

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
April 26, 2016**

Members present: Freshman-Johnson, Holdren, Maersch, Kraemer
Also present: Edwards, Flynn

The meeting was called to order at 8:04 p.m. by Mrs. Freshman-Johnson.

Mrs. Freshman-Johnson said we only have four people out of a five-member board tonight. You do need three out of the four board members to vote yes in order to pass your variance. If you are concerned about that you can choose on your own to not present and to move your variance presentation until the next month's meeting. I know some of you had been waiting a couple of months but I just want to make sure that is clear. If you only got two out of the four you would not pass on the variance approval. If you do present your variance and it gets denied, you can not come back next month with a full board with the same variance. You can only come back if it is a different variance or there are some other clarifications. I just want to make sure you consider all the factors and make your own decisions.

APPROVAL OF MINUTES

Moved by Mr. Holdren, seconded by Mr. Maersch that the minutes of the meeting held February 23, 2016 be approved. Carried. Ayes: Holdren, Maersch, Kraemer, Freshman-Johnson. Nays: None.

SWEARING OF WITNESSES

All were sworn in.

CLIFFORD AND DIANA NAZELLI, 35 HIGH COURT - REQUEST FOR A VARIANCE TO SECTION 1125.03(h), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-16-016.

Mr. Edwards said the Nazelli's are proposing an addition to the rear of the building that encroaches 3' 9" into the required 40' rear yard setback as required by section 1125.03(h). We have received one letter of support and I believe everybody was copied on that letter. I think the Nazelli's have another letter to turn in. Phillip Koepf, architect, said they purchased the house last Fall and did some remodeling on the inside and some lighter remodeling on the outside. Now they are into the house and they would like to add a sun room on the rear of their house which is actually the side yard of a house on High Street around the corner. This letter is from the Dobecks. They are the people who would be most affected by this variance request because it is their side yard that extends the entire length of High Court all the way to the river. So their house is actually way down there and it is close to 300' from the back of their house to where the Nazelli's property is and then they both end

up along the river edge where it drops down to where the spillway is. They have 8' 3" to the existing rear yard setback line and they would like to put a 12' addition on the back of their house. There is a sliding glass door right there and there was a deck here that they took out so they would like to put this small addition on and put a new deck up with a patio and 3' 8" is what we need to make that work. It is not an overly large space and, with no rejections from the neighbors, we would like to see them be able to do what they would like to do.

Ms. Kraemer said before we go any further I need to say that I am going to recuse myself because, while I think it looks like a very nice and appropriate addition, I am fairly close to the applicant in terms of friendship so I am going to recuse myself from voting.

Mrs. Freshman-Johnson said for the record we have a letter from the closest neighbor, the Dobecks. I just want to say that they are in approval of this variance; they have no objections. The letter we received from the other neighbor, the Albers, was in favor of the variance. Furthermore, to summarize the size of the variance, it is just under 4', 3' 9".

Mrs. Freshman-Johnson said just so the board can understand the topical layout of this street. In the back there is brush, there are woods, and it goes down at the back here. Mr. Koepf said it drops about 30' to 40' to the river. Mrs. Freshman-Johnson said it is hard to imagine how that is laid out. I just want to be clear that this is kind of at the top of a hill. So it is not possible that houses could be built behind it.

Moved by Mr. Holdren, seconded by Mr. Maersch to grant the variance to section 1125.03(h). The applicant is requesting a 3' 9" variance from the 40' setback. I don't think this is a substantial variance. I would also like to point out that on their application they explored other options on the side yard and found out that this is the only option, so therefore there was no other options to obviate without the variance. And also I stated the neighbor that this would encroach the 3' 9" that direction approved the variance.

Freshman-Johnson: Aye.

Holdren: Aye.

Maersch: Aye.

Mr. Edwards said this will go to Council for final action on May 9, 2016 at 7:00 p.m.

RICHARD PAULSON, 255 BELL ROAD - REQUEST FOR A VARIANCE TO SECTION 1125.03(e)(f), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-19-012.

Mr. Edwards said the owner proposes to build a new dwelling on a vacant lot, which is in the R1-60 zone. The proposed dwelling encroaches 13' into the 35' front yard setback. The lot coverage by the

proposed dwelling is 22.5% and the code allows only 20%.

Bill Joyce, builder, said I believe most of you are familiar with this site because I was back here last Summer with a customer that designed a home with a first floor master that was encroached on several setbacks. Since then I pursued the lot to try to build on it and in the mean time, I am working with a customer right now, I had designed a home and started marketing it a little bit and I am working with the customer to try to close a dream home situation.

Mr. Maersch asked, the building owner who was here in August sold the property to you? Mr. Joyce said no, it is conditional upon receiving a variance for zoning so I could fit the house on it. He is still the record owner. Mr. Maersch asked, and he is Mr. Paulson? Mr. Joyce said yes.

Mr. Joyce said it is a tough lot in that it is only 105' deep and the regulation for an R1-60 is about 120'. From the start that has put us in a tough spot. When I designed the new home I ended up moving the master bedroom to the second floor plus reducing the footprint by 600 square feet and try to fit the house on without any variances but there are some things I could not overcome in that to get, meet the front yard variance we would have to push the house back upwards of 13' and then I would have to request two variances for rear yard lot coverage and rear yard setback. What works in my favor is that keeping the house at the proposed setback distance it actually lines up with the neighbors houses within inches. We are actually behind the house on the west by 8" and in front of the house to the east by 8" so we split the difference with the 16" that two homes are setback in. By putting that house in that position, not only lining it up with the neighbors, it allows me to meet the rear yard setback and the rear yard lot coverage. And then the second variance request is the lot coverage, which requires a maximum of 20% and the proposed is 22.5%. That 2.5% in square footage is about 200 square feet and how that relates to the first floor of the house, the first floor usable square footage is about 1,378' and for me to reduce that 200 to meet that variance I would be literally taking out a room that is 12' X 16' so it really impacts the house dramatically even though it doesn't impact the lot dramatically.

