



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 Matheny, 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. Matheny 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. Matheny 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 an 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. Matheny stated she doesn't think so. Mr. Maistros stated he doesn't know that he can answer that. Ms. Matheny 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. Matheny 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. Kaissigkeit 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. Matheny 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.

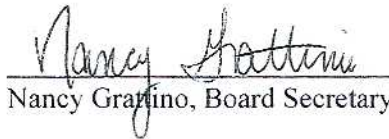
Mr. David Maistros made a Motion to Adjourn. Seconded by Mr. Bill Stone. Mr. Maistros adjourned the meeting at 7:52 P.M.



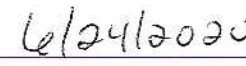
David Maistros, Chairman



Date



Nancy Grattino, Board Secretary



Date

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

Zoom
Chairman David Maistros called the 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. LaChapelle 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 Hocesvar 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 Hovevar 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.

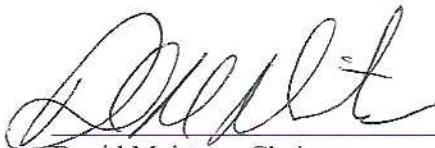
Maistros clarified that the Board's action moves the matter to Council. For the record, Maistros stated the BZA had and considered the letter of November 27, 2019 from Kohrman, Jackson, and Krantz LLP on behalf of the applicant.

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

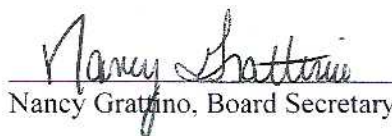
and trying to look for alternatives. There is a house there now that sits on four separate lots and according to the Mayor, Stone thought there should be a discussion of what is going on with Zoning and get it on the agenda for the future. Stone stated that more generally, it appears there are different 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

Nancy Grattino, Board Secretary


Date

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. Hocesvar 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. Hocesvar 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. Hocesvar to weigh in, and Mr. Hocesvar 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 from 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. Hocesvar 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. Hocesvar 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.



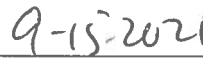
David Maistros, Chairman



Date



Ruth Griswold, Board Secretary



Date



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

speaking 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 Hovevar 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 Hovevar'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 to 101 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 or 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 subplot 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.

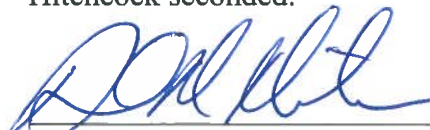
OLD BUSINESS:

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

9/15/2021
Date



Ruth Griswold, Board Secretary

9-15-2021
Date



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 Hocesvar, 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 Hocesvar 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 Hocesvar if he knew how far some of the other

business 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 Hovevar 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

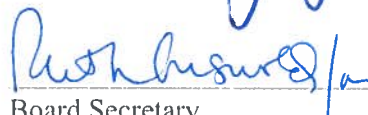
Ms. LaChapelle made a Motion to adjourn the meeting at 7:36p.m.



Ms. LaChapelle, Acting Chairperson

9-15-21

Date



Board Secretary

9-15-2021

Date

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