

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
November 26, 2013**

Members present: Fricke, Williams, Holdren, Loomis, Freshman-Johnson
Also present: Himes, Lane, Newell, Edwards, Lannon

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

SWEARING OF WITNESSES

All were sworn in.

SPILLWAY, LLC, 218 CLEVELAND STREET - REQUEST FOR A VARIANCE TO SECTION 1139.02(a)(6)(b)(2), PERMITTED USES, RESTAURANT SEATING, PERMANENT PARCEL NOS. 931-17-001 AND 931-15-016.

Mr. Himes explained that the applicant was before you in October for various yard buffer and flood plain variances. Those variances were approved by Council at their November 11th meeting. The one issue that the BZA recommended not be granted was for their seating request. They had asked for 460 and the code allows for 250. Spillway withdrew that request prior to Council's action. They have modified their plan and resubmitted an application to the BZA. The Section is 1139.02(a)(6)(b)(2) of our code, which limits the restaurant seating to a total of 250 seats and the seating area to 4,000 square feet gross. This is a new proposal for 369 seats so that would be a variance of 119 seats from the 250 seats that are allowed. They have some seasonal seating and they have calculated the area based on a formula of 36 square feet per table of four and five square feet per bar. Restaurant A has about 1,000 square feet of seating area, restaurant B has about 4,200 square feet, and the large outdoor patio to the east of the main building is about 4,500 square feet. They have also recently come to an agreement with the neighbors on Low Street. The neighbors would prefer to see a solid stockade type fence that would have no openings in it on the west property line of the Low Street parking lot. To do that they would need a variance because our code Section 1148.03(c)(2) requires a three foot setback for a solid fence and this would be on the property line. That variance was originally advertised in the original application but this agreement came in after their resubmittal so it was not in the latest advertisement but I think the people that are affected certainly know about it. Mr. Fricke asked, so that is for consideration tonight? Mrs. Lane said it wasn't specifically in the legal notice so I feel that they would probably have to reapply. Mr. Fricke said so that is one more open issue that we won't consider tonight.

Mr. Fricke asked, what was the original plan or what was envisioned that led to the 250 seat provision of the code? What was the mix that was envisioned at that time? Mr. Himes said the code was basically written around the proposal that they had back in 2009. It included a restaurant, a bed and breakfast or hotel, some office space, a party center, a theater, and retail. It was a mixed used

development so the parking requirement was kind of a blended number so they came up with one parking space for every 250 square feet based on this general mix of use. It put the limits on things like restaurant size to control the parking demand.

Bob Darden, Spillway LLC, said this 119 seat requested variance is substantially less than we previously came before you with. Our request is for a seating variance, not a parking variance. However, like many concerns over the parking required for our request for an increase in restaurant seating we have researched and put together some information and facts pertaining to this request. Per our mixed use code for parking we are required to have 181 parking spaces for this development regardless of the usage. We have 185 permanent parking spaces. Per the mixed use code for permissible square footage for restaurant seating, we are permitted up to 4,000 square feet. With our request we are only utilizing 3,150 square feet of actual seating for restaurant usage. There have been two independent traffic studies both indicate that the current roadway system will support the increase in traffic due to our development. We have met with our tenants and put a parking space usage table together that would be given an indication of a parking need from 7:00 a.m. to 12:00 a.m. on a typical day. Mr. Darden showed a chart indicating the approximate number of employees at any given time and the number of parking spaces that would be utilized during the course of the day. Mr. Darden said we met with the Low Street property owners regarding the Low Street parking lot, which has always been zoned parking. We came to an agreement with them that we would put an "employee parking" sign in the lot. We can not enforce that but the Low Street residents and ourselves agree that a sign that says "employee parking" would deter people from parking there. We would also modify a little bit of the landscaping to help prevent lights from shining towards their houses. We are going to put in a couple of trees in on the other side of the fence. Although it is not on the docket tonight, if we can get approval for a solid fence, in lieu of the board-on-board fence where headlights can shine through, they have agreed to that as well.

Mr. Darden said we have engaged a valet service company to study our plans, walk the site with us, look at our proposed uses, and determine whether we have adequate parking. This company is currently, and for the past fifteen years, has been doing valet service in Willoughby for four restaurants, one is the Willoughby Brewing Company and three others who all share a common parking lot with close to half of the spaces that we have provided for our site. They do feel that we have adequate parking. And in addition, that if we did use a valet service we could gain another forty to fifty spaces on site due to the way they maneuver cars throughout the evening. Mr. Darden said there is a letter supporting the job that this company has done over the last fifteen years in Willoughby from the Mayor of Willoughby.

Mr. Darden said even though we feel that our parking is adequate for this project and with the increase that we are asking for, we had indicated in a letter that Spillway LLC will be entering into a lease agreement with Darden Development LLC, who owns the property where the clarifier is, for a 1-year lease on the property for additional parking. That lot holds approximately thirty-five spaces and it has always been zoned parking. In addition to the 1-year lease that we would be entering into, there will be two six month options on that. The reason we are doing this is because obviously there has been a big concern about our parking needs and we would like to have the availability during that

first year when people are exploring the area because it might be a little busier and we will need additional parking.

Mr. Darden said our request for this additional seating is based on the need to have some viable businesses on the property and being able to afford the rent and survive. Without the seating variance we feel that the tenants that we have will have a rough time surviving down there. We do not want a lot of turnover and we don't want vacant spaces so we feel this is a vital component of the project.

