

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
December 2, 2014**

Members present: Fricke, Williams, Freshman-Johnson, Herdman
Also present: Himes, Lane, Edwards, Subel

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

APPROVAL OF MINUTES

Moved by Mrs. Freshman-Johnson, seconded by Mr. Fricke to approve the minutes of the meeting held September 23, 2014. Carried. Ayes: Fricke, Williams, Freshman-Johnson. Abstain: Herdman. Nays: None.

SWEARING OF WITNESSES

All were sworn in.

JOSEPH AND COLLEEN VARGA, 171 NORTH STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(g), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, PERMANENT PARCEL NO. 931-14-016.

Mr. Fricke said the Vargas have asked for a continuance to the January 27, 2015 meeting. Moved by Mr. Williams, seconded by Mrs. Freshman-Johnson to formally table the application of Joseph and Colleen Varga at 171 North Street.

Williams: Aye.

Fricke: Aye.

Freshman-Johnson: Aye.

Herdman: Aye.

JON & DANA MATTA, 220 KENTON ROAD - REQUEST FOR A VARIANCE TO SECTIONS 1125.04(a)(2) & 1125.04(a)(3), AREA, YARD, AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, AND SECTION 1145.02(b), NONCONFORMING BUILDINGS, PERMANENT PARCEL NO. 931-03-056.

Mr. Himes said the applicants propose to improve an existing accessory building, that exists in their front yard, including replacing the roof structure to create a steeper pitched roof. The structure is

nonconforming to our code requirements for location and size. The building is legal nonconforming or grand-fathered. Under Section 1145.02(b) of our code we prohibit alterations to nonconforming structures unless the entire structure is brought into compliance with the code. Section 1125.04(a)(2) limits the size of accessory structures to 700 square feet in total and the existing building is about 837 square feet. Section 1125.04(a)(3) requires that accessory buildings be located in rear yards only and this structure is in the front yard. For those reasons they need variances to those three sections to do the work that they are proposing.

Mr. Fricke asked, what can the Mattas do to this structure without getting a variance? Is there anything they can do with its current form? Mr. Himes said it is legal nonconforming so they have grand-fathered rights. They can continue to use the building in its existing configuration. The code allows for repairs and maintenance so long as they are not doing structural repairs, unless those repairs are ordered for the safety of the building. They can not make any additions to the building without coming into compliance with the code. Mr. Fricke asked, so they can keep the footprint as it is to the extent that there are new doors, new windows, new siding? Can that be done without a variance? Mr. Himes said yes, that would all be under maintenance of the structure. Mr. Fricke asked, on the interior, can they bring in water? I believe there is already notes in one of the documents received that there is already water, electrical, and plumbing in there. Mr. Himes said right, even if there weren't as long as they are not making additions or major structural repairs to the building they would be allowed to use it as is as an accessory building so their rights to use it as an accessory building are the same as if it was a conforming building in the rear yard. Mr. Fricke asked, can the fire place be replaced without a variance? Mr. Himes said right. Mr. Fricke asked, new flooring and a new interior can be repaired without a variance? Mr. Himes said correct.

Mr. Fricke said there were some concerns raised in several of the neighbor's comments about the facility potentially being used by someone down the road as an in-law suite or as some additional living accommodation. Is that a variance issue? Mr. Himes said no because that goes to the use of the structure and that is zoned single-family residential so they could not create a second residence on that lot.

Fred Carmen, attorney for the Mattas, said I think the only issue before this board is the pitch of the roof. The Mattas already have a legal nonconforming use, which they intend to continue to use in the same fashion that has been used before. They have submitted plans and obtained a building permit already and have begun the renovation work on the interior of the structure, similar to what you discussed.

Joe Meyers, architect for the Mattas, said the existing building is concrete block, it has rotting windows, and a flatter tar paper roof, which has been a continuing maintenance issue. They are going to put new siding on and we want to put a pitched roof on it because it is a much better solution than a flat roof in an environment with snow and rain to control the shedding of water off of the roof and not have continued maintenance on it. We've brought this solution to the Architectural Review Board and they thought it was a good solution and they approved the aesthetics of the building.

Mr. Fricke asked, what needs to be done to the building? Mr. Meyers said it is partially under ground so the walls being cinder block actually hold the ground up around the outside of the structure. The roof is probably in the worst condition inside and out. It has braces that are kind of propping up the rafters. Through the years of leaking it weakened the rafter situation of the roof and so it is to the point that the roof rafters themselves need to be replaced to make it a safe structure. If we are going to replace the roof rafters giving it a little more pitch would shed the water and snow so that we wouldn't be back in the same situation where we are at now dealing with the elements.

Mr. Fricke asked, how did you determine the pitch that you are proposing? Mr. Meyers said the 6/12 is a good enough slope to shed snow and water without being too steep for the size of the structure. Mr. Fricke asked, is it the minimum that you believe is necessary? Mr. Meyers said it is the optimum. Mr. Fricke asked, what is the increase in the high point of the roof to what it is now? Do you know the distance? Mr. Meyers said it is about 6" higher than it is now. The gutter boards facing the road would stay the same height that they are now so the actual front elevation would not stick up any higher above the ground. The gutter line, as it falls across the front of the structure now, would stay in the same place but the ridge behind that gutter line would raise up. The roof itself isn't getting raised, it is pivoting from the bearing wall on the front.

