

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL  
CHAGRIN FALLS, OHIO

3698v.3

IN RE: VARIANCE REQUEST OF ) FINAL ORDER OF COUNCIL  
WEST ORANGE PROPERTIES, LLC ) AND CONCLUSIONS OF FACT  
FOR PROPERTY LOCATED AT )  
22 WEST ORANGE STREET ) ADMINISTRATIVE ORDER NO.  
) 2013-19 v.3a

This matter is before the Chagrin Falls Village Council pursuant to the request of West Orange Properties, LLC ("the Applicant"). The Applicant is the owner of the property located at 22 West Orange Street (the "Property"). The Applicant has requested variances from Sections 1141.02(a)(1) and 1141.05 of the Village of Chagrin Falls Codified Ordinances to permit a restaurant use of the Property without the provision of all of the necessary on-site parking facilities required by the Village's zoning code. The Applicant also seeks variances to section 1137.04(b), which requires a buffer area of ten feet (10') between the parking area and public rights-of-way on Williams Street, West Orange Street and North Main Street and from the abutting residential properties to the north. The proposed plan also has an access drive whose centerline is located eleven feet (11') from the intersection of Williams and West Orange Streets, and Section 1141.09(c) requires a setback of fifty feet (50').

Section 1141.02(a)(1) requires accessory off-street parking facilities to be provided in conformance with the schedule in Section 1141.05. A certain number of parking spaces is required as a condition precedent to the occupancy of a building or whenever the use of an existing building is changed to a use that requires more parking spaces under the code. As calculated by the applicant when the matter was presented to the Board of Zoning Appeals, the proposed restaurant and retail building must provide one hundred twenty six (126) parking spaces, and the proposed parking plan provides only thirty eight (38) spaces on site, which necessitated a variance for eighty eight (88) spaces. There had been no parking plan presented to the Planning and Zoning Commission at the time the matter was presented to the Board of Zoning Appeals.

The Village of Chagrin Falls Board of Zoning Appeals met on February 26, 2013, received evidence and testimony, and heard the arguments of the applicant. The Board of Zoning appeals, on a vote of 3-2, defeated a motion to recommend approval of the variances to Sections 1141.02 and 1141.05. The Board of Zoning Appeals, on a vote of 5-0, approved a motion to recommend that Council grant the requested variances to Sections 1137.04(b) and 1141.09(c).

This Council considered the matter upon the record created by the Board of Zoning Appeals on March 11, 2013 and again on March 18, 2013. Council deferred action on March 18, 2013, so that the Planning and Zoning Commission could hear the matter to consider a proposed parking plan.

The Planning and Zoning Commission reviewed the proposed parking plan on March 18, 2013.

The Planning and Zoning Commission unanimously accepted the proposed parking plan, subject to the variance being granted to permit such parking to substitute for the required on-site parking for the Property.

Council again considered the matter on March 25, 2013 and again on April 8, 2013. This Order and the Conclusions of Fact are predicated upon all of the evidence and testimony on the record before Council and, in consideration thereof, the following conclusions of fact are made:

- 1) The Property is located within the Retail Business District.
- 2) The Applicant seeks to use 3,073 square feet of the existing retail business building for a restaurant use. The previous tenant used the Property for retail sales and services.
- 3) The Applicant plans to pave and stripe the existing parking area and to improve the building facade for the proposed restaurant use at the Property. Council finds this to be an improvement both to the site and for the benefit of the neighborhood.
- 4) The Applicant's representatives testified that valet or overflow parking is available at a nearby parking deck of the Step North Building, that has the same ownership as the Applicant, which can provide additional parking spaces.
- 5) The Board of Zoning Appeals noted that the Applicant's parking plan mirrors existing conditions at the Property, and there is a previous variance to the buffer requirements which was granted in 1988.
- 6) The Board of Zoning Appeals found that there is no increase in total square footage of the building, but only a change in the use of the retail space to restaurant use.
- 7) With respect to the variances from Sections 1141.02(a)(1) and 1141.05 regarding the number of parking spaces, the Board of Zoning Appeals made the following findings:
  - a. The Codified Ordinances require 62 parking spaces for the restaurant use and 64 parking spaces for the remaining retail use, for a total of 126 parking spaces. The Applicant's parking plan of 38 spaces does not provide sufficient parking to comply with the Village requirement of 126 spaces. An 88 parking space variance is substantial.
  - b. The northwest quadrant of the downtown has significant parking problems, and the addition of the parking load from the proposed restaurant would exacerbate the existing problems. Therefore, while the proposed restaurant use would occupy a currently vacant space, granting the variances from the required number of parking spaces would alter the essential character of the neighborhood because patrons will likely park on nearby residential streets.
  - c. The delivery of governmental services will not be affected because the only change at the property is the use.
- 8) Subsequent to the hearing of the Board of Zoning Appeals on this matter, the Planning and Zoning Commission heard the matter, and Council notes the following facts that were adduced before the Planning and Zoning Commission:
  - a.. The ownership of the Property also owns the Step North building, located on

North Main street, and the Step North Building has parking facilities with access located off of East Cottage Street and East Orange Street.

- b. The parking plan presented to the Planning and Zoning Commission indicated that the Property's ownership would permit overflow parking from the Property to use the Step North parking lot during the peak parking times for the proposed restaurant (i.e. in the evening), when parking lot at the Step North Building was not being used by most of the tenants at the Step North Building (i.e. the business tenant's parking needs are significantly reduced during the evening hours).
- c. The Planning and Zoning Commission also received evidence of a recalculation of the parking that the Property requires. The prior calculation was made based upon all of the floor space of the building, while Section 1141.04(b) permits the exclusion of up to fifteen percent (15%) of the floor space that are used for "stairwells and elevator shafts, mechanical equipment rooms and utility rooms."
- d. The project architect for the Property testified that when this space is excluded, the necessary parking spaces for the Property was one hundred twelve (112) spaces, not one hundred twenty six (126) as originally proposed.
- e. The project architect testified that in addition to the thirty- eight (38) spaces at the Property, there are four (4) spaces available at Step North that are not attributable to the users at Step North, when the parking requirement of the Step North Building is calculated.
- f. The project architect concluded that the required variance needed would be seventy (70) spaces when you subtract the available spaces on the Property (thirty-eight (38) and the available spaces at Step North (four (4)) from the required parking at the Property (one hundred twelve (112)).
- g. The project architect testified that the Step North Building has sufficient spaces available in the evenings to meet the parking needs of the Property when the on-site parking is insufficient.
- h. A neighboring property owner who operates a restaurant in the central shopping district objected to the proposed project saying that the available parking in the Village, which he depends upon to provide parking for his restaurant, will be consumed by the Property's parking needs. He suggested that the Village should build a parking garage.
- i. The Planning and Zoning Commission unanimously concluded that the proposed plan to use the Step North building to provide parking for the

Property would be sufficient, if a variance were granted to permit such use.

- j. The Planning and Zoning Commission also recommended that the upper deck of the Step North parking facility be designated, during evening hours, as a valet parking zone and reserved for the exclusive use by the valet service of the Subject Property. Council confirms this requirement. It is a condition of this variance that those spaces on the upper deck of the Step North building be reserved in the evening for the use by the valet parking for the Subject Property when valet parking is being provided during evening hours.
- k. The Planning and Zoning Commission also recommended that the "No Parking" signs be removed from the Step North property. This Council recognizes that the Step North parking facility is primarily for use by the Step North tenants, and now, secondarily, the facility is to be used for the Subject Property's valet parking needs. The Applicant has said that to the extent that primary and secondary usages of the Step North parking facility are met, the facility may be used by the members of the public. Council accepts this and requests that any signs in the facility be modified to reflect that the public is not prohibited from parking in the facility at times and locations that will not interfere with its primary and secondary usages.

