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VILLAGE OF CHAGRIN FALLS BOARD OF ZONING APPEALS February 26, 2013

Members present: Fricke, Holdren, Williams, Loomis, Freshman-Johnson
Also present: Himes, Mayor Brick, Patton, Newell, Rogoff, Subel, Evans, Lane,
Edwards, Lannon

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

Ms. Lane swore in Rachel Freshman-Johnson as a new member of the Board of Zoning Appeals.

APPROVAL OF MINUTES

Moved by Mrs. Loomis, seconded by Mr. Williams that the minutes of the meeting held January 22, 2013 be approved. Carried. Ayes: Williams, Loomis, Fricke, Holdren. Nays: None.

SWEARING OF WITNESSES

All were sworn in.

RIVERWALK AT CHAGRIN FALLS, WEST ORANGE STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(e)(f)(g)(j), AREA, YARD, AND HEIGHT REGULATIONS; MAIN BUILDINGS, AND SECTION 1125.04(b)(1)&(3), AREA, YARD, AND HEIGHT REGULATION; ACCESSORY STRUCTURES, PERMANENT PARCEL NOS. 931-12-018, 931-12-019, AND 931-12-020.

Mr. Himes explained that the development had previously received variances back in October of 2009 for building height, hillside disturbed area, lot coverage of main buildings, driveway coverage, shared driveway, and rear setbacks. Due to various reasons the project has been redesigned to have three single-family units in the configuration that you've seen and was presented at the last meeting. The variances for this redesigned plan include height, Section 1125.03(j) limits height to 35 feet and the applicant is requesting a height of 46 feet. Section 1125.03(b)&(c) for lot width. The code requires a 50 foot lot width and unit #44 has a 44 foot lot width and the other two meet the code. Front yard setback for unit #48, the code requires a 30 foot front yard setback and they are proposing an 11 foot front yard setback for that unit. Section 1125.03(g), required side yard is 3 feet and unit 48 is proposing a 1 foot side yard. Section 1125.04(b)(1) requires each residential unit be shared by a single driveway and the applicant is proposing to have a shared driveway for all of these units. Section 1125.04(b)(2), the code limits front yard coverage by the driveway to 25%. Units 44 and 46 have proposed yard coverage of 90% and 86% respectively. They have previously been granted a variance from the hillside ordinance. That variance has been used; the hillside has been disturbed by grading. The condition that they obtain geo-technical engineering testing and engineering

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approval by the village is still in effect and they are working through that now. In fact, the continuance from the last meeting was to give our engineer time to review the data and conceptual calculation that they have submitted. The village engineer is here tonight.

Mr. Fricke said technically the issue of the retaining wall is not before us as to the question of whether these various variances are warranted or not. But what we decided was, because the issue of the retaining wall so significant, that we really didn't know how we can opine on these variances without a further discussion about the stability of the hill and the retaining wall. We asked the village engineer to thoroughly review the design calculations and report back. We have twelve pages of facts that we found as to the variance request at our last meeting so I would really like to keep the focus on the engineering request. Perhaps Mr. Vitt if you want to give a summary of your proposal to add to what Ben has stated.

Mr. Vitt summarized the variances he is requesting that were discussed in detail at the January 22, 2013 BZA meeting. Mr. Vitt said between Phase I and Phase II we had drilled sixteen test holes and we have boring logs for sixteen test holes. There were four borings in the first phase. The drawing does show the entire Phase I and Phase II bore hole locations. We also have a profile of bore holes near the western property line. We put inclinometers in two of the bore holes along the north property line. Of sixteen bore holes we were able to discern a potential slip plane in four or five. Twelve of the sixteen did not have any evidence of this slip plane. The slip plane is simply the unusual deposit of material that may cause some movement between the soil layers. We did not find any evidence of that material in Phase I. There are twelve holes in Phase II and four or five of them had this evidence of this material.

Mr. Fricke asked, are those four or five in the same area? Mr. Vitt said they are essentially in the northwest corner and that is why we are pulling this building forward from this locations and turning it 90 degrees. What is important is that even though we only found that material in a limited number of the test holes, the design standard assumes it is throughout the site. Even though the whole area doesn't show that material you design for the worse case scenario. As I indicated at the last meeting we know that, and there has been a concurrence that the slope stability factor of safety prior to any work on the site was about 1.0. Right now it is between a .95 and a .97. We have agreed that we would return the site to the preexisting condition as a minimum, which would be the 1.0. I won't build Phase II unless I have assurances from the engineers that we can achieve a safety factor of 1.3, which is a substantial benefit to the adjacent property owners as well as to the residences that are being built in this project. Our engineers have given us assurance that they can achieve that minimum of 1.3 factor of safety.

The specifics of the wall construction have not yet been determined because first we had to get concurrence on the approach from the Village Engineer. The next step is obviously getting the variances that lock in where the units are going to be because they will decide where the wall is going to be. With the location of the wall determined and knowing what the boring logs indicate on all these borings that are adjacent to the wall, the engineers can then design a wall of appropriate depth to offset any concerns over that slip plane.

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Mr. Fricke asked, when you were here a month ago you had spoken specifically to pilings going into the earth 50 feet back and whole bunch of specifics as to the design. Am I hearing you now say there are issues with that but the engineers, if we grant the variances, will be redoing some kind of yet determined wall? Mr. Vitt said this has evolved, even in this last month, and a lot of this is continuing with the dialog between my engineer who is with Rizzo and Associates and the Village's geotechnical engineering consultant Mr. Esser. He said there has been discussion over the depth of the wall and the design possibilities and concepts. He explained various the different design concepts for the wall that are in response and acknowledgment of Mr. Esser's concerns. Mr. Vitt explained the economics of the retaining wall versus the economics associated with the need for the variances. He said the cost to do the 1.0 factor of safety is probably 20% of what the cost would be to build the retaining wall to a 1.3 factor of safety.