Mr. Williams said five years ago when you put the original concept together you had 250 seats factored in for the proposed restaurant space. The plan has been modified since then, what caused or led to the modifications from the conceptual design to what you have now? Mr. Darden said the only way I can answer that is back then it was conceptual. When we first did this we had a concept of a restaurant, a theater, a banquet/party center, some retail space, some office space, a potential museum area, a bed and breakfast/hotel, and a playground area. We wanted to cover all the areas knowing that we may or may not have every one of those components. At that time, if you look at the ordinance, there was 7,000 square feet of retail space that was permitted, the 250 seats, and we were up to twenty rooms in a bed and breakfast/hotel. Since then the economy has changed and our vision has altered a little. One of the major changes is the addition of a second restaurant. The theater has shrunk by close to 2,000 feet, the party center has been greatly reduced in size, the bed and breakfast is no longer there, our retail space is not 7,000 square feet it is closer to 3,000 or 4,000, our office space is more prominent now which are day time single users coming in and leaving, the brewery has always been there, and the larger restaurant has always been there. Instead of 250 seats the larger restaurant is about 230 seats now. The parking in the original plan that was approved we had 130 give or take parking spaces and we have increased that by over 50. The square footage of the entire project has shrunk by close to 20,000 square feet. There has been a lot of comments that the project has grown when in actuality it has shrunk. Per the codes, we are within our parking requirement. Our seating requirement is a number that we are not in conformance with but the square footage of where the seating can be is within the limit. Looking at what we all created back then and what the voters voted on, with the exception of actual number of seats, we are in conformance. We are trying to utilize the space the best we can and we have a second restaurant that would be an attraction and a large tenant.

Mr. Fricke asked what changed from when you were here last to this week other than you are asking for fewer seats? How did that come to be? Mr. Darden said it was based on what you guys actually said. I think I made the comment that we could survive on it if the tenants could survive on the seat count we had or less. We went back and met with the tenants and this is the bare bones that they can survive on and be a sustainable business. Mr. Fricke asked, so each of your tenants has represented to you that this is as low as they can go on seat count? Mr. Darden said correct.

Mr. Fricke asked, why the 1-year lease for parking with two six month options? Why is it so restrictive? Why is that not just parking? Mr. Darden said because that property is owned independently by myself; it is not part of Spillway. There is the thought of developing it and doing

something with it some day. I am not going to be doing anything with it for the first twelve months at least. If it is still available and we still need the parking, which we are not thinking we will, that is why we are leaving a couple of options in there. Mr. Fricke asked, who would determine if you need it? Mr. Darden said we would as the partners of Spillway. Mr. Fricke asked, is it the bulk of the spots that are to the north of the buildings? Mr. Darden said out of the 185 spots, 26 are on Low Street. The rest are on the main property in three separate areas.

Mr. Williams asked about the TMS Engineering traffic study. Mr. Darden said we provided TMS with the information of what the change in the use was going to be with the seat count, which is the same information that we gave to the valet company, the uses of all the spaces, the approximate seat count, the seating plan, and a most of this information that we gave them previously that was just updated. They came back with a letter determining that in the morning they predicted another 48 trips in and out and in the evening it was 224. Now they are saying it is 144 and 264 but they still feel that the roadway system can support what we are doing. Mr. Fricke asked about the reference that TMS made recommending that a Mill Street pedestrian crossing be established at or near the proposed access points and further use of additional traffic calming measures to increase the safety of pedestrians across Mill Street. Mr. Fricke asked, is that with reference to what would now be the employee lot? Mr. Darden said it could be reference to that or the sidewalk that is going to be put in across the street. Basically that study and another study that we got from the village everyone of them says that even though traffic studies are predominately for cars the communities have the same obligation to be able to get pedestrians safely across the street by some means. Their study recommends that there is a crosswalk of some sort along that stretch of road but not just the marked crosswalk, something with some additional signage, indents of the curb, some flashing lights, or something. Traffic calming measures is what they call it. Mr. Fricke asked, that is a village issue, not a Spillway issue? Mr. Himes said not necessarily. Just be clear, the village did not commission a specific study, Bob is referencing the national study on pedestrian safety. If there is to be some pedestrian access across the street there would have to be some sort of engineering study. Mid-block crosswalks are particularly hazardous. The national highway has done studies and most pedestrian fatalities occur in those types of mid-block crosswalks because cars don't anticipate pedestrians in places other than intersections. They do recommend more than simply striping a crosswalk. You need some type of warning flashers. We have done that on Solon Road and we have the pushbutton flashers so there are things that could be done. Mr. Fricke said I guess I am wrestling with impact does that have on tonight's decision? I would like to know what answers we have as to pedestrian safety there. Mr. Himes said I don't think we have any answers without some sort of study on what is required to get pedestrians safely across the street. Mr. Fricke asked, there is nothing currently in the works to review that? Mr. Himes said no. Mr. Darden said that parking lot on Low Street has always been there so obviously the employees at one point were getting from point A to point B by crossing the street. It is still going to be the same amount of cars but now we are putting in the element of the new sidewalk that is coming down from the village that is on the opposite side of the street. We want to work with the village the best we can, whatever we need to do to somehow get the pedestrians across the street safely.

Mr. Fricke asked, is that of concern for us? Can it be of concern for us? We are here to look at a

variance that seeks additional tables and I personally am raising that I just would like to know what the plan is going to be to move pedestrians across the street. Mrs. Lane said it is tricky because parking isn't before us and when you get into pedestrian crossing I am not sure. Is that handled under the uniform traffic control device code? Mr. Himes said signage is. Mrs. Lane said that usually requires an engineering study for any signage. Mr. Himes said you would certainly want to do some type of engineering study on what would be recommended and the location of where that crossing should be as well as what type of signage. Mr. Fricke said if we approve this I for one at least would like to see something tied to an adherence to a professional review and study as to how we are going to move people across Mill Street. Mrs. Freshman-Johnson asked, doesn't the property have to undergo a parking plan approval still through planning and zoning? Mr. Himes said they do, right. And that is definitely one of their concerns as well. Mrs. Freshman-Johnson said so even if we were to approve the variance if it gets to the parking approval and they don't approve the pedestrian plan then it would be halted at that point. Mr. Himes said right, part of that parking plan review is looking at the safety of the pedestrians. Mrs. Freshman-Johnson said they haven't passed that yet. Mr. Himes said right, it is on the planning commission's agenda but they wanted to make sure that the zoning issues were resolved before they reviewed the parking plan.

