



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Maistros made a motion to grant a 1'6 ¾" side yard setback variance on the west side of the property, with the following conditions:

A swale shall be indicated on the plans and be placed between the properties of 103 and 101 Hazelwood and that screening shall be installed on the 103 Hazelwood property between 103 and 101 Hazelwood in order to provide privacy protection for 101 Hazelwood. The screening can be either fencing or plantings, or a combination of the two, to be worked out at the time of installation between Mr. Joyce, Ms. Rini and Ms. Richard. Seconded by Andy Hitchcock.

With no further discussion on the motion, Mr. Maistros asked for roll call. On roll call vote, motion carried.

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

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

OLD BUSINESS:

None.

NEW BUSINESS:

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

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

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




David Maistros, Chairman



Date



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
March 17, 2021 7:00 p.m.**

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

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

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

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

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

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

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

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

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

OLD BUSINESS:

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

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

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

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

NEW BUSINESS: None

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



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
April 21, 2021 7:00 p.m.**

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

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

Board member Mike Mulloy was absent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

although they could request it if need be. He said there was a concern when the sign was blinking and at 100% brightness, but there have been no complaints since it was turned down. Mr. Stone said he also understands Ms. LaChapelle's concerns.

Mr. Maistros then called on Andy Hitchcock. Mr. Hitchcock said his only question was regarding the number of complaints received from the community, and he asked if there were any complaints other than the one, when it was at full brightness. Mr. Hocevar confirmed that there have been no other complaints that he is aware of.

Mr. Maistros said he agrees with Ms. LaChapelle regarding the first prong of the three elements the board is faced with, that the property cannot be used for any permitted use within the district, and obviously it can. He said from his standpoint, the second portion of the code is troubling because it says, "*The variance would not be detrimental to the public welfare or injurious to the property or improvements in the neighborhood in which the property is located*" and his concern is that it appears that this restriction on the illumination is a safety concern, or at least enacted due to safety concerns, since it says "*Signs which might be identified as traffic signals or other safety devices shall not be permitted. In no case shall blinking, flashing, neon or neon-type, moving or other such signs be permitted.*" He said he would not be able to vote in favor of the variance to the use request without something from the sign manufacturer and safety services indicating results showing there is no safety concern if the sign were to operate in its current form. He went on to say that the point may be moot if the board cannot get past the first prong, but that the safety aspect is his biggest concern.

Ms. LaChapelle referred to page 53, Section 5.06, sub section A1, and said, "*All signs defined in Chapter 2, except general advertising signs, shall be permitted according to the following provisions...*" She said it almost sounds like there is a general prohibition against general advertising signs, and a general advertising sign is a sign, "*directing attention to a business, product, service or entertainment, conducted, sold or offered elsewhere than upon the same lot on which the sign is located.*" She said this sign sounds like a general advertising sign and asked if that would apply in this case.

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

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

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

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

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

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

Mr. Hitchcock said he has driven past the sign when it was on, and that it really didn't bother him, but he could understand someone else being distracted. He said if the brightness was kept at a low level, he doesn't see it as that big of a deal, although that is only one portion of the decision criteria. Even with safety force's opinion, it would still not get the board past the first prong of the decision criteria.

Mr. Maistros said he agrees with Andy, and that he drove westbound and also from all other directions at night. He was focused on the sign and didn't feel it was a problem. He said however, the code is what it is, and whether or not they could grant a Use Variance for this type of sign.

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

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

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

Mr. Maistros asked for roll call on the motion with the amended conditions. On roll call vote, the motion was unanimously denied.

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

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

Mr. Maistros clarified that the only issues before the board were the lot frontages, but also that the lots have never met the 150' requirement. Mr. Hocevar said that is correct, and they will have to comply with the frontage aspect at the building line, they just don't have the frontage on Bell Road. Mr. Maistros also confirmed that the last recent lot split and consolidation had not changed the frontage aspect, Mr. Hocevar said yes that is correct. Mr. Maistros asked if the frontage would have had to been approved at some prior date by a board. Mr. Hocevar said he is pretty sure that he has some documentation on that as to when the 50' frontages were approved. Mr. Maistros said that the submittal is before the board tonight because the flag portion of the lot is what is different, and Mr. Hocevar agreed, saying that the reconfigurations did not affect the frontages, which did not change at all.