Mr. Lannon said over the course of the last month we have exchanged comments and received responses to comments and started with the type of wall. Initial comments were related to a sheet pile wall with tie backs and it is not a whole lot different now drilled piers with tie backs and a lagging type base between piers. There are some slight differences. The important aspect still being the imbedment depth of the wall, how deep it is below potential slip plates, the strength of the tie backs, and how that is calculated, how that is tested to make sure the top of the wall is protected from being pushed over and also the strength of the face of the wall, whether that is sheet piling or lagging between piles. Some of the other aspects that have filled in over the last month is the calculation of factor and safety. The 1.3 being an agreed upon number especially considering the amount of data that has gone into that calculation. There is initial agreement on the soil parameters in geo-technical characteristics from the testing. It is very strong data. The site is well covered with soil borings. There is an agreement on how that data is being applied to the wall design but what has also filled in is how the factor safety is applied to the individual aspects of the wall such as the tie backs, embedment depth, and the strength of the face of the wall. Initially it was more of a global analysis to develop that 1.3 and what is filled in in the most recent round of calculations is individual aspects. There is definitely a comfort level now. Rizzo has applied those correctly and is definitely prepared to design a wall with that 1.3 factor of safety.

Mr. Fricke asked, do you and Mr. Esser work together? Mr. Lannon said correct. Mr. Fricke asked, do you feel comfortable that you have seen adequate information? Mr. Lannon said yes. Mr. Fricke asked, and that is a continuing process? Mr. Lannon said yes, Rizzo submitted a conceptual design and conceptual calculations. There is a lot of detail there but it is clearly not a final design. They are not at that stage. The next round is actually getting into more of a final design stage where you consider how the rear wall of these buildings will interact with the retaining wall design and whether that is repetitive or whether the retaining wall has the full strength on its own.

Mr. Fricke asked, when we refer to a slope stability factor of 1.0, is that a village requirement or is that the slope stability prior to the beginning of this project? Mr. Lannon said the Village has no defined standards and most communities do not have standards for this. The 1.0 was the calculated factor of safety in preconstruction conditions.

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Mr. Fricke asked, are you in agreement with Rizzo's analysis that 1.0 is the preconditioned slope rating and as discussed tonight that would be sufficient to get to that 1.0 slope stability factor? Mr. Lannon said we are in agreement in the original calculation yes. For a wall design a 1.0 would not be satisfactory so they are talking about the 1.3.

Mr. Fricke asked, if we are talking about the latter plan, if they are do not get the variances and don't proceed with the building, do you agree that they would need to go back to a factor of 1.0 and the plan as described would be sufficient from what you understand to get that slope back to a 1.0? Mr. Lannon said that is what the Village originally said, that the slope would be left in no worse a condition for that property and surrounding properties. A 1.0 factor of safety would meet the initial Village criteria.

Mr. Fricke asked, how much more stability are we building in at a 1.3 versus 1.2 or 1.8? Mr. Lannon said I don't have the numbers but one other way to think of it is potential for failure where a factor of safety 1.3 is in the range of one in ten thousand chance of failure versus one in a thousand for a factor of safety of one.

Mr. Fricke asked, have you seen other projects in the Village that have a slope rating of 1.3 or greater? Is this an extraordinary measure? Is this a standard measure do you think given the property? Mr. Lannon said I think an acceptable standard is 1.3 based on the input data on this project. Mr. Fricke asked, are you comfortable with what you've seen that the builder will be able to get to a 1.3 standard? Mr. Lannon said yes.

Mark Puianno, of Carter Homes LLC, asked Mr. Vitt specifically where the retaining wall will be located? Mr. Vitt explained to him where it will be. Mr. Puianno said that he is happy to see this.

Jim Weingart, 51 West Cottage Street, asked questions about the borings. Mr. Fricke asked, will there be additional borings taken and what happens to the borings as the construction is going on? Mr. Vitt said our engineer does not feel that any additional borings are necessary. In fact, for this size site, there are many more borings than typically would be provided to the engineers in the course of designing that type of wall. It is a very well studied site.

Mrs. Loomis asked, is there a specific reason why you had two different companies do the borings? Mr. Vitt said when PSI, the initial company that did the borings, was named in the original lawsuit, they felt it was in their best interest not to continue as a consultant on the project. That is when we located Rizzo and Associates.

Mr. Weingart asked if Mr. Vitt can give him a letter guaranteeing that we are not going to see my sandstone and the back of the property degrade further on into the next five to ten years? Mr. Vitt said no because we look at your patio and it appears that there have been many attempts over the years prior to our involvement on the site to retain the hillside immediately adjacent to your patio. There is evidence of rebar and conduit and other materials used to try to retain the hill. Obviously that is on your property and we have no control over that. Mr. Weingart stated his opposition to the

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variances requested.

Mr. Vitt was asked why he needs the height variance. Mr. Vitt said it is because the Village measures from the front elevation. The square footage would drop down to 1,800 square feet if the house was 35 feet tall at the front. I can't sell 1,800 square feet units for \$900,000. I can't eliminate the garage level, I can't eliminate the living room level, I can't eliminate the bedroom level so literally I just don't build Phase II.

Mr. Williams said the way our code is written the 35 foot level is that the elevation is measured from the front and our code does not take into account topography, which is something that we have considered in the past whether or not it is relevant to the particular situation and the second consideration is relevant to the height of the other structures surrounding the applicant's request for a height variance in terms of taking into scale. I think in this particular situation when Larry Shibley was here we talked specifically about that topography issue and where height from the front of the elevation was going to be measured whether 35 feet, or in Larry's case 47 ½ feet, was what he was looking and that was the argument that was being made back then.

