impact to the neighbor and the variance being substantial. He went on to say that the revised plan and the conversations that have occurred have really limited those. The fact that the most impacted party is satisfied with the solution really helps the conversation. He had no other comments.

Mr. Maistros then called on Laura LaChapelle. Ms. LaChapelle said she agrees with Andy and Mike, and clearly things are moving in the right direction and that it appears, for the most part, that a lot of the issues and problems have been resolved or remediated. She said many of her concerns have been addressed with the changes to the plan. She said that while driving down the street and getting a sense of how close the houses are to each other, to her, neighbor input in this particular kind of situation is extremely important. She said she found many of the comments that were made to be very encouraging, and that she agrees with Bill Stone that this is the kind of situation where if everyone in the neighborhood is happy, it is clearly a win-win. She said she has no other concerns or problems.

Mr. Maistros then began addressing the guests in attendance for comments, starting with Mr. Renton. Mr. Renton said he lives across the street at 106 Hazelwood, and that Bill Joyce also built his house. He said he is very good to work with and that he builds a quality house. They worked their way through any variances that were needed, and also involved the neighbors. He said they have been happy, and that he wanted to attend the meeting to support Mr. Joyce and to see how things are going across the street.

Mr. Maistros then called on Sean Davis. Mr. Davis said he was asked to attend in the event that anyone had any questions regarding fire-fighting considerations. Mr. Maistros asked Mr. Davis if, regarding side yard variances and houses being situated this close together, if he had any concerns from a safety services standpoint. Mr. Davis responded that he does not have any concerns of loss of life, he said he just wants everyone to understand that when houses are close together, and when one catches on fire, other will have damage due to proximity and the way heat radiates. In this particular scenario, the fact that there are hydrants, and that the local fire department is an ISO Class III, damages should be minimal. He went on to say that there are definite tactical and strategic type scenarios that would be taken into consideration for houses that are closer to each other. This would involve different placement of ladders, changes in rescue and initial attack or deployment of initial

resources. Nothing that can't be overcome, but it certainly makes for different considerations. Mr. Maistros thanked Mr. Davis for joining the meeting.

Mr. Hitchcock asked Mr. Davis if, when talking about putting in the natural screening such as arborvitae, does it cause a safety concern or an issue, as far as what's going to be there in a couple years versus what's not there now. Mr. Davis stated that if a natural clean hedgerow is kept under control it should not be an issue. If they were to get out of control, it could potentially become more fuel for the fire, and it could also limit access to the other buildings. He would say that most firemen would prefer a natural hedgerow as opposed to a fence, which becomes a significant barrier that is difficult to get around. He went on to say that its tough to move a 200' hose line, putting out 125-150 gallons per minute, around a 100' fence. This would take time to redeploy and move in the event that the fire spreads out of control. He said a hedgerow, even if one has to stomp a hedge or two, makes it easier to get to where one has to be.

Mr. Maistros then called on Emilie Unkrich, asking if she would like to speak tonight. Mrs. Unkrich said she did not wish to speak, but thanked Mr. Maistros for asking.

Mr. Maistros then called on Mark Mikolanis. Mr. Mikolanis said he had nothing to add to the previous support that he has already voiced.

Mr. Maistros then called on Valarie Mariola. Ms. Mariola said she had two questions. She wanted to know the change in the square footage and lot coverage from the previous plan. Mr. Maistros said Mr. Joyce will address that and asked what the next question was. Ms. Mariola asked Mr. Davis if, when putting two houses closer together, for fire suppression you would need more water to do that. She said she knows that there is a fire hydrant right across the street from 101 Hazelwood and asked what the output of the water source is and could it sustain water supply to contain a fire if something should happen. Mr. Davis said while he is not familiar with the flow rates of that particular hydrant, he does know that the Chagrin Falls Fire Department, who is the primary, has auto-aid from Russell, which would bring a tanker. The amount of initial water from Chagrin Falls Fire Department, the hydrant, even if it is limited, and the mutual aid companies is more than enough to handle initial company operations. In regard to the square footage question, Mr. Joyce responded that he believes the footprint was reduced by 140 square feet. Mr. Maistros said that with the information that the board has, the house thereby meets the 35% lot coverage, and asked Mr. Joyce to confirm. Mr. Joyce said that the land coverage was not recalculated because Mr. Hocevar said the lot coverage was no longer an issue. Mr. Maistros noted that the plans indicate a minimal reduction in size, and agreed that Mr. Hocevar said land coverage was not an issue. He asked Ms. Mariola if she had any further questions, to which she responded that she would still like to know why Mr. Hocevar feels the land coverage is not applicable.

Mr. Maistros then called on Katie. Katie said she has no further comments.

Mr. Maistros then called on Mali Rini. Ms. Rini was having technical difficulties and could not respond.

Mr. Maistros asked if there was anyone he had missed, and there was no response. He then called on Sarah Richard again and asked her if there was anything she would like to add after hearing all the comments. Ms. Richard did not have any further comments.

Mr. Maistros then called on commission members for any further comments. Mr. Stone said as he was looking through the Duncan factors and he is unable to check all the boxes on it, but he does have four versus three. However, he feels that the two adjoining neighbors, those who are most impacted by it, puts heavy weight on that, and less on the Duncan factors. He asked how other board members felt about that.

Mr. Maistros said that having heard board members' comments, he thanked Bill and said he also follows those factors for criteria that the board follows, and that they are laid out in detail in the code.

Mr. Maistros went on to thank Mr. Joyce, Ms. Richard and Ms. Rini for getting together over the last month. He said he agrees with everyone else that the changes that have been made, while we're talking about inches here and a foot there, are significant for the overall impact as it relates to both of these properties. He said what was seen a month ago had an impact on only one property, that of Ms. Richard's, and no impact on the other property at all. He said moving the house and narrowing the porch shows a significant compromise and willingness to make this work. At the end of the day, Ms. Rini and Ms. Richard will be neighbors for hopefully a long time and they have to get along. He said while it's fair to say that Mr. Joyce knew the zoning on the property prior to purchasing it, he thinks he has presented a house that is substantially significant and consistent with the other properties in the neighborhood. He said he believes the square footage and the footprint as it relates to other homes is also consistent and does not impact the overall character of the neighborhood. He went on to say that the impact of the variance itself has been minimized significantly from where we were a month ago, and while the board could take the position that the builder could simply build a smaller home for that lot with no variances needed, he said he believes they are trying to create both a home that works for the potential owner and the neighbors as well. He said for those reasons, he will proceed with making the motions.

Mr. Maistros made a motion to grant a 1'6 ¾" side yard setback variance on the west side of the property, with the following conditions:
A swale shall be indicated on the plans and be placed between the properties of 103 and 101 Hazelwood and that screening shall be installed on the 103 Hazelwood property between 103 and 101 Hazelwood in order to provide privacy protection for 101 Hazelwood. The screening can be either fencing or plantings, or a combination of the two, to be worked out at the time of installation between Mr. Joyce, Ms. Rini and Ms. Richard. Seconded by Andy Hitchcock. With no further discussion on the motion, Mr. Maistros asked for roll call. On roll call vote, motion carried.

Mr. Maistros made a motion to grant a 1' side yard setback variance on the east side of the property at 103 Hazelwood. Seconded by Andy Hitchcock. With no further discussion on the motion, Mr. Maistros asked for roll call. On roll call vote, motion carried.

Mr. Maistros stated that both variances requested have been approved, and again thanked the parties for working together and that their efforts are very appreciated.

OLD BUSINESS:
None.

NEW BUSINESS:
Mayor Koons reminded everyone of the next meeting, February 17th. Mr. Maistros asked if there were any agenda items for that meeting, Ruth Griswold responded there are no submittals yet.

Ms. Mariola requested an email copy of the meeting minutes.

There being no other business, Mr. Maistros motioned to adjourn the meeting at 7:38. On roll call, the meeting was adjourned.

David Maistros, Chairman — Date 9/15/2021

Ruth Griswold, Board Secretary — Date 9-15-2021

Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
Record of Proceedings
March 17, 2021 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Mike Mulloy, Bill Stone
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons, Ruth Griswold, Board Secretary
Visitors:	Chris Bell, Bill Joyce

David Maistros called the meeting to order at 7:03p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros stated that the only issues on the agenda are the approval of three sets of minutes.

He began with the minutes from the meeting on **September 16, 2020**. Ms. LaChapelle said she has reviewed them, and she is working with Ruth to address a few minor changes and cosmetic issues. Mr. Maistros said he was not present at that meeting and asked the board members if they had any changes; there were none. Mr. Maistros asked for a motion.

Mr. Hitchcock made a motion to approve the minutes of September 16, 2020. Ms. LaChapelle seconded. On roll call vote, Mr. Maistros abstained, motion carried.

Mr. Maistros then asked the board members if they had any changes or corrections to the minutes from the meeting on **December 9, 2020.** There were none.

Mr. Maistros made a motion to approve the minutes of December 9, 2020. Mr. Mulloy seconded. On roll call vote, motion carried.

Mr. Maistros then asked the board members if they had any changes or corrections to the minutes from the meeting on **January 13, 2021,** noting it was the follow-up meeting concerning the 103 Hazelwood Drive property. There were none.

Mr. Maistros made a motion to approve the minutes of January 13, 2021. Mr. Stone seconded. On roll call vote, motion carried.

OLD BUSINESS:

Mr. Maistros asked Ms. Griswold for any old business. Ms. Griswold mentioned the Bell Station LED sign that failed to make this agenda due to lack of proper legal notice and asked if a special meeting should be called or if they would address it at the next regularly scheduled BZA meeting.

Mr. Maistros noted the sign was already up and therefore did not feel there was a sense of urgency. He asked the board members for their comments. Ms. LaChapelle asked if the Village had received any letters of concern from any residents, and if not, she would agree with Mr. Maistros that it could wait until the meeting on April 21, 2021. Mr. Maistros referred to a letter received via email, indicating the sign created a distraction and was too bright when heading west on Bell Road and approaching 306. Ms. LaChapelle said she believes the brightness has been turned down quite a bit.

