

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
September 24, 2013**

Members present: Williams, Holdren, Loomis, Freshman-Johnson
Also present: Himes, Lane, Herdman, Newell, Subel, Edwards

The meeting was called to order at 8:00 p.m. by Secretary Robert Williams.

APPROVAL OF MINUTES

The minutes of the meeting held May 28, 2013 were approved.

SWEARING OF WITNESSES

All were sworn in.

JOYCE POPLAR, 33 EAST ORANGE STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(g)&(h), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, SECTION 1125.04(b)(4), AREA, YARD, AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, SECTION 1145.02(b), NONCONFORMING BUILDINGS, AND SECTION 1339.02, PROJECTION NEAR LOT LINE, PERMANENT PARCEL NO. 931-13-080.

Mr. Himes said the applicant proposes to demolish the existing garage and build a new garage in a different location in the back yard and attach it to the main building. Because it is becoming a part of the main house it has to comply with the main building setbacks so Section 1125.03(g) of our code requires that the main building be set back a minimum of 3 feet from each side lot line. The proposal has a side lot setback of 1 foot 9 inches. Section 1125.03(h) of our code requires a rear yard setback of 30 feet and the proposed garage is 4 feet 7.5 inches from the rear lot line. Section 1145.02(b) of our code requires additions to nonconforming dwellings to comply with the area, yard, and height regulations of the district; the existing building is nonconforming. The building code sets a minimum setback in Section 1339.02 that no portion of the building, no roof, eave, or projections of any kind shall protrude any closer than 3 feet to any lot line. So that goes along with the side yard setback. Their driveway coverage in the rear yard exceeds 30% of the rear yard and that is Section 1125.04(b)(4).

Phil Koepf, architect, said I have letters from neighbors. He said when Joyce purchased the property about a year ago she knew that it was a tight back yard and it would be difficult to get in and out of the garage. She just finished widening the driveway that comes up by another 4 feet so that you can now back down the driveway. You couldn't do that before because it was kind of a serpentine driveway. So it is a steep driveway and it is difficult to get in and out of. When you get to the top

of the driveway there is barely enough room to get past the corner of the existing house and the existing garage is 12 feet. It is like you are going through an entry way and then in order to get into the garage you have to do about 6 point turn to pull in straight. What she does is drive it and then backs into the garage and then when she leaves she has to come out turn again and come back down the driveway because you can not back out of this driveway with cars at the bottom of the driveway parallel parking. It is a blind drive. He first thought was to keep the garage and just live with it and when she lived with it she realized that the garage needs to be rebuilt. It is leaning up against a large tree that she would like to save. We talked about redoing that existing garage we would have to take it down and make it smaller. Mr. Williams asked, is it a 14 inch or 16 inch tree? Mr. Koepf said right and the garage is leaning against the tree or the tree is leaning against the garage. What Joyce asked me to do was take a look at whether or not she could do an attached garage. I informed her going in that there are a number of violations already and this was going to be something that we would have to bring before you to discuss. I did a plan. The garage takes up is actually smaller than the existing detached garage but it is now attached. There is a small addition on the back of the house that will be made smaller in terms of its depth towards the back but reconstructed. Mr. Williams asked, is this the shed addition that I see kind of off the back? Mr. Koepf said that is a room on the back of her house and it was attached to get down into the crawl space basement. There is one on the outside and there is also one on the inside.

Mr. Koepf said we are trying to accomplish a couple of things; rebuild that back section as small as we can make it, add a garage that is attached, and take down the existing garage which will open up her back yard especially from the view up the hill. It is still in violation in terms of area because we need a driveway large enough to get a car, back out of there, and turn and come down that driveway. Even though we are going to have a little bit more space and a little bit more room to make that turn it still pretty much a completely paved back yard. This back yard, along with all of the back yards on East Cottage Street, originally went from Orange to Cottage Street, Cottage was the alleyway. The access to that garage when it was built came from Cottage and turned and went into the back of that garage. Where this house is now the driveway came straight in here. This house was moved from next to the Lutheran Church when they added the parking lot in sixty something. That house is very old but it didn't exist and it created this situation where all of these back yards are tiny and they don't meet current zoning in terms of rear yard depth and if you want to get a garage back there it is almost impossible.

Mr. Holdren asked, as far as the square footage or the percentage of the rear yard cover is not increasing at all? Mr. Koepf said it is not increasing. Mr. Holdren said it might be decreasing if you consider that this is gone. Mr. Koepf said there is a little bit of a garden area right where the proposed garage goes so we are kind of moving it from one side of the yard to the other. I did a couple of front elevations just to kind of give you an idea of how that garage would look in relationship to the side of the existing house.