Mr. Fricke asked, can you speak to any landscaping? I have been by there many times and it looks to me that the real view is from Kenton Road. It seems like some Evergreen screening around, and I think you would go all the way around by the driveway, might be beneficial if we were to grant the variances. Mr. Carmen said there are some drainage issues. The neighbors' lawns both pitch into ours so we do have to deal with that as well. We didn't want to start that. We really have to do the barn and the side structure as well as the yard. The plan is to replace or make it much more pleasant looking, especially on that ridge line that you were referring to. I think the plan is to run some Pines down it. We will use a landscaper or a landscape architect to put that together. Mr. Fricke asked, are we speaking of the ridge in front? Mr. Carmen said we are, it is on the Kenton Road side. The neighbor would really have a lot less visibility than what they have currently. We are going to have to trench that building so it doesn't make sense to do it prior to doing the trenching.

Mr. Carman said the whole structure can be salvaged; it is the roof that is the major issue. We are getting water damage. If this is not addressed this structure is going to fall. The roof is starting to come in, there is actually a rock wall that is starting to slide, and the doors are falling off. This is a major safety issue especially having two little kids as well as friends over at the house. The way the structure is laid out at this point, at the back of the structure it is less than 3 feet to the top of the roof. Mrs. Matta has given one picture with her son with his foot on top of the roof of the building. When you come across the front of the roof to the front of the property it is a much more significant drop off; it is 8 or 10 feet at that point. Their concern is that their children or other children could hop onto the flat roof in the back, come across, and then either jump or fall off of the front of that building whereas with the pitched roof they could not do that. I think from a safety standpoint it is better for the neighborhood too. Mr. Fricke asked, have you considered just raising it? Mr. Carman said I think that would be a huge detriment to the property. It is a structure that is there and it is a storage facility. I think it just needs to be cleaned up and I think it will look great. I think that would

unequivocally damage the property value.

Mr. Williams asked, when you talk about trenching, are you talking about going around the outside of the building to deal with the water pressure that exists against the current walls right now? That will give you adequate opportunity to look at the footers. Mr. Carman said that would probably be one of the first steps. I don't think there is anything wrong with the structure; we have had a couple of contractors over. It is just taking and redirecting some of that water because it is starting to seep in a little bit. The structure is still sound and it is a pretty solid structure. Mr. Williams asked, have you had it inspected for its load bearing capability with the proposed new roof and the intended improvements? Mr. Carman said actually my belief is that the structure was actually another floor. There is a support beam that runs the structure and it is massive. It is my understanding that at one point in time this was actually another floor or two so it was much bigger.

Mr. Fricke asked, so if the issue is the roof the issue is not a variance over a roof provision in the code, we are just looking because they would be changing the structure? So whether they change it a foot or as long it was beneath the height structure that is set forth in the code the variance is just that. They are not seeking a variance over a height requirement, it is just because that is the one thing that they are changing other than just repairing what they have. Mr. Himes said right, because it is nonconforming, as soon as they start making additions or modifications to the building the code says you have to bring the entire building into compliance with the code. As soon as they start changing things then they need variances for all of the nonconforming issues.

Mr. Herdman asked, the structure, the accessory building predates the residence on the lot? Mr. Carman said yes and there is no change in the footprint of the structure.

Mr. Fricke said we have received a whole bunch of documentation from both the applicant as well as the neighbors who are in opposition to the granting of the variance. By my count we had 8 people on Kenton Road who submitted documentation in favor of the application, 6 people from Kenton Road who are in opposition, there were 9 documents received from residents of Falls Road in favor of the application, there was 1 document received from a neighbor on Falls Road against the granting of the variance, there were 4 documents submitted by neighbors on Willow Lane in favor of the granting of the variance, and no one from Willow Lane submitted a document against the application. All of those documents will all be a part of our record.

Jim Nerpouni, 179 Kenton Road, spoke in opposition to the granting of the variance.

Kathy Nerpouni, 179 Kenton Road, spoke in opposition to the granting of the variance.

Chris Childers spoke in opposition to the granting of the variance.

Donna Alusheff, 431 Falls Road, spoke in opposition to the granting of the variance.

Mrs. Freshman-Johnson asked, if the roof was going to be fixed to have the same pitch as it has now,

if they had to tear it off and put a new roof on with the same pitch, does that require a variance? Mr. Himes said if you are tearing the whole structure off then you are getting into a structural repair. The intent of the zoning code is to try to bring nonconformity into conformance with the code so that is why they don't allow structural repairs. Mrs. Freshman-Johnson said anything to repair this roof you would need to come and get a variance. It is just that because of the opportunity to fix it they wanted to make it more modernized and go with more of a pitched roof is seeing opposition because of the tree landscapes and things like that. Either way they would have had to get a variance here to fix the roof. Mr. Himes said the code allows repairs but as soon as you start getting into the structure they are assuming that the building is so badly damaged that it should conform with the code.

Mr. Fricke said just to be clear, no structural part shall be replaced except when required by law to restore to a safe condition. He asked, has the village opined on whether the roof needs to be replaced? Mr. Himes said no, we haven't made any investigation into the structure.

Mr. Carmen said in a residential neighborhood a pitched roof is not an unusual occurrence, in fact it is the norm. In many towns there is a minimum slope requirement that you have to have if you are going to build a new house and have a pitched roof on it. Typically an Architectural Review Board is looking for a minimum slope to a roof for the construction to look right. I don't see that if you have to put a new roof on the building if we were to come in and propose an out structure in Chagrin Falls and it went to the ARB I would not be surprised if we were turned down if we put a flat roof on a new structure and say this is what we think is aesthetically pleasing. I think a pitched roof is appropriate for a residential neighborhood or not out of character for a residential neighborhood. Mr. Fricke said I think that is all true what you say but I think what we wrestle with is the fact that this is a building that sits in the front yard. We don't have a lot of those in Chagrin and that is the challenge in my mind. If this was in the back yard you would have no issue.

