

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
May 9, 2017**

Members present: Fricke, Holdren, Freshman-Johnson, Kraemer, Maersch
Also present: Himes, Markowitz, Edwards

The meeting was called to order at 8:00 p.m. by Mr. Fricke.

APPROVAL OF MINUTES

Moved by Ms. Kraemer, seconded by Mr. Maersch that the minutes of the meeting held January 24, 2017 be approved. Carried. Ayes: Fricke, Holdren, Freshman-Johnson, Kraemer, Maersch. Nays: None.

SWEARING OF WITNESSES

All were sworn in.

LESTER SCOTT, 10 WEST WASHINGTON STREET - REQUEST FOR A VARIANCE TO SECTION 1141.03, CONTINUATION OF PARKING FACILITIES, AND SECTION 1119.02, GENERAL REGULATIONS - ONE MAIN USE PER LOT, PERMANENT PARCEL NO. 932-06-036.

Mr. Himes explained that the applicant proposes to install outdoor seating for the adjacent restaurant use in the rear parking area on his lot. Section 1141.03 requires that off-street parking facilities shall continue unobstructed in operation unless an equal number of spaces are provided in another approved location. Section 119.02 allows the main use on the lot shall be the only principal use allowed by right. There is currently an existing retail sales and service use on that lot so they would be adding a second main use with the restaurant use.

Mrs. Freshman-Johnson said can you explain more about the continuation of the parking facility? Mr. Himes said it is currently parking; it is parking for the salon building. I am not sure how many spaces are there but any parking facilities are required by the code to continue unobstructed. You can't propose parking for a facility and then at some future date turn it into something else and get rid of the parking. Ms. Kraemer said but that is daytime use, correct? Mr. Himes said the code doesn't specify. Ms. Kraemer said but that is when it is being used is in the daytime. Mr. Himes said I believe so, yes.

Jim McSherry, lawyer representing Lester Scott, said Larry Shibley owns the building that the Paris Room is in; the restaurant that Sali has. In pink is the driveway owned by Susan Harris-White, which Sali and her patrons have the right to walk across. And then we have Les Scott's building in

front and in the back. Typically three cars park there during the daytime and it is pretty empty all night. Not even Sali's patrons park back there because you have to go all the way down the little driveway to get there. What Sali is proposing is adding probably six tables on that patio area. When I look at the zoning codes here, in a sense the continuation of parking facilities we are looking at preserving off-site parking, which I understand and I think it is good. The only one parking there at all is Les Scott's employees and it is only during the daytime and it is completely vacant at night. It is being used for parking while Les needs it and we are going to use it hopefully for outdoor dining at night when nobody else is using it. The area will be improved, it will be a nice dining setting, hopefully it will bring more revenue to the village, and I don't see how it is harming anyone.

Mr. McSherry said the one main use per lot and the main use for Les's parcel is retail and the retail zoning allows outdoor dining. Outdoor dining is still part of the zoning use of the area. Technically there can't be two main uses on that same parcel is how I understand the interpretation. The main use during the day will be retail and hair salon and the main use during the evening will be outdoor dining. It will be a benefit to the village.

Mr. Holdren said is there a time that we would have to put on this variance where 5:00 p.m. is the turnover? Mr. Himes said yes, if they are proposing that they would only be using it during a certain time period then it probably makes sense to put a condition on the variance that conforms to that. Mr. Fricke said do you have a preference on a time? Mr. McSherry said typically what we are looking at is 4:30 p.m. Les's people leave and then we will put up the fencing and make it the outdoor dining. Ms. Kraemer said and that is all moveable? Mr. McSherry said all moveable. Ms. Kraemer said so it is stored away each night as if it were never there? Mr. McSherry said yes. Mr. Fricke said where does it get stored? Mr. McSherry said there is room on the side for it. Mr. Fricke said it would just get tucked off to the side of Susan's property or who's property? Mr. McSherry said on Les's property.