Mrs. Freshman-Johnson asked, how much of the 369 seats are seasonal? Mr. Darden said approximately 125. Mrs. Freshman-Johnson asked, you have three outdoor spaces? Mr. Darden said actually there are four, there is a small one next to the potential coffee shop. Mrs. Freshman-Johnson said so approximately one third of the seats are outdoor seating, one hundred and fifty three.

Mr. Holdren said since the overall size of the project went from 64,000 square feet to 46,000 square feet roughly, I know we are not talking about parking variances but why are we still using 64,000 for the overall 2.5 spaces per thousand square feet? Mr. Himes said the code requires that it be taken on gross area, not necessarily the usable area. I think that is the difference between those two numbers.

John Tressler, 237 Bell Street, spoke in opposition to this variance request.

Mr. Fricke asked if parking at the Lutheran Church is off the table? Mr. Darden said no, they are willing to talk with us. Mr. Fricke asked, do you have tenants for all the spaces? Mr. Darden said we are approximately 65% leased out. Mr. Fricke asked, what happens in your estimation if you don't get the variance that you are seeking tonight? Mr. Darden said we will probably lose our smaller restaurant tenant for starters, which is a little over 4,000 square feet of space. We want to have the right mix of tenants down there, which is what we are trying to do. When somebody goes down there and the restaurant is full, they have other option to go to without having to get back in their car and drive. That is what we are trying to do. The brew pub, the theater, there are things that they can do rather than leave.

Phil Koepf, 321 High Street, spoke in opposition to this variance request.

There was lengthy discussion regarding the allowable seats versus occupancy, the number of people

who could actually be there at one time, standing, waiting for a table, and where they will all park. Mr. Darden said there is a drawing which designates how you calculate the seating square footage. We are allowed up to 4,000 square feet per the code. With all the seating areas we show on here based on the calculation with a table and a chair and how it is calculated that our architect put together it is based on actual table/seat usage, which were about 3,100 or 3,200 square feet. One restaurant is I think 13,000 square feet but the dining area is not like that. Well over half the space is kitchen, prep kitchen, coolers, and freezers. It is the same thing with the smaller restaurant, the vast majority of the space is service area. Mr. Fricke asked, will they both have bars? Mr. Darden said they will both have bars and this is in the seating and it is in the seating square footage count. Regarding the occupancy, the fire department is going to put a tag on the building with a number of occupants permitted at one time and I can't control what that number is going to be. We are asking for a certain amount of seats to provide people to sit down and eat. Mr. Williams said if you have 10,000 square feet of empty space people aren't going to be standing in that space waiting for 20 seats or 50 seats or whatever the number is. You could have 40 people waiting at a bar for whatever seats are going to turn in the next forty-five minutes or next hour, or hour an fifteen minutes. You are not going to have 400 people standing at the bar waiting for those same seats. These are restaurants, they are not discos where you have a big open space where you are going to have people standing most of the night. This is an entirely dislocated site from what is happening down town. The code for downtown is different because everything is landlocked here. There is no more parking. We have restaurants all up and down the streets so we are very tightly constrained of what we have going on in the village. This is an entirely different site, which is why I think they said we need to start from scratch with code because we have a mixed use facility, we have an empty former Chase Bag Factory, we want to see something happen with it rather than sit there derelict so they came up with a proposal, a concept, and now we are at the point where we are dealing with the realities that are being dictated by our current economic environment and what they think the site now can support from a business owner's standpoint to be able to drive traffic. I do understand the occupancy issue and it is an important one but from a practical standpoint from what is it going to take to make a facility work. This was the whole premiss of being flexible in trying to consider what's the best highest purpose for a mixed use facility going to be. He started with one restaurant back then he is now looking at two restaurants to support the facility and also the reduction of other space. A restaurant is a higher impact, I get that. We are talking about 130 or 140 more trips in and out of the facility in the a.m. and p.m. hours and what is the impact going to have on safety? That is one of our issues as well. We have to keep in mind the particular circumstances that are dictated by an old factory that he is trying to retrofit. At the end of the day are we going to have something there or nothing there.

Mrs. Freshman-Johnson asked, does the occupancy quantity change depending on what the use of the building is? Mr. Himes said yes. They are really two different things. The building code occupancy or what is allowed maximum occupancy of space and what is allowed by the zoning code. Mrs. Freshman-Johnson asked, the occupancy of an office space would be different than the occupancy of a restaurant? Mr. Himes said right. The building code is driven by the maximum amount of people they can safely get out of the building in case there is a fire or something like that. The zoning code is controlling the use with respect to things like parking.

Mr. Darden said from what I am told, the restaurants in the village do not need to follow any code as far as parking because they don't have any of their own parking; it is all public parking. They are all sharing various parking spots throughout the village on the street, renting lots, whatever they need to do. We are going to be the only restaurant in the village that has our own parking. We have 185 spots and with the valet service we can tack on another 50 spots. We have more dedicated parking for our facility than any other restaurant in the village. We are doing our best to create as much parking as we can that no other restaurant in the village has. Up the street and out of the village there are the Eagles who have their own parking, Burntwood Tavern, Hunan, and Panini's all have their own parking. Where is designated parking for every restaurant in the village? The only lot that I know that anybody actually owns is the lot between Rick's Café and Huntington and that is owned by Rick's Café and they share it with the bank. We are independent of the central business district which is why five years ago while working with the village, Council, and the engineers to create this mixed use development with a parking requirement for mixed use is what we did. That was a joint effort and I don't feel like we are coming back and asking for a variance on something we created. It was created with the village. We had 937 people vote with us on what we were planning on doing and we need to change something.

Mr. Fricke asked, what is the impact on your project if you lose a restaurant? Mr. Darden said it is going to set us back, obviously. We are going to have to find a new comparable tenant to take over 4,000 square feet and it is going to be a challenge. We feel that the mix we have with the two restaurants counterbalance each other.