Ellen Takas, 140 Division Street, spoke in opposition to the variance requests and she asked about the access to Williams Street because there are an awful lot of variances and no hardship. The board should take into account neighborly good will.

Mr. Fricke asked, what is the engineer's role and the village's role as the retaining wall develops? Mr. Himes said the engineers are talking right now about the conceptual design. Once an agreement is reached on this, and from what Tim said they are very close, and they agree on the approach, the developer will begin final design on what will actually be put in the ground. That final design will also have to be reviewed by Tim and Al Esser, our geo-technical consultant, and we won't issue permits until they are satisfied with the design of the wall and that it meets the design standards and factor of safety that they found appropriate. We would continue to inspect as the installation was going in. Mr. Lannon added that he would inspect critical structural aspects and also require the design engineer to be involved in inspection.

Mr. Fricke asked Mr. Vitt if he had any other comments. Mr. Vitt said regarding access to Williams Street it is a public dedicated street. I have as much right of access to it as anybody does. As far as a great amount of traffic, the width and condition of Williams Street is better than West Cottage Street and will have considerably fewer houses and fewer vehicles accessing Williams Street. We, in fact, this past year did improve the base and re-pave Williams Street along our frontage recognizing that we were going to be using it for an access point. It also substantially improves the situation with respect to West Orange not having an access driveway or having literally nine separate driveways entering West Orange Street.

Mr. Fricke asked, has the police chief opined on the traffic flow? That is a busy corner at Main and Orange there. Mr. Himes said yes, both Police and Fire Departments have looked at this site plan and do not have any safety concerns.

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Erin Manly, 61 West Cottage Street, asked what protection will there be to the hillside while the wall is being constructed. Mr. Vitt said if I can't achieve 1.3 and if I can't achieve a 1.3 at a workable cost then we won't build Phase II. Mr. Fricke asked, will you know that you can't get to 1.3 before you dig into the earth? Mr. Vitt said absolutely. Mr. Fricke asked Mr. Lannon, is that your understanding as well that engineering is such that you will be able to know with some degree of great confidence that once the earth is being moved that the project will succeed? Mr. Lannon said yes and part of the discussion that has gone back and forth between the engineers is how it is actually constructed. An option being considered is construction from the top down so that there is never an exposed face of earth that could collapse.

Moved by Mr. Williams, seconded by Mrs. Loomis to recommend approval of the applicant's proposed variance requests to Council. The developers site plan change and redesigned retaining wall has necessitated the renewal of certain previously granted variances and the granting of three new variances. It should be noted that the current variance requests represent a reduction in size and scope from the previous approved variances for this project. Consideration of the variance requests takes into account the significantly redesigned and re-engineered retaining wall as essential for improved hillside stabilization and satisfactory design of the retaining wall must be agreed upon by the village engineer and the applicant's engineering firm. Comprehensive geo-technical data accumulated between 2011 and 2012 has been agreed upon by both the village engineer and the applicant's engineering firm and is being used to calculate a design parameter of the proposed retaining wall. Further, I think the applicant is proposing to improve the slope stability factor to 1.3 over its natural state of 1.0 as defined by the two engineering firms. Also, the proposed enhanced design parameters have contributed to the applicant's decision to redesign the site plan for Phase II. It should be noted that Phase I of the project has already been completed. The recommended variances are to Section 1125.03(j), building height. The code has building height limit of 35 feet and the applicant is requesting 46 feet for a total variance of 11 feet. Phase I of the project was granted a variance of 47 feet originally. Phase II has the same topographical issues as Phase I and that the slope of the site results in counting the basement and the building's height calculation. Granting this variance will also maintain the architectural integrity of the overall project. Section 1125.03(b) and (c), lot width, the code requires a minimum lot width of 50 and the applicant is requesting 44 feet for unit number 44 for a total variance of 6 feet. This variance allows consistent spacing between the buildings in Phase I and Phase II. Section 1125.03(f), required front yard, the code requires a front yard depth of 30 feet and the applicant is requesting 11 feet for unit number 48, the western most building, for a total variance of 19 feet. Because of the wall design change and aesthetic considerations for the overall project design the building was turned 90 degrees from its original position counterclockwise and the front of the building now actually faces east down the length of the driveway. The change in the wall design does not allow for the building to be placed in its original location, which was in line with the other buildings in the project. This variance further improves the garage entrance and egress relative to unit 46 next to unit 48 maintaining a safe distance between the two buildings. Section 1125.03(g), required side yard, the code requires a minimum side yard depth of 3 feet and the applicant is requesting a 1 foot variance for unit number 48. Again, this is the western most building. The total variance request is for 2 feet. Building's placement is directly at the end of the shared driveway and a practical impact on this particular