Mr. Fricke said it looks to me that the current roof pitch is 5 degrees and if you get a Cleveland snow of 2 feet sitting on that pitch it doesn't appear to me to be all that helpful. I wrestle with the safety standpoint as well.

Mr. Williams said we could talk about the aesthetics all night long but I am not sure that it addresses this specific technical challenge that we are facing.

Mrs. Freshman-Johnson asked, is the building structure more than 30 feet from the property line? Mr. Himes said 58 feet from the front property line.

Moved by Mr. Williams, seconded by Mrs. Freshman-Johnson to make a recommendation to Council to approve the variance requests by the applicant at 220 Kenton Road. The variance requests being to Section 1145.02(b), nonconforming structures, in which nonconforming structures that are altered have to be brought into compliance with the zoning code. The second variance request is to Section 1125.04(a)(2), which allows for a maximum of 700 square feet of coverage by an accessory building. The existing building is 837 square feet so they would need a variance of 137 square feet. The last variance is to Section 1125.04(a)(3), to accessory buildings that are required

to be located in the rear yard and the existing structure is in the front yard. The applicant has submitted arguments to the finding of practical difficulty in this situation. The primary practical difficulty being that the building is an existing building that predates the structure of the original house and sits in the front yard. Will the property yield a reasonable return or will there be any beneficial use of the property without the variance? The structure is in disrepair and a reasonable return would degrade the value of their property if repair and maintenance is not performed. Is the variance substantial? It is a preexisting structure that is already sitting in the front yard. The variance request from 700 square feet to 837 square feet is a variance of 137 square feet, which is not substantial. Would the essential character of the neighborhood be substantially altered? No, the building, again, is preexisting and in requirement of repair and maintenance. Would the variance adversely affect the delivery of governmental services? No, not because of its location. Did the property owner purchase the property with knowledge of the zoning restriction? No, the property owner was probably not aware of the front yard requirement of accessory buildings when that property was purchased. Can the property owner's predicament feasibly be obviated through some method other than a variance? The property owner could in fact renovate the property with the roof in its existing situation, a relatively flat roof. The variance requirement was triggered by the alterations they wish to make to the building, which of course is an increase in the roof pitch. How would the spirit and intent of the zoning code be observed and substantial justice be done in granting the variance? Again, the owner seeks to make improvements, repairs, and maintenance to an existing structure. And lastly, is the variance based on circumstances that are self-created? Again, it is a preexisting structure that sits in the front yard.

Williams: I am going to vote aye for the reasons that were given in the motion. I'd also like to add that pretty much everybody supports the fact that there has to be maintenance repairs to this building. There is argument over the aesthetic value of changing the roof pitch from its current relatively flat configuration to a roof that's got a peak that is 6 feet above its current location and I think that is an aesthetic argument, not a technical argument and while having been considered, ultimately, I don't think changes are determination on whether the standard of practical difficulty has been met. The Architectural Review Board deals with standards of aesthetics when it comes to both dwellings and accessory structures. Lastly, I am voting to recommend the variance requests on the condition that appropriate landscaping is put in around the building to help address some of those aesthetic issues so that would be in the form of some substantial Evergreens along the Kenton Road side and perhaps along the east side of the building as well to shelter the home on Falls Road.

Fricke: I would say first that Kenton Road, I think, is one of the prettiest roads in the village and I have friends who live all around Kenton Road who are both for and against this issue. I would say it's always struck me as odd that that building was even there to begin with. To me it is a bit of an eyesore now as you are driving along, although it is somewhat shielded by the mound. I wrestle with whether the variance is substantial given what's there now. I

also wrestle with whether the neighborhood would be substantially altered. But, I ultimately will vote aye for the reasons that Bob cited and also would suggest, I would only vote so on the stipulation that appropriate Evergreen landscaping block the view as much as possible on Kenton as well as to the east whether that means taking down trees, whatever it might be. It seems to me that that would be a reasonable accommodation to the neighbors as well. So, I would vote aye with that stipulation.

Freshman-Johnson: I agree. I was going to suggest that Kenton Road is one of the most unique roads actually in Chagrin Falls and it is not often we wrestle with variances on properties this large and the fact that this is in a front yard. Normally somebody's front yard is somebody else's back yard so whether you did this in the back or the front you see in this town all the time. You might like that because it is in the back but the person in the back doesn't like it because it is in their front. And so there are always reasons why the surrounding neighbors argue and this particularly I know everybody involved so I want everybody to walk away from this happy but trying to keep it all technical and focus on the issues that we do. I think a lot of people come to this meeting and get very confused about what is within our focus and what's without. We have had many issues in the last 24 months that I have been sitting on the board that are of our scope and we try to refocus the points to be in our scope, especially aesthetics, and that is usually what makes arguments on one side or the other. So, keeping everything in scope and focusing on the materiality, the building itself is there and really the uses, the changes, and everything of how the Mattas want to use that building are irrelevant here. The pitch, whether it is 4 feet or 2 feet or 1 foot, is going to change if they want to maintain this building. I think we can all agree that there is maintenance that needs to be done on this building regardless if it has been there for 50 years. At some point every building needs to be maintained in a difference way and just fixing what is there doesn't work anymore especially when you want to modernize and keep it with the rhythm of the things that are going on in housing today. So, for all those reasons, and I know this is difficult for those, but I will vote aye to approve the variances.