Mr. Williams asked if the alleyway is the space between her house and the phone company? Mr. Koepf said it is 1 foot 9 inches, it might be 2 feet. It is 6 feet 8 inches from her house to the side of that building. Mr. Williams asked if there has been any comments from the phone company? Mr.

Himes said no. Mr. Williams asked, what is going to happen to the old cellar door? Mr. Koepf said that one we are actually increasing the width of that connections to incorporate so she will be able to come inside and go down into her basement. The drawings show a very low sloped roof to keep it as small as possible. Even though we are making it a little bit wider it won't be any taller because it has to sneak under windows in the back of the original house. Mr. Williams asked, so the stairs that I see on your drawing are the stairs going to the basement? Mr. Koepf said right.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson to grant the variances for 33 East Orange Street. All of them will not substantially alter the neighborhood. I don't think any of the variances are substantial except for one. I think in general this is an improvement to the property. You are actually going to be making it, from the street, appear to have less of a building. I think overall this is an improvement and the only place where it is actually going to be a problem is next to a brick wall. I don't see that as a problem there. As far as the variance, adversely affect government services, actually I think it will be better if they actually did have to pull in it would be easier to back out just like it would be easier for yourself. The variances are to Section 1125.03(g), the requirement is 3 feet and you are requesting a 1 foot 3 inch variance because you will be 1 foot 9 inches away, which is the same distance the existing residence is currently. The only big variance I see is to Section 1125.03(h), which is a rear yard setback of 30 feet. You are already within that 30 foot encroachment. You are increasing it but again, I don't think this is going adversely affect the neighborhood at all and like you stated this is due to the neighboring property being added 50 years ago and that is why the driveway is all withing the existing setback, or the house I believe. Section 1145.02(b) pretty much summarizes everything. If you do an addition to a nonconforming dwelling it has to be within the code. We already stated the other reasons why we are granting the variance. Section 1339.02 that the no projection from the building will go within 3 feet of the lot line and, again, this is on the side yard where the existing residence is already within the 3 foot setback so I don't think this is a substantial variance. Section 1125.04(b)(4) for the improved area and the rear can not exceed 30%. As you stated, it is not increasing, it is staying the same so I don't think this is a substantial variance. We got four letter in favor of the variance and noone opposing it. For all those reasons I vote aye.

Loomis: Aye.

Williams: Aye and I would also like to add a motion that there is no opposition either voiced or in print to the proposed variances. The applicant also submitted four letters of support for the variance requests. I would also like to add that the new garage is actually smaller than the existing garage and I would like to make the variances contingent on the demolition of the old garage. Also, that existing addition off of the back of the house is a nonconforming addition. The replacement element of the proposal will be up to code and the new garage will, the applicant has said that that will be up to code as well.

Freshman-Johnson: Aye.

Holdren: Aye.

Mr. Himes said this will go to Council on Monday, October 14, 2013.

JAMES AND MELODY MCCLURG, 52 SOUTH FRANKLIN STREET - REQUEST FOR A VARIANCE TO SECTION 1125.04(a)(2)&(6), AREA, YARD, AND HEIGHT REGULATION; ACCESSORY STRUCTURES, PERMANENT PARCEL NO. 932-03-013.

Mr. Himes said the applicants are applying for variances to construct a new detached garage. They were before the Board previously in August of 2012. This time around it is a little bit different proposal. They were approved by the BZA but ultimately the previous variance was rejected by Council. They have modified their plan. The garage is 736 square feet and this exceeds the 700 square foot limit this is set by 1125.04(a)(2) of our code. And they are proposing a structure 22 feet high. The proposed setback is 4 feet and our code requires 3 feet plus 1 foot for every foot over 15 feet so they would be at a required setback of 10 feet for a 22 foot high structure.