Mr. Maersch said what about the weekends? Mr. McSherry said Les is open Saturdays. Mr. Maersch said it didn't occur to me that we would do a time limit on our variance. It would occur to me that there would be a contract with Les that would govern who would use the lot when if we go in that direction and that would govern as opposed to a time limit because you could foresee a situation where, and I don't know the particulars of your establishment and what kind of licenses you have, but presumably you could open in the afternoon if Les weren't using the lot or something like that. That is probably another way to deal with it. Can you talk a little bit about how the moveable panel fence would work and what the surface is going to be? Sali McSherry said we have two ideas on that right now. We would have a cement pad that would be a pretty small pad and my husband is an architect and he came up with the idea of the removable fence where we would put small holes into the cement that the fence would just fit into and then you can take it out and then the months when it wasn't being used it would be filled in. Mr. Fricke said what is the purpose of the fence? Mr. McSherry said we need to confine the area if we are going to have diners. Mr. Fricke said would cars still be able to access that driveway? Mr. McSherry said the driveway, yes. If it is an evening and someone is coming in and doesn't know Chagrin and they turn right into this driveway and you just have fence here and a car would just see if they are in the wrong place or something or will there

be a sign here saying don't go through here? Mr. McSherry said a sign might not be a bad idea. You and I know Chagrin Falls and I think to myself if I was coming into this town I wouldn't be going down that alley without an idea where I was going. My GPS might tell me but I am not sure I am going down there.

Mr. Maersch said has this ever come up before? Mr. Fricke said I don't recall. Ms. Kraemer said what has come up before is evening use. Actually I was looking at the list of variances and I remember when Rick's Café got a variance for after 5:30 p.m. It was a similar kind of thing where they could only do it as an evening use. Mr. Fricke said but they built a permanent structure there. Ms. Kraemer said right, that is the difference. Mr. Fricke said I haven't seen a portable one that goes from a parking lot to a dining area. Mr. Maersch said the other aspect is just sort of the factors. It is essentially two land owners.

Mr. Fricke said I assume Susan's lot there must be an easement of some sort so you can get in and out of the restaurant. Mr. McSherry said there is an easement; it goes back to 1875. Mr. Fricke said for that whole pink area or just accessing the back of the site? Mr. McSherry said access from the yellow. Mr. Fricke said and the easement just goes straight out? Mr. McSherry said it says you are allowed to use the alley as you ingress and egress.

Mr. Markowitz said what is different about this is that I think it is the first time you have a variance where the outdoor dining will be on a separate lot from where the restaurant is operating. That is what Ben and I struggled with trying to figure out what to call this and what the variances really were. Mr. Himes said we have had a number of variances for outdoor dining but not on a separate lot. Mr. Fricke said the variance isn't being sought by Mr. Shibley it is being sought by, well it is the property owner right? Mr. Himes said right, technically because he owns the property. Mr. Fricke said so he could conceivably say I am going to put up picnic benches for my employees. Mr. Himes said they would have to comply with the testimony at the BZA meeting so they are proposing a certain use for this and that will be what the variance will be for. Mr. Fricke said the property owner is the one seeking the variance here, it is not the restaurant owner, it is the property owner on whose property this area sits to accommodate someone else with whom he is cooperating and neighborly and everything else he is seeking the variance on their behalf.

Ms. Kraemer said how many cars park there during the day? Mr. McSherry said three. Ms. Kramer said because there is room for more than that. Mr. McSherry said Les rearranged a few things and there may be another one here but traditionally it has been three cars. There is another parking area to the left of the store itself and there are three cars that can park there too. Mrs. Freshman-Johnson said isn't that where customers park because customers aren't allowed to park where this patio is? That is established for employees only? Mr. McSherry said it is whatever Les wants to do. Ms. Kraemer said it is a private lot.

Mr. Fricke said is this alley used and do you have supplies delivered through the alley? Mr. McSherry said our trucks just go in the parking lot. I have gone into Les's area when I have had like a lot of stuff to take inside and then gone back out. I always park in the large lot. All of our vendors

park in the parking lot.