Herdman: I will also vote aye and I just wanted to say whenever we have emotionally charged issues like this, and it happens unfortunately all too frequently here before the BZA, I always take comfort in the code. That is our guidepost, that is what we have to seek solace in and so I go back to the code and I look at this, the variance that is sought here, I don't see it as substantial. In fact, any variance would be required based on the nonconforming situation that we have with this particular building. I credit to a great degree the testimony from the architect about the pitch. I have a flat roof myself on my main residence and I can tell you I will not sit here and say that is it easily

maintained. It is much harder to maintain a flat roof than it is a pitched roof. I have lived in both types of residences so I have first hand knowledge with respect to the difficulty of maintaining a flat roof. I also wanted to speak just briefly to the safety issue involved here. I think a steeper pitch actually enhances safety on a roof here to discourage children or neighborhood children from going on the roof and playing on the roof. I think a steeper pitch actually is an enhanced safety feature for this roof. I also would join the stipulation on the landscaping. I do think that there are well founded concerns obviously that have been addressed before this BZA with respect to the affect on the character of the neighborhood. But, I do think that reasonable landscaping efforts would go a long way towards meeting those concerns and so I would also join that stipulation.

Moved by Mr. Williams, seconded by Mrs. Freshman-Johnson to amend my original motion to include the requirement for Evergreen landscaping appropriate for shielding both the visibility from Kenton Road as well as the east side of the property.

Williams: Aye.

Fricke: Aye.

Freshman-Johnson: Aye.

Herdman: Aye.

Mr. Himes said this will go to Council on December 8, 2014 for final action.

RIVERWALK, 46 & 48 WEST ORANGE STREET - REQUEST FOR A VARIANCE TO SECTION 1125.03(c)(f)&(j), AREA, YARD, AND HEIGHT REGULATIONS: MAIN BUILDINGS, AND SECTION 1125.04(b), AREA, YARD, AND HEIGHT REGULATIONS: ACCESSORY STRUCTURES, PERMANENT PARCEL NOS. 931-12-019 & 931-12-018.

Mr. Himes said recently variances were approved for 44 West Orange Street and it is under construction. The applicant is proposing to build two more single-family dwellings on the adjacent lots to the west. The lots are zoned R2F, which is residential two-family. They are proposing a height of these dwellings at 46 feet and our code Section 1125.03(j) allows 35 feet. Section 1125.04(b)(3) of our code allows 25% coverage of the front yard by driveway and the proposal calls for 66% of coverage on each lot. On unit #48 they are requesting a front yard depth of 28 feet and our code Section 1125.03(f) requires 30 feet. For unit #46 they are requesting a modification to the required frontage. Section 1125.03(c) requires a lot width of 50 feet and they are proposing 47 ½ feet. These are hillside lots. Unit #44 was construction with a slope retention system. That retaining wall has been installed and it expands across the rear of unit #44 and also the proposed unit #46. They have also proposed that that retaining wall then extend across the back of unit #48 with a return

that would come back towards West Orange Street. The village engineer must review and approve all grading, hydro logic controls, landscaping, and an engineer slope stability plan before permits would be issued.

Mr. Fricke said we have two new curb cuts. Mr. Himes said going way back to the original plan, all of the units were going to be served off of a single curb cut off of Williams Street. These buildings are really separate single-family units from the duplex units that were previously constructed so each one of them has a curb cut to West Orange Street. Mr. Fricke asked, has there been any safety, police, or fire review of those additional curb cuts on Orange Street? Mr. Himes said no, the police have not looked at that.

Mrs. Freshman-Johnson said last time we talked about unit #44 I specifically asked the question if there are going to be other dwellings built here and the answer was no. So, I am not sure what has changed. I believe we said we have been around these variances for two years now and we have come back and circled back around to a plan that presented, then un-presented, and presented and here we are again. I just don't even know why this is here again.

Robert Vitt said this is a similar submission to what was presented and approved back in January of 2013 when there were three additional single units. If you would pull that drawing from the file you would see that the units are approximately the same size. There are three distinct permanent parcels that are west of the existing development. They were three single-family lots platted before my ownership of the property. On the western most two parcels there was a duplex located next to the white three-story building that is immediately west of our parcel and that was demolished. What this proposal before you today is in fact a continuation for the construction of a single-family residence one on each of those two platted lots. Because of its close proximity to the condominium development the units are similar in material, similar in architectural detailing, similar in height, and for all practical purposes it would look like a continuation of the existing streetscape.

Mr. Vitt said there is a specific reason that we did request a variance on one of the lots from 50 feet to 47 ½ and that was to permit us to run a retaining wall to the west of this building, between this building and the next building up the hill. The question why are we proposing two more buildings is originally when I bought this property the previous owner/developer had submitted plans (and were approved) to build at least eleven if not fourteen units. We have scaled back from that original plan.

Mr. Vitt said the biggest difference between my plan that was approved in January of 2013 and this current plan is that the last unit is set back 28.5 feet from the right-of-way. The one that was approved in January of 2013 there was a fair amount of discussion because we had moved that unit up to 11 feet of the right-of-way. Mr. Fricke asked, was that the building that was supposed to be facing east? Mr. Vitt said it was turned because we had a cul-de-sac. In that configuration it was a condominium. The whole project was a condominium with one access point off of Williams Street. Because these are now single-family homes and single-family lots they all require their own driveway. We could do a shared driveway but that would also require a variance.

Mr. Vitt said one thing we do know today about the site, even though this site has been drilled and probed and over the last five years studied by at least six geo-technical engineers and structural engineers and civil engineers, we probably have discovered more about this site in the last month and a half than the previous five years. The geo-technical engineers came up with a strategic plan to drill a dozen holes in locations that would give them a look at what was underneath the subterrarium configuration of the soils on that hillside but did not have the ability to go in and do more or a larger scale excavation to determine what was actually there. In the past couple of months in the preparation and then in the construction of the now existing retaining wall we discovered a great deal about that hillside because we were able to excavate relatively large areas and then come back and recompact them. We know a great deal about the profile of that hillside from West Orange Street all the way up to West Cottage Street because we own the parcel at 47 West Cottage Street and we basically re-contoured that entire parcel of property. We are moving what were previously considered retaining walls, we are moving portions of the foundation of the structure, and really analyzing in considerable detail the subsoils on that site with respect to where foundations would typically exist for properly designed and constructed dwelling so we know a great deal more. That led to the evolution of what was previously designed, submitted, and approved for this site. This particular site and the retaining walls that we have installed in contemplating completing the installation to build the last building we did take into account all this additional engineering that has been made available to us in this exploration that has taken place in the last several months.