Mrs. Freshman-Johnson said just for some background, this lot did come to us several months ago, maybe a year ago June/July, and the variances requested for you were over 50% of the required. They were very significant in material and the board did decline all of the variances and we highly recommended a remodel of the house to deal with the lot. Also one of the issues with this lot was the previous owner now trying to exchange ownership you know based on these but there was a survey that came in and there was some issues with what they thought they bought, they didn't and so was title ever followed up with that? Mr. Joyce said correct. When the title company transferred the lot into Richard Paulson's name we actually designed the house to fit and when we got the surveyor out there and found out the monuments were from the 1800's and the title company who issued the title work was off by 17 foot in depth and just threw the old house into an array. Mrs. Freshman-Johnson said it was significant. I am surprised the owner didn't go with their rights against title. Mr. Joyce said we looked into it and because a lot of the title work that they actually dug up was stated, but once we, but the monuments hadn't been shot in so long that it was incorrect so to chase it was a lot.

Mrs. Freshman-Johnson said you have made significant progress on these variances. They are more than 50% less than they were last time so thanks for really working on this and taking suggestions. Just to be clear, we are looking for a 12.85' front yard variance. Again, the front yard setback normally has to be 35' and they are proposing 22' and the lot coverage is only a 2.5% difference just to be clear on materiality for those.

Mrs. Freshman-Johnson said this street and this line you make a valid point that even though it is a setback most houses on this street have a setback variance because of how it is lined up. It is not like this house would be jetting up versus the others because it does go on an angle where this road it. Is that correct, which is why one is a little farther up and one is a little farther back? Mr. Joyce said it is kind of on the radius heading up towards the turn on Bell. Mrs. Freshman-Johnson said not quite there but getting there so that is why I just want to state why the neighbor to the one side is farther back than the neighbor on the other sides so it looks natural when you go up the road because it starts to curve that route.

Mr. Holdren said you mentioned the depth being 105' and normally in a R1-60 zone it is 120'. If that was 120' you are probably within the 20%. Mr. Joyce said exactly.

Mrs. Freshman-Johnson asked, wasn't there also a question on the driveway capabilities on this house? Mr. Joyce said right, the lot is topographically challenged because you come up and then it is a reverse load garage. Mrs. Freshman-Johnson asked, and that is what you are still proposing here? Mr. Joyce said exactly. Mrs. Freshman-Johnson asked, but you have enough width on that side? Mr. Joyce said we do.

Mr. Maersch asked, so how did you obviate the need for a rear coverage variance for the driveway? Wasn't that on the previous plan? Mr. Joyce said it was actually reduced, the depth of the house, by 10'.

Ms. Kraemer asked, so what is the reduction in square footage of the house from the original plan? Mr. Joyce said about 400' overall of the original plan. It was a master down so it is nearly 2,000' on the first floor and this is only 1,370' on the first floor.

Mr. Maersch said Mrs. Freshman-Johnson I recall that last time we were here we had a significant amount of neighbors that spoke in opposition.

Frank Reagan, perspective buyer, spoke in favor of the variances.

Craig Platt, 263 Bell Street, spoke in favor of the variances.

Mrs. Freshman-Johnson asked, has this gone to the Architectural Review Board? Mr. Joyce said it has not. Mrs. Freshman-Johnson said so that will be contingent on this. Just so everybody understands, they are always contingent on each other so it is irrelevant what we do if the ARB doesn't approve it. Those are steps in the process so one isn't necessarily needed for another and

you can do either one in any order that you want. I just want to make that clear. It is always a confusing topic for those attending these meetings.

Mr. Maersch said so it is and it isn't right? So they can't get a building permit without both ARB and BZA and I always like to signal where I am in this. So, here is where I am in this plan. I think you have done a phenomenal job scaling it back and making it fit on the lot and I'm happy to see that everybody is working together because whatever ends up being there is 100% better than what was there before. I feel badly for Mr. Paulson that it didn't work out for his specifications but it seems like we are really close to having something here. Having said that, this is a property, to me, that screams for ARB input. I feel like the ARB is going to have significant input for you on this. I'd raise it because in your application you say that the proposed home is architecturally similar in looks and size to many homes in the area. I drove the area, I know that street well, and I don't see that. This home is completely different than anything up there. Bell Street is full of frame houses with big front porches. There is a Western Reserve style brick home that is up there and there is a new construction type Victorian on the corner but none of them look like what you are proposing here. Obviously we don't deal with architectural details here except that you put it in your application so that leads me to talk about it. Also, the same thing on the spirit and intent behind the zoning.

Mr. Maersch said so, from my perspective, I would make a motion that we table consideration of these zoning variances, as minor as they are, until the ARB has had a chance to review these plans because I foresee significant input from the ARB.

Mrs. Freshman-Johnson said I have a question on that. If we approve the variances today and they go to the ARB and they force changes to the house that then changes the variance requirements and they would need to come back for variances? Mr. Edwards said that is correct. Mrs. Freshman-Johnson said if it is within the variance it can go through.