Mr. Markowitz said what is the arrangement that you have made with Les Scott? Is it going to be a lease? Mr. McSherry said yes. Mr. Markowitz said is that signed? Mr. McSherry said yes. There is an agreement between Les and Larry. This has been going on for two years. Sali has been open for two and a half years and this is finally the Summer that we are going to make that happen. We just haven't gotten the cooperation to make it happen up until this point. We have actually been wasting it for two years and not using it. Mr. Markowitz said you have been leasing the parking area? Mr. McSherry said yes.

Mrs. Freshman-Johnson said today in order to access that parking area where the employees of the salon do they come down the alley and turn in? Mr. McSherry said yes. Mrs. Freshman-Johnson said because you can't come from the parking lot? Ms. Kraemer said you would have to go over a barrier. Mrs. Freshman-Johnson said so there is a barrier there already, is that right? Mr. Holdren said correct. Mrs. Freshman Johnson said so from the west you can't get in so the only way to access this by car is to use the alley. Mr. Maersch said my understanding is that you used to be able to access this lot, the area in green on the map that Mr. McSherry handed us, down the left side of the salon building but Mr. Scott put a foyer on his building so you no longer can access the back patio. Apparently they take advantage of the easement to use the existing gravel drive in pink.

Mr. Fricke said I personally think it is a neat idea. I just worry about if people already access this alleyway to park back there I just don't want to see anyone get hurt if there are waiters and wait staff coming out of these doors and we haven't closed off this alley. Ms. Kraemer said there is only people driving there during the day. You are saying signage might be appropriate. Mr. McSherry said it is not our space to change. I don't mind putting a sign up.

Susan Harris-White said a little bit of history before there is too much confusion. The space that Sali occupies and that building does have an easement to walk across the property. Les doesn't have an easement to use the property. That driveway we do use on a daily basis and we have parking down there for tenants of our buildings. They park here during the day; two to three cars. Mr. Fricke said and these are employees of businesses? Mrs. Harris-White said of properties that we own, yes. They are there when they are open in the evenings sometimes, Thursdays and longer hours in the Summer. They have the right to park there by lease and will continue to park there going forward. There is a possibility, I don't know that we would, but we had blocked this off going underneath our red barn. Our red barn is right here in the parking lot across the street and it has an elevated walkway that connects to the back. The driveway does continue to our property on the other side of that and have used it to access that in the past. We blocked it off after having too many people accessing it but not knowing what is going to happen with the parking situation it may be a way that we will use to access the parking behind the Joseph Banks area and things like that going forward. That is always in the back of my mind. Mr. Fricke said that just worries me more.

Mr. Maersch said I don't share your concern; I understand your concern. It is a gravel drive and it is extremely narrow. To the extent that the concern is that people are going to start driving down

that driveway even if what Mrs. Harris-White says is going to come true and she is going to blow a hole underneath the red barn and access the building behind the Joseph A. Bank, which would seem a little bit of an odd way to go. Even if that happens, I don't think this is going to become a thoroughfare that is going to create a public safety situation. But, that certainly is a factor we have to consider. I don't see the concern given the condition of that drive and where the location is and the narrowness of it. I understand that Hedges is open in the evenings sometimes. In the time I have lived in Chagrin Falls I don't think I have ever seen a car going into or coming out of that gravel drive. It is just not that heavily traveled.

Mrs. Freshman-Johnson said can you speak a little about how this adds to your business? Some people might say, so what it is a couple of tables, but the space that you have in the restaurant is fairly small and this would add 25% more room for business? Ms. McSherry said in Chagrin it is very hard to compete with a lot of the other restaurants because everybody has patios. We wanted to have something where people would come in for dinner but there is a little spot, a small area, where people can wait for a table and have an appetizer or if they have dinner inside they can go back outside and have dessert. Ms. Kraemer said do you know how many tables you are looking at? Ms. McSherry said six tables. There will be four tables of four and two tables of two. Mrs. Freshman-Johnson said how much does your whole restaurant hold? Ms. McSherry said about forty-two. Mr. McSherry said there are twenty-four seats in the dining room and eleven or twelve in the bar.