Mr. Maistros asked the Mayor's view on the matter. Mayor Koons said the owner of the Bell Station will be required to turn the sign off until the next BZA meeting. He said the sign contractors received some misinformation last fall but may have deliberately avoided the permitting process. He said he did not see any urgency in getting the situation addressed.

After confirming with the Mayor and the board members that they agree to review the Bell Station sign at the next regularly scheduled BZA meeting, Mr. Maistros asked Ms. Griswold to place the Bell Station sign on the agenda for April 21, 2021.

NEW BUSINESS: None

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There being no further business, Mr. Maistros motioned to adjourn the meeting at 7:11.

David Maistros, Chairman — Date 9/15/2021

Ruth Griswold, Board Secretary — Date 9-15-2021

Village of South Russell
5205 Chillicothe Road
South Russell, Ohio 44022
440-338-6700

BOARD OF ZONING APPEALS MEETING
April 21, 2021 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Bill Stone
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons, Dave Hocevar, CBO, Ruth Griswold, Board Secretary
Visitors:	Robin Rood, Greg Heilman, Nick Nykulak, Chris Bell, Caroline Smith, George Plazek, Linda Gilbert, Doris Gilbert, Anne Burr, Ann Wishart

David Maistros called the meeting to order at 7:00p.m. Board Secretary Ruth Griswold conducted roll call.

Board member Mike Mulloy was absent.

Mr. Maistros motioned to approve the minutes of the BZA meeting on March 17, 2021. Ms. LaChapelle seconded. On roll call vote, the motion carried.

Mr. Maistros asked Ms. Matheney to swear in anyone present at the meeting who may like to speak on any agenda items. Ms. Matheney swore in visitors.

CASE # BZA 21-01: MR KEN ASHBA OF BELL MARKET EXPRESS, OWNER OF GULF STATION AT 5196 CHILLICOTHE ROAD-LED READER BOARD SIGN.

Mr. Maistros indicated that pertaining to the Bell Road sign, the board members have received copies of two notices of violation, two zoning permit applications, an email complaint dated 1-29-2021, and photos of the sign. He said the board members also have received and reviewed a copy of the Planning Commission minutes from the meeting on March 11, 2021.

Mr. Maistros asked Ms. Matheney if this request would be for a Use Variance since the code strictly prohibits this type of sign. Ms. Matheney said since it is not a permitted use, the board would need to apply the standards for a Use Variance, not an Area Variance.

Mr. Maistros addressed the members and referred to Section 3.07 (c) (1) which says, *"Variances to use regulations may be granted only to the following extent: (a) The property cannot be used for any permitted use within the district, and (b) 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 (c) The variance shall be the minimum necessary in order to provide adequate relief to the property owner."* He said therefore, the criteria and standards are a little different than what the board normally deals with. He then referred to the portion of the code which addresses the sign regulations that come into play, section 5.06 (a) (5), which talks about illumination. *"The illumination of signs shall comply with the development and performance regulations of this Code. Signs which might be identified as traffic signals or other safety devices shall not be permitted. In no case shall blinking, flashing, neon or neon-type, moving or other such signs be permitted."*

Ms. LaChapelle asked for confirmation that the Market Express sign, referenced as a cloud sign, was not an issue. Mr. Hocevar confirmed that as being correct.

Mr. Maistros then addressed Mr. Ashba and said that after reading the Planning Commission meeting minutes, they have a good history as to how the submittal got to this point, and asked him to speak on his own behalf, as to what he was requesting and why.

Mr. Ashba said when the process began, he told the sign manufacturer and his team, who wanted to sell him the signs, to go through the process of attempting to get permits for the signs, and that he didn't think they would get approval. He said the next thing he knew they were at the Architectural Review Board and they were approved. The sign manufacturer then told him they were done and could put up the signs. He went on to say that apparently there was a miscommunication as to all the required processes, which became evident when he received the first violation notice. Mr. Ashba said he felt the Planning Commission meeting was an attack on him and the Mayor, and that it seemed as though the board members had decided against the sign before any word was spoken. He said the sign was installed and they thought it was correct. He emphasized that the sign is not neon, and it will flash and go from screen to screen if it is set up that way, which it doesn't have to be. He said when the sign was first installed, it was at 100% illumination, which he agreed was too bright. He said they took it down to 15% illumination prior to being advised to turn the sign off altogether. He went on to say that the sign is no more of a distraction than many other things, and that having the sign set at the lowest possible brightness, it is almost unreadable from a distance at night. He suggested being permitted to have the sign on only during business hours, and he would have a one unchanging message for the day. He reiterated his commitment to being part of the South Russell Village community, offering to have the sign share any messages that the Village would like to announce to the community. He said many of the surrounding communities have some sort of a reader board for their community. He said whatever action the board deemed necessary; he will comply. He then asked Dave Hocevar if he was permitted to put signs inside his window. Mr. Hocevar said they cannot be blinking or neon, and that limited signage may be allowed but could

not clutter the allowed area. Mr. Ashba said his preference would be to leave the sign in place, with necessary restrictions imposed by the board, and to move on.

Ms. LaChapelle asked if the message on the sign changes, would it then be construed as a general advertising sign. Mr. Hocevar said yes, it could be. He went on to say that Mr. Ashba's statement regarding the events that transpired was correct, but that he had never seen the application for the LED sign, the contractor just passed out the photo of that sign at the ARB. The ARB went on to approve the sign. The contractor never obtained a zoning or a building permit for the signs that were installed, and there was incorrect and misleading paperwork submitted by the contractor.

Mr. Maistros said the way the Board of Zoning Appeals would review this submittal is without casting fault or blame on the applicant or property owner. He said the board would treat this as a request for a sign that does not necessarily comply with the existing code. He said he read the Planning Commission minutes, and that he understood Mr. Ashba's characterization of that meeting, but that being said, the Planning Commission denied this submittal, and he consulted with Ms. Matheney as to what options the BZA has. Ms. Matheney said the sign went before the Planning Commission because of a section in the zoning code requiring the erection of signs in the business or industrial district to go before them for review. The question was if a sign on a wall, regardless of the LED component, should be considered an erection of a sign. She said the Planning Commission review was discretionary.

Mr. Ashba said he felt the Planning Commission review was a premeditated and hostile attack, and upon hearing that the review of the sign may not have been necessary he felt they used the loophole in the code to necessitate the sign be reviewed by them.

Ms. Matheney advised the board that the discretionary review was allowed per code, but that the Planning Commission's approval is not required. She reiterated to Mr. Ashba that the Board of Zoning Appeals is a separate board and what happened at the Planning Commission meeting is immaterial.

Mr. Maistros asked the board members for their questions or comments, starting with Laura LaChapelle. Ms. LaChapelle thanked Mr. Maistros for clarifying that the higher standard being applied would be for a Use Variance. She said given those restrictions and parameters, she would find it especially difficult to overcome the first obstacle which states, *"The property cannot be used for any permitted use within the district"*. She said she frequently patronizes the Bell Market Xpress, and she has, for the most part, no issues with the business, but she is concerned that the sign may be a distraction to the traveling public.

Mr. Ashba suggested a study from the sign manufacture if that was available. Ms. LaChapelle said getting past the first element would still be difficult.

Mr. Maistros then called on Bill Stone. Mr. Stone said, in the past, they have deferred some sign issues to Chief Rizzo, and said that may be something they should ask about in relation to this sign. Mr. Maistros asked if there had been any input from safety services. Mr. Hocevar said not yet,

although they could request it if need be. He said there was a concern when the sign was blinking and at 100% brightness, but there have been no complaints since it was turned down. Mr. Stone said he also understands Ms. LaChapelle's concerns.
Mr. Maistros then called on Andy Hitchcock. Mr. Hitchcock said his only question was regarding the number of complaints received from the community, and he asked if there were any complaints other than the one, when it was at full brightness. Mr. Hocevar confirmed that there have been no other complaints that he is aware of.

Mr. Maistros said he agrees with Ms. LaChapelle regarding the first prong of the three elements the board is faced with, that the property cannot be used for any permitted use within the district, and obviously it can. He said from his standpoint, the second portion of the code is troubling because it says, "*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 his concern is that it appears that this restriction on the illumination is a safety concern, or at least enacted due to safety concerns, since it says "*Signs which might be identified as traffic signals or other safety devices shall not be permitted. In no case shall blinking, flashing, neon or neon-type, moving or other such signs be permitted.*" He said he would not be able to vote in favor of the variance to the use request without something from the sign manufacturer and safety services indicating results showing there is no safety concern if the sign were to operate in its current form. He went on to say that the point may be moot if the board cannot get past the first prong, but that the safety aspect is his biggest concern.
Ms. LaChapelle referred to page 53, Section 5.06, sub section A1, and said, "*All signs defined in Chapter 2, except general advertising signs, shall be permitted according to the following provisions...*" She said it almost sounds like there is a general prohibition against general advertising signs, and a general advertising sign is a sign, "*directing attention to a business, product, service or entertainment, conducted, sold or offered elsewhere than upon the same lot on which the sign is located.*" She said this sign sounds like a general advertising sign and asked if that would apply in this case.

Discussion followed regarding the classification for this sign versus a general advertising sign.

Mr. Hocevar said the code was put into effect because they were seeing portable blinking signs put up on the corner of 306 and Bell, to advertise for places in Chagrin Falls and on East Washington Street.

Mr. Ashba asked if that would prohibit the community from utilizing the sign for fundraisers, car shows, etc. He once again said the community needs to communicate with the community, and if it's not his sign he suggests the Village put one up somewhere else.

Mr. Maistros asked the board if they felt it would be beneficial to obtain a report from the Police Department or the sign manufacturer concerning any studies that have been done regarding the distracting nature of the sign.

Mr. Stone said that is probably something that may help them make the decision, given that there is no current code regarding the newer L.E.D. brightness.

Mr. Ashba said he is willing to defer to the Chief of Police, since the manufacturer will only provide a generic study and not contain any guarantees that it won't be a safety concern.