Mr. Maersch said I am looking at this from a different perspective. I sit on Council and we have to approve all these things. The ARB needs to look at these plans. There is significant work to be done based on the character of the neighborhood that is currently there and maybe this plan comes back to us with exactly the same variances and I think if that is the case we've already, last time we were here we talked about the setback, which is relatively routine. All those houses have already been granted those variances. I think it was a 23' setback and I think we all acknowledged that a 2.5% variance on lot coverage is fairly insignificant, but from my perspective, I think the ARB needs to review these plans before we touch the variances.

Mr. Joyce said I totally understand where you are coming from and now working with a perspective buyer some of the character and textures and siding colors and some of the details are already being changed but within the same foundation envelope. I have gone to the ARB first before and then come to a zoning meeting and got turned down and had to redesign. So, that is why I don't go to the ARB first. I am just wondering, if you grant these requests this evening I don't know how that would affect, I mean they are sharp guys but with sharp pencils and I don't know if that would even matter if the variances were granted or not at this point. I would love to get through this at this point

because we are getting to the building season and we have children to get into the school system.

Mr. Maersch said I would love for you too. From my perspective I actually don't know where everybody is that is opposed to this because there were a long list of people and I know they are still opposed because I talked to many of them but they are not here to fill the record so I can't really talk about it. Obviously that is not a factor that we can consider tonight but from my perspective there are certain plans that should go to the ARB first and there are certain plans that it doesn't matter one way or the other. From my perspective this is one that should go to the ARB first for the reasons that you mentioned. The ARB is going to have significant input for you on design, building features, materials, and what have you and there is a chance you will come back with a different footprint and different zoning needs.

Ms. Kraemer said I will second that motion that is on the floor and with the thought that I think the discussion has reflected that I don't think anybody up here thinks that the setback in an issue and I think the lot coverage is fairly minimal so you could expect that if you came back that would be your result. But if there is a very different plan that the board is considering then there could be a result relative to that plan that would be helpful to you as the builder.

Mr. Joyce asked, in regard to timing and in a situation like that, if it goes there and we make those changes and have to come back, do we have to come to a formal meeting or can it be done as a condition? Mr. Flynn said ultimately it needs to be recommended by the BZA and then confirmed by Council so I think you have to be brought forward. One thing I think the board could do is they approve it subject to ARB review and subject to, or at least inform Council that they are waiting on the ARB. We are dealing with setbacks here and lot coverage, things that may not change and I think the criteria doesn't change necessarily based upon the finishes and the ultimate look. I think the board could move forward but stress in their approval that it needs ARB blessing and stress that to Council because ultimately Council has to confirm. If you don't vote or don't approve tonight I do think it would have to go to another meeting and have that official recommendation being made.

Mr. Holdren asked, can Council not vote on it until the ARB has approved it? So if we were to pass it tonight it usually goes to the next Council meeting in like two weeks. Is that something that Council, then everybody could actually take all of the factors in and they are not waiting. Mr. Maersch said I don't technically know the answer to your question but I am sure it is something we can do. But, this whole nested series of conditional approvals to me is something that needs to be changed and I am pretty confident it will be changed as part of the Charter review, which is this year. I understand the timing issues and I understand where we are here but we are also trying to put a system in place that puts buildings in the village that fit with what is in the village and I don't think this one does. I think the ARB is the body that can help us get you in the direction there and that is the basis for my motion.

Mr. Joyce said zoning is the body that grants or turns down those variances so that is why I am trying to kind of keep them separate knowing that I know this ARB does its job very well and will work with me and anyone else to get the right house up. Mr. Maersch said I want to give them that

opportunity in the first instance because the thing that ARB doesn't love when they see a plan that needs work is somebody that comes in there that has all their variances and they have very little incentive to work with the ARB to change their plans and that is what I am trying to avoid in this instance.

Mr. Edwards said Council does have the final say so on anything that the BZA does so you could vote on this as conditional but Council can overturn it at the next meeting so they do have the final say so.

Mr. Flynn said there is no time limit so if you wanted to wait for Council to review it at a later meeting so the ARB could review it in the interim I don't see any problem with that. Mr. Maersch said if we are going to table it at that level why aren't we just tabling it at this level? Mrs. Freshman-Johnson said I am going to disagree. We are on a board that I am mandated by the rules that are in place today and you have a lot more background on what's going on because of your position where as me as a volunteer on this board I don't. I sit forth here today saying I have enough information in front of me to do my job and to read the code and the law and say I can make a decision on this variance based on the criteria that I am supposed to. I don't agree with the motion. I think we are here today to prove this variance even though I totally understand where you are going but that is not in place today and it is all contingent on those things anyway. If it doesn't fit in with the neighborhood and if Council doesn't approve our recommendation, remember it is a recommendation that Council approves, and you have more insight on what is going on there, there is no harm in doing whatever we do today because we followed our rules that dictate what we are supposed to be doing. And we proud ourselves on these architectural tie-ins because it gets really hurray when we say well you don't have architectural approval so forget it. But, it is not related; it is just a part of the process.

Mr. Maersch said it is related in the sense that the plans could change. The motion is pending. It may or may not have been seconded, we can vote on it and then we can decide whether it is tabled or we are going to make a motion to approve. I have no problem with the process playing out. I like to give people a sense of where I am coming from.