Tim Olland, architect, said what we have is a garage presently 17 inches on the west property line into the neighbor's yard. The people want to fix their garage and because it was over the property line they weren't allowed to fix it so they are trying to move it and build a new one. The previous applicant was withdrawn because it was over 800 square feet, which it is presently at 864 square feet being 164 square feet over the allowable 700. The Council thought that was a little big. We have made it smaller but it is still over 700. It is now 736, which is 128 square feet lower or less than it was previously or is presently. The house is on the corner and being a corner not it has the same situation as the alley used to go through right where the garage is presently crossing center street. What they did was build the garage where it would fit when the alley was there and it is on the neighbor's property. Jim has talked to the neighbor and the neighbor is happy with the 4 feet. They can maintain both properties now and it gives them room for fire and police. There is a telephone pole that is touching the back of the garage now and Jim is going to have that moved and put the service underground. I think overall the utility situation is an improvement. His home is on the inside cover page of the Village of Chagrin Falls Design Guidelines so he is pretty picky about the house. What we have done is we have a smaller garage. We went to the Architectural Review Board and it was approved. They suggested a 12, 12 pitch to match the home, which made it taller than the required minimum. That is how we got from 15 feet to 22 feet to try to match the home. When you go over the 15 feet that pushes your side yard further away and because of the siting of the house it moves the garage towards the back of the house. It is only about 14, 15 feet now and he doesn't want to put the garage 6 feet from the house so that is why the variance request. It is the standard two-car garage, 24 feet by 36 feet. I think it would be quite an improvement to do something that matches the house. It will be within 6 feet, one way or the other, within where it is now. It is the same width and it will present itself the same way to the front. If you were to walk down the street and look at it is the same width as it is now.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson to grant the variances for 52 South Franklin Street, specifically to Section 1125.04(a)(2) for accessory buildings over 700 square feet.

They are proposing a 736 square foot detached garage and as Tim mentioned, the current garage is actually 864 square feet, which is about 24%, 25% over our code and with the new proposed garage it would only be about 5% over so this is an improvement. Section 1125.04(a)(6) requires the garage to be 10 feet away from the lot lines because of the height. Currently it is 1 foot 5 inches over the line. They are requesting a 6 foot variance 4 feet away from the lot line. I think moving the garage off the neighbor's property onto their property they should be commended for that and grant a little leeway in the variance. I don't think the variance is substantial. I don't think the owner's predicament can be alleviated through some other method other than the variance and as you stated that the ARB actually recommend the height, which is driving the side yard setback variance to match the existing house. I think that it is a minor variance.

Loomis: Aye.

Williams: Aye.

Freshman-Johnson: Aye.

Holdren: Aye.

Mr. Himes said this will go to Council on Monday, October 14, 2013.

SPILLWAY, LLC, 218 CLEVELAND STREET - REQUEST FOR A VARIANCE TO SECTION 1139.04(b), YARD AND BUFFER REGULATIONS, SECTION 1133.03, YARD REGULATIONS, SECTION 1141.14, IMPROVEMENTS TO PARKING AND LOADING AREAS, SECTION 1148.03(2), GENERAL PROVISIONS-FENCE, SECTION 1142.05(b), PARKING AREAS, SECTION 1141.16, APPROVAL OF PARKING AND LOADING PLANS, SECTION 1151.03, PERMITTED USES, SECTION 1139.02(a)(6)(b)(2), PERMITTED USES, SECTION 1353.06(a)(5), SPECIAL FLOOD HAZARD ZONE, AND SECTION 1353.06(b)(2), FLOOD PROOF CONSTRUCTION, PERMANENT PARCEL NO. 931-14-001 AND PERMANENT PARCEL NO. 931-15-016.

Mr. Williams said this is the developers for the Spillway Project, the old Ivex Plant, at 218 Cleveland Street. Because of the nature of this redevelopment there are a number of variances that we are going to be addressing tonight so I ask everybody to be patient. It is going to take us awhile to get through these and we will take them one at a time.

Mr. Himes said the Spillway Group proposes to build a mixed use development on the this site. It is zoned Limited Industrial but has a mixed use zoning component that was written into the code basically for this development. They have proposed a combination of uses: a restaurant, an office, a theater, and a brewery. The code sections that they will need variances to based on their proposal are Section 1139.04(b), which requires a five foot buffer between parking areas and the public right-of-way. This condition exists at the front of the parking lot of building 2, which is the northern most entrance to the property. They also have a parking lot on Low Street and that parcel is zoned Parking

District. That lot requires a twenty foot setback from the right-of-way for the parking spaces and a ten foot setback from the adjacent residential property. They are proposing a zero setback from the residential property and approximately five feet from the right-of-ways. They are proposing a fence, which I initially identified as a privacy fence between the residential parcel and the Low Street parking lot. On closer review, that is proposed as a board-on-board fence, which the ARB has determined is 25% open for purposes of the application of our code so they would not need a variance for that fence, it would be allowed on the property line as proposed.

Mr. Williams asked, so we are removing the consideration for the variance to Section 1148.03(2)?
Mr. Himes said right.

Mr. Himes said Section 1142.05(b) requires that parking areas with fifty or more parking spaces have at least 5% of its area for landscaping that is designated to interrupt the expanse of paved surface. Their plan indicates 4.1%. They are counting what could be considered perimeter planting at the corners of lots but they are short of that 5% requirement. Section 1141.16 requires our Planning Commission's approval of parking and loading plans. They have already been in front of the Planning Commission for both the parking plan approval and the landscape plan approval. The Planning Commission is waiting for final action of the zoning so they wanted them to get their variances first. Section 1151.03 of our code is the River Buffer Ordinance which was previously in the Flood Damage Prevention chapter. It has now been moved to the zoning code. This section limits the use of property within 120 feet of the low water level of the Chagrin River to passive recreation only. A substantial portion of the project is located in that 120 foot river buffer.

