

**VILLAGE OF CHAGRIN FALLS  
BOARD OF ZONING APPEALS  
February 25, 2020**

Members present: Fricke, Holdren, Freshman-Johnson, Kraemer, Rockey  
Also present: Matheney, Jamieson, Edwards

The meeting was called to order at 7:30 p.m. by Mr. Fricke.

Mr. Fricke introduced Andrew Rockey, Council representative to the Board of Zoning Appeals.

**ORGANIZATION**

Moved by Ms. Kraemer, seconded by Mrs. Freshman-Johnson that Mr. Fricke serve as Chairman of the Board of Zoning Appeals for the year 2020. Carried. Ayes: Holdren, Freshman-Johnson, Kraemer, Rockey. Abstain: Fricke. Nays: None.

Moved by Ms. Kraemer, seconded by Mr. Holdren that Mrs. Freshman-Johnson serve as Secretary of the Board of Zoning Appeals for the year 2020. Carried. Ayes: Fricke, Holdren, Freshman-Johnson, Kraemer, Rockey. Nays: None.

**APPROVAL OF MINUTES**

Moved by Ms. Kraemer, seconded by Mr. Holden that the minutes of the meeting held July 23, 2019 be approved. Carried. Ayes: Fricke, Holdren, Freshman-Johnson, Kraemer. Abstain: Rockey. Nays: None.

Moved by Ms. Kraemer, seconded by Mr. Holden that the minutes of the meeting held August 13, 2019 be approved. Carried. Ayes: Holdren, Freshman-Johnson, Kraemer. Abstain: Fricke, Rockey. Nays: None.

Moved by Ms. Kraemer, seconded by Mr. Holden that the minutes of the meeting held August 27, 2019 be approved. Carried. Ayes: Fricke, Holdren, Freshman-Johnson, Kraemer. Abstain: Rockey. Nays: None.

Moved by Ms. Kraemer, seconded by Mr. Holden that the minutes of the meeting held September 24, 2019 be approved. Carried. Ayes: Fricke, Holdren, Kraemer. Abstain: Freshman-Johnson, Rockey. Nays: None.

**SWEARING OF WITNESSES**

All were sworn in.

**Ronnie Kertesz, 17 East Orange Street - Request for a variance to Section 1141.05, Schedule of Required Off-Street Parking Spaces, Permanent Parcel No. 931-13-032.**

Mr. Jamieson said 17 East Orange Street is owned by Step North Equities, represented by Ronnie Kertesz. It is in the Retail Business Zoning District and its previous use was Retail Business. They are proposing to place a restaurant into this occupancy. The unique part about this property is that there is no on-property parking. Historically, it has always been grand-fathered in for any parking requirement on the site. This property is adjacent to the Step North parking garage and has utilized Step North as well as surrounding public parking areas for its parking needs. We are here tonight due to the requirement of a variance to Section 1141.05, Required Off-Street Parking Spaces for Eating Places, Bars, and Taverns. There are two different ways of measuring the required number of parking spaces for a restaurant. One is based on square footage and the other is based on the number of seats. Which ever one is greater is the one that applies. This restaurant, including the proposed front patio and interior first and second floor seating, comes to 74 seats. With that number of seats it requires a total of 64 parking spaces be provided at the facility. There are no parking spaces on this parcel so a variance is required for the entire 64 parking spaces. The parking plan for this project initially went before the Planning and Zoning Commission and it was approved to allow the parking for this restaurant to be provided for in the Step North garage as well as surrounding public parking. When we looked at the parking requirement at the Step North garage, we calculated the current building use and the available number of spaces required for that property. We looked at the M Italian variance stipulating that after hours the top floor of the parking deck be reserved for valet parking for M Italian. We also looked at the proposed hours of operation for the proposed restaurant of 5:00 p.m. and later and then we visited the site several times after 5:00 p.m. to look at the parking conditions, which were very minimal at 5:00 p.m.

Ms. Kraemer said so if you said that the top floor was reserved for M Italian, what does that leave in terms of spaces? Mr. Jamieson said I will have to get you that exact number. We did look at that and we did take those number of spaces out and the number of spaces on the middle level and the lower level was enough to accommodate the 64 required spaces for the restaurant. However, you have to look at the use of the Step North Building at the same time. The Planning and Zoning Commission did review and consider that.