Mr. Holdren asked, is the way that Spillway is presenting the square footage for the seating area, is that the way you calculated it also? Mr. Himes said that is not the way we would typically calculate gross square footage. It was what the code required. It says 4,000 square feet gross. Their architect used a formula to calculate the square footage for seating or the seating area. We would typically measure the insides of the area that is described for seating and come up with a square foot, basically the floor area calculation of where that seating is going to be, 1,000 square feet for restaurant A and 4,200 for restaurant B.

Mr. Fricke said the record will show Mr. Tressler's letter dated November 12, 2013, Mr. Darden's letter of November 6, 2013 on the additional parking agreement on the clarifier property, the November 7, 2013 agreement among the Low Street residents and Spillway LLC, the Letter from Mr. Miller on October 22, 2013, a letter from Mr. Perco of curbside transportation valet, and the TMS Engineer letter dated October 4, 2013.

Moved by Mr. Williams, seconded by Mr. Holdren to make a recommendation to Council to approve the variance request by Spillway LLC at 218 Cleveland Street to Section 1139.02(a)(6)(b)(2), having to do with restaurant seating. The current code for this is a maximum of 250 seats and the applicant is requesting a 119 seat variance to that limit for a total of 369 seats. The applicant went on to demonstrate practical difficulty in this situation with supporting documents from TMS Traffic referencing the number of increased trips. The applicant also demonstrated the necessity for economic viability of the site by having two restaurants instead of one. Having sited that the hotel

has been eliminated there is less retail space and the theater is now smaller than the original conceptual design submitted to the voters four years ago. The applicant also referenced with regard to the increased seating a review by a parking service that would allow for better management of the existing parking spaces. Specifically, the test for practical difficulty in our code has several factors that we need to consider in recommending approval of a variance request. Although, no single factor controls the ultimate recommendation one way or the other. Will the property yield a reasonable return or will there be any beneficial use of the property without the variance? Based on the reality that the developer is facing now and the redevelopment of this site versus the conceptual plan he has demonstrated economic practical difficulty and is addressing that by the addition of a second restaurant increasing the necessity for the additional 119 seats. Is the variance substantial? Yes, but in the context of the circumstances of the Spillway LLC project overall that it is justified. Will the essential character of the neighborhood be substantially altered or will adjoining properties suffer substantial detriment as a result of the variance? The TMS traffic study indicates that with the addition and the change in the use of the property there will be an additional 136 trips both a.m. and p.m. combined and it is roughly a 3.5% increase over the previous traffic study that we looked at in our earlier meeting where there was excess of 4,000 trips onto Cleveland and Mill Street. Will the variance adversely affect the delivery of governmental services? No, I think the original design concept from the point of view of access to the site and exit from the site are the same. Did the property owner purchase this property with the knowledge of the zoning restriction? Yes, but again, the original design was conceptual and we are now dealing with a practical design to the property. Would the spirit and intent behind the zoning code be observed and substantial justice be done by granting the variance? The applicant has said yes, there will be substantial justice done. Again, the village has worked with the developer to redesign or re-purpose the use of the old Chase Bag facility into a mixed use facility. Is the variance based on circumstances that are self created or exist as a result of actions of the property owner? Yes they are but the request for the variance is based on the practical economical circumstances of redeveloping the property.

Mr. Fricke asked, if we were to approve the variance and allow 369 seats, I assume that variance runs with the property and then to the extent that if a tenant leaves and there is a desire to put a third restaurant in the number 369 would stay at 369, would it not? And, there would have to be a need for an additional variance at that point if that is what the developer was seeking? Mr. Himes said right, the variance would go with the land unless you put conditions on it. You could put conditions on it that it is specific to a certain tenant or specific to a certain occupant. Mr. Fricke asked, does the number 369 stay with the property? Mr. Himes said yes. Mr. Fricke asked, and to the extent that if the developer wanted to have twelve restaurants and make it a food court it still would have 369 seats? Mr. Himes said right, unless you condition it to two restaurants that the variance only applies to this plan and two restaurants.

Williams: Aye.

Loomis: Aye.

Fricke: I would vote aye and I would seek a cap at 369 seats with the stipulation that

it runs with two restaurants. I also assume that none of this happens without a safety study and the analysis and all is done that needs to be done to assure the safe pedestrian crossing on Mill and Cleveland Streets.

Freshman-Johnson: My vote is aye and I just want to bring up something we didn't spend too much time on. Doing some quick calculations here I appreciate you coming back with a new plan and considering some of the concerns that have been expressed throughout this whole process. I know it has been kind of long but now that your plan has come back you have really reduced significantly the inside seating actually, which if you did not consider any of the outdoor seating, which would not be available on a night like tonight, you are within code without a variance there. So 41% of the total seats are outdoor seating and that is 100% of the variance that is being asked for tonight. I think that is important to note on record and I vote aye. Good luck.

Holdren: I was looking at the parking and how the code would view the parking if it was just a restaurant and that is why I voted against it when it was 460 because I didn't think there was enough parking. But, at 369 with the way the code is in the other sections we need one spot for every two seats and looking at your parking plan currently you have enough parking. So, that is why I vote aye.

Mr. Himes said this will go to Council on December 9, 2013 for final action.

FLESHER HOLDING CO. LLC, BENTLEYVILLE ROAD/CHAGRIN BOULEVARD - REQUEST FOR A VARIANCE TO SECTION 1125.04(b)(1), AREA, YARD, AND HEIGHT REGULATION; ACCESSORY STRUCTURES - DRIVEWAYS, PERMANENT PARCEL NO. 932-02-002.