Section 1139.02(a)(6)(b)(2) sets 250 seats as the maximum number for restaurant seating. They have proposed 460 seats, which exceeds the limit. Section 1353.06(a)(5) prohibits the deposit of fill, including sand, gravel, or other materials of any composition in the special flood hazard zone. Portions of the rear parking area, on the main development on the north side of the river are located in the special flood hazard zone under the current FEMA mapping. The dam has been lowered substantially and when that is re-mapped it is very likely that it will be entirely out of the special flood hazard zone but until that re-mapping is approved by FEMA, we have to apply the existing mapping. Substantial portions of building 2 have floor elevations below the base flood elevation. This is the existing building that runs along the river on the north side of the north bank. Certification of flood proof construction for existing buildings that are substantially improved as defined in Section 1353.06(b)(2) is required pursuant to Section 1353.04(d)(4)(b). There are exceptions for historic building.

Mr. Himes said part of the parking is proposed to be located in the public right-of-way at their main entrance. Because of the realignment of the road when the new grid was put in there is a stub of the old right-of-way that stems onto what appears to be their property but is still within the public right-of-way. They would be required to obtain a license from Council to use the public property for their private use.

Mr. Williams said one thing we discussed earlier, which you should add, is the FEMA guidelines

for historic structures in a flood plain. Mr. Himes said the national code has a built in exception for historic buildings. Historic buildings that are substantially improved do not have to comply with the flood proofing requirement. The local code does not include that exception so they have to obtain the variance. In the introduction to the NFIP Flood Plain Management Regulations they state that the intent is to provide significant relief to historic structures. They do not have to meet the new construction's substantial improvement or substantial damage requirements of the program and that is to serve as an incentive to maintain historic buildings and also to provide some incentive to obtain historic designations. The Spillway folks have already obtained their historic designation. The buildings are on the National Register of Historic Places.

Bob Darden said the first thing I would like to say about the parking design in general is that due to topography there is a substantial amount of land that is unavailable to us for parking. It would be great if we could actually put parking there. We have a 17 foot continuous retaining wall on the north side of the property that we can't do anything up there. That is property that is essentially off use for us in terms of parking or any sort of development. The last issue would be the nature of needing the large amount of parking for the development. We are required to have 2.5 spaces per 1,000 square feet and that puts us at 181 parking spaces. We are proposing 185 so we just squeezed them in. If we have to meet the zoning code requirements we will go way below that. The intent this plan was certainly not to blatantly disregard any sort of zoning regulations that Chagrin Falls has, it was to really find a happy medium to design the site and maximize the parking for what we are trying to do here knowing full well that we have to come here tonight to explain what we are doing.

Mr. Kaplan said the other problem is that the top of the hill on Cleveland Street the grade it at 950 and at the bottom of the hill it is about 941 so there is a 9 foot drop between the road and parking area. A car is parked where we are showing it on the plan. You really do have substantial difference between where people are walking versus where people are parking.

Mr. Holdren said I guess this is where are these parking spots looking at the first page it is gravel right now. Mr. Darden said it is gravel. Mr. Holdren said, but we don't have to address that tonight, the right-of-way. That is for Council. Mr. Himes said right.

Mr. Darden said the Low Street lot has a 5 foot setback along Low Street. I think it is the same along Cleveland Street and Vincent Street. There is actually a substantial grade change there with a heavily wooded area. Pretty much of what is shown there is covering what is existing. Going up to the property line, this is the current fence that is there now and the owner of the property has property stakes that I circled here that is right on the property line. We are talking about replacing the fence and being able to park up to the fence on our side. Mrs. Freshman-Johnson asked, are you putting a wood fence there? Mr. Kaplan said a wood board and board fence. Mrs. Freshman-Johnson asked, so in this parking lot you go in off of Low Street? Mr. Darden said you enter and exit off of Low Street. Mrs. Freshman-Johnson asked if the adjacent residential property is vacant. Mr. Darden said the house was torn down and there are two other houses on the street.

Mr. Williams asked, is this lot that is to the west of the Low Street lot owned by the house that is one

lot over or is it just a vacant? Mr. Darden said the other two owners I believe are here from the other houses on the street. I am not 100% sure who owns it. There was a house there and she tore it down.