Mr. Hitchcock said he has driven past the sign when it was on, and that it really didn't bother him, but he could understand someone else being distracted. He said if the brightness was kept at a low level, he doesn't see it as that big of a deal, although that is only one portion of the decision criteria. Even with safety force's opinion, it would still not get the board past the first prong of the decision criteria.
Mr. Maistros said he agrees with Andy, and that he drove westbound and also from all other directions at night. He was focused on the sign and didn't feel it was a problem. He said however, the code is what it is, and whether or not they could grant a Use Variance for this type of sign.

Mr. Maistros said he would make a motion based on the information in front of them tonight. The variance request is to vary from Section 5.06(a)(5) in the Village of South Russell Code, which, as written, prohibits any blinking, flashing, neon or neon-type signs, moving, or other such signs in the district. He said the criteria before the board is 3.07(c)(1)(a)(b)(c), which the board has been discussing.

Mr. Maistros made a motion to grant the variance from Section 5.06(a)(5) to allow the sign that is currently standing to remain. Mr. Hitchcock seconded.

Mr. Maistros asked for any discussion on the motion. Ms. LaChapelle said if this had been an Area Variance, the board would have a little more flexibility, but the Use Variance threshold is much higher. Mr. Maistros said he is in full agreement with Laura's statement. Mr. Stone asked if there should be any restrictions on the operation of the sign put into the motion, to avoid opening up any floodgates for the installation of these types of signs. Mr. Hitchcock agreed about hours of operation and discussion followed regarding possible conditions as it relates to brightness level. Ms. Matheney said the conditions in the motion would not be universal, it would only apply to this particular sign for this property. Mr. Maistros made the following conditions to the motion on the table: that it does not exceed a brightness level approved by the Chief of Police, that it only operates when the business is open, and the information on the sign be a single daily message and not be a rotating informational sign. He asked board members for comments regarding the conditions that were just placed. There were none.
Mr. Maistros asked for roll call on the motion with the amended conditions. On roll call vote, the motion was unanimously denied.

<u>CASE #BZA 21-02</u>: MR BRAD CAMPOSO OF PREMIER CUSTOM BUILDERS, APPLICANT AND OWNER'S REPRESENTATIVE. TWO VARIANCE REQUESTS AFTER LOT SPLITS AND CONSOLIDATIONS.

Mr. Maistros asked Mr. Camposo to present his request to the board. Mr. Camposo indicated that the property owner, Nick Nykulak, was also present to answer any questions. He said Nick purchased two existing flag shaped lots that go back narrow and flag out at the rear of the property. He said they met the new neighbors, the Smiths, and they talked about the wetlands that cuts through the rear of the property. He said the only way to get back there without constructing a very expensive bridge was an existing path to get across that portion of the stream. Mr. Camposo wanted to make it clear that they were not asking to create another lot. Mr. Nykulak said they did not change any of the lot frontages. He said when he purchased the two lots, the frontage on both lots were 50'and sometime in the early 2000s, the lots were split apart, with the frontages remaining at 50'. Mr. Hocevar said that is correct.

Mr. Maistros clarified that the only issues before the board were the lot frontages, but also that the lots have never met the 150' requirement. Mr. Hocevar said that is correct, and they will have to comply with the frontage aspect at the building line, they just don't have the frontage on Bell Road. Mr. Maistros also confirmed that the last recent lot split and consolidation had not changed the frontage aspect, Mr. Hocevar said yes that is correct. Mr. Maistros asked if the frontage would have had to been approved at some prior date by a board. Mr. Hocevar said he is pretty sure that he has some documentation on that as to when the 50' frontages were approved. Mr. Maistros said that the submittal is before the board tonight because the flag portion of the lot is what is different, and Mr. Hocevar agreed, saying that the reconfigurations did not affect the frontages, which did not change at all.
Mr. Maistros asked for comments from board members, beginning with Laura LaChapelle. Ms. LaChapelle asked if it were true that the lots would be unbuildable without frontage variances. Mr. Camposo said that is correct, and Mr. Hocevar agreed. He went on to say that the code requiring 150' frontages was meant to discourage flag lots, but there have been quite a few in the past, as long as the structures still meet the 150' at the building line. Ms. LaChapelle said it is significant that Mr. Hocevar said the flags lots were already created, and these lots have been undeveloped for quite a while. She said her only issue would be the narrow driveways, and she asked if that would adversely impact access for fire trucks or any other governmental services. Mr. Hocevar said the same situation exists throughout the Village, and there has never been an issue. The site plans must be approved by the Village Engineer, and flag lots exist with Board of Zoning approval. Ms. LaChapelle asked since there are similar conditions existing in other parts of the Village, would this substantially alter the character of the neighborhood. Mr. Hocevar said it would not.

Mr. Maistros then called on Bill Stone. Mr. Stone said that upon reviewing the Duncan factors, his question would be if this variance would be the only way to profit from the property, as it is. Mr. Camposo said it was bought as two lots, which were sub-divided before the purchase, and they are recognized as two buildable lots, but without the frontage variance, they become unbuildable. Mr. Stone said they also do not have anything in the code prohibiting flag lots. Mr. Maistros said flag lots are generally discouraged from being created, but these are existing lots.

Mr. Maistros then called on Andy Hitchcock. Mr. Hitchcock asked if they were going to create a third driveway between the two, or will each lot have its own driveway. Mr. Nykulak said off the

street, there will be two standard 14' wide driveway entrances that will merge 150' back from the road and share an easement. He said aesthetically, they wanted it to look like two properties and have two mailboxes. He said they will be leveling off the land at the front and putting a new pipe in, so that it looks good from the street. Mr. Hitchcock said he saw Eric Haibach's initial assessment of the lots and asked Dave Hocevar if this variance is granted, would there be any additional restrictions anticipated with the lots. Mr. Hocevar said he has not seen the final site plans for the homes, but they may have to come back for variance setbacks or accessory structures.

Mr. Maistros confirmed that the variance request was for both lots; Mr. Hocevar said that is correct, they are identical variance requests for frontages of 50.2'. Mr. Maistros then referred to the email from Eric Haibach, indicating he would like to take a closer look at the capacity of the 36" culverts on the property and asked if the issue was still outstanding. Mr. Hocevar said it is outstanding and if the variances are granted, site plans will be submitted for each property, and they will go to Eric for approval.

Mr. Maistros asked for any questions or comments from the guests.

Mr. George Plazek, owner of property that abuts the eastern side of the lots before the board, spoke first. He said he feels the variance request is very extreme. He said he knows some variances have been granted, but he knows of none in the Village that would allow only a 50' frontage for two properties. He said he doesn't know if there would be a precedent set by granting this variance, but he is not in favor of it. He continued by saying there are other issues that need to be addressed, a lot of them having to do with the wetlands and the environment, and how building houses may affect the quality of the water and erosion concerns. He said he knows that ODNR will not allow water to be backed up into the culvert that comes out of the Plazek Lake and flows into what is now the Smith property. He said if there is any road building or driveways, they will have to keep in mind that they cannot back water up into that culvert. He said those are a few of the concerns he has.
Mr. Camposo addressed Mr. Plazek and said he understands his concerns. He said Mr. Nykulak has no intention to clear-cut the lot or dam up any streams. He said they met with a person from Soils and Water at the site, and they don't plan to put any other crossings on the properties, and they have also met with tree preservationists. Mr. Nykulak plans to clean up some invasive species in order to restore the natural areas. He said the Nykulak family will also be stocking the pond with fish. He said one of the reasons Mr. Nykulak purchased the property was for the natural beauty of it, and their intent is to preserve that.
Linda Gilbert was the next guest to speak. Ms. Gilbert said she is Mr. Plazek's niece, and that she also lives at the property, which has been in their family since 1926. She asked if there has been any consideration to preserving their privacy at the western border of their property. Mr. Camposo said there are two proposed house sites, and the most westerly site has a gulley or dry ravine that cuts the second house site in half, so as you're looking from the road, it makes the right side of the property unbuildable. He said he is planning to preserve his privacy as well, by staying as far to the left as possible when he builds his house.
Ms. Gilbert said they use their woods for nature observation and some relatives use it for bow hunting. She said they are not interested in seeing a large house from their property through the woods. She asked about how the placements of the houses would be handled. Mr. Maistros said the

issue before the board today is for a variance request for frontages. He said eventually, they will have to submit a site plan showing the layout of the houses and where they would be situated. Mr. Camposo said he would be building his house as far to the left as possible, and that neither he nor Nick is interested in clear cutting any part of the property.
Mr. Nykulak said he is very interested in getting to know his neighbors, but he understood the neighboring land to belong to the Chagrin River Conservancy. Ms. Gilbert said they have a conservation easement on their property with the Western Reserve Land Conservancy, which means there is a legally binding document that the land cannot be developed, although they still own the property, and it is considered their private property. Mr. Nykulak said one of the reasons he bought the land was because the conservancy guaranteed that land would never be developed. He said he is planning on only clearing enough trees to build his house, and leaving the surrounding woods intact. He said there should be no concerns regarding privacy because he doesn't want to see another house either. He said he hoped by purchasing 18 acres in Geauga County he could bury himself back in the woods. He said he looks forward to being good neighbors. Ms. Gilbert asked how the fragmentation of the environment would benefit them, since their conservation easement will be devalued since it would no longer contiguous be to larger, undeveloped property. Mr. Nykulak said he will be contributing to the tax base in the Village. He said his intent is to clear only enough to build the house, he has a forestry plan and a forestry expert who is helping him plant trees to make the forest healthier.
Mr. Plazek said one of their concerns is that there will be trees cut down, and the continued impact on wildlife, since their habitat would be destroyed. He said even though Mr. Nykulak plans on being a good steward of the land, the building of the two houses will still have a large impact on their enjoyment of the cherished family property.
The next guest to speak was Doris Gilbert, Mr. Plazek's sister, who also lives on the property. She was concerned about the very small frontage of the proposed properties. Mrs. Gilbert said the Village should not allow two houses with the frontage for one home. She asked Mayor Koons to explain further. Mayor Koons said he had visited Mrs. Gilbert twice to explain the situation, and he went on to clarify the likelihood of what her visual sight line would be. Mrs. Gilbert expressed concern that if the Village allows this, it would be setting a precedent and asked why they should not have to follow the rules and regulations.
Mr. Maistros said there are rules and regulations in the Village, and if a property owner requests to vary, or differ, from those regulations, that is called a variance. The applicant can make a request and it comes before the board; the board then considers granting the variance after considering seven conditions. He said the board then decides whether this particular request should be granted or denied, in their opinion, based on the criteria in the code. He said they do understand that the applicant is requesting a variance from the required 150' frontage.