Mr. Vitt said the advantage of building the three units and the resulting retaining wall will elevate the slope stability factor of this hillside higher than we previously thought we could obtain. The wall now extends approximately 90 feet to the west of the existing construction of the six original condominiums and it does extend about 12 feet beyond what would be the west wall of the unit referred to unit #46 but it does not extend to the extreme western end of the property. The proposal is to build an extension of that wall and then the building structures themselves are a heavily reinforced poured concrete wall and then the area between the building wall on units #44, #46, and #48 would be filled with stone. There are two requirements that the consultants gave us in the course of stabilizing the hill and they are to decrease the mass on the top of the hill and increase the mass on the bottom of hill, which we are doing. The retaining wall that was installed was bored into the ground into very hard, dense blue/gray clay and then about two thirds up the structured steel columns of that wall they drilled earth augers back into the hillside like stitching it into the hillside. We were surprised at how dense the soils were and in fact exceeded the design parameters for the amount of torque to drill in the earth augers in distances less than calculated.

Mr. Williams asked, taking into account all of that, is it basically all the new geo-technical data and the design of the new 90 foot wall that has permitted the feasibility of constructing another two dwellings? Mr. Vitt said with the wall that exists today we could build units #44 and #46 with almost no additional excavation.

Mr. Fricke said please talk about the wall design around unit #48. I see that it runs horizontal to West Orange and then it takes a diagonal dip and then heads due north/south. Mr. Vitt said you can see the topography line. If you notice that the wall starts to track more closely the north/east-

south/west direction. The most effective location and design of the wall would follow that contour line. That is what is driving the unusual shape of that last unit and its location. There is additional benefit to the entire hillside to continue to extend that wall. To extend that wall it makes sense to run almost parallel to the topography grade lines of that hillside. That is why the dog leg is in that section of the wall. The very specific design of that section of wall, not yet constructed, has not been refined because the information that we got from the installation of the first wall, including all the readings on the depths and the torque resistance of the anchors, has yet to be analyzed by the engineers who would design the extension of the wall. The north/south wall actually doesn't really have anywhere near the lateral forces of the hillside. It is really a wall to accommodate the excavation. If we didn't build unit #48 there would be no advantage in building that element of the wall. To build that wall and to build unit #48 requires that wall. That wall probably wouldn't even require tie backs, or minimal tie backs at best because the geo-technical engineers have said because it is running almost perpendicular to the parallel grade lines it is taking little forces. The forces on a hillside are typically moving perpendicular to the grade lines.

Mr. Fricke asked, will the north/south wall be the same dimensions and height as the diagonal wall as well as the east/west wall? Will it show? Mr. Vitt said when it is all finished you won't see any of it. Mrs. Freshman-Johnson asked, is it being buried in the hill? Mr. Vitt said yes, when the units are built in front of it the wall totally disappears. If I don't build units there you will see the wall. At the base of the wall there is a drain for water runoff.

Mr. Williams said the new wall looks like it is an additional 90 to 100 feet extension from the existing wall? Mr. Vitt said the initial leg is probably 55 feet and then it probably makes another turn. Yes, it is probably 90 feet.

Mr. Fricke asked, will the wall be constructed of the same material as the rest of the wall? Mr. Vitt said possibly, but it hasn't been designed. It could be a slurry wall with rebar and tie backs.

Mr. Williams asked, it will be designed to meet the same 1.3 slope stability? Mr. Vitt said yes. Our original goal was a 1.2 slope stability and we have elevated that goal to 1.3 and that is probably obtainable.

Mr. Herdman said I seem to recall when we considered the proposal for unit #44 that this wall was not in that proposal. Is that correct? Mrs. Freshman-Johnson said right, it was not required. Mr. Herdman said there was discussion, I think from the neighbors, that they would like to have seen this retaining wall put in. Is that right? Mr. Vitt said in the proposal of 2013 we could have built a single unit without a wall. Mr. Herdman said the proposal that came before us earlier this year, with respect to unit #44, I recall specific discussion about the construction of a wall similar to this and I remember there being discussion about the fact that there was no need for that retaining wall in order to insure slope stability. Mr. Vitt said because Isaac Lewin said he could design the wall of the building to retain the hillside. Now what we have done is we have designed the wall independent of the building so the wall on its own can retain the forces of the hillside with 13 feet of it exposed like it is right now. Mr. Herdman asked, was that a product of a necessity to maintain the slope

stability. You started to do more studies on the slope and you realized that you were actually going to have build this retaining wall or was it a decision that was made in order to accommodate the construction of unit #46? Mr. Vitt said when Isaac Lewin designed the building foundations they were very complex and they required that the duration of time to build the wall, the building wall, because of complexity we thought was unreasonable. Isaac Lewin threw out the other option. He said build a wall using tie backs. Previously, in 2013, the wall was a cantilever wall. Isaac Lewin, who is a very respected structural engineer, suggested that we look at using tie backs and when we did the analysis the analysis from the perspective of the time duration to build the wall and being able to achieve the 1.3 and not have the buildings themselves be the retainage for the hillside everybody, including the structural engineer and the geo-technical engineers, felt more comfortable with two distinct systems. One wall design to hold the hillside and then the building walls independent of that requirement. That then permitted the design of the building walls to become much more simple. We could have gone a head and built half that wall. Mr. Herdman said that was the original proposal. Mr. Vitt said to build that wall twice the length costs us about 30% more because once we mobilized to do the work with the equipment that was required to do it. Any of you may have watched the construction of that wall. That whole thing went in in about a week and a half.