Ms. Kraemer asked, could I ask one additional question because I don't have the benefit of having been here when the discussion was held the first time around? My impression from not seeing anyone in the audience who was in opposition to this was that the plan had changed so substantially that now there wasn't that level of opposition. I don't know if that is correct or not and I don't know if those were issues that really are not any longer a part of this. Mr. Joyce said I think it plays a large part and the fact that you guys stood, we came to you with five variances last time and they were not huge spaces but percentage wise it was a bit and I can understand not setting precedence with those large percentages and that was my motivation to bring back something that was, if there was anything it was this big. So I think you are correct on that assumption.

Mrs. Freshman-Johnson said the problem is this, unfortunately, if you don't want to approve the variance because it is not being tabled but you would approve the variance if it gets approved from

the ARB and they get denied today they are denied their variance and can not come back to try it again even if the ARB doesn't change it and that hurts the applicant. Mr. Maersch said so implicit on what I said Mrs. Freshman-Johnson, is if we don't table it I have to vote to approve it because under the code they have met their requirements. I can't vote against this variance that is why I am moving to table it because I think it belongs at the ARB in the first instance.

Roll call on the motion to table:

Maersch: Aye.

Kraemer: Aye.

Freshman-Johnson: Nay.

Holdren: Nay.

Ms. Kraemer said so that doesn't pass. Mrs. Freshman-Johnson said no, we are not tabling it.

Moved by Mr. Holdren, seconded by Ms. Kraemer to approve the variance for 255 Bell Street for Section 1125.03(e)(f). They are requesting a 22' setback and a 35' setback is required so it is a 13' variance and they are requesting a 22.5% lot coverage and the code calls for 20% so it is a 2.5 % variance. I believe the variances are not substantial. As already stated, this would line the house up with the neighbors' houses so the front setback is not substantial and also the 2.5% lot coverage is not substantial as stated earlier. If the lot was bigger, like most lots in the R1-60, it would actually be within code. So, for all these reasons, I would like to make a motion to approve. And I would also like to state that, as already stated by several of us, that the ARB has to approve the plans and Council has to approve our variance after ARB approved the plans.

Holdren: Aye.

Freshman-Johnson: Aye.

Kraemer: Aye.

Maersch: I am going to vote aye and I am commending Mr. Joyce and the owners for coming to us with I think is a completely reasonable request for variances and if someone happens to only be reading this section of the minutes I would also like to say that I look forward to the results of the ARB. For those reasons I vote aye.

Mr. Edwards said this will go to Council for final action on May 9, 2016 at 7:00 p.m.

MICHAEL AND CHRYSANTHI WEISBURGER, 542 NORTH STREET - REQUEST FOR

**A VARIANCE TO SECTION 1125.04(a)(3), AREA, YARD, AND HEIGHT REGULATIONS:
ACCESSORY STRUCTURES, PERMANENT PARCEL NO. 931-23-003.**

Mr. Edwards said the owners are proposing to construct a detached garage in the side yard replacing an existing garage. Section 1125.04(a)(3) of the code requires detached garages to be located in the rear yard.

Michael Weisburger said my wife and I moved into this house roughly eight months ago or so. We were initially planning on probably looking at moving the garage as the existing structure is original to the house as far as we are aware from 1920. The structure does not really fit modern cars. My wife's small Honda can barely fit inside and the garage itself is in relatively poor shape with multiple cracks in the walls and floor. Because of the topography of our yard we are unable to reasonably build the garage behind the house as the current code allows for so we just want to replace the current garage in the existing footprint and extend it forward and try to widen it slightly to accommodate more modern cars and also allow for some storage.

Mrs. Freshman Johnson asked, can we talk about the current footprint? You will be tearing down the existing garage? Mr. Weisburger said that would be the plan. Mrs. Freshman Johnson asked, do you know where on here we see the current footprint? Mr. Weisburger said I believe on the far right side is the lot and the current structure. He showed where the footprint is changing. Mrs. Freshman Johnson said it is generally in the same footprint forward 10' and closer to the house actually 2' instead of closer to the property line on the side setback so that is not affected at all.

Mr. Holdren asked, what is the variance they are requesting? Is it the fact that it is a garage? Mr. Edwards said detached garages have to be located in the rear yard. With the topography of this, this garage is located actually in the side yard. Ms. Kraemer said it is already in the side yard. Mrs. Freshman Johnson said so that is the only variance. Mr. Maersch said no, it also has to be 3' from the lot and this is 2' from the lot so there are two variances to the same section. Mrs. Freshman Johnson said a 1' variance for that. Ms. Kraemer said 2' instead of 1'. Mrs. Freshman Johnson said right, because if you are going to change any existing structure you have to comply with the code today.

Mrs. Freshman Johnson asked, have we received any letters on this from anyone? Mr. Edwards said Mr. Himes received a phone call from a resident across the street but there was no followup. Mr. Himes tried to call the resident back so we don't know if it was for or against the variances.

Mrs. Freshman Johnson asked, and you do have neighbors directly to the north side of this? Mr. Weisburger said yes. Mr. Maersch asked, have you spoken to them? Mr. Weisburger said I believe the current residents there are renting the property and I do not know who the current owner is.

Mr. Edwards said this has not gone to the ARB either.

Moved by Ms. Kraemer, seconded by Mr. Maersch that we approve the variance request. I think that

what we are looking at is somebody who is trying to create a new structure that is useable and has better appeal and the variances are minimal and you are stuck with a garage that is already existing so it is not really changing the character of the property.

Kraemer: Aye.

Maersch: Aye.

Freshman-Johnson: Aye.

Holdren: Aye.

Mr. Edwards said this will go to Council for final action on May 9, 2016 at 7:00 p.m.