Mrs. Freshman-Johnson asked, what about the infrastructure and utilities that are coming through here? Are you putting them underground? Mr. Darden said the only utility that we have to worry about is I think there is a storm line that we are putting a new catch basin in for where that parking lot that ties into an existing storm sewer. Mrs. Freshman-Johnson asked, so what kind of lighting situation do you have over here? Mr. Darden said I don't think we are proposing any lighting over there because there is a street light right there. We are not adding any additional light.

Mr. Holdren asked, what is the setback? You have 15 here, I thought I read 5, and you have 20 here from the neighbor. Mr. Himes said because it is zoned Parking District there is a 20 foot setback from the right-of-ways on the three sides and a 10 feet setback from the residential property.

Mr. Darden explained where sidewalks are going in, the location of the proposed fence, and the location of the landscaping.

Mr. Holdren asked, over 50 parking spaces is where you look at the coverage for interior landscaping? Mr. Himes said right, a single parking area with greater than 50 spaces triggers that requirement for 5% interior landscaping. Mr. Holdren asked, this is a single parking area, Spillway, correct? Mr. Himes said I took the all of the parking on the north side of the river as a single parking area. Mr. Darden said it is two rows of parking and when you get in the back you get three rows of parking and it is different from a shopping plaza or even across the street. We are surrounded by trees.

Mrs. Freshman-Johnson asked, the parking lot that is over on Low Street, if you didn't get the variance how many spaces would you lose? Mr. Kaplan said that entire lot is 26 spaces and we would basically end up with probably only being one row smack dab in the middle. It would be hard to for people to turn around. I think I measured it out that we might be able to get 10 spaces in there. If we did that then we would have to come back for another variance because we would be under the parking count. One thing about the parking count, I know it is based on the square footage of the buildings. It is about 72,000 square feet of building but we have 35,000 of leaseable space. There is a lot of dead space withing the footprint of the building. Mrs. Freshman-Johnson said, forget the code for a second, if you were going to plan the parking for this use space how many spaces would you recommend for the plan usage and traffic that is assumed for this site? You think it is 186? Mr. Kaplan said to be honest, if I were presenting a building on this size on an empty field I would have a lot more parking.

Mr. Darden said regarding the 120 foot river buffer, the entire existing building is pretty much in the 120 foot river buffer. If we had to limit the development to outside of that we would have close to no parking on the site and the whole building would be in violation essentially. Mr. Kaplan said I don't know if there is a grandfather clause or what but we are actually eliminating half of the buildings that are there now.

Mr. Kaplan said as was mentioned in the introduction, the issue with this really is more that FEMA hasn't caught up with us. We do have documentation and engineering showing what will become the future flood elevation. FEMA just hasn't been on site. We have Buckeye Engineering, who is our engineer who did the design of the dam. In his cover letter he cleaned up a little but if you look at all the backup documentation the 100-year flood plane drops 5-7 feet in that whole area from what it used to be. Just like Ben said earlier, we are looking for the variance now anticipating what it is going to be down the line.

Mr. Williams asked, how many yards of fill do you think you are going to have to put in? Mr. Kaplan said I don't know but there is, I can't give a yardage. Mr. Williams said I presume you will use standard erosion prevention measures along the edge of the old lake. Mr. Kaplan said we are maybe talking a foot or two, two or three feet of fill right on this far corner. After we fill it this whole area along this existing river bank gets graded down, sloped down. Mr. Williams asked based on where this is going to be, considering where FEMA is likely to draw out the new 100-year flood plane line, does this require more erosion protection? Mr. Kaplan said not that I am aware of. Mr. Himes said being outside the flood hazard zone they wouldn't really need erosion protection.

Mr. Holdren asked, do you know when FEMA is going to redraw? Mr. Kaplan said I think once the project is 100% closed out, which it is now yet. There is some re-seeding they need to do out there. Just from the experience I know Rob Grodin had them, this property off of Miles Road it could take up to a year to get the map amended. Mr. Williams said relative to that, I don't know if it affects this or not but I am going to a question, because this is a historic site is it going to be, will FEMA hold it to the same standard as a non historic site when it comes to building? Mr. Himes said they will as far as the mapping goes. The mapping is set by an engineering study and they have done some of the calculation for that, which is how he came up with anticipated 100-year flood elevation. It is a matter of them submitting that study to FEMA to get the flood hazard zone re-mapped and becoming the actual regulatory boundary of the flood level. Mr. Williams asked, but at least as FEMA is concerned, what they are talking about doing here they would fall under this exemption, right? Mr. Himes said right, in fact FEMA does not have a prohibition against fill in the flood plane. That is a local regulation that just increases the safety factor and provides some holding capacity in the flood plane.