Mr. Maistros asked for comments from board members, beginning with Laura LaChapelle. Ms. LaChapelle asked if it were true that the lots would be unbuildable without frontage variances. Mr. Camposo said that is correct, and Mr. Hocevar agreed. He went on to say that the code requiring 150' frontages was meant to discourage flag lots, but there have been quite a few in the past, as long as the structures still meet the 150' at the building line. Ms. LaChapelle said it is significant that Mr. Hocevar said the flags lots were already created, and these lots have been undeveloped for quite a while. She said her only issue would be the narrow driveways, and she asked if that would adversely impact access for fire trucks or any other governmental services. Mr. Hocevar said the same situation exists throughout the Village, and there has never been an issue. The site plans must be approved by the Village Engineer, and flag lots exist with Board of Zoning approval. Ms. LaChapelle asked since there are similar conditions existing in other parts of the Village, would this substantially alter the character of the neighborhood. Mr. Hocevar said it would not.

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

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

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

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

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

Mr. George Plazek, owner of property that abuts the eastern side of the lots before the board, spoke first. He said he feels the variance request is very extreme. He said he knows some variances have been granted, but he knows of none in the Village that would allow only a 50' frontage for two properties. He said he doesn't know if there would be a precedent set by granting this variance, but he is not in favor of it. He continued by saying there are other issues that need to be addressed, a lot of them having to do with the wetlands and the environment, and how building houses may affect the quality of the water and erosion concerns. He said he knows that ODNR will not allow water to be backed up into the culvert that comes out of the Plazek Lake and flows into what is now the Smith property. He said if there is any road building or driveways, they will have to keep in mind that they cannot back water up into that culvert. He said those are a few of the concerns he has.

Mr. Camposo addressed Mr. Plazek and said he understands his concerns. He said Mr. Nykulak has no intention to clear-cut the lot or dam up any streams. He said they met with a person from Soils and Water at the site, and they don't plan to put any other crossings on the properties, and they have also met with tree preservationists. Mr. Nykulak plans to clean up some invasive species in order to restore the natural areas. He said the Nykulak family will also be stocking the pond with fish. He said one of the reasons Mr. Nykulak purchased the property was for the natural beauty of it, and their intent is to preserve that.

Linda Gilbert was the next guest to speak. Ms. Gilbert said she is Mr. Plazek's niece, and that she also lives at the property, which has been in their family since 1926. She asked if there has been any consideration to preserving their privacy at the western border of their property. Mr. Camposo said there are two proposed house sites, and the most westerly site has a gully or dry ravine that cuts the second house site in half, so as you're looking from the road, it makes the right side of the property unbuildable. He said he is planning to preserve his privacy as well, by staying as far to the left as possible when he builds his house.

Ms. Gilbert said they use their woods for nature observation and some relatives use it for bow hunting. She said they are not interested in seeing a large house from their property through the woods. She asked about how the placements of the houses would be handled. Mr. Maistros said the

issue before the board today is for a variance request for frontages. He said eventually, they will have to submit a site plan showing the layout of the houses and where they would be situated. Mr. Camposo said he would be building his house as far to the left as possible, and that neither he nor Nick is interested in clear cutting any part of the property.

Mr. Nykulak said he is very interested in getting to know his neighbors, but he understood the neighboring land to belong to the Chagrin River Conservancy. Ms. Gilbert said they have a conservation easement on their property with the Western Reserve Land Conservancy, which means there is a legally binding document that the land cannot be developed, although they still own the property, and it is considered their private property. Mr. Nykulak said one of the reasons he bought the land was because the conservancy guaranteed that land would never be developed. He said he is planning on only clearing enough trees to build his house, and leaving the surrounding woods intact. He said there should be no concerns regarding privacy because he doesn't want to see another house either. He said he hoped by purchasing 18 acres in Geauga County he could bury himself back in the woods. He said he looks forward to being good neighbors. Ms. Gilbert asked how the fragmentation of the environment would benefit them, since their conservation easement will be devalued since it would no longer contiguous be to larger, undeveloped property. Mr. Nykulak said he will be contributing to the tax base in the Village. He said his intent is to clear only enough to build the house, he has a forestry plan and a forestry expert who is helping him plant trees to make the forest healthier.