CHAGRIN FALLS EXEMPTED VILLAGE SCHOOLS, 400 EAST WASHINGTON STREET - REQUEST FOR A VARIANCE TO SECTION 1143.04(b), SIGNS PROHIBITED, SECTION 1143.06(a)&(b), NUMBER AND TYPE OF SIGNS PERMITTED, AND SECTION 1143.11(a), GROUND SIGNS (POLE SIGNS), PERMANENT PARCEL NO. 932-20-011.

Mr. Edwards said the applicant, the Chagrin Falls School District, is a political subdivision. They are proposing to replace the existing nonconforming scoreboard sign in the Parks & Institutional District. Section 1143.04(b) prohibits internally illuminated signs and Section 1143.06(a)&(b) allows for two signs per building or unit thereof and no more than one sign shall be displayed as a ground or pole sign. The school has numerous ground signs and Section 1143.11(a) restricts ground signs and pole signs to 20 square feet and less than 10' in height. The proposed sign is 275 square feet and 30' feet in height.

Glenn Ramage, architect, said we are here to replace the existing high school football scoreboard. The existing scoreboard is mounted to an iron frame structure that I am really not sure how old it is but it is decades old and it is not structurally sound. So, we need to fix this structural issue and the safety issue. At the same time we are proposing to replace the existing scoreboard with a new one that is very similar in design to bring that into current technology with some wireless communications and that kind of thing. The new scoreboard is slightly larger than the existing; it is about 15% larger. The existing scoreboard is 12' X 20' and the new scoreboard is 11' X 25'. It would be mounted a foot higher than the existing so that the top of the scoreboard would be at the same level that it is now minus the decorative arches. The old scoreboard has an arch on top and the new scoreboard would have an open truss work arch on top. The illumination of the scoreboard would be very similar to what it is now except that it would have LED lights instead of the incandescent lights that it has now, which is a maintenance issue. It is not a changeable copy picture kind of scoreboard it is very similar to what it is now.

Mr. Maersch asked, so is that the only illumination is the LED lights to light up the score? Mr. Ramage said that is correct. Mr. Maersch asked, so the sponsorship and the Dad's Club those are

not illuminated; they are the same as they are today. Ms. Kraemer said so the areas of illumination are the same in the new sign as the old sign except that they are ten times brighter because, as we all know, LED lights are bright. Mr. Ramage said it might be a little brighter. Ms. Kraemer said so you are saying as you look at the current scoreboard the new one would actually be at the same height but it would be longer width wise. Mr. Ramage said it is 11' instead of 12' so the top would match but the bottom would come up a little bit and it is wider, therefore, it is a little bit larger.

Mrs. Freshman-Johnson said we have three variances here. The first one, number and type of signs permitted, that is no measurement. Why is the school not zoned outside the village zoning? Mr. Edwards said it has always been Parks & Institutional. That is just the way our zoning code is written. Mrs. Freshman-Johnson asked, so it is in a separate part of the code as Parks & Institutional? Ms. Kraemer said right, because it is an institution. Mr. Maersch said there is a provision in Parks & Institutional that says the signage requirements from our general building and zoning code apply to Parks & Institutional. Mrs. Freshman-Johnson said that is my question, there is no separate signage. Number two is size limitation. Mr. Ramage said the old one is 20' X 12' and the new one is 25' X 11'. There is a decorative arch on the top of both and the new one is an open frame arch. Mrs. Freshman-Johnson said the last one, it is a 35 square foot difference by the way for the variance. The last variance is that you just aren't allowed to have a lighted sign but we already do.

Mr. Maersch said I guess my questions have already been answered. The internal illumination is the same internal illumination that exists there today; it is just a different type of bulb.

Moved by Ms. Kraemer, seconded by Mr. Holdren that we grant the variances requested. It is requesting variances and those variances have been granted in the past because there are obviously more signs than what is allowed by Parks & Institutions but that has been accepted by previous boards. The size limitation is a 35' difference from what is there and I like the fact that it is not any higher in elevation and I like the fact that the arch above is open and it will be a little bit wider but not any bigger from a height standpoint. The internal illumination piece is already illuminated and hopefully the bulbs aren't too bright and we are just changing it out for something that is going to last a long time. On that basis I would move that we grant the variances as requested.

Maersch: Aye.

Kraemer: Aye.

Freshman-Johnson: Aye.

Holdren: Aye.

Mr. Edwards said this will go to Council for final action on May 9, 2016 at 7:00 p.m.

RIVERWALK AT CHAGRIN FALLS II, 48 WEST ORANGE STREET - REQUEST FOR

A VARIANCE TO SECTION 1125.03(j), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS AND SECTION 1125.04(b)(3), AREA, YARD AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, PERMANENT PARCEL NO. 931-12-018.

Mr. Vitt said this nearly identical with one exception to the one that was previously approved and expired. The previous one also had a third variance and it was a setback. The last time, I think January of last year, we were granted three variances. The exact same variance on the height and the exact same variance on the area of coverage of hard surface in the front yard. The third one that was approved last January was a setback of 28.5' from the right-of-way. We are no longer asking for a variance because we are beyond the requirement, the regulation of 30'. We are going to be 30' or more beyond so we don't require the third variance. So the only difference really is that we are asking for one less variance; the other two are identical to the two that previously existed. Actually, I think the variances have been approved several times but they keep expiring because we can't complete the process within a year.