Mrs. Freshman-Johnson said an analysis of the Step North parking utilization by the Planning and Zoning Commission has been completed and the conclusion was that there would be enough parking spots at all hours of the proposed business for the new restaurant to support the required 64 spaces. Mr. Fricke said for dinner only. Ms. Kraemer said after 5:00 p.m. Mrs. Freshman-Johnson said they said they looked at all times, is that correct? I don't know what the hours of the restaurant are proposed to be.

Ronnie Kertesz said I am one of the principals and owners of Step North Equity, which includes the large building, parking garage, and the house. There have been proposed uses in the past for restaurants there. In 1992 there was a variance granted of approximately 54 cars that was intended to be used for a coffee shop and ultimately a coffee shop wasn't built there. The existing building

is approximately 3,600 square feet. We have owned the building for 20 years. Throughout the history of the ownership of the building, there has never been a parking issue between the mixed use. If you recall, Hunters Hollow was there at one time and they had 163 seats and it was over 6,000 square feet where by comparison, this is a much smaller use with 3,600 square feet and approximately 70 plus cars. Mr. Fricke said was Hunters Hollow open for lunch? Mr. Kertesz said yes, they were open all day long. We are here to ask for you to approve a variance for Batuqui, which is a Brazilian Restaurant that is currently in operation in Shaker Heights. This will be their second location. Batuqui is a family-owned business, husband and wife, and they have been in business for 5 years. They will be generating over \$640,000 in wages with 32 full-time and part-time jobs being created. Obviously the 32 people aren't going to be there all at once, it will be a lot of part-time servers, managers, and busboys. They will have a bar and a patio. The patio will be constructed in front of the property and it will be about 2,000 square feet. As a result of there never being an parking there, it creates a practical difficulty. The practical difficulty is to use the property they need a variance of some method. If we were only going to continue with Retail Use it would be a matter of inspecting fire extinguishers and changing the tenant. But, because they are going to be a restaurant with substantial renovations, they do need a variance. They will have the use of the Step North garage. Most of the Step North tenants are office tenants and leave the building between 4:00 p.m. and 6:00 p.m. The use of the building has substantially changed since it was originally built. We haven't had that kind of occupancy since Smith Barney left almost ten years ago. The parking demand has substantially diminished from what it was originally used for.

Mr. Kertesz said the proposed hours will be Monday - Thursday 5:00 p.m. to 10:30 p.m., Friday and Saturday 5:00 p.m. to 11:30 p.m., and Sunday from 10:30 a.m. to 2:30 p.m. for brunch and then 5:00 p.m. to 9:00 p.m. Their use will compliment the parking availability in the parking garages. It is practically empty except for people who park there and go someplace else.

Mr. Kertesz said the building has been vacant for over two years. The retail business throughout the world has changed dramatically with the internet. If you can buy it on the internet the stores are shutting down. If you do nails, hair, or you are a restaurant those types of uses are very popular and that is why you see a lot of new restaurants opening up. We feel that this is a good use of the building. They will be putting a large investment financially into the building and we are contributing, as the landlord, a significant amount of money. This restaurant is a completely different flavor and will bring a different atmosphere to this part of the village and I think it will be a great benefit.

Mrs. Freshman-Johnson said your current restaurant is in a Victorian home restored as well? Barbara Martinez said yes. Mr. Kertesz said if you have been there it will be a very similar concept. They have a patio out front, they have a small bar in front, and then they have tables. It is a very popular restaurant. I believe it will add to the character of the neighborhood, it will provide significant income for the village, and it won't create a burden on the parking. The M Italian valet parking, they use it more on weekends and not so much during the week. We have an agreement. The variance required that we, as Step North, had to enter into the operating entity for M Italian for a lease of the upper level parking garage. It doesn't give them the exclusive use of it, there are

tenants that do park up there, but they run their valet parking back and forth. It is more of an overflow because they do have the lots all around their building. The village is a very walkable community and people tend to walk to where they are going. Some residents walk from their homes and some people park elsewhere, shop, and go to restaurants.