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section is negligible. Placement also maintains similar separation between the buildings of approximately 12 feet throughout the whole project. Section 1125.04(b)(1), shared driveway, the code requires a residential building to be served by its own driveway. This variance request was previously approved for all the buildings within the project. The shared driveway access in this project will actually improve the safety of the entrance and egress on Williams Street and Orange Street. As the applicant mentions, a single driveway is better than nine driveways existing on to West Orange Street. Section 1125.04(b)(2), driveway coverage, the code allows for a maximum driveway coverage of 25% and the applicant is requesting 90% and 86% for units number 44 and 46 respectively. Now the buildings will use a shared driveway with the other buildings in the project which is located in the front yard necessitating this increased coverage. Generally, the village's fire chief and police chief have reviewed the revised site plan and are satisfied with its safety and accessibility to fire and rescue personnel. Other considerations in regard to our assessment of the applicant's practical difficulty with the proposed project and associated variance requests. Will the property yield a reasonable return or will there be any beneficial use of the property without the variances? The applicant has stated that he will likely terminate Phase II of the project if the requested variances are denied due to the escalating costs associated with it. There is no other plan that will allow the owner to move forward with Phase II and will likely result in the property remaining undeveloped and unimproved. Is or are the variances substantial? Relative to substantial challenges of the site itself, the variances collectively are appropriate for the overall development and surrounding area. The present variance requests actually reduce the size and scope of the previously granted variances specifically for units 44 and 46, which are approximately 4,000 single-occupancy dwellings versus the previously designed 6,000 square foot duplexes that required variances to the maximum 27% lot coverage requirement of the code. That is not required in this instance. Would the essential character of the neighborhood be substantially altered? The project would only be half finished based on the original design reviewed and supported by the village and its original proposal. Completing the project I think is valuable and beneficial to the improvement of West Orange Street overall. Will the variance adversely affect the delivery of governmental services? No, in particular the fire chief has found that no detriment to the delivery of safety services will result from the revised site plan. Can the property owner's predicament feasibly be obviated through some other method other than a variance? Again, the applicant has stated that the project can not succeed economically without the requested variances and will inevitably lead to the termination of Phase II. Will the spirit and intent behind the zoning code be observed? Approval of the requested variances will allow for the best possible resolution to completing a scaled back Phase II and the overall improvement of West Orange Street corridor and the surrounding properties to the hillside. It will also allow for the construction of a retaining wall, which will likely arrest the potential for the slip plane that was identified in earlier testimony. Finally, recommending approval of these variances by Council is contingent upon a satisfactory design and construction of a retaining wall that stabilizes the slope for the benefit and safety of the uphill properties as well as the new property owners within the Riverwalk Town Homes project. In this I believe that the substantial justice will be done by granting the variance requests.

Mr. Fricke said I would like to include the minutes from our last meeting, which had 12 pages of fact and the additional request for the variances that we listened to last month.

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Williams: Aye.
Loomis: Aye.
Fricke: Aye for the reasons of the motion.
Freshman-Johnson: Abstain.
Holdren: Aye.

Mr. Himes said this will go to Council for final action on March 11, 2013.

ORANGE WEST PROPERTIES LLC, 22 WEST ORANGE STREET - REQUEST FOR A VARIANCE TO SECTION 1137.04(b), YARD AND BUFFER REGULATIONS, SECTION 1141.02, OFF-STREET PARKING FACILITIES; WHEN REQUIRED, SECTION 1141.05, SCHEDULE OF REQUIRED OFF-STREET PARKING SPACES, AND SECTION 1141.09(c), ACCESS DRIVES TO PARKING AREAS, PERMANENT PARCEL NOS. 931-12-024, 931-12-025, 931-12-026, 931-12-028, AND 931-12-029.

Mr. Himes explained that this is the former Ski Haus property on the north side of West Orange Street at Williams Street. The property is zoned retail business. The applicant proposes to convert 3,073 square feet of the space from retail to restaurant use. Restaurant use is an allowed use in the district, however, our code Section 1141.02(a)(1) requires that parking must be divided pursuant to the code requirement when there is a change of use going from a use that has a lower parking requirement to a higher parking requirement. Section 1109.05(b)(2) of our code requires a new parking plan whenever a use is changed to one that requires more parking and the Planning Commission will have to approve that parking plan. In this case their parking plan includes some conflicts with the code.

The restaurant use itself would require 62 spaces based on the floor area and our code requirement of 1 parking space for every 50 square feet and then the remaining 7,960 square feet of retail space requires another 64 parking spaces based on 8 parking spaces per 1,000 square foot requirement. For total parking, the code required parking requirement of 126 parking spaces. The parking plan that was submitted shows 35 parking spaces plus 3 compact car parking spaces. Seventeen of those spaces do not meet the code for the required buffers to adjacent lot lines and the 3 compact parking spaces do not meet the code required 9foot by 20 foot dimension for a parking space. Section 1141.09(c) of our code requires an access drive be located at least 50 feet from the intersection. There is an existing access drive on to Williams Street but is located basically right at the intersection of the right-of-ways. There is a 10 foot buffer requirement to the right-of-way line on Williams Street and a 10 foot buffer to the residential properties on the north side and a 5 foot buffer on the south side of the Main Street parking area adjacent to the Phillips Marathon Station.

Rick Siegfried, RSA Architects, said the first thing that we want to emphasize with respect to this

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and these variances sound really significant. We want 10 feet out of 10 feet. This is all in the existing condition. This is the way it was when the Ski Haus had it for years and it has been that way, it has been parked this way all along until now. We have added the handicapped spaces because that is a village requirement that wasn't evidently in place when the previous parking plan was in place. So, we lost 3 spaces by adding the handicapped and we added these 3 compact car spaces.

With respect to the buffer along Main Street, the buffer along Williams Street, and the buffer along the residential property in the back, and the piece over on North Main, and then up against Phillips Automotive those are in place and have been in place and our understanding is if Mr. Kertesz found a tenant to come into the building tomorrow and take the whole building it would all just stay that way.

The Williams Street access is not 50 feet away from the corner, but again, it has been that way forever. You'll have to go across the street to see the same thing. Go down to the corner of West Orange and Main Street and you will see it again. If you go across East Orange Street you will see it again. If you go to the gas station you will see it again. It is not an unusual condition.

With respect to the location and the layout of the parking, we don't intend to make it any worse we think in a lot of ways we are making it better. The gravel lots are going to be paved, it is going to be striped, and the access will be a lot clearer and easier to read.