The finished floor that we are proposing is existing on the inside of the building, which is I believe about five or six, seven feet below the 100-year flood. The existing floor is below the requirements that FEMA has for flood proof construction would make it probably very infeasible for us to utilize that entire lower level of that building, which is close to half the square footage of the project. I have been living with this building for the last five years. The walls that are down there now are two feet thick stone wall that have been there for over 100 years. There is no water seepage coming in through those walls although we plan on cleaning them up and waterproofing them. All the windows along that edge, that you see in these pictures here that have been taken a few years ago, they have all been blocked up. Obviously they had problems before with water coming in. The 100-year flood plane is just a little lower than those glass block that is in those windows, slightly lower than that. We are planning on putting new windows back in, removing all the block, that look historic and

securing them, sealing them, and we are actually looking into a hurricane type of film to put on the windows that can withstand any impact from any debris that might come down the river.

Mr. Williams asked if there is a standard construction technique for waterproof windows? Mr. Kaplan said there is all different kinds of things you can do. The one thing that we need to prevent is the glass from breaking, which is what the hurricane film is for.

Mrs. Freshman-Johnson asked, which variance does this discussion impact? Mr. Himes said the requirement in our code for flood proof construction for substantial improvement to existing buildings. If this were a non-historic structure they would have to provide certification of flood proof construction. Mrs. Freshman-Johnson asked, but since it is it is an exception to our code? Mr. Himes said there is no exception in our code. They have to get a variance. There is an exception in the federal code. Mr. Kaplan said we are just asking the village to go along with what FEMA says. Mr. Himes said the local flood hazard ordinance can be stricter than the federal ordinance, it can't be looser but we can be stricter.

Mrs. Lane said I don't know if it will be helpful but the variance procedure under our local code differs as opposed to an area and yard variance procedure and it specifically says things the board needs to look at. You need to determine whether the variance will not result in the increase flood heights, increase risks to public safety, cause extraordinary public expense or create nuisances. Also, that the structure or other development is protected by methods to minimize flood damages. There are other thing to be looked at, which largely are safety issues, danger to life and property due to flooding, and susceptibility of the proposed facility in its contents to flood damage.

Mr. Kaplan said we have identified seasonal seating/outdoor seating separate from interior year-round seating. The count for seasonal seating is 155 so and the total seating is 460. Mrs. Freshman-Johnson asked if there is anything in our code that differentiates that? Mr. Himes said no, in the code section, in the district they are in, the seating set at 250 maximum. It doesn't matter where it is, the maximum seating is set at 250 for restaurant use. They have other seating for theater and that does not count. Mr. Kaplan said per the existing code we are allowed up to 4,000 square foot of actual bar and dining seating and 250 seats. We are proposing 460 but we are still under the 4,000 square feet. Mr. Holdren asked where the number 250 came from? Mr. Himes said it came from the Planning Commission based on the original plan for this property. They only had one restaurant at that time and now they have two restaurants. Mrs. Freshman-Johnson said so the 250 was arbitrary based on the original plans set by the planning commission; it is not necessarily a calculation formula. Mr. Himes said they tried to make some relation back to our requirements in the downtown but it was also based on what they were proposing and only having one restaurant at the time. Now they have two restaurants and a small coffee shop.

Mrs. Freshman-Johnson asked if this is plan subject to the traffic review board, a traffic plan? Mr. Himes said they have to get the parking plan approved from the Planning Commission and they typically look at egress, ingress, and safety issues. Mr. Holdren asked, what about going from 250 seats to 460 seats as far as noise? Is that anything to consider? Outdoor seating, is that always in

the plan? Mr. Himes said when they initially made their proposal there was a lot of concern from neighboring properties about noise generated from the site so the Planning Commission worked on a noise ordinance and the noise ordinance was tightened up to help alleviate any problems. Mr. Kaplan said the noise with the seasonal seating right now we are buffered by a 50 foot drop from High Street, a solid wall of trees and on the other side of the property we have a field, a river, and another solid set of trees. While the outdoor seating the trees are full of leaves. The front of the property, I think noise from the street, there are no residents right there.

Ron Bombeck, Low Street resident, said he is concerned about taking away the ten foot buffer against the residential side. It seems to be pretty severe. He asked if the Low Street lot will be for employee parking only? Mr. Kaplan said no. He said regarding the 10 foot buffer, regardless whether we are parking up against the fence or 10 feet away from the fence there still is going to be, we want to put up a fence. It would keep any headlights from shining your way.