Mrs. Freshman-Johnson said has the village had any issues with the valet parking? I don't know how long the lease is. Do we know how long that lease lasts? Mr. Kertesz said I believe they have a ten year lease. Mr. Jamieson said awhile ago we had some issues when the valets weren't using the garage; they would just valet into the city streets. I think that was an individual problem and we brought it to the attention of the restaurant management and it stopped. I haven't heard of any further problems.

Mr. Kertesz said I know you can't include it in the count, but there are an extraordinary number of parking spaces on the street that are striped along East Orange and you also have the municipal lot across the street. People tend to believe that Chagrin Falls has a parking problem. You probably have enough spaces but they are not convenient to everybody. Fortunately here they are convenient to our property.

Mr. Fricke said where will the employees park? Mr. Kertesz said the employees can park in the building. We have more than enough spaces; there are 135 spaces. They can park on the East Orange garage and they can come off of Cottage and park in the large garage. This will be handicapped accessible. They will have provisions for handicapped to actually get into the first floor of the building. Right now it is not handicapped accessible.

Mr. Fricke said in the past I have heard complaints about crumbling cement perhaps in the middle floor and maybe even the lot off of East Orange. Mr. Kertesz said we have a program every year. Unfortunately, the garage is subject to the weather; it needs maintenance. We spend anywhere from \$25,000 to \$50,000 a year maintaining it. We have a structural engineer who inspects it every Spring and puts together a to-do list. We then hire a contractor to do the work. This last year we actually spent \$230,000 restoring a large section of the surface. This year we are addressing a lot of the underside. It is an on-going maintenance issue. It would probably cost over a million dollars to tear the garage down and completely reconstruct it. When we bought it twenty years ago we spent about \$300,000 completely redoing the garage at that time. With the wear and tear there will be pieces that may fall down but during the Winter we go through and we knock down any of those pieces that we see. The contractor will be starting up again in probably April, as soon as the weather permits, and we will probably spend another \$50,000. It is an on-going issue.

Mr. Fricke said does the restaurant have any potential to open for lunch and what would happen to your parking requirements then? Mr. Kertesz said they could but they don't have current plans to do so. Ms. Martinez said no, we don't open for lunch but we will open on Sundays for brunch. Mr. Fricke said what is the occupancy right now with Step North? Mr. Kertesz said I would say we are probably pushing 90%.

Mr. Rockey said what percentage of the garage would you say is occupied during the day? Mr. Kertesz said I would say 70% of it. Mr. Rockey said do you have any plans coming up to re-stripe that lot because it is getting faded and a little hard to tell where the spots are? Mr. Kertesz said we intentionally didn't do it this past year because with the process of the construction we weren't sure when that was going to end. They were working inside and outside of the garage and we didn't want to ruin the striping. That is one of our plans as soon as they start the work in the Spring time is to stripe. But we want to actually spray the majority of the garage from the inside white just to increase the appearance and make it more pleasing. A couple of years ago we increased the lighting throughout the entire building.

Mr. Fricke said if you ever went to lunch, would you have enough space? Mr. Kertesz said without question. I would not anticipate a problem if they did.

Ms. Kraemer said how many employees would there be at one time? Ms. Martinez said approximately ten.

Mr. Rockey said how many seats does your other facility have? Ms. Martinez said 32 seats plus 6 seats at the bar and 120 seats when the patio is open.

Mrs. Freshman-Johnson said I actually noticed that there is a good portion of your seating that will be on the patio and the patio is only seasonable. It can't be open all year round which during the Winter will diminish the parking needs because when the patio is open and the weather is nicer people can walk more. It looks like there are only 40 seats inside and 40% are outside. Mr. Kertesz said I count approximately 50 seats inside and the patio will be a couple thousand square feet so about 30 plus seats. During the inclement weather the patio is not going to be used.