Mr. Edwards explained that the applicant is proposing a new single-family dwelling in the R2F district. The proposed dwelling is 46' high and Section 1125.03(j) limits the height of the dwelling as measured on the front elevation to 35 feet. Section 1125.04(b)(3) limits the amount of improved area designed for parking and driveways to 25% of the front yard. The applicant is proposing coverage of 60%.

Mrs. Freshman-Johnson said I want to note on record that these two variances, exactly as they are today, were approved but have since expired because the third building has not been started, therefore, the permitting process because of the expiration you have to come back and get another variance in which case you are allowed to come back with the same variances but minus the setback variance that you had before.

Mr. Holdren asked, is that wall that is there now not going to be moved? Mr. Vitt said it is. Mrs. Freshman-Johnson asked, so you are going to move the existing retaining wall? Mr. Vitt said to build this unit it has to be repositioned so it will be dismantled and then re-erected. It will be moved to the west to permit the excavation necessary to build this unit. Mr. Holdren asked, can the new one be built before the old one is dismantled? Mr. Vitt said no. There are actually two walls and you will see the really bold almost eighth inch wide wall, which is the furthest to the west and then immediately to the right of that is a much finer line that has all those anchor screws connected to it. The wall that has the anchor screws is installed first. Mr. Holdren asked, currently it is installed? Mr. Vitt said no. That will go in before we actually dismantle the wall. There is one wall going in but it is not the same wall. The wall that has the anchors in it that wall is approximately 30' deep and the other wall is really about 12' so the bold line is 12' and sits higher than the other wall. The one that really retains the hillside is the one with the screws into the hillside. Mr. Holdren asked, so it's a little lighter shade and that is currently there today behind unit #44 #46? Mr. Vitt said yes. Mr. Holdren said and then where it gets darker that is going to be where it continues on? Mr. Vitt said that is correct.

Ms. Kramer asked, is the elevation of this proposed structure the same as the elevation of the building next to it? Mr. Vitt said no, there is a variation to it. The ARB has seen this elevation. If you look at it, it is the front end gable of the terrace door then the first level the gable is missing on the second. It is actually probably more similar to unit #44. It has more stone on it versus siding. Ms. Kraemer said I was talking about the height. Mr. Vitt said they are all the same. Ms. Kraemer asked, it looks in that area as though the land slopes up in some way? Mr. Vitt said it slopes up and goes up the hill. Ms. Kraemer said visually, isn't it going to be taller than the other buildings? Mr. Vitt said because it is following the grade, the grade rises a foot so if it the same height as the building next to it, it will be a foot higher. Mr. Maersch said what he is saying if you are walking up East Orange Street they are all going to look the same height to you because the road is going up too. This may be relevant or may not but I didn't appreciate the 46'. Our code measures height from essentially the front and it doesn't take into account grade changes on the lot so, as you know, that grade slopes significantly down from West Cottage and so it is not technically 46' high; it is something modified. Mr. Vitt said it is like 31' from the back. That is how steep that slope is.

Mrs. Freshman-Johnson asked, what is going on with the building to the west of this lot? Mr. Vitt said it has been sold to a developer. They did approach me and asked whether this piece would have been available that they could incorporate into that piece. If you remember, Larry Shibley originally had a proposal for this. He actually had a development of sixteen units that included that building but that building and that site is considerably higher so you really have to split the two sites. You can get to the site that I am developing from West Orange from individual driveways or from the east end. But, because of the grade change where that white building is, you can build. It is actually large enough to build probably two, maybe as many as three, duplexes but the problem is that you have to come in from a driveway to the west. That piece can be redeveloped. One of the reasons my variances expired on this piece is I had several conversations with representatives of the current owner, the new owner. Mrs. Freshman-Johnson asked, was the new and current owner advised of these variances? Mr. Edwards said yes. Mrs. Freshman-Johnson said because there has been so much discussion on whether or not the work in the soils right next to it has caused that building to shift and if a developer buys this and knows that you are doing this retaining wall and they have no concern not being here we are not here to tell you how to build a building but that has been the controversy of this site the whole time. I was curious about moving that retaining wall again now you are boring holes and taking soil test and now we are back to this whole thing. Mr. Vitt said their plans are to demolish the building and redevelop the site. The building was damaged long before we came along. In fact, that building has been underpinned twice; once long before we came along. Unfortunately the previous owner was never made aware of the fact that the building had been underpinned. The building cracked, who knows how many years ago, and it was underpinned. They drilled deep into the subsoils and supported the building and the underpinning that was done a couple of decades ago failed and then it was underpinned again five or six years ago. When it was underpinned the second time that is when they discovered that it has been previously underpinned because of structural failure. The previous owner never knew it when he bought it; it was never disclosed. The current owner is aware of the fact that it has been underpinned twice. I have had several conversations with them and then they got involved in another project and I haven't heard any more. We put this on hold and our variances expired. Now we are looking at another window