9) Council finds and determines that the necessary parking space count has been reduced from one hundred twenty six (126) spaces to one hundred twelve (112) spaces, and that the necessary variance is seventy four (74) spaces.

10) Council finds that the parking requirement works causes a practical difficulty for the property owner which can be alleviated only by the granting of a variance to the parking requirements. If the site is to be put to the requested permitted and productive use, that would be permitted if the property were located in the Central Shopping District, a variance must be granted.

11) Council also finds and determines that the availability of spaces at the Step North building, that is provided at no charge to the public and can be managed to provide parking for the Property, is a significant factor in this case that warrants the granting of the variance relative to the parking space requirements.

12) Council further finds that a seventy-four (74) space variance (which would be substantial in another context) is not substantial in this case, given the proximity of parking available for this usage of this Property during peak usage hours, as approved by the Planning Commission, subject to this Council granting a variance.

13) Council also finds that the concern that the Board of Zoning Appeals found, that overflow parking from this site would park on other Village streets, is legitimate but ameliorated by the fact that during peak hours valet parking will allow the cars coming to this site to be

parked at the Step North building, not on the Village streets.

14) With respect to the variances from Sections 1137.04(b) and 1141.09(c) regarding the buffer area and access drive, the Board of Zoning Appeals made the following findings:

- a. The Applicant testified that it cannot make a reasonable return on the Property without the variances because the property has been vacant for five years, and the proposed restaurant use will serve as an anchor tenant for the property.
- b. The variances are insubstantial because the Applicant plans to maintain the existing conditions at the Property. A buffer area variance was granted by the Village in 1988, and this condition has not changed at the property.
- c. The variances would not adversely affect the character of the neighborhood. No objections were heard from neighboring property owners.
- d. The delivery of governmental services will not be affected because the only change at the property is the use.
- e. The Applicant's predicament cannot be obviated through some method other than these variances because the Applicant has been trying to lease the building for five years and finally found an anchor tenant. The variances are necessary for this restaurant use.

15) This Council finds, as recommended by the Board of Zoning Appeals, that with respect to the variances for the buffer area and access drive, the Applicant has demonstrated a practical difficulty resulting from the strict application of the zoning ordinances because the Property has been vacant for five years, and the Applicant has finally found an anchor tenant to lease the space. In addition, a buffer area variance was granted by the Village in 1988, and conditions at the property have not changed.

WHEREFORE, IT IS ORDERED, that the variances to Sections 1141.02(a)(1) and 1141.05, requested by the Applicant, the plans for which are on file with the Building Commissioner, be and are hereby granted.


IT IS FURTHER ORDERED, that the variances to Sections 1137.04(b) and 1141.09(c), the plans for which are on file with the Building Commissioner, be and are hereby approved.

IT IS FURTHER ORDERED, that this document is deemed by Council to be the final order in this matter and that the Clerk of Council shall mail a copy of this Final Order of Council and Conclusions of Fact to the applicant, and any other parties requesting same, by first class mail, and note the mailing date upon this order. The decision of this Council shall be deemed final upon the date the Clerk mails this document, as provided herein.

Adopted this 8<sup>th</sup> day of April, 2013, by a majority of the Village of Chagrin Falls Council,


who have subscribed their names below.


Village of Chagrin Falls Council

x   
\_\_\_\_\_  
Steven Patton,  
President of Council

\_\_\_\_\_  
James Newell, Council member

x   
\_\_\_\_\_  
Michael Chess, Council member

x   
\_\_\_\_\_  
James Holdren, Council member

x   
\_\_\_\_\_  
Janis Evans, Council member

\_\_\_\_\_  
Janna Lutz, Council member

\_\_\_\_\_  
Richard Subel, Council member

Notice mailed this 14 day of May, 2013.

  
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Clerk of Council