Craig Bauman, 46 East Orange Street, said if the variance was approved would it be possible to make it conditional on its not being open for lunch and maybe an additional variance if that were to develop? Mr. Fricke said it certainly is possible to make it conditional. We have never had one that came back though. But I don't know why you couldn't if we make it conditional and they decided they wanted to go to lunch and then they would come back and present. Mr. Kertesz said I'm not sure it would necessarily be an issue. Mr. Fricke said I was thinking the same thing in terms of the lunch crowd and the parking in the building and such. Mr. Bauman said regarding the 135 spaces being available, I am assuming that excludes the deck that M Italian is contracted for. Mr. Jamieson said no, the entire garage is 135 spaces. The top level is around 55 spaces, the middle level and lower level total is about 78 spaces, and the requirement is 64 spaces. Mr. Bauman said it is not necessarily accurate to assume that parking on East Orange Street is available because it is always full, as well as the municipal lot across the street. He said there are signs up in the garage saying "park at your own risk, it leaks". If you are a patron coming in to park, is that where you are going to park? Mr. Kertesz said we have never had an issue with people not parking there. Mrs. Freshman-Johnson said that is a risk for the restaurant. We are not here to opine on whether the garage is a good one or a bad one, it is just that that is the available parking. Our opinion on whether or not the parking garage is good or bad is irrelevant to the variance.

Mr. Fricke said Rob remind me, there is no parking on East Cottage Street? Is that correct? Mr. Jamieson said correct. Mr. Fricke said and on West Cottage? Mr. Jamieson said there is parking on the north side but a lot of that is for the residents because there are a few houses that don't have any parking. Mr. Fricke said having lived on East Cottage Street, I wouldn't want people to be parking up and down. The houses are literally right on the road and if there is spillover traffic I would hate to have it forced onto East Cottage.

Anne deConingh, 50 East Orange Street, said I would like to know more about the outside patio and if there is going to be music? Mr. Kertesz said the outside patio will be landscaped, elevated, and there will be a chair lift for the handicapped. I don't know if they have made plans for music. Ms. Martinez said at their other restaurant they have music from 5:00 p.m. to 7:00 p.m. on Sundays.

Mia Becmen, Bentleyville resident and employee of Batuqui, spoke in favor of the variance.

Mrs. Freshman-Johnson said I know as wonderful as the restaurant seems to be, isn't that irrelevant? Does the variance go with the building and they could come in with this restaurant, the restaurant closes in six months, and they put a Pizza Hut in there and the variance stands? Mr. Jamieson said it would depend on the dynamics in what they are proposing. If it is still the same use with the same parking calculation based on either square footage or the seating, which ever is greater, then it would be the same and they wouldn't need a variance. But if there is a change in seating or a change in square footage, which ever one is greater, then they would have to reapply. Mrs. Freshman-Johnson said it is just more of use. It doesn't have anything to do with what restaurant is going in there. It is a restaurant and the sizing of it. Mr. Jamieson said yes.

Mr. Holden said do you have a lease with Batuqui? Mr. Kertesz said we do have a lease signed.

Mr. Fricke said I would like the motion to consider that the variance be granted as to the dinner hours and that if there were to be lunch service that we would revisit that or the owner would apply. My personal thought was to grant the variance conditional upon the stated reason of dinner only and if lunch becomes an issue we would revisit that if they would apply for another variance. Ms. Kraemer said the only thing is that they were also talking about brunch on Sundays. Mr. Fricke said that could be part of the condition is dinner and brunch on Sunday and anything past that would need to be reconsidered for another variance. Mrs. Freshman-Johnson said I disagree. I think we need to look at it at maximum capacity and does it support it any time of day. If you think there is an issue that during they day they can't support twenty cars or whatever you think the restaurant is going to have with all the additional options in town of parking then I think you would deny the variance. I think limiting it is really complicated. What if they want to go to 4:30 p.m.? Do they have to come back and get a variance? I just think that you are starting to put in a lot of parameters that are hard to enforce and it is a judgement call. I think it starts to get really complicated and that is not something that is the intention of our board. I think you should look at what is the maximum capacity. Even though that is not their intention, could they support something during the day? And if you think that is an issue then maybe that is a reason you should deny the variance.

Ms. Kraemer said does M Italian serve lunch every day? Mrs. Freshman-Johnson said yes, absolutely. Ms. Kraemer said and they always use that upper deck? Mr. Kertesz said the agreement we have with them is that they are not allowed to use it until 6:00 p.m. In your ordinance it only requires the valet service to use that during peak business hours and our lease restricts them to be able to start using it after 6:00 p.m. The idea was that that was when the businesses were shutting down and that coincides with your ordinance. Mrs. Freshman-Johnson said so we give them the variance based on that parking plan, which limited their peak use hours. We didn't give them a variance for only certain hours. There is a difference there. We give them the variance based on their parking plan and that variance is applicable for any hours of business.