Mr. Maistros asked board members for any further questions or comments. There were none.

Mr. Maistros recited the standards the board must follow: ***Whether the variance is substantial.*** He agreed the variance is substantial; the applicant is asking for a variance of 99.8' for each lot frontage, but that is not the only criteria for the board to follow. ***The essential character would be substantially altered regarding adjoining properties.*** He said while he hears the neighbors saying they do not want houses built next to them, the reality of it is, the property next to them is zoned

residential, and there was going to be a point in time where it was very likely that a house would be built on that vacant land. He said it is also very likely

that all vacant land that has not been conserved will eventually be developed. He appreciates and respects the neighbor's conservation of their property, but what they have before them is buildable property. ***Whether or not the variance would adversely affect governmental services.*** Mr. Maistros said this was addressed by Laura LaChapelle, and the answer to this is no. ***Whether the applicant purchased the property with knowledge of the zoning restrictions.*** He said he will assume that they did. ***Whether or not this problem could be resolved in some other manner other than the variance.*** He said in his opinion, it cannot be resolved in any other way because of the limited frontage of these properties. He went on to say that the first standard the board has to consider is ***whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.*** He said, in his opinion, if the 150' frontage requirement was strictly adhered to, this property would simply not be able to be developed under the conditions presented. He said that is the exact criteria that gives rise to a variance request. Having given his perspective, he went on to make the motion.

Mr. Maistros made a motion to approve the frontage variances for 1576 Bell Road and 1580 Bell Road. Current code requires 150' frontages and the applicant is requesting frontages of 50.2', therefore the variance granted would be for 99.8' per lot, conditional upon the board receiving a definitive review and statement from the Village Engineer, Eric Haibach, regarding the existing capacity of the 36" culverts. Mr. Hitchcock seconded.

On roll call vote, the motion carried.

Mr. Maistros thanked the applicants and the neighbors, and said he is hopeful that Mr. Nykulak will work with the neighbors to address their concerns as the project moves forward.

Mr. Nykulak thanked Mr. Maistros and inquired as to the possibility of the Mylar that needs signing by Village officials be executed prior to the minutes being completed.

Mr. Maistros addressed the board and said the question had come up as to when this board actually confirms the decisions it makes, and that there is a reference in the code that the board must take this action within 15 days after the public hearing. There is a reference to Form Z-6, which is an internal form that is used by the Village, that gets completed regarding the motion, the vote on the motion and any conditions that may be applied, which is essentially the check-off that allows the applicant to move forward with the project. He said traditionally it has waited until the next meeting when minutes get approved. He said he is not sure, while that process may have worked in the past, that it necessarily complies with the code and whether it is necessary, since the action was here tonight, the submittal being approved with conditions.

He asked that the motion be put in writing and reviewed by himself and the board as quickly as time allows, so the secretary can certify the actions of the board. He asked the board for any objections. There were none.

Ms. Matheney said because there were some objections from contiguous property owners, and should an appeal be filed, Mr. Nykulak must agree to the Village waiving the formalities with respect to Village officials signing off on the plat. She said other communities do this as well when there are time constraints for the applicant. Mr. Nykulak agreed to sign a waiver which would be created by Ms. Matheney.

CASE #BZA 21-03: MR. ROBERT DARDEN, APPLICANT AND OWNER'S REPRESENTATIVE-REAR YARD SETBACK AT 120 FAIRVIEW ROAD

Mr. Maistros thanked Mr. Darden for his patience and asked him to tell the board about his proposal. Mr. Darden said he is representing the property owners, Robert and Rachel Swartz, and he has been living at the house for about four years, with plans to continue living there a few more years. Their plan is to construct a deck that is 16' wide, the width of the house, and then 14' deep. The deck will not encroach the side property lines. He said the reason for the variance request is due to the 14' depth being too close to the rear property line, but there will be a distance of 34' from the rear property line. He said the lot is very narrow, and that it will be a small deck. He is requesting a 5.75' variance. He went on to say that the house directly behind him on Mapleridge Road is about 220' away from the back of the house he is in, as they have a much deeper lot.
Mr. Maistros noted that the lot Mr. Darden is building on and the one behind him are fairly wooded. Mr. Darden agreed, and said there are large trees between the properties, but he can see the neighbor's house, although it is quite a distance away. Mr. Maistros asked if he had had any conversations with the neighbor about the proposed deck. Mr. Darden said no, he does not know who lives there and has never even seen them. Mr. Maistros asked if the Building Department had received anything from any neighbors regarding this variance request. Mr. Hocevar and Ms. Griswold responded no, they had not. Mr. Maistros asked if anyone was present to speak for or against this issue. There were no parties present to speak on the issue.

Mr. Maistros called on board members to speak, starting with Laura LaChapelle. Ms. LaChapelle said she thinks it is significant that the house to the rear is a fair distance away, and that Mr. Darden is only requesting a variance of 5.75' for his deck. She went on to say that building a 9' deck would be very limiting.

Mr. Maistros then called on Bill Stone. Mr. Stone said he has been to the house and he feels that granting the variance would not harm anything.

Mr. Maistros then called on Andy Hitchcock. Mr. Hitchcock said his thoughts are in line with Laura's; the request is minimal and the wooded area between the lots really speaks to the privacy that will continue to exist.

Mr. Maistros agreed with all the members' comments.

Mr. Maistros made a motion to grant a variance of 5.75' to the rear yard setback for the construction of a deck at 120 Fairview Road, as submitted by the applicant. Ms. LaChapelle seconded.

On roll call vote, the motion carried.

There being no further business, Mr. Maistros motioned to adjourn the meeting at 8:34pm. Mr. Stone seconded.

David Maistros, Chairman — Date: 9/15/2021

Ruth Griswold, Board Secretary — Date: 9-15-2021

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

May 19, 2021 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Bill Stone, Mike Mulloy
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons, Dave Hocevar, CBO, Ruth Griswold, Board Secretary
Visitors:	Candace and Nate Remington, Chris Smith, Chris Bell, Jaclynn Bosley, William McDonnell, Adam Tomkins and Mike Stusek

David Maistros called the meeting to order at 7:00p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros motioned to approve the minutes of the BZA meeting on April 21, 2021, subject to a correction Ms. LaChapelle mentioned, which would be clarified via email to Ms. Griswold after the meeting. Ms. LaChapelle seconded. On roll call vote, the motion carried.

Mr. Maistros reviewed the item before the board, which will be presented by Mike Stusek of the Artisan Design Group on behalf of the owners of 312 Fox Way. He said they are seeking a variance from Chapter 4.01.1 of the Zoning Code, which allows a maximum of 500 square feet per acre for accessory structures. He said the lot in question is 0.8 acres, which would mean they are entitled to 400 square feet, and the applicant's proposed pool house is 800 square feet, therefore the request before the board is for a variance of 400 square feet.

Mr. Maistros asked Ms. Matheney to swear in anyone present at the meeting who may like to speak on any agenda items. Ms. Matheney swore in visitors.

Mr. Maistros asked Mr. Stusek to begin his presentation to the board.

Mr. Stusek began by saying the Remingtons, owners of 312 Fox Way, have 0.8 acres, which would allow them to build a 400 square foot accessory structure. He said their plans include the installation of an in-ground fiberglass shell swimming pool in the back yard, and as part of that installation, an equipment room and a basic storage area is necessary. He said they are proposing 400 square feet of enclosed space for storage and a small bathroom, and the additional 400 square feet would be an overhang. The roof area in total is about 800 square feet, and the enclosed square footage is about 400 square feet. He said the project will not require them to infringe on the side or rear yard setbacks, the height restriction will be met, and they would match the existing structure on the property. He said they are trying to achieve a low impact build, but they would like the additional 400 square feet to provide some seating area for poolside enjoyment.

Mr. Maistros then called on board members for any questions, starting with Laura LaChapelle. Ms. LaChapelle asked Mr. Stusek what kind fencing they would be installing. Mr. Stusek said initially they were hoping to avoid putting up any fencing and use an auto cover instead, so they want to keep it very minimal and are proposing a black aluminum powder coated fence, which looks like wrought iron. He said the fence will be very attractive, with a small square baluster and a 2" square flat post and a few self-closing gates. Ms. LaChapelle asked if there would be any natural screening outside the fence, to the north and south of the property. Mr. Stusek said there is existing screening, many arborvitaes to the north, and to the south there are some tall evergreens. Ms. LaChapelle asked if the arborvitae is older and established. Mr. Stusek said they are established, and that there is quite a bit of existing privacy. He went on to say at the back of the property is a buffer, and the neighboring daycare center behind them can't be seen. Ms. LaChapelle said when you drive down Fox Trail and look south, or you drive down Fox Way and look east, you can see through those from the road. Mr. Stusek said he agrees, if you are out on the road in front of the Remington's home and you're looking for this thing, you will be able to see it, but he wouldn't call it highly visible. Ms. LaChapelle asked where they were as far as obtaining HOA approval. Mr. Stusek said that's a great question, and that they had been working very hard to meet with and talk with Chris, but he went on vacation, and he has been very hard to get a hold of for the last two weeks. He went on to say that he is aware that the neighbor to the south had some concerns, but that he didn't think they were interested in preventing them from building, and that their concerns were regarding drainage. He said they had reached out to them unilaterally but had not heard back from them either. Ms. LaChapelle asked if they reached out via email, or had they tried to talk to them personally by phone. Mr. Stusek said he and the Remingtons both reached out to the neighbor via a couple of phone calls and texts but did not hear from them. He went on to say that they know of their concern because it was relayed to them by Chris Smith of the HOA. Mr. Stusek said he had conversations with Mr. Smith a couple of weeks ago, gave him the information he needed, but has not heard back from him. He said he reached out to him about a week and a half ago and then learned second-hand that he was on his way out of town, and he has not returned his phone calls.
Ms. LaChapelle said this is a concern, because it is unusual to see a situation where you have three parcels, a pool to the north and a pool to the south, and a parcel in the middle of that. She said obviously there would be potential runoff concerns and asked Mr. Stusek to comment on that. Mr. Stusek said he didn't think they would be impacting runoff, necessarily, as no regrading of the Remington's property would occur, and any drainage at the pool would be addressed by a sump system which would be pumped out to the sewer. Mr. Tomkins, also of The Artisan Design Group, said they would have downspouts that run back to the house's sewers. Ms. LaChapelle asked if they would be submitting a landscape plan. Mr. Stusek said the Village has the landscape plan. He went on to say that due to the type of questions being asked, it sounds like a topo from a civil engineer is

going to be required, although his understanding was that they did not need to provide one. Ms. LaChapelle said there are obviously storm water runoff issues in this area. Mr. Stusek said it is a big, flat area and water does collect. Mr. Tomkins said they will have to do work to move water from the property, because of how flat the back yard is now. He said on the southeast corner of the back yard there is a massive 12" crock that they intend to utilize. Ms. LaChapelle said the installation is obviously closer to the property to the south vs the property to the north.