because the only time we could work on that hill and put foundations in is between June and probably the middle of October so now we are up against it again because by the time I go through the process even though I would get the variances it doesn't mean I can build it because the procedures are I get the variances, I get Council's approval, then I have to go back to the geo-technical engineers and they have to do a new analysis on the hillside based on what we are proposing. They have to submit a report to Tim Lannon either confirming that we are going to complete the compliance of the 1.3 stability factor, which is the standard now for hillside development in Chagrin. The wall that is there now got really close at like 1.27 or 1.23 but it didn't get to the 1.3 and it is a complex issue because I own the bottom half of the hill and there is another owner that owns the top half of the hill. The owner of the top half of the hill approached me and they want to redevelop their site. They can't redevelop their site unless I build on the lower part. I really can't build on the lower part unless they redevelop the top part. The reason is as you go further west the hillside becomes a little steeper and a little bit more complex. To address the slope stability factor of that hill we have to go all the way from West Cottage on the top all the way to West Orange. To achieve the 1.3 several things have to happen. The top of the hill has to have a reduction in mass and you have to increase the mass at the bottom of the hill. When I built on 47 West Cottage before we built that house that is there now we actually lowered the top of the hill by about 5'. We take 5' X 50' X 84 width that is a lot of mass that came off the top of the hill. In addition to that, the series of retaining walls, it looks like we are actually stitching the hillside together. There is a term called slope nailing along highways where they drive 25' long nails into the hillside to act as anchors. In this case we are not driving them in but they are screwed into the hillside. The retaining walls that we are building on the lower part of the hill are screwed into the hillside so rather than the retaining wall being a foot thick it is acting like an element that is 35' thick because the actual surface of it is a foot thick but all the anchors go back in that hill about 35'. For me to be able to justify going to the next step, we have to do two more core drills and then I have to retain the engineer to do a new stability analysis. Before we spend those kind of dollars we want to know that we can get back the same variances that we had previously.

Mr. Holdren said everything you are asking for today has nothing to do with what's going on on West Cottage Street whether you help them develop it or not. You are going to build a wall to the 1.3 standard whether or not you remove earth up top. Mr. Vitt said no. They have to be done together. Unless some mass comes off of the top of the hill, unless the house gets demolished and they reduce, that site comes up off of West Cottage. It has to be dropped down about 5' to the level of West Cottage to take off that mass. I can't build below unless they build above and they can't build above unless I build below.

Ms. Kraemer said I am confused, which house are you speaking of now on West Cottage? Mr. Vitt said the Weingart's house. The Weingarts want to demolish their house and they want to build a new house.

Mrs. Freshman-Johnson asked, so if you get the variance here but they decide not to do this can you build this unit? Mr. Vitt said no. Ms. Kraemer asked, what is the status of that project? Mr. Vitt said nothing. Ms. Kraemer asked, at what point do you say this is too difficult, we've done enough?

Mr. Vitt said by Chagrin's standards that seems like a big hill but in Pittsburgh that is a putting green and our engineers are out of Pittsburgh. Mr. Maersch said they don't have our soil problems either.

Mrs. Freshman-Johnson said none of this was an issue last time we had these variances. This is a new issue in the last year that came up? I don't remember that retaining wall being part of this third and final property. I don't recall that being a part of the discussion. Mr. Vitt said we assumed that we could get to the 1.3. When they run the analysis they run two different programs. In one program we actually achieved 1.31 and the other one I think we had a 1.23. Once you have a 1.23 you can't take the 1.31. We couldn't pick and choose. Then the engineer came back and said the only way you are going to get to it is you are going to have to take mass off of the top of the hill. We had the ability to do that with the other two units because I owned 47 West Cottage at that point and we demolished the house, cut down the hillside, and then put in a massive foundation. I controlled the upper part of the hill and the bottom part of the hill; it was easier. Mr. Maersch asked, you can't get to 1.3 unless they do what you did at 47 West Cottage because you have to take that mass off the hill? Mr. Vitt said we won't know that until we spend money again to have another computer model done on that concept of taking their house down. Before I couldn't give them that option. I couldn't say just assume that house is coming down. Now they want to build on the site.

Mrs. Freshman-Johnson said the timing of this variance seems odd to me. It seems like you have a lot of work to do yet on this and these variances compared to what you've done over there. These are like icing on the cake for what you are trying to do. Why do you need the variances now? This would be like the check boxes at the end of the project to say let's go we just need to make sure we are in compliance. So many things are going to change between all these things that need to happen in the coordination. I feel like in a year from now we are going to be here again like you haven't built that place yet.

Mr. Maersch said I think what drives the application for a variance, as I understand it, is he needs to do something and get a permit from the village and the village says you can't do that until you do this.

Mr. Vitt said for them to do an accurate computer model I have to give them engineered drawings of what we are going to do with that structure and the retaining wall. I have to know where it is, the height and the size of it, and I have to give them the weight of the building. We have to go through a lot of hoops to give them accurate information so when they input all that data into the computer program that they give me an accurate analysis. We are so close.

Mrs. Freshman-Johnson said I am trying to say what is the obviated reason if you couldn't do this what would happen and that is what I am trying to get on record, the purpose of having this variance now with all these other things still to go in place.

Ms. Kraemer said I still don't understand why you need the variance because you are saying that you have to essentially do all of the preparation and all of the engineering to even get the computerized analysis and the approval of the engineer to be able to move forward and you don't want to do that

if you don't have the variances. Mr. Vitt said yes, because the variances have to be very specific. We are so close in getting the 1.3. Everyone has agreed that if I can't get 1.3 we are not going to build. The engineer is saying we want to know specifics what you are going to do on that hillside and that is why we are going through this sequential. I have sixteen core holes on my site and the Weingarts are going to have to drill two on theirs which would complete the so called global stability factor of the entire hill. We are missing two core holes; also expensive.

Ellen Hunt, 56 East Orange Street, spoke in opposition to the variance requests.