Moved by Mrs. Freshman-Johnson, seconded by Ms. Kraemer regarding the variance application, the property at 17 East Orange Street, known as the individual building located at Step North, the use of the building is going to be converted into a restaurant from the retail. The current retail calculation, based on zoning, is only 36 required spaces. The use of a restaurant and the size doing the calculation of the grater of the size versus the square footage calculation calculates required parking of 64 spaces of which they have zero and, therefore, the variance is requested for all 64 spaces. Several analysis of optional parking plans have been presented to address the parking possibilities for a restaurant in this area. First the analysis of the Step North parking utilization was concluded by Rob Jamieson and several others working for Council and Planning and Zoning and have determined and concluded, based on their findings, that there seem to be available parking both during the day and specifically after 5:00 p.m. in the evenings and on weekends. Even though Step North is currently about 90% occupied, the parking was deemed to be found not full at any given time during the day and had available spots including after 5:00 p.m. where an entire level of parking, number of spaces unknown and calculated at this point in time, is contracted to be valet for the M Italian Restaurant. There have been no issues with parking availability for the valet for the M Italian Restaurant and the parking lot still has available empty spots at various operating hours throughout the week and the days. The parking, although substantial, the request is substantial since it is the entire requirement. It must be noted that this particular location is not in the Central Business District. The Central Business District has eight restaurants that have zero parking requirements or much less constrained parking requirements for restaurants of this size or greater. Deemed that these restaurants are in a location in Chagrin Falls that is considered a walking neighborhood. A variety of parking options throughout the area create a sense of accessibility without specific parking and doesn't operate like a normal restaurant, which is unfortunately where this restaurant is located in the intention of the code but the application of it is 100 yards away from being realistic. I just want to note that the materiality is only there because of the location of this specific restaurant compared to the majority of restaurants located in Chagrin Falls, which do not have this parking requirement and continue to operate and have accessibility for patrons of this town. The essential character of the neighborhood would actually be enhanced by not having a vacant space. The renovation, the capital investments, and the accessibility of the handicapped improvement to this structure would offer more market and more services into the town as well as bring in more jobs and taxes and business into the town. The variance would not adversely affect the delivery of governmental services and accessibility should be continued to be the same. The owner has been working to reallocate the property's use to the downturn of the retail market and to

return this into a restaurant and a lively hood use. It fits more in the modern times of what is being asked by people living in these neighborhoods. The property's feasibility could not be obviated through another variance. If we deny the variance it is not denying this particular restaurant idea, it is denying a restaurant in total and they would have to revisit and, therefore, they could not carry on without this variance with this idea and the building could remain vacant without any use for the village. They have had tenants come in and out. Again, the circumstances are created by change in evolution of the lifestyle of the modern culture and the retail support is not there and turning this into a useful property with income and accessibility would benefit the neighborhood as a whole. For all those reasons, I make this motion.

Kraemer: I would vote aye. I think it is a substantial variance as Rachel indicated based on the fact that all of the spaces, you need a variance for all 64 spaces. I think some of the compelling arguments that favor the variance are the fact that there was a parking plan approved by Planning and Zoning and there has been a significant analysis of available spaces that would be utilized in the adjacent parking garage. I think definitely the other aspects of the Duncan Factors the character of the neighborhood certainly would be enhanced. Obviously the property owner did have knowledge of the zoning restriction based on the history of this property and there is not another way of obviating the issue except to grant the variance. I think the spirit and intent of the zoning requirement would be observed based on the parking solution that has been discussed. I think there does need to continue to be discussion of an analysis of how the area is impacted by the traffic that will be increased as a result of granting the variance but I think it is an enhancement to the neighborhood and as a result of that the Duncan Factors, while there is a substantial variance the other aspects of the reasons for approving a variance have been established so I would vote to approve the variance request.

Rockey: Aye, especially because this request benefits the village in that we do have a shift in culture. We are moving away from brick and mortar stores everyday and we have a building that has been empty for two years and we are moving forward. It doesn't really realistically have any planning and they have come forth with a substantial parking request but they do have a pretty detailed and ironed out plan and so I vote aye.