Mr. Siegfried said with respect to the number of parking spaces, it is triggered by the addition of the food service establishment. When you look around Chagrin Falls at food service establishments that is a big part of who we are. They are all over the place. Nobody has any parking. We have more parking potentially if this happens than anybody else in the village. At the time when the central shopping district was established the line got drawn down the middle of West Orange Street and this stayed in the retail business district and Step North stayed in the retail business district and everything else on the other side of the street changed.

Mr. Siegfried said we've got pretty adequate parking on side, we've got Stepnorth across the street, which is also owned by Mr. Kertesz so they actually have the ability to valet cars or tell people where to go park. They have about 80-100 spaces at Step North.

Mr. Siegfried explained what changes they are going to make to the building.

Jordan Berns, counsel for the applicant, said we do view this as an opportunity for the village as well as the applicant to see an important part of the village area redeveloped without changing the footprint of the property and without changing the boundaries of the property. With regard to the variances that had previously been issued, in May of 1988 when the Ski Haus was the single occupant of the building, variances were issued allowing for a variance from the buffer setbacks. Those same variances are the variances that are sought now. There is at least some argument to be made that those variances don't need to be sought again. Once they were granted because they've been

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used on a continuous basis whether the use of the property changes those variances remain outstanding.

We are not here arguing that, we've applied for variances as Ben Himes requested and we are seeking those variances. One could have a good argument over whether that line between the central shopping district and the retail business district was drawn at the appropriate spot. We are not here to argue that.

With regard to the standards for consideration of variances, will the property yield a reasonable return or will there be beneficial use of the property without the variance? It has not been effectively used for some time. It has been in part vacant for more than five years and this is going to finally give the applicant the opportunity to redevelop the property in a manner that will really complement the surrounding area and be a boom to the village.

Is the variance substantial? No. The number of spaces sounds substantial but this goes back to a comment that Mr. Himes made earlier, there is a parking plan that needs to be submitted to and approved by the Planning Commission. Presently there is in place a parking plan that was submitted to and approved by the Planning Commission apparently back in the May of 1988 time frame. That parking plan allowed for the 40 spaces that were described earlier. There is a small reduction in the number of spaces from 40 to 38 to account for handicapped spaces. It is in essence the same plan that was approved back in 1988 when the variances were granted and when this was a single-user building especially given that the central shopping district is in such close proximity and the parking requirements are what they there. This is not a substantial variance, this is a vast improvement over the parking that is available there.

Is it going to change the essential character of the neighborhood? The answer here is clearly no. It is the same building and the same footprint as exists now.

This won't affect the delivery of governmental services.

Was the property purchased with the knowledge of the zoning restriction? The zoning code has changed over the years but because of the nature of the property, because of the variances that had been granted previously really the owner could not have predicted that this would play out the way it has.

Can this be obviated through some other means? No, short of leaving the building fallow or tearing the building down creating a very small building with a large parking field, which I don't think is in the cards here.

Does this undermine the spirit and intent of the zoning code? This is an opportunity for the village to both see this property vastly improved and a welcome back to the village a restaurant that has a long history here and do so in a fashion that really does enhance the restaurant and enhance this property and ultimately enhance the village. We ask you to grant the variances and allow the project

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to go forward.

Mr. Fricke asked, have you thought through your parking plan that you will submit to P&Z? Is it going to use off-site parking? Mr. Siegfried said right, this is our parking plan with the overflow parking at Stepnorth.

Mr. Holdren asked, in our code can't they have off-site parking within 200 or 300 feet? Mr. Himes said the Planning Commission can approve off-site parking if it is within 400 feet walking distance. Mr. Holdren asked, are there enough spaces that aren't already claimed at Stepnorth? Mr. Himes said they have already be attributed to the parking requirement for Stepnorth so whether there would be spaces available to count towards this parking plan, I am not sure.

Mr. Fricke asked what the variances were that were granted in 1988. Mr. Himes said the variances then was only for buffers, I don't believe it was for the parking requirement.

Mr. Fricke asked if this building remains a retail use how many spaces does it need? Mr. Himes said if they keep the retail space they simply use the parking that they have. There is no requirement for more parking. Mr. Fricke said because it is grand-fathered.

Mr. Williams said I don't think that anybody disagrees with the premise that we want to see all of our retail spaces filled. I know I don't like seeing any vacant spaces anywhere on Main Street or Orange Street or Bell Street or anywhere in the Village but you are hitting at the absolute heart of the issue. We've had fights in these chambers over two spaces. Who is going to get to use them, and how are they going to be allocated. The challenge that we have is simply the change in use of the space from retail to restaurants. All of sudden now we are facing this calculation where we are being asked to consider an 88 space variance where we've got other restaurant owners that are not happy with the number of parking spaces at that end of town now. I want to see this space leased out and the property improved and the lots paved and having happy tenants in there. But, an 88 space variance request is a big number considering that right across the street not too long ago we were denied a variance for the elimination of 2 existing parking spaces. This north end of town is constantly searching for more parking. Mr. Williams said one solution that was proposed and is being used a few years ago was the valet parking and leasing space from another office building across the street between Gamekeeper's and Jekyll's.

Mr. Williams said in regard to the other variance requests I understand the argument very well. The space that is being now will continue to be used as it is for parking. I personally would not make a big argument around those particular variance requests, although, they obviously have to be reviewed according to the standards that are present in our code. The biggest challenge in this, I think this whole presentation is the use of retail space for restaurant purposes. And that is a different standard for calculating a total number of spaces that are required and trying to figure out where those spaces are going to to and the impact on the other businesses that are equally looking for additional parking spaces for their patrons as well.

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Mr. Berns said we've got a seating plan for what they propose to do and there are 80 seats in there, which happens to be 40 parking spaces and we have 38. Obviously there is enough room in Stepnorth and Mr. Kertesz can require Joey's employees to park at Stepnorth and walk the 100 yards across the street and there are 38 of your 40 parking spaces.