Mr. Herdman said this is the biggest problem I have with this proposal. You came before us earlier this year and there were specific statements that were made and testimony that was given to this Board and also to Council about what you needed in order to achieve slope stability. Nowhere in that discussion was there construction of this wall that currently exists. In fact, I distinctly remember you saying it was not necessary in order to achieve that slope stability. You also said something that concerns me greatly, which is you've learned more about the slope in the past month and a half than you have in the previous five years. We haven't considered a proposal from you in the past month and a half. That means that you know more about the slope now than you did when you previously came before the Board and Council and that troubles me deeply. That is not to say that any of this is necessarily germane to what we have to consider here but I can tell you that it is germane to whatever vote would come up to Council and you distinctly and specifically told us that you are not going to build on those other two lots. In fact, I think that there was a statement that you were thinking about selling the lots or that they were going to remain unconstructed. Can you explain why you've had a change? Mr. Vitt said if you go back and review all of the statements that were made it came out specifically that if we built the one additional unit that we would improve that area of the hillside to 1.3 not necessarily changing the balance of the hillside beyond the 1.0 and that was a concern of a number of people.

Mr. Herdman said I am having trouble distinguishing in my mind the necessity to maintain slope stability going forward now with this entire project including the construction of unit #44 and what it is that you would have to achieve slope stability with respect to only unit #44. The construction of a new wall makes me wonder whether or not you would have been able to achieve the same slope stability without constructing that longer, more efficient wall that you constructed. It raises questions in my mind as to the initial slope studies that were conducted and how much fidelity we should put in those numbers. I will be the first to admit I am not sure that they are necessarily on

point as to what we have to consider here. I really don't think that they have anything to do with the zoning variances that you are seeking but I will tell you that I think that there are a lot of people who are here in the audience tonight because they are very frustrated with this process and I know that we will probably hear from them shortly. I can understand why that would be because I feel as if there have been statements that have been made to this Board in the past and now we are hearing something different and that is frustrating for me to sit here and hear that.

Mr. Vitt said I don't know that you are correct. We agree that the whole hillside was 1.0 and there has been testimony by consultants and by Tim Lannon that the hillside was 1.0. When we made the proposal for the single unit it was agreed that, and stated that, that portion of the hillside would be improved to 1.3. A number of people raised the question, what about the rest of the hillside? When I submitted the plans for this wall to Tim Lannon and I had a conversation with Ben and I said I don't have approval to build unit 46 and he said well what will you do if you build the wall and you don't build unit #46. I said I will build unit #44 and I will fill the area in front of the wall. But the benefit will be that we have taken a substantially larger portion of that hillside from 1.0 to 1.3. Is that wrong? Should we have simply said no, less is more or is there an advantage of having the 1.3? I took the gamble on the dollars and I told Ben if I don't get approval for unit #44 I will fill in the area in front of that wall beyond building unit #44. But, the benefit is that we have taken instead of one-third of the hillside to 1.3 and the balance to 1.0 we've now taken nearly two-thirds of the hillside to 1.3. If you don't want me to do the rest of the hillside 1.3 and 1.0 is fine, I'll do that. I will stop and unit #46, I'll stop at unit #44. I am simply saying I am prepared to pay the cost of taking that hillside not to where it was previous of my ownership, I am prepared to achieve the 1.3 to the western boundary of this property. I can only do that by building an additional section of the wall. Right now we are beyond our submission. When we got approval for unit #44 it was clearly stated at that meeting that only that portion of the hillside we would be able to achieve a 1.3.

Mr. Herdman said my memory seems to sink up with that so if I stand corrected I stand corrected. My point is I have less comfort in what you are telling me about the slope stability now as I did back in May or whatever it was that we last considered this because it seems as if there has been a substantial change in your understanding of the hillside. I still don't know whether or not I have a clear answer on whether the slope as it pertains to unit #44 would have remained as stable without the construction of the wall. If you had not constructed the wall, the wall that currently exists, would you still have been able to maintain a 1.3 slope stability with respect to the parcel that relates to 44 and the parcel above it on West Cottage Street? Mr. Vitt said, as I stated earlier, the 1.3 could be achieved without this wall on the portion of the hill behind unit #44 because Isaac Lewin designed the wall of the building to be the hillside retention to achieve the 1.3. So, yes, I could have not built this wall and designed the building but when consultants started to confer with each other they thought it was a win-win to build a more complex wall and extend it beyond the limits of 44 and that is what drove this design. I didn't build this wall without submitting it. We had discussions with Mr. Lannon and we submitted the design to Mr. Lannon and the calculations to Mr. Lannon for review. I don't know where they went beyond Tim Lannon but he came back and gave us a thumbs up and we went ahead and built the wall.

Mr. Williams said, Justin just to remind you, the conditions of our recommending the last set of variances for unit #44 were conditioned upon the engineers agreeing upon a wall system that was going to meet the village's requirements and the requirements for safety as well as something that could actually be built. I am looking at something that the village's engineer and the developers engineer agreed upon that should be built on this site. If they exceeded what was discussed the last time I am looking at this whether or not 46 and 48 get built the safety factor has actually been improved just by the existing wall. Yeah, it is different but I remember leaving that in the hands of the engineers to determine the appropriate wall system to be put in place to insure slope stability.