Mr. Maersch said what are the liquor requirements and the food requirements given the fact that it is not contiguous to your building? Mr. McSherry said part of that structure needs to be there relative to the liquor license and there has been discussions about the liquor and the attorneys but all those decisions aren't made because we haven't gotten this far. The idea would be certainly desserts and appetizers and we would like to find a way to make that work but it has to be enclosed of which it will be enclosed.

Ms. Kraemer said in your application it is a 20' setback. Mr. Himes said the setback is 5' from the property line. Mr. Maersch said they don't need a variance on that.

Mr. Holdren said Ben, is there a dual use for the farmer's market? Mr. Himes said that is all village owned property so that is approved by Council.

Mrs. Harris-White said I can appreciate what Sali is trying to do. I know that I wish she'd open a restaurant in a space where she thought that she could have outdoor dining and that would make a lot more sense. I am going to continue to use the alley and I am going to continue to park cars in the alley as many as I need to. I think that I am bearing the burden of this happening to some of it. Parking is very valuable at this point and being able to offer it to tenants is a bid deal. Hedges does park down there every single day. They like to park by their back door so in the evenings the employees feel secure. It is a store that carries a fair amount of jewelry and they have quite the security system in place because of some of the product that they carry. They don't want the girls walking out and having to walk far. I can tell you that they will continue to park there.

Mr. McSherry said there is nothing in our plans to impede that parking at all. It is nice to be able to cooperate with Les. Mrs. Harris-White said it would mean they need to back into or at least point their cars out because at that point they wouldn't be able to turn around. Ms. Kraemer said if they were leaving after the patio had been set up.

Mr. Fricke said how many cars can conceivably be parked in this alley way? Are there spots here that could be used as parking? Mr. Himes said I don't know. It really wouldn't conform to any modern parking land that we would approve. They just park as many cars as they can. Mr. Fricke said as I recall, it isn't wide enough to have a car and space to go past it; it is only wide enough for one car. The initial alley way you couldn't park there because you wouldn't be able to get around it up until the beginning of the patio. Ms. Kraemer said you are saying it is the length of two cars? Mr. McSherry said there are two cars that could park there. Mr. Fricke said if you parked a car along this wall here you wouldn't be able to get a car past it width wise. Ms. Kraemer said is there a "no parking" sign there already? Mr. McSherry said correct. Mr. Fricke said could you conceivably park cars along the front, somewhere close to the front of the Paris Room? Mr. McSherry said I think basically there are two cars that park in the pink area and in order to get around anybody else you couldn't park those two cars in the back. The two tenants there back in in the morning and there are two cars there and they are ready to go up that and nobody else is going to park anywhere else because if they did that would block those two cars.

Mrs. Freshman-Johnson said separate the facts of the parking, this patio is not where the parking is. Even if the owner's decided to line up cars here who cares. Ms. Kraemer said you still could use the patio. Mrs. Freshman-Johnson said is your only concern about the cars there? The reality is even though this owner here is convenient that people can turn around right now because it is open gravel but Les could put a fence around that whole property if he wanted to creating the alleyway to be exactly how it is shown here. There is no control over that and this is about this space right here and they are just showing that there is an access easement into that restaurant and there would have to be traffic that goes back and forth, which by the way is exactly how you enter that restaurant today regardless of the patio. You can't get there from South Franklin Street so you have to walk across this no matter what to get into that restaurant, which has been operating for several years. Mr. Maersch said I agree with Mrs. Freshman-Johnson. If the easement didn't exist it might be different set of facts.

Mary Ann Ponce, village resident, spoke in favor of the variances requested.

Moved by Mrs. Freshman-Johnson, seconded by Ms. Kraemer for property owner Les Scott at 10 West Washington Street two variance requests for 1141.03, continuation of parking facilities and 1119.02, general regulations - one main use per lot. The presented facts here today is the request to build an outdoor patio that has flexibility in arrangement and style to be used as both a patio and a parking area, which would be why the 1119.02 general regulations - one main use per lot needs to be provided. Because of the multi-use you also need a variance for the continuation of parking facilities. This restaurant is unique in Chagrin Falls by the small nature of its layout in a restaurant and by adding the limited seating on the patio it actually does provide a large reasonable return to