Freshman-Johnson: I vote aye. Again, we support a lot of restaurants in this town that have no parking and everybody always freaks out and says where are we going to park and yet people go to the restaurants all the time, even when it is snowing out. So they find a way to get there and it is what makes this town what it is and unfortunately, the way the code is written, it is in a section that requires this parking and although it seems very material there are really only two properties so far. We did give a variance to M, I was part of that. They have a much bigger restaurant. It had a little bit of different accessibility across the



other street but there was a variance granted. They had to revamp their parking plan and they did and so I think with that thoughtfulness this will be a great enhancement and I vote aye.

Fricke: I vote aye as well, for the reasons of the motion. I also find it significant that Planning and Zoning unanimously approved the parking plan with the detailed analysis. I also find compelling that the retail store that was there required 36 spaces and this restaurant only requires an additional 28 and I find perhaps most compelling the fact that the applicant owns the building, the parking lot, and Step North which all stand to win or lose if the parking doesn't work. So, they have an interest in making this work as well. So, I vote aye.

Holdren: I vote aye, for all the reasons stated.

Mr. Fricke said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

**Marianne Conway, 430 Solon Road - Request for a variance to Section 1151.02, Establishment of Buffer Area Setback and Boundary, Permanent Parcel No. 932-24-061.**

Mr. Jamieson said this is in the R1-100 zoning district. The entire back yard backs up to the Chagrin River and almost the entire back yard of the property is within the riparian zone of the river buffer. The applicant is proposing to build a patio and a retaining wall to protect the property all within the riparian zone. Neither of these structures will impact the flow of water but they are structures within the riparian zone and require a variance to Section 1151.02.

Marianne Conway, 430 Solon Road, said I don't believe that my request is going to in any way infringe on the beauty or the flow of the river. The main reasons for my request are for the safety of myself, my guests, and my grandchildren. At the edge of the property there is corrugated steel wall that holds back the river, very similar to what you see in the flats. The property goes right up to that. It is an inch or two above ground and then there is a 4' drop to the river, at normal river levels. You if you have kids playing or if you have adults who maybe had a drink or two and they get too close to that little lip my concern is that they are going catch that lip on their foot and fall into the river. It is for that reason that I not only want to put up a patio but I would also like to put up what they call gabions which would be very beautiful because it would be river stone, it will be encased, and like a metal box sort of. The river, if it gets up high enough, will be able to flow through the gabion. When I was speaking with Tim Lannon, village engineer, he was saying that he would prefer if that wall, it is just a 2' or 3' wall to keep people from running into the river, would let water through. A gabion would be attractive but also it would let the water flow through and, therefore, would not impede the flow of the river at all. I would not in any way want to put anything into the river that would be harmful or in any way make it unattractive or change the flow of the river. That is a concern of mine as well as yours.

Mr. Fricke said the idea is you are going to build steps because the flow is such that you are worried about children and others who would slip and fall so you are going to have steps and then you are going to level off a patio so you are adding steps and a level patio to alleviate many of the concerns you are talking about in addition to the river issues.

Ms. Conway said actually my deck is in the buffer zone. There is also a retaining wall that would be needed. Ms. Kraemer said how long is the retaining wall. Ms. Conway said the circumference of where the patio will be is probably 10' and then the way that this is done to make it more beautiful is that it extends out this way a little bit so I am going to make a guess of 15' - 18' but the retaining wall will be this much here but over here it is going to be maybe just rocks almost.

Mrs. Freshman-Johnson said and all the existing structures that are back here to help with the river actual cannot be touched. Is that correct? Ms. Conway said yes, that is correct. There is no plan to touch them.

Mr. Holdren said where are the rock cages that you are talking about going. Ms. Conway showed the location on the drawings. Mrs. Freshman-Johnson said the gabions have been confirmed that they will be on the inside and the structural reasoning around them being able to handle the current is so they wouldn't get, you know if you put a regular retaining wall or something that can't handle water it might ruin the structure quicker over time. The gabions are designed to take in water and still remain structurally sound. Ms. Conway said what you are saying is accurate but also the gabion wall is so that any structure that I put up next to the river will not impede the flow of the river so the wall has to be water permeable in order to not impede the flow of the river as well as to keep it standing too. Mr. Fricke said who's idea is the gabion wall? Ms. Conway said I think the gabion wall was the idea of the people who made the plans.