Mr. Himes explained that Bob Flesher owns approximately 20 acres and about 13 of those are in Chagrin Falls. The balance are in Moreland Hills. He is proposing to subdivide the Chagrin Falls acreage into 2 lots that front on Bentleyville Road and a third lot of about 8 ½ acres that is landlocked behind the front two, which they are proposing to deed restrict to prevent future development. They meet all the zoning requirements with the exception of 1125.04(b)(1), which relates to driveways and says that each building shall be served by a driveway on the same lot. Mr. Flesher is proposing a shared driveway for the 2 lots. That shared driveway then continues into Moreland Hills and serves three lots in moreland hills. The most recent site plan slightly changed from what was submitted to the planning commission and I believe they misinterpreted the rear yard setback. The front of the lot is what faces Bentleyville Road so they would need a 50 foot setback to the lot line that is opposite of Bentleyville Road. They are showing a 50 foot setback to the property line of what by our code would be the side yard. There is not a variance request for the rear setback at this point.

Dale Markowitz, Thrasher, Dinsmore, & Dolan, said we were here four years ago for the river buffer variance. This was the plan that we had presented at that time, which was a public road, or a private road at the time, but it was going to have fourteen lots in Chagrin Falls and three lots in Moreland Hills. This plan was subject to the variance in order to get the river buffer at 120 feet because the code at that time said that you had a setback 120 feet plus if you had a wooded area you had to keep going until the wooded area ended, which our whole lot was wooded so you gave us the variance. Since that time your code had been amended so we wouldn't need that variance any more. Mr. Markowitz said your hillside regulation had changed also since we were last here. It would be possible to add a few more lots in Chagrin Falls on this side of the line so we could come in with sixteen or seventeen lots in Chagrin Falls and three lots in Moreland Hills.

Mr. Markowitz said this project is now down to five lots. There would be two lots in Chagrin Falls and three lots in Moreland Hills. We would be using a private drive that would be owned in common by all five lot owners. The reason that we are seeking a variance is that we have decided instead of coming in with a larger subdivision with a lot more lots after hearing what the community had to say and then see what we thought was an appropriate use for the property and trying to conserve a significant amount of the land we decided that a five lot proposal was viable but we would have a shared driveway instead of using a public road. It has two benefits. We are able to economically then afford to have a five lot subdivision and there is no necessity for the Village of Moreland Hills and for Chagrin Falls to have to maintain the road. Even though we only have two lots here with a private drive, it would still be a subdivision under your code so we have to come back to the planning commission for approval for the project.

Mr. Markowitz said we met with Chief Frank Zupan of the fire department and his concerns were brought to us through a letter when we first submitted our application. We met with Tim Lannon, the village's engineer and Chief Zupan and they had a number of suggestions. He said they came up with a number of things that Chief Zupan wanted to see from what we had originally presented and we were able to satisfy his concerns. We also put together a set of deed restrictions which will ensure that the concerns that Chief Zupan has and that Tim Lannon could have and we have no objection to including that should you grant the variance tonight that those deed restrictions be recorded and binding to all of the lot owners.

Mr. Markowitz said this is a practical difficulties test, it is not a use variance under your code. He said you don't have to meet every single one of the sections in order to be able to develop. For example, if you turn down this variance yes, we can develop this site but it will be a nineteen lot subdivision because that project does not need any variances. We don't think that is the right answer for you or for this project. We would also lose the 8 ½ acres that we are proposing to turn into common area. This land also included a piece of the river so we would be conserving a nice piece of frontage of the river for as long as deed restrictions and the people who are going to live there. If we have to go back to the other project there would not be the opportunity to be able to create the common area and to keep it as a natural passive state that it is in today and as we would like to see it.

Bob Flesher said since we were last here and were granted a variance for the river buffer we have taken a look at the property and what could be a potentially reasonable rate of return for our development and come up with a softer density development with the five sub lots. What we are proposing is the use of a shared driveway and that is why we are asking for a variance.

Mr. Flesher said besides the six borings that are shown on that plan we have done an additional five borings along the driveway coming in off the property that is in Moreland Hills. We have actually done a total of fourteen bores all down below the slope of 90 feet. The driveway that we are proposing to install would be a fourteen foot wide asphalt driveway with a two foot berm on each side of the drive yielding an eighteen foot total width. It would certainly be passable for the limited amount of traffic that comes off of the five sub lot development. The driveway would also have pullovers in areas where sitting is needed in case there was oncoming traffic. I think it is certainly wide enough for emergency vehicles and construction vehicles that would be used to construct the future home sites. The grade of the driveway is proposed at 9%, which is less than the permitted slope of a driveway in Chagrin Falls or a public roadway for that matter. Part of the concerns when we addressed the planning commission last month on a preliminary basis was trying to come up with a reasonable response to Chief Zupan. We have since met with Chief Zupan and we have revised our plan to demonstrate that it is safe by reducing the slope to less than 10%. We have demonstrated that the ingress/egress of a vehicle, a fire truck, an emergency vehicle can navigate the radius of the roadway. We have demonstrated that we have adequate water supply in the event of a fire and we have the ability to turn emergency vehicles around at the end of the driveway by virtue of a cul-de-sac.

Mr. Flesher said part of the reason that we are asking for the variance is the practical difficulty of accessing a driveway up on Bentleyville Road on these sub lots. Each lot is challenged by either the steel retaining wall or guardrails and then sitting at an intersection. From the point of accessing the property safely it appears to us that it would be better served by the use of a singular driveway versus trying to have five driveways up on Bentleyville Road. Five lots and five driveways would yield more disruption to trees and excavation on the hillside. If we had to put a public roadway in we could not economically justify the only five lots and we would be back at nineteen or twenty lots. There are similar shared driveways both in Chagrin Falls and Moreland Hills. He submitted photographs of shared driveways on North Street, Cabot Lane, Falls Walk, Riverview, and the Mayor's driveway. Shared driveways are not uncommon.