Mr. Stusek asked for clarification on the water runoff concern and asked if it were that the water that would ordinarily flow off the neighbor's lot would be prevented from escaping due to their installation. Ms. LaChapelle said the concern is any stormwater impact whatsoever. Mr. Stusek said he wishes there were a water runoff problem right now, since there is a standing water problem that they will address as it relates to the pool itself. He said they would not create a situation so as to have standing water. He reiterated that any water runoff they create would be addressed by tying into existing downspouts and such. Mr. Tomkins said there would actually be improved runoff when their project is complete.

Ms. LaChapelle asked if they are flexible as far as the dimensions of the overhang. Mr. Stusek said he doesn't want to be, but he wants to hear what the board is looking for. He said just the enclosed portion of the structure maximizes the allowed area, and he thought if they were going for a variance, they should go big, but they are flexible if they have to be. Ms. LaChapelle said her questions also throw out information for consideration by the board, who will be asking questions as well.

Mr. Maistros then called on Andy Hitchcock. Mr. Hitchcock said one of his concerns is regarding water, and not just the runoff, but the fact that they are adding 800 square feet of impermeable structure to the backyard, not to mention the pool, and during a heavy rain, where would that water go. He said it sounds like the gutters from that building will be tied back into the drainage system, which is great, but the concern remains regarding removing permeable grass and landscaping in favor of hardscaping, which would just push the water away. He then referenced emails received from a neighbor to the south and one from Chris, the president of the HOA, and asked if the Village had heard from any other neighbors. Ms. Griswold said nothing else in writing had been received.

Jaclynn Bosley, a resident of Fox Run, introduced herself as a member of the board, and said while she is a trustee on the board, she is not a voting member on their Architectural Review Board. She said she is not seeing any fellow board members at the meeting. She said as a board member, she wasn't even notified of this meeting by Chris, and she received an email from him late last evening indicating the Remingtons are applying for a variance, and that any parties having an opinion on the project should attend the meeting. She went on to say that she and Chris have been exchanging emails throughout the day. She said because she has been working all day and has not had an opportunity to provide something in writing to the board but would like to express her views on the proposed variance when the time comes. Mr. Hitchcock said there will be an opportunity for attendees to voice their opinions later in the meeting.

Mr. Hitchcock referenced Chris' concern in the email regarding any possible future enclosing of the proposed pool house. He said that what is currently a 400 square foot building, doubles in size due to the overhang, and since it is structurally possible, the board should keep in mind that in the future there is nothing the board could do to prevent that from ever being boxed in. He said with the best

of intentions to approve this today as a 400 square foot structure, that could very well change drastically at a later date and adversely affect the street and the neighborhood. He then addressed Dave Hocevar regarding total floor area as mentioned in the code as "total area of all floors measured from exterior faces of a structure". He asked if this were to be a cantilevered roof and there were no posts holding up the side, would that still be considered floor area because of the overhang, since there aren't any exterior faces other than the structure itself. Mr. Hocevar said in determining side and rear yard setbacks, they measure from the overhangs, whether it's an accessory building or not. He said in reference to some of the board members' concerns, he would like to see a site plan showing water run off submitted to the building department for review by the Village engineer and stated that the board can restrict any future enclosing of the structure.

Mr. Maistros then called on Bill Stone. Mr. Stone referenced the email from the HOA stating they had not received plans yet, and he asked what the precedent is for the BZA to review plans in communities that also have an HOA. He asked if HOA approval has to be taken care of before review by the BZA. Mr. Maistros said it will be part of what is put on the record, and whatever the board decides does not override the HOA, they still have their regulations that must be complied with. He said even if the BZA approves the submittal, the applicant still must comply with the HOA. Mr. Stone asked if the BZA discussion and review was premature. Mr. Maistros said the HOA would make their approval conditional on BZA approval, just as the BZA would make it conditional on the HOA approval.

Ms. LaChapelle said it was unusual to see a submittal that did not have HOA approval prior to appearing before the BZA.

Mr. Stone then referred to the neighbor's letter of concern regarding water runoff. He said when he drove by, he noticed there is a bit of mound between 312 Fox Way and the daycare center to the north of the property, and he got the impression that it would be a tricky place to get water out of. He said that being the case, there doesn't seem to be a lot of water movement plans or information presently available. He said the driveway looks to be very close to the property line, so trenching out to the street is not a good option, therefore everything from the pavement around the pool and the roof drainage would probably have to be run through downspout lines from the house, but he's not sure if that is standard protocol in a case like this. He asked Dave Hocevar his thoughts on it. Mr. Hocevar said that would be one of the things the contractor would have to address on a site plan, with contours, which would then be reviewed by the Village engineer, who is very well aware of the water flow to the storm sewers and the runoffs on these properties. Mr. Hocevar asked that the submittal of a site plan with contours be part of the requirement of any motion tonight. Mr. Stone said that even if the board were to approve something tonight, there would still be many other steps where the project may be cancelled, or changes may be needed.

Mr. Maistros then called on Mike Mulloy. Mr. Mulloy said he wanted to confirm what was stated earlier, that the gutters and downspouts for this accessory structure would be tied into the sewer lines. Mr. Stusek responded yes, that is correct. Mr. Mulloy asked for confirmation that the drainage system from the pool would be tied into a sump system, which would then also be tied into the sewer line. Mr. Stusek responded yes, that is correct. Mr. Mulloy said he had no further questions at this time.

Mr. Maistros asked for clarity if ***runoff from the concrete pool deck*** was being referred to when they said the "***runoff from the pool***", which would be tied into the sewer lines. Mr. Stusek said he may have answered that question incorrectly earlier and clarified that the runoff from the structure will be diverted into the downspout system. He deferred to Adam Tomkins to respond to how the runoff from the pool deck would be handled. Mr. Tomkins said the runoff from the pool deck would be caught by a newly installed drainage system in the yard itself, and there will also be a sump pump underneath the pool itself, in a bed of gravel, that would catch any water that would collect underneath the pool shell. He said the discharge would be go to the large 12" existing crock. He said the yard is very flat and that is why the crock is currently underutilized, so they plan to use that resource to relieve water from the property. Mr. Maistros asked that all elements discussed regarding stormwater management be depicted on a site plan. Mr. Stusek said they will submit a site plan addressing the issues as requested, and that he had underestimated the importance of drainage because they had been focused on obtaining the variance for the accessory structure.

Mr. Maistros then asked if any members of the Board of Zoning Appeals had questions for the homeowners of 312 Fox Way, Candace and Nate Remington. There were none at that time. Mr. Maistros then asked Chris Smith, president of the HOA, for questions and comments.

Mr. Smith said the Remingtons first contacted him about their proposed pool project in January or February of 2021. He then sent them a copy of the deed restrictions. He said he was also contacted by the Artisan Design Group, so he sent them the deed restrictions as well, and received a thank you email in return, saying they had received them. He said he has asked multiple times for items that were in the deed restrictions and referred to Article I; *"No building shall be constructed on premises until plans, plot plans, landscaping plans, specifications including the exterior color of any such building be submitted."* He said he feels it is very clear what is required, but the contractor was confused about what he was asking for. Mr. Smith said he in turn contacted an architectural firm to relay what the requirements were, and was told that the requirements were fairly standard, very clear and should not be difficult to provide. Mr. Smith said the contractors kept asking for definitions of the requirements, so he asked them to send him an email as to what exactly they don't understand. He was willing to contact the architectural firm to obtain exact definitions for the contractors. After multiple attempts to obtain information, they finally thought they had what they needed, and he asked the contractor if they were confident they had suppled all the necessary documents to obtain HOA review and approval; they said yes. He scheduled a meeting with the other volunteers on the HOA Architectural Review Committee at 8:30am on a Saturday to go over the plans. It was then they realized they did not, and still do not, have a building plan, but they went over what they could at the meeting. He said he does not have the authority to say they don't need to submit a building plan. The committee did determine three months ago that they were concerned about water runoff and also requested a privacy fence on the side of McDonnell's. He said he then got a call from the Artisan Group refusing to out a privacy fence up, and he said they might want to approach it differently by speaking to the affected neighbor, although he doesn't know if that ever happened. He said things went on and on, and finally, 27 emails later, the contractor sent him something on May 11, and he advised them he did not have time to review it, as he was out of town and would be returning May 18th. He said he did send the items on to the other committee members but does not know if they have reviewed it yet. He said he came back into town yesterday and emailed the other members to try and get approval, but he still does not have a building plan.