Mr. Plazek said one of their concerns is that there will be trees cut down, and the continued impact on wildlife, since their habitat would be destroyed. He said even though Mr. Nykulak plans on being a good steward of the land, the building of the two houses will still have a large impact on their enjoyment of the cherished family property.

The next guest to speak was Doris Gilbert, Mr. Plazek's sister, who also lives on the property. She was concerned about the very small frontage of the proposed properties. Mrs. Gilbert said the Village should not allow two houses with the frontage for one home. She asked Mayor Koons to explain further. Mayor Koons said he had visited Mrs. Gilbert twice to explain the situation, and he went on to clarify the likelihood of what her visual sight line would be. Mrs. Gilbert expressed concern that if the Village allows this, it would be setting a precedent and asked why they should not have to follow the rules and regulations.

Mr. Maistros said there are rules and regulations in the Village, and if a property owner requests to vary, or differ, from those regulations, that is called a variance. The applicant can make a request and it comes before the board; the board then considers granting the variance after considering seven conditions. He said the board then decides whether this particular request should be granted or denied, in their opinion, based on the criteria in the code. He said they do understand that the applicant is requesting a variance from the required 150' frontage.

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

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

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

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

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

On roll call vote, the motion carried.

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

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

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

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

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

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

Mr. Maistros thanked Mr. Darden for his patience and asked him to tell the board about his proposal. Mr. Darden said he is representing the property owners, Robert and Rachel Swartz, and he has been living at the house for about four years, with plans to continue living there a few more years. Their plan is to construct a deck that is 16' wide, the width of the house, and then 14' deep. The deck will not encroach the side property lines. He said the reason for the variance request is due to the 14' depth being too close to the rear property line, but there will be a distance of 34' from the rear property line. He said the lot is very narrow, and that it will be a small deck. He is requesting a 5.75' variance. He went on to say that the house directly behind him on Mapleridge Road is about 220' away from the back of the house he is in, as they have a much deeper lot.

Mr. Maistros noted that the lot Mr. Darden is building on and the one behind him are fairly wooded. Mr. Darden agreed, and said there are large trees between the properties, but he can see the neighbor's house, although it is quite a distance away. Mr. Maistros asked if he had had any conversations with the neighbor about the proposed deck. Mr. Darden said no, he does not know who lives there and has never even seen them. Mr. Maistros asked if the Building Department had received anything from any neighbors regarding this variance request. Mr. Hocevar and Ms. Griswold responded no, they had not. Mr. Maistros asked if anyone was present to speak for or against this issue. There were no parties present to speak on the issue.

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

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

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

Mr. Maistros agreed with all the members' comments.

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

On roll call vote, the motion carried.

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



David Maistros, Chairman

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 MINUTES**

May 19, 2021 7:00 p.m.

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

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

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

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

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

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

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

Mr. Maistros then called on board members for any questions, starting with Laura LaChapelle. Ms. LaChapelle asked Mr. Stusek what kind fencing they would be installing. Mr. Stusek said initially they were hoping to avoid putting up any fencing and use an auto cover instead, so they want to keep it very minimal and are proposing a black aluminum powder coated fence, which looks like wrought iron. He said the fence will be very attractive, with a small square baluster and a 2" square flat post and a few self-closing gates. Ms. LaChapelle asked if there would be any natural screening outside the fence, to the north and south of the property. Mr. Stusek said there is existing screening, many arborvitae to the north, and to the south there are some tall evergreens. Ms. LaChapelle asked if the arborvitae is older and established. Mr. Stusek said they are established, and that there is quite a bit of existing privacy. He went on to say at the back of the property is a buffer, and the neighboring daycare center behind them can't be seen. Ms. LaChapelle said when you drive down Fox Trail and look south, or you drive down Fox Way and look east, you can see through those from the road. Mr. Stusek said he agrees, if you are out on the road in front of the Remington's home and you're looking for this thing, you will be able to see it, but he wouldn't call it highly visible. Ms. LaChapelle asked where they were as far as obtaining HOA approval. Mr. Stusek said that's a great question, and that they had been working very hard to meet with and talk with Chris, but he went on vacation, and he has been very hard to get a hold of for the last two weeks. He went on to say that he is aware that the neighbor to the south had some concerns, but that he didn't think they were interested in preventing them from building, and that their concerns were regarding drainage. He said they had reached out to them unilaterally but had not heard back from them either. Ms. LaChapelle asked if they reached out via email, or had they tried to talk to them personally by phone. Mr. Stusek said he and the Remingtons both reached out to the neighbor via a couple of phone calls and texts but did not hear from them. He went on to say that they know of their concern because it was relayed to them by Chris Smith of the HOA. Mr. Stusek said he had conversations with Mr. Smith a couple of weeks ago, gave him the information he needed, but has not heard back from him. He said he reached out to him about a week and a half ago and then learned second-hand that he was on his way out of town, and he has not returned his phone calls.