Mr. Fricke said I made a note of the same thing that you did Justin when Mr. Vitt said we learned more about the site in the last month and a half than the previous five years and I cringed. Mr. Vitt said I will explain why. If you had an acre of land and you dug a hole right here would you then walk away and say I know everything I need to know because I dug that hole right there? Mr. Fricke said we have been granting variances all along based on what we knew at the time. Are we comfortable? Mr. Vitt said because of the lawsuit we were prohibited from doing investigation underneath the Mitchell house, which we have since demolished. The back half of the house was supporting. It was split in about 1990. We excavated and discovered four piers in attempt to hold it up. We excavated to the bottom of the piers and discovered that six inches below the bottom of the piers was a layer of topsoil. The piers were not capable of supporting that house. All the bores that were done, and including some on that site, including two that I commissioned, never hit those lenses because we could either drill in front of the house or behind the house. Once the house was gone we could excavate anywhere we wanted. The other thing we couldn't do is we couldn't do an excavation in the rear yard. There were cracks in the soil in the rear yard running the length of the property. Once I owned the property we were able to do an excavation and we discovered something rather unique, the cracks didn't extend beyond the nearly 28 to 32 inches of topsoil that existed on the entire width of the back of that parcel. I assume it continues on the adjacent parcels. We also photographed that. When the cores drill a hole, if you have an 80 foot rear yard and you drill a hole 4 inches in diameter in 80 feet versus the ability to trench and dig out the entire 80 feet. You will obviously know more when you are done digging 80 feet than the 4 inches in that 80 feet in the course of doing all that investigation. The other thing that we couldn't do, we discovered when we were doing the earth augers is when you are drilling through the soil you don't have the ability to calculate the holding strength of the soil. You are getting a core sample of the cross section of the soil. They ran 22 earth augers in a distance of 88 feet at different angles and in each case they calculated the distance, they know what soil layers they were going through, and they were reading the resistance on a torque meter to either achieve 1,000 foot pounds of torque or 1,200 foot pounds of torque. All of that additional testing was not possible prior to this past two months.

Mr. Fricke said don't get me wrong, when I saw your new submission and I saw the wall going all along the side and even extending north/south I viewed that in my simplistic, non-engineering mind as a good thing that would hopefully make people feel better about what you are doing in that area. I assumed it was going to provide greater support. I guess my frustration is, I don't know how many times you have been before us seeking variances and each time there was information that we were acting upon and each time the information seems to be getting better and each time we give a

variance and then time goes by and we give a variance because we have better information and then time goes by and we give a variance because of better information. Are we at the point now where we have no more information, this is as good as the information is going to get? Mr. Vitt said yeah, because I am not coming back here. The variances that were previously granted expired and that is why we are here again.

Mr. Fricke asked, have we not been granting 46 feet as a height variance in all the units? Mr. Vitt said yes. Mr. Fricke asked, and does not Orange Street as it heads west does it not get higher? Mr. Vitt said yes, it does. Mr. Fricke said so the goal is not to have the tops of the building be horizontal. The goal is to have them run like a fence where they are just going to go up? Mr. Vitt said they are slightly less than following the grade. There is a big change in grade. Even with this 46 feet the building next to us, the white home, actually towers above this. Mr. Fricke asked, what is the difference in height from Williams Street to where unit 48 will be? Mr. Vitt said probably from about 36 feet to 10 feet. They are all 46 feet. The garage elevation of the first building by Williams Street is 940. The garage elevation of unit #48, if we were to build it, is 948 so that is 8 feet difference. I believe we had a 46 ½ foot variance on the first couple of buildings.

Mrs. Freshman-Johnson said, to keep on the variance topic, the height I had a question as well. As the street goes up and even though it is equivalent to the steps, the problem is as you get farther up here, west, if you go west the grade on Orange Street gets higher and higher but the grade on Cottage Street stays the same because at the top of Orange Street they meet. Mr. Vitt said no, it doesn't. There is a substantial increase in grade on Cottage Street; we just surveyed it last week. Mrs. Freshman-Johnson asked, what is the grade of Cottage Street above because as the houses increase on Orange Street, we talked about this at length and in several meetings we talked about the 46 height and at what point do the houses above really start to get the impact of those higher roofs? The way I understand Orange Street to be is the grade starts to go up and then they meet. Mr. Vitt said the pitch of the highest point of our roof is about 12 feet to 15 feet below the first floor of West Cottage Street. Mrs. Freshman-Johnson asked, of any house on West Cottage Street? Mr. Vitt said no, the house to the east to West Cottage, it kind of sits in the hole and is lower.

At 10:05 p.m. Mr. Herdman had to leave the meeting. Mr. Vitt was asked if he wants to continue tonight with only three members or continue this to the January or February meeting. Mr. Vitt said he would like to continue tonight.

Mrs. Freshman-Johnson asked, I was just wondering about the grade of Cottage Street if it is following the same grade as Orange Street? Mr. Vitt said yes, pretty much it is about the same. We just surveyed the West Cottage parcel and it is pretty much climbing to an elevation of about 1,008 feet. The street elevation is 946 so our western street elevation is 946 so we are about 60 feet lower than the street at West Cottage. The pitch of the roof is 14 feet below and about 20 feet below your eye level.

Mrs. Freshman-Johnson said the slope and stability is out of scope of this Board. It is for us to understand the impact of the whole project and hence we can ask the questions and things. However,

the variances to consider and focus of this Board is simply on the three variances of height, driveway, and front yard depth. I want to keep the focus on whether those particular variances are substantial, needed, etc. rather than getting into another two hour discussion about slope stability, which we have already covered for two years. That is not the scope of this Board.