Jim Black, 188 Low Street, said I support this project but I strongly oppose the parking lot and the parking variance. I am also concerned about the safety of crossing the street. Mr. Williams asked, when they were doing the sidewalk plan for Mill Street and Cleveland Street they looked at those issues, didn't they? Mr. Himes said yes. There is no good solution. There is a legal crosswalk at the intersection of every public right-of-way by state law. So marked or unmarked, pedestrians can legally cross at Low Street without jaywalking. When crosswalks are unmarked the pedestrian has to yield to traffic and when they are marked, in theory, the traffic is supposed to yield to the pedestrian. In a mid block situation like this where you have no traffic signal a marked crosswalk would provide a false sense of security. Normal traffic won't stop for a pedestrian even in a marked crosswalk. Mr. Williams said the sidewalk will be on the riverside of Mill Street and on the south side of Cleveland Street. It will actually be on both sides because the bridge has a walk on both sides. Mr. Himes said it will continue on that side of the street all the way up to Bell Street and then it will cross over to the east side of Cleveland Street and continue up to Washington Street.

A Carriage Hill resident said overall it is a great project. She asked is 180 parking spaces the total amount or is that on the side of the paper mill and how many spaces with or without the variance would the low street parking lot have? Mr. Kaplan said it is 185 including the Low Street lot and the Low Street lot itself is 25 spaces. The Carriage Hill resident said the Low Street lot will be very dangerous.

Joe Miller, 170 Cleveland Street, also talked about the safety concern, the parking situation, the noise, and the increase of traffic.

Mr. Holdren asked, if we are unsure, do we have to vote on an issue? Mr. Himes said you can always ask for more information. Mr. Holdren said the main issue I see is going from 250 to 460 seats. I want to look at how we came up with 181 spots for 250 seats and whatever the square footage of the rest of the space, the actual equation that came up with the 181 parking spots and then you go to 460 and then you have less leased office space. How does that affect the parking? Mr. Himes said there should be some indication of the rationale for making those decisions. I can get you that information.

Mr. Holdren said I would like to put off the variance request for the seating. Is there anything else on here that you would like to be decided on tonight because of construction. Mr. Kaplan said whatever we can get approval on.

Mr. Holdren asked, if something was voted on tonight and it was not passed, what would they have to do to come back and request it again? Mr. Himes said they would either have to modify their plan to comply with the code or modify it based on the comments from the board towards denying the variance.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson to grant the variance for Section 1139.04(b) that requires a 5 foot buffer between the parking areas and the public right-of-way. Specifically the parking in front of building 2. I believe this variance is not substantial at all. The current area is a gravel parking lot so I don't believe this variance is substantial.

Loomis: Aye.

Williams: I am going to vote aye with the stipulation that the applicant enter into an agreement with the village regarding those parking spaces that are actually sitting within the right-of-way.

Freshman-Johnson: Aye.

Holdren: Aye.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson to grant the variance for Section 1133.03 for the Low Street parking lot that requires a 20 foot setback from the right-of-way and 5 feet is proposed. This is towards Low Street, Cleveland Street, and Vincent Street. I think that there are enough plantings along Vincent Street and I don't think there are any residents on the other side of Low Street or Cleveland Street. I don't believe that part of that section is very substantial. Again, this lot is actually a gravel parking lot. It is zoned parking; I don't think that is substantial. Although, this section requires a 10 foot setback from the adjacent residential property. I do think this is a substantial variance because they are requesting a zero foot setback.

Loomis: I am going to vote nay because I feel that the zero setback along the residential side would adversely affect the residential property on the other side.

Williams: I am actually going to vote aye for this variance request because I do believe this has been used as a parking lot for decades. Even back when Chase Bag was still a functioning bag factory it was used as employee parking. Also, because in a village where we suffer parking constraints taking away parking space I would consider a detriment to the area and it could potentially force parking on side streets as opposed to in the parking lot.

Freshman-Johnson: I will vote aye pointed out that it is zoned currently as a parking lot and even with no variance granted there is still room for parking spots there regardless of a variance today so the issue of safety is not in consideration for this variance. In addition, a zero tolerance setback on the set aside, the person owning that lot adjacent purchased the lot knowing this was a parking lot with access up to the zero tolerance line and it is zoned parking without a building constraint there. So, for those reasons, I vote aye.

Holdren: I also vote aye. I also wanted to ad that the owners are putting in a new, better wood fence.

Moved by Mr. Holdren, seconded by Mrs. Loomis to grant the variance to Section 1142.05(b) that requires parking areas with fifty or more spaces to have at least 5% of its area landscaped and the current plant is 4.1%. I don't think this variance is substantial. When I picture all the lots in Chagrin that are more than fifty I don't think any of them have landscaped features and these actually do. I also want to point out that this is not a square lot; it is actually broken up into several sections so I don't think it is going to have that appearance of just an asphalt field.

Loomis: Aye.