Ms. LaChapelle said this is a concern, because it is unusual to see a situation where you have three parcels, a pool to the north and a pool to the south, and a parcel in the middle of that. She said obviously there would be potential runoff concerns and asked Mr. Stusek to comment on that. Mr. Stusek said he didn't think they would be impacting runoff, necessarily, as no regrading of the Remington's property would occur, and any drainage at the pool would be addressed by a sump system which would be pumped out to the sewer. Mr. Tomkins, also of The Artisan Design Group, said they would have downspouts that run back to the house's sewers. Ms. LaChapelle asked if they would be submitting a landscape plan. Mr. Stusek said the Village has the landscape plan. He went on to say that due to the type of questions being asked, it sounds like a topo from a civil engineer is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



David Maistros, Chairman

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 MINUTES**

September 15, 2021 7:00 p.m.

Members Present: David Maistros, Chairman, Laura LaChapelle, Chris Bell

Members Absent: Andy Hitchcock, Mike Mulloy

Other Officials: Bridey Matheney, Solicitor; Mayor Bill Koons,
Ruth Griswold, Board Secretary

Visitors: None

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

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

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

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

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

Mr. Maistros asked the applicants to begin their presentation.

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

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

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

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

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

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

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

Mr. Maistros reviewed the signed agreement with attached maps.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On roll call vote, the motion passed unanimously.

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

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

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



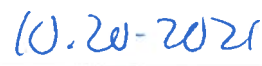
David Maistros, Chairman



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 MINUTES**

October 20, 2021 7:00 p.m.

Members Present: David Maistros, Chairman, Laura LaChapelle, Andy Hitchcock, Chris Bell

Member Absent: Mike Mulloy

Other Officials: Todd Hicks, Solicitor; Mayor Bill Koons, Dave Hocevar, CBO,
Ruth Griswold, Board Secretary

Visitors: Corinne Greiner and Stephen Rice, 33 Forest Drive; Janet Smith, 36 Forest Drive; Martin O'Toole, 100 Foxhall Drive; John Buda, 106 Leaview Lane; Robert Bourne, 13 Forest Drive; Nancy Bohue, 33 Forest Drive, Jeffrey Rice, 33 Forest Drive

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

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

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

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

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

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

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

Mr. Maistros asked the applicants to begin their presentation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Laura LaChapelle, Acting Chairperson

12-15-21

Date



Ruth Griswold, Board Secretary

12-15-2021

Date



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

December 15, 2021 7:00 p.m.

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

Member Absent: David Maistros

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

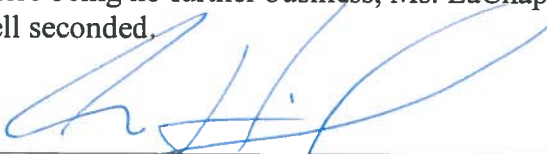
Ms. LaChapelle made a motion to grant a Use Variance to allow a pole sign as proposed, at 506 East Washington Street, the overall height being 126.05" or 10'5", and the height from the bottom of the sign would be 111", or about 9.25', and conditioned upon the approval of the Architectural Review Board.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

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

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

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

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



Andy Hitchcock, Chairman

Feb 16, 2022

Date



Ruth Griswold, Board Secretary

2-16-2022

Date