Mr. Fricke said I am still trying to figure out the economics here. Your option is you either get a variance from us and one from Moreland Hills and you have five units or you can build nineteen without any variances. Why wouldn't you just want nineteen? Mr. Flesher said nineteen is a different type of investment risk to take and selling off nineteen lots may take a different element of time to actually be able to sell. Five lots, it is a pristine piece of property and I think it is in a good location. The lots will be more expensive. The construction of the infrastructure, the driveway, the electricity, the water supply, the gas, etc. would be a lesser expense so there is some different economies that come into play when we evaluate how much money you are going to invest and how much money you are going to get back out. Certainly if it was crystal clear that you would sell all

nineteen lots it is a better deal for the developer and it is a different deal for the community. We have elected to go with softer density and take the risk that these lots will cost more and that there should still be, if we are successful in selling the five lots for what we think they are able to be sold for, a fair rate of return.

Mr. Williams said we have had a lot of challenges with slope stability in the village lately and a lot of lawsuits. You said you have done a number of borings, fourteen, is the geotechnical report available? Has the village's geotechnical engineer reviewed your engineer's work? Mr. Flesher said we haven't submitted engineering for construction so obviously if we were granted a variance we would satisfy the village's expectation for engineering. I think that is what we are trying to convey tonight. Mr. Markowitz said that is what we have to do when we go to the planning commission. Mr. Fricke said we are a little sensitive to that issue for obvious reasons and when you look at the code and the reasons for granting a variance when you get to the essential character of the neighborhood substantially being altered, affecting delivery of governmental services, and based on circumstances self created or exist as a result of actions of the property owner. There are a number of factors that I think we are going to hear a lot. That part of this village has lots of things going on when it comes to topography. I for one would love to hear more about what it is that you've done to study this common driveway. I also think it is imperative that the village see the same data because we have had the same representations in other projects and we have had some issues.

Mark Recktenwald, geotechnical engineer from Solar Testing, said we originally did eight boring on the parcel in the Summer of 2008 for the development of this plan. Those boring were focused on and much greatly improved road along approximately the current alignment of the driveway that is there. There was some questions raised in the geotechnical review about a retaining wall that was going to need to be constructed. In order to construct a roadway in a 60 foot right-of-way it pushed that roadway considerably away from the Goldman property, away from the existing driveway that is there, and further over the edge of the hill so it was requiring a very substantial retaining wall. Why not build twenty homes? Because you have to build a very expensive roadway and in a 60 foot right-of-way in order for it to be a public road. The plan at this time is to make use of the existing driveway that is there, basically to extend that driveway down the hill in order to serve the lots constructed down below. At this time we have not been asked to do a geotechnical evaluation of that driveway and it was a discussion that we have had within the past couple of weeks about how much engineering do you do before you know you are going to get a variance. From the work that we did to construct a much wider driveway on the property starting all the way at Bentleyville Road continuing the whole way down is doable. With certain engineering controls and design features the soil that is there and proper construction methods it can be made stable to build a stable roadway on the site. Even though the roadway would be in a slightly different alignment than what we had evaluated back in 2008 and then again with some additional borings that were performed it was found that it was feasible from an engineering standpoint to construct that roadway. I have no doubt from my knowledge of the slope on this property that we could come up with a geotechnical design to construct the remainder of this shared driveway as shown on this plan.

Mr. Fricke asked, do you have any estimates as to how many trees would come out with the

construction of the driveway? Mr. Recktenwald said no. Mr. Fricke asked, is that something that you include in your analysis at some point? Mr. Recktenwald said no, that is something that the civil engineer would consider. We really are just looking at the stability of the ground and the grading that would have to be done, and the cuts and fills within the soil. Mr. Fricke asked, what is it about the ground that you have seen thus far that leads you to believe that it is a doable project? Mr. Recktenwald said from those twelve borings that we have seen we are dealing with soil conditions that are not unique to this piece of land but typical of soils in the eastern part of Cuyahoga County. From my own engineering experience, as well as the rest of the engineers in our office that have been involved in doing slope stability evaluations on this property, we don't see anything that is especially unique or challenging in these soil conditions. Although there are some issues, obviously there have been some failures along Bentleyville Road where the road has been narrowed and retaining walls have been constructed. With proper engineering controls, proper drainage, and proper maintenance I see no reason why a roadway could not be constructed on the soils on this property. Mr. Fricke asked, is that why in your estimation Bentleyville Road has failed because it didn't have proper drainage and the other factors you mentioned? Mr. Recktenwald said my guess would be that when it was taken from a narrow road and improved over the years that the widening of that road probably was not done with proper fill along the hillside. Mr. Fricke asked, have you undertaken projects that are similar to this in other areas? Mr. Recktenwald said yes we have. Mr. Fricke said can you give us an example in terms of the slope and terms of whatever factors you can compare? Mr. Recktenwald said we have not been involved on one that involves a shared driveway and a reuse of part of that shared driveway but we have worked on projects where single-family homes have wanted to be constructed on a hillside in similar types of soil condition. We have also been involved with other subdivisions where roadways were to be constructed within a hillside. We have worked on several projects in Waite Hill. One that involved the extension of a public road and another that involved a couple of single-family homes and driveways. We have worked on countless properties in the Brecksville area where there is also some very steep slopes. In terms of similarities, similarities in the steepness of the slope yes and similarities in the soil count definitely. We use engineering tools that are common in the industry and excepted engineering practice by the State Department of Transportation.

Mr. Fricke asked, the oldest of your borings go back to 2008? Mr. Recktenwald said correct. Mr. Fricke asked, and those are still being sampled? Mr. Recktenwald said no, when we do a soil boring we drill a hole down in the ground and take samples at regular intervals. We bring those samples back to our laboratory and we test them and determine the strength and composition of those soil samples. At this point the soils haven't changed in thirteen years. Those soils have been there for thousands upon thousands of years.