Williams: Aye.

Freshman-Johnson: Aye.

Holdren: Aye.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson to grant the variance to Section 1151.03 that limits the use of land within 120 feet of the low water level of the Chagrin River to passive recreation. I don't think this is a substantial variance because this is the idea behind the paper mill bagging plant ever since the last 150 years.

Loomis: Aye.

Williams: Aye, and I would like to add that granting this variance will do substantial justice I think to our code because the historic structure sits virtually entirely within the 120 foot river buffer setback. It has been used for a mill for most of its existence and it is being changed to a more recreation, entertainment, office use, which is a lower impact use and will serve to allow the developer to preserve the property and substantially its original form.

Freshman-Johnson: Aye.

Holdren: Aye.

Mr. Williams said it has been discussed that potentially we could defer action or recommendation on action to the variance to Section 1139.02(a)(6)(b)(2), the 250 seat maximum with a proposed 460 seat request, which would be a 210 seat variance. Is there a motion to defer or recommend? Moved by Mr. Holdren, seconded by Mrs. Loomis to defer.

Loomis: Aye.

Williams: Aye, and I would like to also add that the Board of Zoning Appeals is taking action to defer recommendation on this particular variance request until we can see what method was used to determine the original 260 maximum so that we can at least consider what the original plan was relative to what the applicant is requesting tonight.

Freshman-Johnson: Aye.

Holdren: Aye, and I just wanted to add that the idea of having more restaurant seating I am not opposed to at all. Actually, personally I think it is great. I just want to have more time to figure out that will affect the parking and the rest of the area.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson to grant the variance to Section 1353.06(a)(5) that prohibits the deposit of fill in the special flood hazard zone. This one I originally had a problem with because I am not an expert on flood hazards. But, I would like to point out the engineer that did the report, Buckeye Engineering, they took into account the lowering of the dam that FEMA would move the river flood zone and they are experts. I would also like to add, can we have our engineer look at too and give his input. Mr. Himes said we can submit that to our engineer. Mr. Holdren said I don't think this is a substantial amount of space. It is bringing in some fill just to shore up some of the parking that I believe is currently parking or at least it is currently developed.

Loomis: Aye.

Williams: I am going to vote aye and I'd also like to add that I believe adding the limited amount of fill that the applicant is proposing will not increase a threat or impact safety factors relative to flooding and the threat to personal safety or to property. I'd also like to add consideration for this that we did look at FEMA's recommendation, their NFIP flood plane management requirements in the exemption that is provided to historic structures of which this is adjacent to.

Freshman-Johnson: I vote aye. The timing here getting a new re-mapped flood zone here on this property would probably eliminate this variance in the future and the work to be done to eliminate the flood zone issue would eliminate the issue for the variance. Therefore, I am approving the variance based on this fill is just to

get it back to where it is now anyway and it is irrelevant for the future mapping of this land.

Holdren: Aye.

Moved by Mr. Holdren, seconded by Mrs. Freshman-Johnson to grant the variance to Section 1353.06(b)(2) and Section 1353.04(d)(4)(b). He said our code states that if a building is being renovated below the flood plane it needs certification of flood proof construction. This building is existing, it's there, and I don't think there is going to be flood issues that will damage the village in any way. If it damages that property I don't know but that is out of our hands whether it is flood proof construction or not. I don't think this is going to cause safety issues to anybody in the village.

Loomis: Aye.

Williams: I vote aye and I would like to add that I am not recommending approval by Council of acceptance of this variance would render this particular section of the building undevelopable or unimproveable and hence unusable to both the developer and future lessees. I also want to add that I think the applicant has demonstrated that they will improve this part of the building particularly the windows with substantially flood resistant new windows. I don't think granting this variance is going to put property or individuals at greater risk.

Freshman-Johnson: I vote aye for reasons of the variance exists today and with modern material and plan can only increase the safety and security of the flood issues at the current place of the building.

Holdren: Aye.

Mr. Himes said these recommendations will go to Council on Monday, October 14, 2013.

Mr. Williams said we will take up the variance request to Section 1139.02 at our next scheduled BZA meeting.

Mr. Kaplan asked, would it be possible to have a special meeting with your group prior to your next meeting? Mr. Williams said yes, if that is possible the challenge for us will be scheduling. I will contact Wade, our Chairman, and we will see if there is another date. There is a minimum two week notification to all the residents of a special meeting. Mr. Himes said 20 days for a normal application. I am not sure what we would have to do with a continuance. Ms. Lane said notification for a continuance is not necessary. The people were already here so if they want to attend a subsequent meeting they can call the village.

The meeting adjourned at 10:30 p.m.

Robert Williams, Secretary
lgb