Mrs. Loomis asked, what are the hours of Joey's going to be? Mr. Lionetti said we will be open later than the retail establishments. Mrs. Loomis said but there will be a period of time when there is a demand for both. Mr. Lionetti replied at lunch time and early afternoon there will be some cross utilization.

Mr. Holdren asked how many spaces there are at Stepnorth? Mr. Kertesz said 130 spaces.

Moved by Mr. Williams, seconded by Mr. Holdren to recommend approval to the applicant's request for a variance to Section 1137.04(b), the buffer regulations, which have principally to do with the existing parking as they stand today but because of the change in use the applicant is requesting a variance. Specifically they are requesting a 10 foot variance to the 10 foot requirement for setback from the street right-of-way on all of Williams Street, West Orange Street, and North Main Street. Also under that section there is a 10 foot required setback from the north property line. The applicant is seeking an 8 foot 6 inch variance to that, which would leave 1 foot 6 inches from that lot line. And, they are seeking a variance from the 5 foot required setback at the west edge of North Main Street parking lot. The variance they are seeking is a 4 foot 6 inch variance to that 5 foot requirement, which would leave 6 inches on that lot line.

Williams: Aye, for the reasons that were previously stated. I would also like to reiterate that the applicant has demonstrated that the existing use of the parking lots will not be altered so I don't believe that approval of this variance request will directly affect the existing property surrounding this.

Loomis: Aye, for the reasons stated in the motion.

Fricke: I would just add that I believe the evidence showed all these variances were granted in 1988 to the same building and as Bob said there will be no changes as was presented to us so I would vote aye for those reasons.

Freshman-Johnson: Aye, for the reasons stated in the motion.

Holdren: Aye.

Moved by Mr. Williams, seconded by Mrs. Loomis to recommend approval of the variance request to Council to Section 1141.02, off-street parking. Off-street parking is required when there is a change of use in the property and the number of parking spaces calculated is necessary. Moved by Mr. Williams, seconded by Mrs. Loomis to recommend to Council approval of the variance request

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to Section 1141.05, required parking spaces. Under our code the calculated required parking spaces for the new use of this space, which includes both the restaurant application and all of the retail spaces, 126 spaces required. The applicant is showing 38 spaces available on their site plan and they are seeking an 88 space variance to that calculation and that part of the code.

Williams: I am going to vote nay. Contrary to what I would like to see happen here but the challenge as I stated during the course of our discussion is that the variance requests specifically to Section 1141.05 and secondly to Section 1141.02, which requires a variance to the off-street parking requirement element of our code. Under our code the calculation states that they must demonstrate that they have 126 spaces to serve the intended use of the building both retail and restaurant. They only have 38 spaces. It is helped by the concept of providing the valet parking but again that would still require that additional 88 spaces would have to be identified for any off-site parking.

Loomis: It is a quandary that Chagrin faces and the districting and unfortunately we are not in a position to change the districting so I am going to have to vote nay.

Fricke: I guess I have to go with the comments that have already been made. I want this project to succeed. I want something to go in that structure that succeeds and brings people to the village. I guess the fact that this property is literally across the street from the central business district where the requirement would be totally different. Is that fair? I don't know but it is what it is and I look at it and I keep looking at the reference to the variance substantial. The property owner purchased the property with the knowledge of the zoning restriction, the central character of the neighborhood altered, and I was on BZA when we denied the request for variances, a reduction of two spots across the street in the central business district. I wish I could do otherwise but I feel compelled to vote nay as well.

Freshman-Johnson: I understand the issues in the village and I know that that property has been sitting vacant for some time and I am no expert on what to do with the existing property and I am not sure how to get a tenant in a space that I consider to be prime time space in a town where people come to walk around. Whether they shop or eat they bring people to this town and I think that is important. I don't know how any tenant in the structure of the existing building will ever have enough parking spaces regardless of whether it is fully retail or a restaurant and I think that I would like to give the opportunity of a valid parking plan and I will vote aye.

Holdren: When I look at the reasons for granting a variance there are three of them I want to point out. Whether the property will yield a reasonable return. I

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think the fact that it has been vacant for five years proves that it won't return a reasonable return without these variances and whether the property owner's predicament can be alleviated through some other method than the variance, no on that also. So that means I am for the variance but I am against the variances whether this will alter the neighborhood and I think it will. I think there are 88 spaces where people are going to still come whether it should be 88 or not I don't know but we have a code and there needs to be spaces there and I think people will start parking in the residential street parking and that will alter the neighborhood. So weighing those two different sides I do think that the fact that you do have 130 spaces at Stepnorth does help. I know most of them or some of them are already accounted for but I do think that that is a valid argument for your parking spaces. So weighing all those factors I actually will vote aye.

Moved by Mr. Williams, seconded by Mr. Holdren to recommend to Council the applicant's request for a variance to Section 1141.09(c), which has to do with access drives. Specifically, there is a 50 foot of required setback from the center line of the intersection of Williams Street and Orange Street. The applicant is seeking a 39 foot setback from that calculation. The current access to the parking lot will not be changed from its existing use but because there is a change in use of the facility they are required to get a variance to that section as well. Mr. Williams said regarding the tests for recommending of the variance requests for starters will the property yield a reasonable return or will there be any beneficial use of the property without the variance? The applicant has said no. The building has been vacant for five years and the proposed tenant, the restaurant, would effectively function as an anchor tenant for this facility. Is the variance substantial? The applicant has stated no, the variance requests are not substantial in particular to the buffer regs and the access drive, which were Section 1137.04(b) and Section 1141.09(c). They are requesting a continued access to the parking lots that they have with no change to how that access should be granted. Would the essential character of the neighborhood be substantially altered or would adjoining properties suffer a substantial detriment as a result of the variance? The applicant has made the argument that the building again has been vacant for five years and that this particular property would better serve the village and the neighborhood if they were allowed the variances so that they could lease the space. Would the variance adversely affect the delivery of governmental services? No, they are only talking about a change in use of the space with their restaurant tenant. Could the property owner's predicament feasibly be obviated through some other means? Again, the applicant has stated no. They have been trying to lease this space for several years now and they believe they have a lead tenant in the restaurant.