Mr. Williams asked, have you done a calculation on slope stability? Mr. Recktenwald said we have. We did an extensive slope stability evaluation of the 19-20 acre plan in 2008 evaluating the stability of a much widened road in the area of the existing driveway that is to become part of the shared driveway. We also did an evaluation of a new roadway beyond the end of where that driveway is now that, although it is slightly lower down the hill and not as close to the property line, it is in approximately the same location and that is visible by some of the boring that you see out in this area

here. They are a slightly different alignment but they are still within the same soils on the same hillside and we were able to evaluate them using that data. If we find that we need to collect more data there will be additional soil borings taken.

Mrs. Freshman-Johnson asked, what is the rating of the slope stability? Mr. Recktenwald said slope stability is expressed in terms of factor of safety against failure. When we do an evaluation you calculate the strength of the soil as being a restraining force and the weight of the soil and any improvements that are constructed as being a pushing or driving force and as long as the restraining forces are 30% greater than the driving forces that is considered by the FHWA and ODOT to be an acceptable margin and an acceptable factor of safety for roadway construction. We found from the work that we did previously that we could construct new improvements that exceeded a factor of safety of that 30% or what we call 1.3.

Mr. Fricke asked, when you do your analysis, are you looking solely at the site or are you looking at Bentleyville Road or are you looking at the neighboring property within a few miles? Do you consider anything other than the area which you are boring? Mr. Recktenwald said we look at the entire slope above and below what is to be constructed. Most of these borings, even if they were taken at a considerable elevation above the river, the depth of those borings were deep enough that we know what the soil conditions are at the same level as the river so that we can evaluate a very steep potential failure within that slope and look at what would effect Bentleyville Road, and for that matter, even what would effect homes on the opposite side of Bentleyville Road. In terms of it being miles, no, but 1,000 feet from the river up, yes, and maybe even more definitely. Our one slope stability evaluation that was done lengthwise through the property was well over 1,000 feet.

Mr. Fricke said help me feel better as just a non-engineer citizen. For the last twenty years I have lived here I have watched Bentleyville Road seemingly slide further down the hill. I come in and out of Chagrin Boulevard and there is a massive project done to build, reinforce the side of Chagrin Road. On West Orange Street we had a house for whatever reason sort of slide down the hill as we had whatever going on. I look at it and I say gosh, within a 2 mile radius it seems to me, with a very uneducated eye, that there is lots of slippage and things going on that make me very cautious when I listen to your evidence. Why should I feel better knowing that Bentleyville Road has had issues, Chagrin Boulevard has had issues, Orange Street has had issues, and West Cottage Street has had issues. Mr. Recktenwald said one of the important things to consider is that they are all very old streets and when those streets were originally constructed and over the years as those streets were widened they were not evaluated to the extent that we are evaluating this property for this development. The home that you refer to as having slid down on West Cottage, is that something that was built within the last thirty years or was that a century home? If we are talking about a century home sliding down the hill, I doubt that they had anything as far as any type of soil evaluation or any slope stability analysis. Just because we go out and we drill the soil and we do the calculations it doesn't mean we are going to make it better but by having that information we can control the particulars of the construction as far as the steepness of the slopes after construction being flatter than they were before. If there are areas that the hillside has to be cut into then retaining walls are necessary. If you are going to have a retaining wall that is designed looking at current practices

and a lot of current practices were developed based on those prior failures and how engineers today look at why those prior failures occur and how we can stop them from happening in the future. Just because we are doing borings and are doing this evaluation doesn't make the hillside any safer but because we are doing the boring and doing this evaluation we are going to instruct Flesher Holding Co. on how to design this roadway to make it safer.

Mr. Williams said we have dealt with shared driveways before and one of the overarching issues for shared driveways is safety and the ability of residents on that side to get on and off the driveway onto the main right-of-way or onto the main street, whether or not governmental services can be delivered on an ongoing basis once the developer is done with the project, and things of those nature. In this particular case where we have an awful lot of familiarity with slope stability factors and slip zones and soil conditions, particularly after there has been some disturbed area. There has been a lot of debate over what the correct engineering is going to be to achieve the slope stability factor that we are talking about not only during the construction phase but after construction is complete as well. That is where I am getting hung up as well. I kept looking for the data in Bob's variance request to support a recommendation for a variance in this particular circumstance and I don't see it. That is one of my concerns. Weighing safety is one of the several issues that we are facing, not only safety for the residents on site but for the surrounding area as well. I guess I am data hungry.

Mr. Flesher said the engineering that you are asking for, the data that you are hungry for, is something that would come through in the construction permitting process and it would fall into what the city or village's engineer would be expecting to sign off before permits for construction were even issued. Moreland Hills has already gone on record saying that the variance for a shared driveway is independent of the engineering of constructing a shared driveway. If the planning commission in Moreland Hills were to so issue the shared driveway permit we would then have to submit the information that their engineer needs. I get the fact that you have listened for the last few years about issues that the village has had but, honestly, I think the construction of the driveway would have to satisfy your engineering requirements.

Mr. Williams said a one page assessment from your engineer saying oh yeah, everything will be fine compared to the hundreds of pages we received before granting variances on the other site. We know so much about it now and that is why even a little bit more data about the type of soil, the slope stability factor as it stands now, what happens to the slope stability as the site is disturbed, and are there slip zones that you are going to be crossing during the development process and the likely impact that is going to have on the surrounding area. This is just base data. This isn't the engineering that goes into the design of the system that is going to cope with those challenges, which is what your engineer was talking about earlier so there are two different types of engineering we are talking about. Right now I am just talking about the study of the site and understanding what the impact not only on the future residents of the site is likely to be but the surrounding property as well without even getting into the engineering. I understand you can engineer anything. You can engineer Hoover Dam to hold back a mountain but right now I am just trying to understand what it is going to take in order to achieve that. We've got other considerations that we've taken into account with other shared driveway variance requests that we have seen in the past as well. You

saying the variance request is a challenging terrain is why this whole issue of slope stability and the conditions of the soil and all these things kind of are in our mind right now as we try to assess what recommendation to make to Council on this variance request.