He then asked if the Village building department has received a building g plan. Mr. Hocevar said no, the building department had not yet received a structural building plan. Mr. Smith said some of the questions that came up tonight pertained to lighting. He said the documents he has do not indicate a lighting plan. He said until he received the letter from the Village, he did not know they needed a variance for double the allowed size of the accessory structure. He said he doesn't really have a problem with that, and their deed restrictions do not prohibit pool houses, but they do prohibit pavilions, so they agreed to look at this project as a pool house. The issues they have pertain to water runoff, privacy, lighting and obtaining the information they require in order to give approval. He said as a trustee, he cannot change the requirements of the bylaws that require a building plan, and this could have been provided two months ago. The volunteers took the time to have a meeting in order to move this project forward. He then said he just checked his phone and does not see a phone call from Mike Stusek, who said he had been trying to reach him. He said he did get an email from Candace when he was out of town, inquiring if anyone else could handle this in his absence. He said even if the others could have reviewed what they have, it would not have made any difference due to the lack of a building plan. He said he doesn't think anyone on the Architectural Review Committee have a big problem with the project. His concerns are the request is for a variance that is double the size of what is allowed, but as one of the trustees pointed out, only 400 square feet is covered. He said it is not controlled by that, it is controlled by the footprint of the roof, and what stops someone from closing it in at a later date. He went on to say that a subsequent owner may not want the pool, so they remove it and do something different with the pool house. He said he is not sure who governs or enforces such things, but that is a personal concern of his, along with the runoff, which is already an issue, which was addressed in a letter to the contractors two months ago. He said he would prefer to have all the correct information, which is clearly stated in the deed restrictions, ahead of time. He apologized to the Remingtons that the recent last-minute submittal could not be reviewed right away. He went on to say that everyone speaking tonight is under oath, and he takes offense when it is said that he hasn't responded to phone calls, his phone shows no missed calls or messages.

Mr. Maistros said on behalf of the BZA, he wanted to point out that many times these issues are on two different tracks, and they are not here tonight to decide the HOA's issues, conditions and bylaws, although the board does care about them. He said just as their decision on granting or denying this variance isn't for the HOA to decide, each entity has their role. He said that regardless of what happens here tonight, everything mentioned by Mr. Smith here tonight must be provided before the HOA makes their decision.

Mr. Maistros then called on William McDonnell. Mr. McDonnell, of 310 Fox Way, said when he received the notice from the Village, he had a conversation with Chris, and put his concerns in writing. He confirmed what Mr. Smith said, that they met as a committee months ago and did not have many of the required documents. He said Candace had called to set up a meeting in the yards, which had to be cancelled due to not having complete documents from the contractor. He said he received his first and only phone call from Mike Stusek this morning; he returned the call, and the voicemail was full and would not accept any messages. He said he was excited about the plans for the Remingtons, and thinks it looks very nice. He said he is curious about the zoning restriction limiting the square footage of an accessory building based on acreage and would like to understand the reasoning behind it. He said as he pointed out in his email, he does have concerns regarding water issues in the backyards, but he is not qualified to comment on that and would like to know how that gets addressed. He is appreciative that the BZA is also concerned. He went on to express

concern about privacy since there is already a pool on the other side of his house, and some of the trees that could provide privacy, as seen in the outdated photo submitted, have either been removed or the pines have grown to a height where you can see under them. He said the biggest issue he has is getting an understanding of the water issues, and other than that, it looks like an attractive project.

Mr. Maistros asked if anyone who hasn't spoken would like to speak further on the matter.

Mr. Smith said he wanted to make it clear that he doesn't have any objection to the project, but he does have objections to the fact that the HOA has not been able to get the information necessary in order to make a decision. He said he has gone above and beyond in his attempts to obtain the necessary information, and then was made out to be the bad guy, which is not the case. He said lighting is an issue and asked if the BZA controls lighting. Mr. Maistros said while that issue is important, the BZA does not control lighting, and that the issue before the board is the variance of 400 additional feet of the structure.

Mr. Maistros asked the Remingtons if there has been any thought to landscape screening between their property and the McDonnell property. Ms. Remington said part of their landscape plan included planting larger arborvitae in some of the open spaces, and in the back corner where there are a few gaps. She said their plans are to put some low, natural bushes in the areas where the pines have grown higher. Mr. Maistros asked if that would cover the open areas on both sides of her property. Ms. Remington said it would, and there had been discussion about doing a mound on one side, and she does understand the privacy concerns.

Mr. Maistros asked if any board members had any follow up questions. Ms. LaChapelle said she didn't have any questions but was reviewing the Duncan factors as she listened to the testimonies. She said she knows the board has discussed rendering a decision tonight, but she felt that due to all the outstanding issues between the homeowners and the HOA, they need more time to resolve them and may do so in a manner that possibly could be satisfactory for everyone. Ms. LaChapelle then referred to Duncan Factor C, *"Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties will suffer a substantial detriment as a result of the variance"* and stated that factor, in conjunction with Factor G, *"Whether the spirit and intent behind the zoning requirement would be observed, and substantial justice done by granting the variance"* are directly impacted by the outstanding issues. She said in all fairness to all parties involved, she doesn't know if it would be in the best interest of everyone to render a decision tonight.

Mr. Maistros said his concern is that the BZA is not acting as the advocate of the HOA to get them their information, and the applicants still have to go through that approval. Ms. LaChapelle agreed, and said the information and issues that are outstanding tonight do impact those factors, and she just wanted to raise that for discussion.

Mr. Stusek asked if it was possible for the BZA to render an approval pending the approval of the HOA. Mr. Maistros said any decision would be conditional on the HOA approval. Mr. Smith said he would be in agreement with that, and he would like to receive the required information so the project could move forward.

Mr. Maistros then asked the other board members for follow up questions or comments. Mr. Hitchcock said he had no questions, but regarding the Duncan Factors that Laura referenced, he does understand where she's coming from and agrees with her thoughts. He said what he keeps coming back to is if the variance is substantial, and he doesn't know how to get around that one. He said even if all the other issues are addressed, such as the site plan, water concerns and HOA approval, he is still having difficulty with the size of the structure.

Mr. Maistros said that was his initial reaction also, but took into account that the actual enclosed portion of the building is within the 400' requirement. He said the additional approximate 410' overhang is to provide shelter and shade. He understands that the Village's definition of structure encompasses all of that, but some other definitions of structure define everything within the walls. He said from that standpoint you are not looking at an 800 square foot walled structure, this would have pillars and the ability to look through it, which he considers when looking at the substantial nature of the request. He said the stormwater runoff and screening issues and how they would be handled are bigger concerns of his, since those would directly impact the neighbors. He feels a conditional motion could require those issues to be resolved, and if he made a motion, it would be conditioned upon a site plan addressing all stormwater runoff, verifying tie-ins to the storm sewers, and signed off by Village engineer, and also a condition of landscape screening to provide privacy for the neighbors, and that the overhang portion could not ever be enclosed, and of course HOA approval as well. He does understand if the majority of the board members would want to see those issues up front, but it would just circle back to the BZA. Mr. Maistros asked the board members for their thoughts.

Mr. Mulloy asked for confirmation on the height of the roof. Mr. Stusek it was originally drawn at 15'6", but they reduced it to 15' after learning of the restriction. Mr. Smith asked what the roof pitch would be since the HOA has a restriction on that and asked if they had recalculated the pitch after lowering the roof. Mr. Stusek said both gables would be at a 6:12 pitch.

Mr. Stone said that having more information, such as an architectural rendering, would no doubt allow their decision to be more easily rendered. He said he shares Laura's concerns about the process of the information, and that the lack of information is pushing him in one direction. Mr. Maistros said viewing architectural plans and designs are not part of their role. Mr. Stone said he was looking at it from the standpoint of the concerns expressed earlier, if the structure could be enclosed at a later date, in that pools tend to come and go.

Ms. Remington asked if they could sign a document to be kept on file with the Village, stating that they would not enclose the structure and that any future owners would not be permitted to enclose it. Mr. Maistros said that would be a condition of approval, and the granting of the variance would run with the property and also apply to any future owners.

Mr. Maistros said he would be happy to make a motion for conditional approval but does not want to push this forward if board members are not comfortable making a decision one way or the other, given the lack of information. He said any board member could make a motion to continue the case and require more information.

Ms. LaChapelle said at this point in time, if all parties involved feel they can address the issues that have been raised, they could take a stab at a motion, depending on how other board members feel

about it. She said she also recognizes that the BZA is just one step of the process, and that HOA and Village ARB approvals are also required.

Mr. Maistros said he did not want to have any board members feel they have to vote "no" due to lack of information presented, which would put the homeowners in a bad spot, and he did not want to force it to a vote if that was the case.

Per Mr. Stone's request, Mr. Maistros recited the proposed conditions to approval: 1) HOA approval, 2) That the overhang area cannot be enclosed in the future, 3) That a site plan be delivered to the Village engineer, addressing the water runoff, both from the building and the concrete pad around the pool, 4) Landscape screening must be provided to both neighboring properties for privacy.

Ms. LaChapelle asked if the the landscape screening would be provided to the satisfaction of the property owner and the adjacent property owner. Mr. Maistros said since it would be primarily filling in gaps to ensure privacy, the Village could create a meeting between the property owners and the neighbor to ensure all parties are satisfied. He said he feels confident that the Remingtons will work with the neighbors. Mr. Hocevar said the landscape plan would be reviewed by the Village engineer, and that the aesthetics of the project would be reviewed by the Village ARB. Ms. LaChapelle confirmed that the Village engineer must approve the site plan; Mr. Hocevar said yes, they would need an approved site plan with landscaping.

Mr. Stone referred to the two letters from the neighbors who are concerned about water runoff and noted that they are not disapproving of the pool. Mr. Smith said that is correct, they are mainly just concerned about the water runoff. Ms. Remington said that she and her neighbor, Bill McDonnell, have spoken and that they are both concerned regarding the water runoff and the last thing they want would be to cause more issues for them, and they would do whatever it takes so that the water runoff is not an issue. She said Bill has been very encouraging and they do not want to create any rifts with their neighbors over this project. Mr. Smith said he has had the same conversation with Ms. Remington regarding her concern for the neighbors.

Mr. Maistros made a motion as it relates to the variance request at 312 Fox Way, for a 400 square foot variance for an accessory structure specifically related to the pool house depicted on the plans submitted and reviewed by the BZA tonight, on the following conditions: 1) Prior to any construction, the homeowners receive full HOA approval, 2) That the area covered by the roof, which is approximately 400 square feet, cannot be enclosed or boxed in in any manner in the future, 3) That a site plan, fully addressing water runoff and handling of the stormwater management, and showing tie-ins to the storm sewer lines, be submitted to the Village engineer for approval, 4) That a landscape plan depicting the screening between the Remington's property at 312 Fox Way and their neighbors in the back, showing that all the gaps are being filled from a privacy standpoint, be submitted to the Village for approval.