Williams:

I will vote aye for the reasons previously stated and again reiterating that the access drive to the parking areas will not be altered from how they exist today for any future use by a tenant of this particular site and this is the 39 foot variance request to the 50 foot center line required for the intersection of Williams Street and West Orange Street.

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Loomis: Aye.

Fricke: I vote aye for the same reasons. I vote aye on motion one, the buffer regulations.

Freshman-Johnson: Aye.

Holdren: Aye.

Mr. Himes said the motion on one and four passed. That is for the buffer and access drive. Motion two and three failed. These will go to council for final action on March 11, 2013.

TODD GOLDSTEIN, 49 WEST WASHINGTON STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(g), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 932-03-004.

Mr. Himes explained that the applicant was previously in front of you for a front yard variance as well as this side yard variance. Prior to final action by Council they withdrew the side yard variance. The front yard variances were approved. They are proposing a west side adjacent to the alley there is a setback requirement of 10 feet and the applicant is proposing a 5.9 foot setback. There is also an encroachment into the side yard of several feet for an entrance feature. If the side lot line were adjusted to the 5.9 feet then the entrance feature could project up to 3 feet into the side yard.

Mr. Fricke said they only show one variance and it is to the side yard setback. Mr. Himes said correct, if you grant a variance to the side yard that essentially changes the side lot requirement for this parcel, therefore, the code allows for projections into the required side yard up to 3 feet so that side entrance would not need a variance is the side yard is adjusted.

Bill Childs, Bill Childs & Associates, said showed pictures of what they are proposing.

Mr. Fricke said the variance request is for 4 feet, 3 inches. What is the impact of reducing the width of that house 4 feet, 3 inches? Mr. Childs said it would be substantial to try to reduce the house. It is pretty tight right. It's been a major difficult site to deal with. We started this back in June. Mr. Fricke asked, you feel as though this is the minimum footprint that you can build on this site. Mr. Childs said absolutely, without a doubt. Mr. Williams said you said the minimum footprint, you mean the minimum width? Mr. Childs said right, width. I think you are going to ruin the look of the house too. Not only that but function wise it is going to make it very difficult to make it function. It is a really tight and narrow site.

Mr. Fricke asked, are you going to talk about why the house can't be moved 4 feet, 3 inches over to the other side? Mr. Childs said yes.

Jared Flynn, Thrasher, Dinsmore, & Dolan, said he is representing the Goldsteins. He said this was

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the same variance request that was approved by the BZA on December 18th. We haven't changed anything. It went to Council, there was some discussion about the side yard and the drainage, which we believe is practical difficulty on the property. Instead of going to Council for a vote we withdrew and got Chip involved. Chip is going to discuss the drainage situation. This is a variance because there is a drainage problem. The elevation to the east with the church creates a real problem that undercut the foundation of the current home. There is a demolition permit for this, the current home, which encompasses the same width, or beyond the same width, of our current plan. We are asking for a 5.9 foot variance from the alley way were as the current structure sits 4 feet 9 inches from the alley way. We are proposing to move 9 feet off of the existing lot line to allow for drainage. The current structure sits on and actually encroaches on the lot line. The impact of the neighborhood, the impact of the neighbors to the west and to the east is less significant. Mr. Flynn said Chip is going to talk about the drainage and why 3 feet, 4 feet is not sufficient given what is going to be necessary to keep water out of the basement of the home to allow water to go off the property. That is the only new piece of information we are providing to the BZA from what my partner provided in December that the BZA approved.

Chip Hess, Hess Engineering, said the challenge to the lot is the width and also from the church side the photographs we provided we are standing in front of the church looking towards the existing house showing that the slope from the church goes into the brush that is there and the house sits right on the property line and the house is rotting and that is why it is going to be demolished. In the cross section we tried to show the existing house and the proposed house going the 9 foot distance and a proposed swale to intercept the water coming off the church and direct it away from the house so the new owners don't have the same problem that currently exists.

Mr. Fricke said if I am understanding that drawing correctly, the house as proposed is moving a foot further from the alley. Is that correct? Mr. Hess said correct. Mrs. Loomis said the new house is substantially less wide than the existing house. Mr. Hess said that is correct. The details in the middle show if it was 3 feet per code. Three feet more coming off the church is going to be very difficult to deal with. We typically like to have a 1 foot variation from the grade at the house to a drainage area to keep the water away from the house. So you are going to end up with 3 foot wide area 1 foot deep, a ditch next to the house.

Mr. Fricke said on this picture that you submitted, all this vegetation is on church property? Mr. Hess said right. Mr. Fricke asked, and the fence line is the property line? Mr. Hess said the edge of the house is the property line. If the house were situated 10 feet off the alley, 3 feet off the property line you would only have this much space to take care of that water and that is why we are proposing to go to the 9 feet and have an area that can be landscaped and mowed to create a nice side yard feature and get rid of the water without having a ditch like this on the property line.

Mr. Williams said, so you are saying if the space were narrower it would actually be a ditch because of the depth required to handle the water? Mr. Hess said you want the water to get away from the house, yes. Mr. Williams asked, the wider it is the shallower the actual swale can be? Mr. Hess said not shallower but less steep side slopes. So it is much more gradual. Mr. Williams asked, so the

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depth is the same? Mr. Hess said the depth is the same, correct.