Mr. Vitt said we are not asking for any variances that haven't been previously granted for this site including this portion of the site. Both by me and previous submissions taking us all the way to the western end of this site and the previous developer who actually received variances for height of 47.5.

Mrs. Freshman-Johnson asked, if you didn't make 48 as wide as you are proposing, we have a frontage minimum issue with proposed unit #46 but you wouldn't have one for proposed unit #48? Are these previously parceled this way so that you could eliminate a need for that variance? One is 3 feet too much and one is 3 feet too little. Is that right Ben? Mr. Vitt said it is driven by a number of things. If you notice the retaining wall, it follows as close as we can to the parallel grading on the hillside. That pushes the unit #48 not only forward but makes it shallower and that is why it is considerably shallower on its west end. The configuration is designed to fit the envelope that we have to work with after we build this retaining wall. If I were to make the sub lot that is 47.5, fifty feet it would push the other one 3 feet closer to the western boundary line. The distance that we have on the western end of that property is to permit the heavy equipment to move up and down that hillside at a safe distance away from that house. Two and a half feet doesn't seem like a lot but when you are moving a track hoe that is ten feet wide the two and a half feet seemed to be important to the contractor. Mr. Fricke asked, on unit #48, why 28 feet and not 30? Mr. Vitt said probably 70% of the building is at 30 feet and the ARB suggested it.

Mark Puianno, 58 West Orange Street, spoke in favor of granting the variances requested.

Patricia Weingart, 51 West Cottage Street, spoke in opposition to the granting of the variances requested.

Jim Weingart, 51 West Cottage Street, spoke in opposition to the granting of the variances requested.

Moved by Mr. Williams, seconded by Mrs. Freshman-Johnson to recommend approval of the variance requests to Council. There are four variance requests. The first variance request is to Section 1125.03(j), the height limit. Our code requires a height limit of 35 feet and for units 46 and 48 the applicant has requested 46 feet for both of those units so they will both require an 11 foot variance to that code. The next variance, Section 1125.04(b), has to do with the maximum coverage of a driveway. Our code allows for 25% of the front yard and the applicant has requested, again for both units 46 and 48, a coverage of 66%, which is a variance of 39% from the code. The third variance, Section 1125.03(f), is for unit 48 alone. This is a front yard depth minimum requirement under our code of 30 feet and the applicant is requesting 28 feet or a variance of 2 feet from the code. The fourth variance is to Section 1125.03(c), minimum street frontage. Our code requires 50 feet and the applicant is requesting 47 feet, 6 inches for unit number 46. That would be a 2 foot 6 inch

variance from the code. Under the reasons for granting the variance and demonstration of practical difficulty, will the property yield a reasonable return without the variances? The answer to that would be no because ultimately what would happen is without those variances the retaining wall could not be constructed and a reasonable return could not be generated from these two remaining parcels. Is the variance substantial? These variance requests are in line with the variance requests previously requested not only for these parcels but for the other units in this overall complex. These last two units represent a completion of the original plan. 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 short answer is no and I guess the biggest weigh in factor there is the construction of this retaining wall, which is a value to all the surrounding properties. Would the variance adversely affect the delivery of governmental services? No, the driveway access is adequate for all governmental deliveries, particularly with the turnarounds in front of each of the units, 46 and 48. Did the property owner purchase the property with knowledge of the zoning restriction? We have been dealing with the zoning restrictions for about five years now so, the answer to that one is yes. Can the property owners' predicament feasibly be obviated through some method other than a variance? No, again it is a function of economics on this site and the ability of the two new units to support the cost of the extended retaining wall. How would the spirit and intent behind the zoning requirement be observed and substantial justice done by granting a variance? Again, looking at the project as a whole and the desired result I think the spirit and intent of the code is being upheld and also, again, a significant safety factor for the surrounding properties is being gained by the construction of this new extended retaining wall. Is the variance based on circumstances that are self-created? To a certain extent the answer to that is yes, but the extraordinary circumstances of this site given the extreme slope and the requirements necessary to construct these units on it that substantial, the variances should be granted.

Williams: I will vote aye and again I, as a board member, have the benefit of eight years of seeing all the proposals coming across our desk for how this site can be best developed and the challenges that go along with it. The single greatest challenge of this site has of course been the slope and the construction of substantial retaining wall systems extending from Williams Street ultimately to the end of this project. We are talking about roughly three to four hundred feet of retaining walls that lend substantial stability uphill to the properties surrounding it. I have to say it is pleasing to see ultimately the potential of completing this project overall.

Fricke: I don't want' to discredit the concerns over the height and I expressed the concerns at other meetings as well. I do think that a variance from 35 feet to 46 feet is substantial, however, I do recognize that the buildings that have already been built are all the same height and I also give credit to the testimony that the economics change if the height, if we lose a floor. For those reasons and all the reasons that Bob cited as well as the reasons for the motion I would vote aye as well.

Freshman-Johnson: I also struggle with the height variances being the most impactful variance brought before us and we have considered this many times in the past similar that has been spoken today, although significant, it is in line with the significance the variance of the previous units that have been built and looking at the slope going today has turned out quite nicely with the way that the views from the adjacent properties from above are looking. Also, considering that the slope of Cottage Street continues upwards as does the Orange Street slope, they will all be in conformity with the differentiates in height as they were previously, these new units, just like the ones prior. Additionally, the economics of the project if they don't work we are faced with the retaining wall not being there and continuing on with a project to full completion. So, with all that in consideration, I feel we need to move forward to complete this project and I vote aye.

Mr. Himes said this will go to Council on December 8, 2014 for final action.

The meeting adjourned at 10:50 p.m.

Wade Fricke, Chairman

lgb