Mr. Markowitz said when we were talking about the challenging terrain in the variance application, we were talking about if you were to go down the frontages on Bentleyville Road. We want to avoid that and just have everybody come off of here where the terrain is not challenging in a sense that the practical difficulty argument you wouldn't have five driveways, which I don't think anybody would want to see. In this area here the terrain, yes, is slope of 90% and your code says 12% for street and 10% for driveways and we are going to be less than that. If you are saying to us we really want to have you go do all the geotechnical work and then come back I respect your opinion on that and we will have to do that. We thought that it was appropriate for that to be considered at the planning commission when we come in for the subdivision. That is why we didn't present it here. Mr. Recktenwald said we do have the geotechnical report that was done for the 20 odd subdivision that is on the flip side of that board there. I talk about the existing soil conditions and we've got the existing slope stability printouts in here as well as the proposed stability. Some of that is not pertinent to the shared driveway because of the fact that we have cross sections cut through different features and an existing driveway versus a roadway and a 60 foot right-of-way. This was just the 2008 one, this doesn't even include the 2010 work when we went out and we did additional borings and additional testing to evaluate a retaining wall on the upper section of the roadway. Mr. Fricke said I am like Bob, I understand that we don't want you to put the cart before the horse but I also think at least I am sensitive to just punting this off to somebody else and say well as long as engineers are okay we are just going to give a variance now. No single factor for the reasons to grant a variance controls but I just keep looking at will the essential character of the neighborhood be substantially altered or whether adjoining properties would suffer substantial detriment. We certainly have evidence that that happened for whatever reason about 100 yards away from you and I would like to hear from people who can speak, like you speak, who work for the village who can see the data. We understand more data than we care to now but I'd like to have an opportunity to have that dialog and hear from our people a recommendation rather just saying fine, we'll give you a variance and just hope that everyone else does their job. I would like to make sure that we are doing our due diligence as well.

Mr. Markowitz said I just asked Mr. Flesher what he wants to do and he would be willing to continue this so that we can take the opportunity to provide the data.

Chief Frank Zupan said my concern was getting into this property safely to serve the residents that live there. The first order of business was that it was a 10 foot wide driveway. They have agreed to make it 14 feet plus 2 feet of room on either side. Our apparatus are eight feet wide so we would be able to pass each other now. The fire hydrant on Bentleyville Road I am comfortable with that serve the two house in Chagrin Falls. But, now what do we do about Moreland Hills? I could still utilize that hydrant for the three houses at the bottom but laying a hose like that proves to be a little bit difficult. The size of the driveway, the ten feet, was also difficult. As soon as you lay hose down there you are stuck so we came up with a drafting pond at the bottom. I also wanted some way to

get rescue squads in and out of there if one of these three houses at the bottom had a fire. So we have pull-off areas on the one bend and then one by the drafting pond where so you can get out of there. I also asked that no parking be allowed on the street at all. The slope is under 10% and I think 50% of it is under 6% and the rest is under the 10% that is required by code. Getting in and out of there was my biggest concern. Then, maintenance came up. I wanted to make sure that like on nights like this we can get out of there without sliding down the hill and bouncing off all the retaining walls so they put that in the deed restriction so that satisfied my request for that.

Mr. Himes said the next meeting is scheduled for December 24, 2013 so that will be changed, possibly to January 7, 2014.

Mrs. Freshman-Johnson said I understand why we want more information but in my opinion what they have is too old and it is not going to help me make a decision and I think you guys are waiting for the variance to do the geotechnical work specific to this design and I think what we are asking for is that you go do the work and I don't think you can get it done. I don't know how long it takes you to do the engineering study, but I think the data that you have is too old. Mr. Recktenwald said I would ask that that question be deferred to the village's engineer and one of the reasons for saying that is that it is common practice in our industry to make use of prior borings that were done in a specific area and if development exceeds the area where the soil boring were taken then additional borings be done at that time. But, the soil in the location where we did those soil borings has not changed. There has not been any hillside slippage within this property that would lead to any additional. Mr. Flesher asked, are you saying it is too old because it is from 2008 and 2010 or you are saying because the road has changed? Mrs. Freshman-Johnson said both. It is just not relevant to what we are talking about today and clearly, the mass of people that are here today, there are changes that happened over the years about what is going on in that area. There are issues. I have a memorandum from Moreland Hills that I just received about work to be done on Bentleyville Road and I need to understand how that is going to correlate to the work that you are going to do and who goes first and who is going to do what. This is way more complicated than a shared driveway variance, unfortunately. It is about a lot more impact. The village has been caught already in arguments between residents and hillside developments with lots of legal issues going on, which is not something that we care to get into again so we need to be very careful and understand the facts.

Bob Goldman, Bentleyville Road, said regarding driving down that driveway, there were three structures and one has been demolished because it slid. The second one is a garage and in front of that garage the asphalt has sunk 13 inches in fifteen years. You are absolutely right, we need current data.

Mr. Fricke said what I would suggest is that we get this data to Mr. Flesher and you get your data to our engineer. I share the same concern that the data be as fresh as our engineer believes it needs to be. I worry from a lay perspective whether data in 2008 and 2010 is relevant to 2013 but I leave that to you; it is your case to present. I would suggest that we adjourn for the evening and we all come back to the next meeting. We want to hear all your comments but I think we should keep them fresh to the record that we will be setting in a month or so. Comments were heard from several

audience members regarding the fact that they believe that the engineering should be done first before a variance is granted.

Mr. Fricke said we will get a notice out to the property owners within 300 feet, per the code, at least 20 days before the next meeting.

Moved by Mr. Williams, seconded by Mrs. Freshman-Johnson to continue this variance request. Carried. Ayes: Williams, Loomis, Fricke, Freshman-Johnson, Holdren. Nays: None.

The meeting adjourned at 10:30 p.m.

Wade Fricke, Chairman
lgb