Mr. Maistros asked if there were any questions on the motion. Seeing none, he asked for a second. Mr. Mulloy seconded. On roll call vote, David Maistros-Yes, Andy Hitchcock-No, Laura LaChapelle-Yes, Bill Stone-Yes, Mike Mulloy-Yes.

Ms. LaChapelle thanked Mr. Maistros and said it was very helpful that a lot of the concerns were addressed in the conditions. Mr. Maistros said some very important points were brought up during the meeting, and that there is a lot of work that still needs to be done. He asked the homeowners to ensure that they comply with everything the HOA needs, as well as the providing all the required documents to the Village.

Mr. Maistros reminded the board that summer vacation season is approaching, and the sooner things can be addressed, the better, with all members present, to avoid juggling standard meeting dates due to absences.

There being no further business, Mr. Maistros motioned to adjourn the meeting at 8:07pm. Ms. LaChapelle seconded.

David Maistros, Chairman — Date 9/15/2021

Ruth Griswold, Board Secretary — Date 9-15-2021

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

September 15, 2021 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Chris Bell
Members Absent:	Andy Hitchcock, Mike Mulloy
Other Officials:	Bridey Matheney, Solicitor; Mayor Bill Koons, Ruth Griswold, Board Secretary
Visitors:	None

David Maistros called the meeting to order at 7:00p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros welcomed Chris Bell as a new Board of Zoning Appeals member.

Mr. Maistros motioned to approve the minutes of the BZA meeting on May 19, 2021. Ms. LaChapelle seconded. On roll call vote, Mr. Maistros-Yes; Ms. LaChapelle-Yes; Mr. Bell-Abstain.

Ms. Matheney swore in both applicants in attendance, Mr. Patrick Holtz and Ms. Carlene Holtz.

AGENDA ITEM 1: CASE #BZA 21-05: Ms. Carlene Holtz of MC Art Studio, representative for owners of 1208 Bell Road (PPN 29-029100) and Chillicothe Road (PPN 29-705200) is seeking a variance from Chapter 4.01.1(4) of the Zoning Code which requires all fencing to be set back a minimum of 3' from the property line. The proposed fencing, at its furthest point, would be 14' from the property line, requiring a variance of 17'.

Mr. Maistros asked the applicants to begin their presentation.

Ms. Holtz said she is operating a State licensed pre-school, which requires her to provide an outdoor play area in order for her to have any type of extended programs. She said because she does not have an outdoor play area, she is currently limited to three-hour programs.

Ms. Holtz said that a portion of her building is on Village property, therefore some of the play area would also be on Village property. The State requires 60 square feet of play area, and they would like to take advantage of as much property as possible. She said the fence she is proposing to install would not be a permanent structure because the posts would be set into piping so the fence could be pulled out and the post holes capped off, which is the same installation method used for the park benches at the South Russell Village Park. She said if the Village ever needed their portion of the property for an activity or an event, the fence could be easily removed. She initially thought that only the portion of the fence on Village property should be removable, but she may have the entire fence installed that way so she could also temporarily remove her portion for practical purposes.

Ms. Holtz showed the board a drawing of the proposed fence and explained how the fence would be modified with natural wood for the top rail and matching wood posts. She said she feels this would achieve an open look for the garden and play area while still keeping the children safe.

Ms. LaChapelle referred to the site plans and asked for clarification on the 17' variance request and how those numbers were achieved. Ms. Holtz said that she's not sure how that was determined, but at least 6' of her building is on Village property. Discussion followed regarding the placement of the proposed fence in relation to the lot boundaries shown on the map.

Mr. Bell asked if a variance was needed because the installation is a temporary structure. Ms. Matheney said the variance is needed since part of the fence is going to be permanent, and the other part would be semi-permanent since the post holes in the ground would always remain even when capped off.

Mr. Bell noted that the application for the Zoning permit refers to Section 4.01, which is under the Residential Code, but the property seeking a variance is a business, which would fall under Chapter 5, and he was wondering if that made a difference. Mr. Bell said he didn't want the applicant to get caught up on a technicality. Ms. Matheney said he was correct in pointing that out, it should be cited per Section 5.02, although the verbiage is the same.

Mr. Maistros asked about the separate written agreement between the Village and the property owners regarding this submittal. Ms. Matheney said there is an agreement between the Village and Dr. and Mrs. Holtz, the owners of the property, and the tenant, Carlene Holtz of MC Art Studio. She said in 1978 there was also an easement granted to the previous owner, and it ran with the land, for the portion of the building that encroaches Village property. She said the recent agreement dated August 6, 2021, allows MC Art to use the portion of land that is owned by the Village. She went on to say that any structures, improvements or change of use must still receive zoning approval.

Mr. Maistros reviewed the signed agreement with attached maps.

Mr. Holtz said his father, Dr. Gary Holtz, is in agreement with the proposal per the documents signed by him. Ms. Matheney said the Village Council has also agreed to allow MC Art to submit

plans for the proposed fence. Mr. Holtz noted that if there was no need for a variance, their permission from Council would have been sufficient to allow the fence.

Mr. Maistros said he does not dispute the need for a variance, but he is struggling with the actual number of feet needed per the submitted drawing. Discussion followed regarding the actual variance needed per code.

Mr. Holtz said the need for the variance also takes into account the requirements of JFS as to what Carlene must do to maintain the property as a licensed facility for children. Ms. Holtz said JFS has the requirement of 60 square feet per child, which limits the number of children she can have. She said without the variance, she couldn't have all the children outside, which means she would have to pay for two teachers for a group of kids that could be with one teacher.

Ms. LaChapelle said she is not interested in changing the dimensions at all, she is just trying to understand the scope of the variance request.

Mr. Bell referred to the drawing and asked if the corner that sticks out the furthest on South Russell property is 6' from the line. Ms. Holtz said it may not even be 6', because at the time of the drawing they were thinking of using 3' fence sections. She said on the original zoning permit application she had indicated they would be installing about 2200 feet of fencing, but now they are down to approximately 1700 feet, after crunching corners and realizing how to best utilize the space and be respectful to the Village. She said one of the questions from Council was regarding the maintenance of the property. She said they already maintain the grass, and they have a good relationship with Tim (Alder) and the Service Department.

Ms. Holtz said before the agreement was signed, she worked with Village officials regarding the pick-up and drop-off of children at her facility. She said it is scary because it can be really dangerous, and due to the graciousness of the Village, the parents are now permitted to come in off Bell Road, come around the corner of the property and drop children off right by the area of the proposed gate. She said this is very safe and maintains traffic flow. She went on to say that this makes for a much shorter walk for them to get into the playground, where they would be met by a teacher and parents would not even have to exit their vehicle. Mr. Holtz noted that with the fence in place, they could better utilize the improved ingress and egress from Bell Road, which was initiated at the request of the Police Chief.

Mr. Maistros asked how far away the fence would be from the driveway. Ms. Holtz said she did not know the exact measurement, but there would still be quite a bit of grass.

Mr. Bell asked, should the variance be granted, would it transfer to the next property owner. Mr. Maistros said he would feel more comfortable if any variance is conditioned to the existing agreement, which has a life span with a renewal provision. He said it is a significant variance and he would not want a blanket variance to go with the property. Mr. Maistros asked Ms. Matheney if there would be an issue if the board attached the life of the variance to the existing agreement. Ms. Matheney said that would not be a problem, and she said one other condition that should be considered is that the applicant be responsible for the maintenance inside the fence and perhaps a foot outside of the fence, in the event of damage being done to the fence or the capped posts by Village equipment. Mr. Maistros asked if there was a current understanding with the Village

regarding fence and lawn maintenance. Ms. Matheney said it is a verbal understanding. Ms. Holtz said in the past, the service department has cut her portion of the lawn and they, in turn, have done the same to the Village's portion.

Mayor Koons said the equipment used by the Village could damage the fence, therefore it would be best if their mowers are kept away from the fencing at MC Art.

Mr. Maistros asked board members if they had any further questions. They did not.

Mr. Maistros made a motion to grant a variance as it relates to the property located at 1208 Bell Road, PPN# 29-029100. A 3' setback is required for a fence, and the motion is to grant a 14' variance from the property line as depicted in the site plan date stamped received August 27, 2021 and incorporate that exhibit into our motion. He said this motion for the variance is conditioned upon the following: That, if approved, the variance shall run with the agreement between South Russell Village, the property owners, and the tenant, dated August 6, 2021. Should that agreement lapse, either under its own terms or for any reasons therein, that the variance shall also lapse. Another condition being that the applicant maintain the property within the fenced area and within 1' outside of the fenced area as it relates to the Village property. Mr. Bell seconded.

Mr. Maistros asked for any discussion on the motion. There was none.

On roll call vote, the motion passed unanimously.

Ms. Holtz thanked the board and said the artist who is creating the fence should have it completed and installed by the end of October.

Mr. Maistros addressed the item under New Business, which was to discuss the option of future BZA meetings being broadcast live on YouTube. Mr. Maistros said he feels it would be beneficial to get the information out to the residents. Ms. LaChapelle said she had no objections, and Mr. Bell said he felt it was the right thing to do.

There being no further business, Mr. Maistros motioned to adjourn the meeting at 7:36pm. Ms. LaChapelle seconded.

David Maistros, Chairman

10/20/2021
Date

Ruth Griswold, Board Secretary

10.20-2021
Date

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

October 20, 2021 7:00 p.m.

Members Present:	David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Chris Bell
Member Absent:	Mike Mulloy
Other Officials:	Todd Hicks, Solicitor; Mayor Bill Koons, Dave Hocevar, CBO, Ruth Griswold, Board Secretary
Visitors:	Corinne Greiner and Stephen Rice, 33 Forest Drive; Janet Smith, 36 Forest Drive; Martin O'Toole, 100 Foxhall Drive; John Buda, 106 Leaview Lane; Robert Bourne, 13 Forest Drive; Nancy Bohue, 33 Forest Drive, Jeffrey Rice, 33 Forest Drive

David Maistros called the meeting to order at 7:04p.m. Board Secretary Ruth Griswold conducted roll call.