Mr. Hess said one other thing to consider is the finished floor of the house. The new home is going to be slightly higher than the existing house. To make it any higher, Bill touched on that fact, was trying to match the elevations of the street.

Mr. Williams asked, how deep is that swale? Mr. Hess said what we are proposing is a 1 foot deep swale. Mr. Williams asked, when the water hits the swale, what direction does it flow? Mr. Hess said towards the road. We have proposed high points at the house. Currently there are some catch basins behind the old home where the water picks up in the back.

Mr. Fricke asked, the new home will be how far off that property line? Mr. Hess said 9 feet. Mr. Fricke asked, if the house is moved over some greater distance the swale would just be less severe? Mr. Hess said the goal when we do grading plans for homes is to have the grade slope away from the home to roughly a foot depth before we start changing and going in different directions of the contours. Mr. Fricke asked, is it your professional opinion that this is the closest it can be to the church side property line to do drainage appropriately?

Can it move closer? Can you have more of a moat? Mr. Hess said you could have a ditch but then the ditch won't necessarily be able to be maintained in the same course. The idea is to have something in there that can be mowed and maintained. Basically the narrower it gets the more of a ditch rather than a mowed yard effect. Mr. Fricke asked what happens if it is 6 feet? Mr. Hess said then you have side slopes that are steeper on that drainage way that become less maintainable. Mr. Fricke asked, does that somehow make it less stable though? If the goal is to improve the drainage on the church side of the property and you are proposing the house to be 9 feet away and if you are denied the variance, let's say, and the house just moved over towards the church at some point is 9 feet the minimum where you think that the effectiveness of the drainage will be compromised if the house moved closer than 9 feet to the church property line? Mr. Hess said I guess you are asking can it be done in less than 9 feet? Yes, but what can be done and maintained and attractive. Mr. Fricke asked, is it a question of attractiveness? Is it an issue of functional? Mr. Hess if you get narrower than that then you can no longer have a lawn area because your side slopes and mobility and maintainability and things like that.

Mr. Goldstein said our biggest fear is that it is such a steep slope off the church and we don't want to face any severe water issues. If you would have walked into the house the basement and the first floor are flooded. There is mold, there is rotting, and it is just falling apart.

Mr. Fricke asked if the Goldstein's are planning on living here? They said yes.

Nancy Rogoff, 17 Water Street, spoke in opposition to the variance request. And, she said a swale is not the typical way to handle drainage.

Mr. Hess said the idea of the swale is to pick up the surface water and runoff and take it either

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direction towards the road. Anytime you can avoid pipes, avoid trenches, catch basins, and things like that makes it better.

Mr. Fricke said we did receive a letter from Mrs. Rogoff that should be part of the record.

Mr. Williams said in Mrs. Rogoff's letter she mentions test number 2, is the variance request substantial? She highlights relative to the 10 foot requirement they are requesting a 40% variance to that 10 foot side yard setback, which is the 4 feet, 3 inch variance to that 10 foot requirement.

Moved by Mr. Williams, seconded by Mr. Holdren to recommend approval by Council to the applicant's variance request to Section 1125.03(g), area, yard, and height regulations. That section of the code requires a 10 foot setback and the applicant is requesting to locate the structure 5 feet, 9 inches from the lot line for a total variance request of 4 feet, 3 inches. The applicant has stated that that particular location of the house will ease the management of their drainage plan on the east side of the lot, that space between the church and the proposed new house. Also, the applicant indicated that the depth of the swale, which will catch the water runoff from that site, needs to be a foot deep and the additional width on that side yard will allow them to smooth the grade of that swale and thus allowing improved and easier maintenance of that over time. Will the property yield a reasonable return? I think the return would be the same regardless of where the house is located on the lot. I would note at this point though that the proposed new dwelling is substantially narrower than the existing house, which requires demolition because of its current poor condition. The existing home that is there now literally stands the width of the lot and the new proposed house is substantially narrower than that. Is the variance substantial? The applicant says no, the variance is not substantial. Given that the current structure sits 4 feet, 9 inches off the lot line versus their proposed 5 feet, 9 inches off the line. Will the essential character of neighborhood be substantially altered? No, the applicant is stating that not only will the character of the neighborhood not be substantially altered negatively, but in fact will improve the neighborhood with the construction of a new home. Would delivery of governmental services be adversely affected? No, because the existing access to the current house and the access to the new proposed house are essentially the same and there will be no greater obstruction to the side alley along the west side of the house. Can the current predicament be feasibly obviated through some other means? The suggestions has been made that the house be situated further east on the lot. The applicant has said that managing drainage on that east side lot would be improved by locating the house where they have it on their current site plan.

Williams: Aye.

Loomis: Aye.

Fricke: I guess Bob, the one thing I am not sure I fully caught on yours is I believe there was testimony that if the swale size was reduced the elevation of the house would actually have to go higher so I would add that in the findings of fact. I do agree with the comment that the request is significant to the extent that it is a 40% request or increase the 40 %, or decrease I should say, but

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noting that the overall house is narrower than the existing house and it actually would move a foot further away from the alley, I would vote aye as well.

Freshman-Johnson: I will abstain.

Holdren: I will vote aye. I just wanted to point out that this is a corner lot and the requirement is 10 feet because of that alley. If it was just another neighbor there it would be 3 feet. All the other reasons that Bob said are the reasons I vote aye.

Mr. Himes said this will go to Council on March 11, 2013 for final action.

The meeting adjourned at 11:03 p.m.

Wade Fricke, Chairman
lgb