the business at hand increasing it potentially by 30% to 40% on any given time that the restaurant would be using the space. The variances themselves is difficult to call substantial because it is not a measurement, it is more of a use function. As far as substantiality it is more of a yes or no instead of quantity of quantification here. The essential character of the neighborhood actually would be improved. The existing look and feel of the patio is actually pretty bland. The rundown gravel sometimes you wonder is it a parking lot, is it a place for people to linger. It is hard to know what really the space is used for and I think adding architecture features and sprucing up this area would actually quite increase the look and feel of this area right behind the building. The variances would not affect parking of the existing locations at all. It will not affect parking for the multiple owners that go through the alley as well as the owner of the salon as well as the public parking in the lot. Government services would have the exact same access they have today. There are already existing blockades from the west entrance so the access through the alley continues to be the one and only access to this alleyway. The property owner is actually just a business owner looking to do this and so the purchase of property is not relevant in this discussion. The only feasibility is to not do the patio so there is no other options. You can't put a patio anywhere else because of the way the restaurant is located in the back part of this building. The spirit and intent would be to support local businesses by allowing these variances so that they can provide outdoor seating and be competitive in the marketplace here in Chagrin Falls. For all these reasons I move this motion.

Mr. Fricke said are you planning on resurfacing this area? Mr. McSherry said yes. Ms. Kraemer said a cement pad. Mr. McSherry said Sali's husband is an architect and he has two scenarios. Cement is the number one and there is also some special compacted gravel thing. Mr. McSherry said it has to be a very safe surface for us.

Maersch: I am going to vote aye. In my view the two things that stick out for me is I agree with Mrs. Freshman-Johnson that the essential character of the neighborhood is going to be improved. On factor three for me and factor seven I think the spirit and intent of the zoning requirement, particularly the notion in section 1105.03 which sets out the objectives on character of a business and character of uses I think that what we are getting at here is it is a parking lot during the day and it is vacant at night and the fact that we are going to, the proposal is to put a patio, tables, and chairs, out there and allow the diners to enjoy the outdoor environment improves the character of that particular use. I also note, as I just alluded to, that on our 1141.03, which deals with the parking requirements, we are not taking any parking away from the evening stock because even though it is private parking it is not used during the evening. I also would commend the joining property owners or neighboring property owners for cooperating to find a solution here to a problem. So, for those reasons I vote aye.

Kraemer: I vote aye. I think the variance is not substantial. I think the fact that the tables and chairs will be removed during the day really makes this a combined use as the applicant has indicated. While there are some private

parking spaces there I think the delineation of this separate space and the fencing along with the paving of the space would alleviate any concerns about safety and I think that the cooperative use of the property allows the retail use to be supportive during the day and the enhancement of the Paris Room as a thriving restaurant establishment to be supported at night. For those reasons I would support the variance.

Fricke: I would feel better if we had a time constraint or some kind of parameter around when this will become a patio and when it will not be a patio. As I have expressed, I have concerns about safety in the area. I will vote aye. I do believe that there are tremendous signs of cooperation among the property owners and I applaud that. I trust that Mrs. Harris-White's property will still be used as she intends to use it. I express concern that I assume I trust the property owner will take care of the safety of their patrons and their wait staff because I think it is an odd setup to have cars leaving at night while servers are walking across their path. But greater minds than mine have thought about this and I assume that the property owners and business owners will take care of those things. Again, I'd feel better if we had done this that we ensure there were no cars coming in and out while the patio was in place but I will still vote aye.

Freshman-Johnson: I feel like there is really nothing but upside here considering the back of that building is actually not that beautiful to look at and it takes advantage of the space in this town which is limited in our footprint and if it doesn't work out I don't think there is a whole lot that we went through to get here and everybody remains whole and the property owners, I think, have acknowledged that by working together so that everybody can use that space at the times they need to use it. I vote aye.

Holdren: I vote aye for the reasons stated.

Mr. Fricke said if no further action is taken this is final but Council has fifteen days within which to act.

The meeting adjourned at 8:44 p.m.

Wade Fricke, Chairman
lgb