Mr. Maersch said I did go back and read all the minutes for all the meetings for this property or the adjoining properties, both 47 West Cottage and Phase I and Phase II were an issue. I feel compelled to vote in favor of these variances because I just don't know what else to do. October of 2009 variances were granted even before that: January 22, 2013, February 26, 2016, April 2013, May 2014. So, if this was a clean slate I might be having a different view of the world because I don't love this project for Chagrin Falls but we are sort of here now. We do have soil problems over there, as we all recognize because we had all kinds of issues including legal issues, but we are at a point now where we have a hillside ordinance that has a certain requirement that you need a 1.3 stability factor. Mr. Vitt is well aware of what he needs to do to get this property built or not built. These variances have been approved by our board before and the Weingart property is new information but it doesn't affect the variances; it actually has no bearing on the variances. It is a fact that the property owners have to cooperate or no one is going to get a 1.3 stability factor under our code. But what the Weingarts do or don't do is unrelated to the variances that are being sought here in my view.

Mrs. Freshman-Johnson said the only thing I am trying to prevent is can you build this unit without changing this retaining wall and doing anything with the retaining wall? Because if you can you have the ability to go and screw everybody at the top of that hill because you can go and you can build this unit with this variance and not do anything with the retaining wall and everybody at the top of that hill will never have his cooperation because you wouldn't put money into it. I just want to make sure that the retaining wall is required to build and that you have to move it to build this unit. Mr. Vitt said we have to reconfigure it to build. Mrs. Freshman-Johnson said and when you reconfigure it you are required to meet the standards of the hill. Mr. Vitt said everybody benefits beyond where they are now because if we can get the geo-technical engineers to confirm that we can reach the 1.3, they don't have that now. Mrs. Freshman-Johnson said I just want to make it clear that this unit can not be built without reconfiguration of that retaining wall. Mr. Vitt said correct. Mrs. Freshman-Johnson said and the retaining wall can not be reconfigured without meeting the standards of our hillside ordinance. Mr. Vitt said correct. Mrs. Freshman-Johnson said therefore, you could not slide this unit in and walk away and say see you later to everybody else. That is how we are understanding the facts to be presented today. Mr. Vitt said nothing will happen beyond this point until we go through all this engineering. If the engineers come back and say that we can't get to 1.3 then that retaining wall stays just like it is. Mr. Maersch said an un-buildable lot. Mr. Holdren said the other two units, they did meet our hillside ordinance of 1.3.

Tom Muscenti, 105 Bell Street, asked is there a problem with the Weingart property? Mr. Vitt said

yes, there is. Mr. Edwards said the Weingarts approached me about demolishing their house. Mr. Vitt said the back half of the house bows out a foot.

Valerie Bertsch, 97 Williams Street, asked when you are talking about the Weingarts up at the top and you down at the bottom what about if when they demolish or redo those apartment buildings next to you? Des that mean the Manly house, which is right above them is going to be demolished as well because of the instability of the hill now? Mr. Maersch said I would venture to guess that as a village we've probably learned a little bit from this project so I think we are probably not going to let people demolish things until we've done, I mean that is the purpose of the hill stability. The new facts that we have now, and we have a hill stability ordinance, it would surprise me if we let anything go on over there before we go through what Mr. Vitt is having to go through.

Moved by Mrs. Freshman-Johnson, seconded by Mr. Holdren to approve two variances related to 48 West Orange Street. Section 1125.03 is the height variance and the limit is normally 35' and the applicant is asking for 46', which is an 11' variance. This variance was approved previously for this same exact height. Also, Section 1125.04, the driveway max being 25% and the applicant is requesting a 60% coverage. This is also a variance that was previously approved at the exact same measurements. The property can not be built without these variances the way they are designed. They are designed to go in consideration of the previous buildings that are directly next door and will fit into the project as a whole, identical style and architecture, of all the units finishing the project in the sixth and final building in the entire development. The variances, although seeming substantial, are actually very relevant to the style of houses, more of a condo/town home style that doesn't have a yard and it has a full driveway that acts as a front landing pad from the street below. So the variance on the coverage is required to fit in with the style, which all the other units in this development have also done. And then the height limit is in the same height restrictions as all the other buildings that are also in this development in similar materiality. So in comparative to a single-family home sitting on a regular R1-60 lot it may seem substantial but on this type of lot and this type of style they are not very relevant to the style and placement of these structures. The essential character would be consistent with everything else that has been built there. Governmental services are kept in check. The owner has purchased the property with knowledge of this but has been working with the city for over five years to develop these types of buildings. The only obviation if they don't get these variances is to not build and it would become an un-buildable lot. This is in the spirit of finishing up the project and helping others that are involved with this hillside development. For all those reasons, I make the motion.

Holdren: I vote aye. I would also like to add that the current hillside stabilization is less than our 1.3 and with these variances the new wall needs to be above our standard of 1.3.

Freshman-Johnson: Aye.

Kraemer: No. I don't believe that this is a reasonable variance and I am at a disadvantage because I know that the same variances were previously

granted. I don't believe that I would have made that decision if I had been a part of the Board of Zoning Appeals at that time. I think in terms of what has already been built there it is what it is. I think every new addition to that hillside in terms of structures is something that has to be evaluated very carefully and I don't think that simply saying well we are finishing the project is enough to justify granting the variance. So, I would vote no.

Maersch: I am going to vote aye because these exact same variances have been approved by the BZA previously and I feel legally and factually bound by that prior decision. This has been a complicated project for the village, for the developer, for everybody involved and if I had a clean slate I probably would not be voting in favor of these variances but we don't have a clean slate. For those reasons, I vote aye.

Mr. Edwards said this will go to Council for final action on May 9, 2016 at 7:00 p.m.

The meeting adjourned at 9:40 p.m.

Rachel Freshman-Johnson, Secretary
lgb