Mrs. Freshman-Johnson said in other words, she wants this somewhat of a wall there for safety reasons but you can't put a solid wall there because if the water comes up it doesn't work correctly with how the environment is going to be around it so you have to design something that can let the current go through. Mr. Fricke said I am just curious because you already have a massive wall there now. Ms. Kraemer said that is the interesting part because that was done because I think the bank was going to be eroding. That was an erosion issue back in the day. Ms. Conway said yes, I believe so. Right now that wall is sort of like when you go to Chipotle where they have that steel thing on the wall that comes up about 4' above the river. Mr. Fricke said it looks like it is way higher than the grass level and it looks like the grass is sloping down. Ms. Conway said it is not; there is a little lip there. She said that river is supposed to be very deep there and there are also snapping turtles.

Mr. Edwards said Tim Lannon and I did visit with the applicant last Spring and talked about concepts. Mr. Fricke said we are very sensitive about building in the river buffer zone and this is blatantly right in it. Mr. Edwards said there was a variance granted for this property, I don't know the specific date, to put an addition on this house.

Mr. Rockey said gabions are pretty common in river situations; you see them all over the place

holding back embankments.

Ms. Kraemer said has there been erosion there over time? Mr. Edwards said no, not with that wall. Ms. Kraemer said next to the gabion? Mr. Edwards said the wall there has really helped. Ms. Kraemer said and the reason it was placed there is because that is where the river turns so that is where you would see the erosion. Mr. Edwards said the erosion was to the north. Ms. Kraemer said but I am sure that over time it has gotten steeper back there.

Moved by Ms. Kraemer, seconded by Mr. Holdren that we approve the variance request at 430 Solon Road with respect to a variance requested for construction in the rear yard of that residence and it is a variance to 1151.02, the River Buffer Ordinance. The applicant has made a presentation with respect to the reasons for construction of a gabion wall and step that will enclose and protect the rear yard of the residence. We have already established that a portion of the existing deck was granted a variance from, I believe the rear yard setback, and a good portion of this property is already in the river buffer area. In terms of the factors with respect to the variance request, would the property yield a reasonable return without the variance being granted? Yes, it would but this will enhance and create more safety to the rear yard of the residence. I would say the variance is substantial because we are already sort of in the river buffer when you look at the back yard itself. It is not going to impact the essential character of the neighborhood and, in fact, I would say that it probably is going to, if anything, improve the river bank and perhaps also have a side benefit that it might control some erosion issues there. It will not adversely affect the delivery of governmental services. I don't believe the property owner purchased the property knowing of that zoning restriction. There is not really another method for enclosing that property and keeping the back yard and the rear yard safe because it is already in the river buffer area. It does impact the spirit and intent of the zoning code by improving the safety and the quality of the residence with respect to utilization of the rear yard. It is not really based on self-created circumstances because in order to enjoy and be able to have piece of mind in living in the rear yard with that proximity to the river and the drop off there it is a way of making that a safer space. So, for those reasons, I would move that we grant the variance request for that property.

Rockey: Aye, because I think that it does improve the property value of the house and protects the owner's longevity and ability to live there. And it does offer substantial safety benefits to the property and that she purchased it not knowing that this was going to be problem. And so, aye.

Freshman-Johnson: Aye. I think it is a great enhancement to utilizing the space. I think it is going to look awesome and you should take advantage of that view you have. It is zero impact, it is just improving everything. I vote aye.

Fricke: I agree. I would vote aye. I do recognize that the variance is highly substantial since the entire house literally is in the river buffer zone. But I agree, for all the reasons stated. I think it is a substantial enhancement safety wise and other wise.

Holdren: I vote aye. Actually, I think it is not substantial because I think we are granting a variance to build two retaining walls. So I think it is not impacting the river buffer that much so I look at it as not substantial. But, either way, we are all in agreement. Mr. Fricke said the patio is also in the buffer zone. Mr. Holdren said I guess that needs a variance also but I think this is actually going to make the reason for the river buffer ordinance is so it doesn't flow into the river. I think this is actually going to help it by building two walls. Aye.

Kraemer: Aye, for the reasons stated.

Mr. Fricke said this action will be final within fifteen days unless appealed to Council by a petition of three or more Council members.

The meeting adjourned at 9:04 p.m.

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Wade Fricke, Chairman  
lgb