Mr. Maistros motioned to approve the minutes of the BZA meeting on September 15, 2021. Ms. LaChapelle seconded. On roll call vote, Mr. Maistros-Yes; Ms. LaChapelle-Yes; Mr. Bell-Yes; Mr. Hitchcock-Abstain.

Mr. Hicks swore in both applicants and visitors who may speak.

AGENDA ITEM 1: CASE #BZA 21-06: Mr. Stephen Rice and Ms. Corinne Greiner, owners of 33 Forest Drive, are seeking an area variance from Chapter 4.01(b)(4) of the Zoning Code which prohibits fencing, other than split rail, along the front lot lines.

Mr. Maistros went over all the documents that had been presented to the board pertaining to the applicants' submittal. Mr. Maistros asked Mr. Hocevar to briefly describe the events leading to the board hearing tonight.

Mr. Hocevar said he was made aware of this fence after receiving a complaint. He said his field inspection confirmed that the fencing was in violation of South Russell Village Zoning ordinance, because the only fencing permitted in the front yard is a split rail with a maximum height of 4'. After discussing options with the homeowner, they decided to appear before the board to try and obtain a variance.

Mr. Maistros asked if the variance request would be for the placement of the fencing, or the height of the fencing, with 6' posts, or both. Mr. Hocevar said they would need a variance on both.

Mr. Maistros asked the applicants to begin their presentation.

Ms. Greiner began by saying they would like to be permitted to keep their fence, and that they are grateful to everyone at the meeting for the opportunity to be heard. She said they were genuinely confused when they misread the ordinance. She said they found the ordinance to be vague, and nothing was written regarding exterior vs interior fencing, which led them to believe the ordinance did not apply to interior fencing. She said they were not the only ones who didn't understand the ordinance, and that neighbors around the corner from them also had a vegetable garden fence, which they removed when they received the violation notice. She said in some ways, their concerns are larger, in that they do not want others to be affected by the vague ordinance, which she can see happening. She went on to say that whatever the outcome is tonight, the ordinance should be rewritten to be clearer. She said they moved to South Russell from Cleveland Heights, and their fence ordinance was very specific, and they also permitted fencing to be as high as 7' for vegetable gardens. She said the neighbors around the corner who removed their non-compliant garden fence had also moved from Cleveland Heights. Ms. Greiner said it is very difficult to grow a vegetable garden without a fence due to the deer population.

Mr. Rice said they wish to be in compliance and to be good neighbors. He said upon reading the ordinance, he thought the front lot line referred to the area with the split rail fence, and that they would not be in violation if they installed a fence behind the split rail fence. He reiterated that protection from deer is vital to the success of any vegetable garden.

Ms. Greiner said in looking around the Village, they saw various fences that seem to be in violation and that the application of the rules seems to be erratic. She said clarity on the Village website and in the ordinances would be very helpful.

Mr. Maistros asked the applicants how long the garden fence had been up. Mr. Rice said they finished the installation in July.

Mr. Maistros asked Mr. Hocevar to confirm that the issue is because the fence is located in the front yard, and would there be an issue if this fence were around a garden in the back yard. Mr. Hocevar said a back yard fence of this size and type would not be an issue. Mr. Maistros asked if the existence of the split rail fence in the front yard impacts the code at all. Mr. Hocevar said no, it does not.

Mr. Rice said their property does not have any space for a garden in the back yard, and that they had to remove some trees in order to provide some sunlight for the garden.

Mr. Maistros opened the discussion up to board members for their questions.

Ms. LaChapelle asked if the fence had to be 6' in order to keep the deer out. Ms. Greiner said the general recommendation is 7-8', as deer have been known to jump very high. Ms. LaChapelle asked if there was anything other than a fence that could be used to protect their vegetable garden. Ms. Greiner said that is a very good question, and some people put down blood meal or other deterrents, but when it rains, it must be re-applied. She said she would not want to do that since she doesn't want the residue to wash down into people's wells.

Mr. Hitchcock asked Mr. Hocevar to confirm that a neighbor complaint was what initiated his inspection. Mr. Hocevar said yes, a call came into the office. Mr. Hitchcock asked if there has been any other contact from neighbors, either for or against the garden fence. Mr. Hocevar and Ms. Griswold said they had received no other calls pertaining to the fence. Mr. Hitchcock asked the applicants if they had been approached by their neighbors. Ms. Greiner and Mr. Rice both said they have received numerous positive comments from their neighbors.

Mr. Bell asked the applicants if the fence was seasonal or permanent. Ms. Greiner said it is permanent, and the contractor set the posts in concrete. She said they were very pleased that the fence is 90% transparent, since the part of the code they thought they were following requires only 25%.

Mr. Maistros asked board members if they had any further questions for the applicants They did not. Mr. Maistros then asked if anyone else present would like to speak.

Mr. Robert Bourne said he has lived at 13 Forest Drive, which is just east of the applicants' home, for over twenty years. He said he supports their efforts to obtain a variance, and that he has no issues whatsoever with the garden fence.

Ms. Janet Smith of 36 Forest Drive said she is very concerned about setting a precedent for changes to the fencing code. She said she does not want to see a lot of trees coming down and fences going up. She said she can understand the removal of trees only if they are a potential danger to houses, or if they are diseased. She said as potential buyers the applicants should have thought of future garden placement.

Ms. Greiner said the only trees that they have or will have removed were either diseased or dying due to lack of care.

Mr. Maistros asked Ms. Smith if she wanted to say anything further on her concern regarding establishing a precedent. Ms. Smith said if the applicants would have gone through the proper permitting procedures, they would have known exactly what kind of fencing was allowed in South Russell.

Ms. Greiner said they studied the ordinance and did not see anything pertaining to an interior vegetable garden. Ms. Smith said they should have called the Village for assistance. She went on to say that her main concern is precedent being set and opening up the door for others.

Mr. Maistros said he can appreciate her concern but pointed out that part of their charge as a board is to consider certain criteria, with such criteria always being very specific to the property. He said real property is in and of itself unique, and each lot can be looked at as different from the others. He said the board takes great caution in reviewing each request to make sure that whatever recommendation or approval is granted, it is based upon the property as it sits and could not be applied as a cookie-cutter to any other properties. He said they consider each variance's potential for negative impact on the neighbors and the make-up of the neighborhood, and that each property may have a different impact due to trees, screening, and things of that nature. He said the Village is very cautious to ensure that any board decisions do not give carte blanche to the next.

Ms. Smith said someone may look at the applicant's fence and just assume that it is permitted, not knowing they may have obtained a variance. Ms. Greiner said she agrees with Ms. Smith, and it goes back to what she was saying earlier that it does concern her that the ordinances are so vague, which could cause trouble for the Village down the line. She said the neighbors who had to take down their fence had the same misinterpretation of the ordinance.

Mr. Maistros said the neighbors chose to take down their fence, and that they could have gone through the process of applying for a variance instead of doing so. That being said, per Ms. Smith's concern about precedent, just because someone down the street has a certain type of fence, it doesn't mean anyone else is entitled to the same. He said the board often encounters variance requests for work that is already completed, but that also does not impact their decision, and the applicant could still be denied.

Mr. Bourne asked if the fence would be permitted in the side yard. Mr. Hocevar said this fence would be permitted in the side yard, but that the only fence allowed in the front setback is a split rail fence with a maximum height of 4'. Mr. Bourne said part of their fence is in the side yard. Mr. Maistros said yes, but there is part of the fence in the front yard, which is why they need a variance.

Mr. Bell confirmed with the applicants that the garden fence is 13' from the split rail fence.

Mr. Maistros asked the applicants if they could have installed the fence behind the front setback of their house. Ms. Greiner said it was not a viable option because they would have had to remove many healthy trees to make room for it. Mr. Rice said the area where they installed the fence also receives the largest amount of sunlight.

Mr. Maistros asked if anyone had any further comments. There were none. He asked the board members if they felt there was a distinction between the height variance and the location variance, and should they be decided separately. Ms. LaChapelle said historically, the variances are split up, and she felt that would be a good idea. Mr. Maistros noted that if the fence were not in the front yard, they would not need a variance.

Mr. Maistros said in consideration of all the documents submitted, and in consideration of the comments that were made here tonight by both the applicants and the residents, he would make a motion in BZA Case # 21-06, for 33 Forest Drive, to grant an area variance for the placement of fencing, other than split rail, in the front yard setback. Mr. Hitchcock seconded. Mr. Maistros asked for any discussion on the motion There was none. On roll call vote, the motion carried.

Mr. Hocevar asked if the board would consider adding a condition to have the applicants obtain the zoning permit and to have the contractor who installed the fence become registered with the Village. Mr. Maistros said he feels the contractor registration is a separate issue. After discussion, the board agreed that securing the permit is the responsibility of the homeowner, and the contractor registration is a separate issue to be handled by the building department.

Mr. Maistros made a motion in BZA Case # 21-06, for 33 Forest Drive, to grant a 3' height variance to a fence that is located in the front yard, to allow for a 6' high fence that otherwise meets the opacity requirements of the Village Code, on the condition that the homeowners complete the application, pull the appropriate permit and pay the required permit fee. Ms. LaChapelle seconded. Mr. Maistros asked for any discussion on the motion There was none. On roll call vote, the motion carried.

Mr. Rice and Ms. Greiner thanked the board for their consideration and decision.

There being no further business, Mr. Maistros motioned to adjourn the meeting at 7:37pm. Mr. Bell seconded.

L LaChapelle

Laura LaChapelle, Acting Chairperson

12-15-21

Date

Ruth Griswold

Ruth Griswold, Board Secretary

12-15-2021

Date

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 Hocevar, 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. Hocevar to provide some history surrounding the remnants of the old sign frame that remains in place at 506 East Washington. Mr. Hocevar 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.

Andy Hitchcock, Chairman — Date: Feb 16, 2022

Ruth Griswold, Board Secretary — Date: 2-16-2022