

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL
CHAGRIN FALLS, OHIO

3753

IN RE: VARIANCE REQUEST OF) FINAL ORDER OF COUNCIL
SPILLWAY, LLC) AND CONCLUSIONS OF FACT
FOR PROPERTY LOCATED AT)
218 CLEVELAND STREET) ADMINISTRATIVE ORDER NO.
) 2013- 74

This matter is before the Chagrin Falls Village Council pursuant to the request of Spillway, LLC (“the Applicant”). The Applicant owns the property at 218 Cleveland Street (the “Subject Property”) and intends to redevelop the Subject Property, a former paper bag mill, as a mixed use development with restaurants, a brewery, coffee shop and offices (“the Project”). The Applicant has requested seven variances from the Village of Chagrin Falls Codified Ordinances as follows:

- (1) Section 1139.04(b) requires a five foot (5') buffer between parking areas and the public right-of-way. The Applicant is seeking a variance from this provision because the parking area in front of “Building 2” extends into the public right-of-way.
- (2) Section 1133.03 requires the Low Street parking lot to have a twenty foot (20') setback from the public right-of-way and a ten foot (10') setback from the adjacent residential parcel. The Applicant is seeking a fifteen foot (15') variance resulting in a five foot (5') setback from the public right-of-way and a ten foot (10') variance resulting in no setback from the adjacent residential parcel.
- (3) Section 1142.05(b) requires parking areas with fifty or more spaces to have at least five percent (5%) of its parking area for landscaping. The Applicant is seeking a variance of .9% resulting in 4.1% of its parking area being landscaped.
- (4) Section 1151.03 limits the use of land within one hundred twenty feet (120') of the low water level of the Chagrin River to passive recreation. The Applicant is seeking a variance from this provision because a substantial portion of the Project, including existing structures, is located in this river buffer.
- (5) Section 1139.02(a)(6)(b)(2) sets 250 seats as the maximum number for restaurant seating. The Applicant is seeking 460 seats, which would require a variance of 210 seats.
- (6) 1353.06(a)(5) prohibits the deposit of fill, including sand, gravel or other materials of any composition in the Special Flood Hazard Zone (SFHZ). The Applicant is seeking a variance from this provision to permit it to add about two to three feet of fill in a small area to reach the required grade.

- (7) 1353.06(b)(2) requires certification of flood proof construction for any buildings with floor elevations below the base flood elevation. The Applicant is seeking a variance from this provision to permit portions of "Building 2" to continue to have floor elevations below the base flood elevations.

The Village of Chagrin Falls Board of Zoning Appeals met on September 24, 2013 and October 8, 2013, received evidence and testimony, and heard the arguments of the Applicant. At the September 24, 2013 meeting, the Board of Zoning Appeals, on a vote of 4-0, recommended that Council grant the requested variances from Sections 1139.04(b), 1142.05(b), 1151.03, 1353.06(a)(5), 1353.06(b)(2). The Board of Zoning Appeals, on a vote of 3-1, also recommended that Council grant the requested variance from Section 1133.03. At the October 8, 2013 meeting, the Board of Zoning Appeals, on a vote of 2-3, recommended that Council deny the requested restaurant seating variance from Section 1139.02(a)(6)(b)(2).

This matter was presented to this Council on October 14, 2013. On Tuesday, November 5, 2013, Spillway withdrew its request for the seating variance. This Council then considered the matter on November 11, 2013, upon the record created by the Board of Zoning Appeals. This Final Order of Council and 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 Subject Property is located on the northeast side of Cleveland Street in the Limited Industrial-Mixed Use Development and Parking Districts.
- 2) The Applicant seeks to redevelop the Subject Property, a former paper bag mill, as a mixed use development with two restaurants, a brewery, a coffee shop and offices. The large scale project requires the seven variances set forth above.
- 3) The Board of Zoning Appeals noted that the Federal Emergency Management Agency's ("FEMA") guidelines for historic structures provide an exception from the certification of flood proof construction requirements for historic structures. The existing structures at the Subject Property are on the National Register of Historic Places.
- 4) The Board of Zoning Appeals noted that the Subject Property, being a former paper bag mill, has certain site constraints due to it being a developed site with existing structures and parking areas.
- 5) With respect to the variance from Section 1139.04(b), the Board of Zoning Appeals found that the variance is not substantial because the area is currently a gravel parking lot. The Applicant showed that the existing public right-of-way is an unusual, existing site condition created by the removal of an old bridge and, therefore, the Applicant's predicament cannot be obviated through means other than a variance. However, the Board

of Zoning Appeals conditioned its recommendation on the Applicant entering into a license agreement with the Village for the parking spaces located in the public right-of-way.

6) With respect to the variances from Section 1133.03, the Board of Zoning Appeals found that the resulting five foot (5') setback from the public right-of-way is not substantial because the area is zoned for parking and is currently a gravel parking lot. The Board found that no setback from the adjacent residential parcel is substantial, but the parking lot will be screened by a board on board fence. The Board noted that the Village has limited parking so the parking spaces gained by these variances are necessary. Further, the Applicant established that its predicament cannot be obviated through means other than a variance because the denial of this variance would cause the Applicant to lose necessary parking spaces, resulting in a request for a variance from the required number of parking spaces.

7) With respect to the variance from Section 1142.05(b), the Board of Zoning Appeals found that the variance is not substantial because other properties in the Village have little or no landscaping in their parking areas and the Subject Property is not a square lot, but broken into several sections. The Applicant showed that the variance was the minimum variance necessary to maintain the required number of parking spaces and to accommodate required storm water facilities.

8) With respect to the variance from Section 1151.03, the Board of Zoning Appeals found that the variance is not substantial because the existing buildings are located within the river buffer and substantial justice is done to the Code because the Subject Property was formerly used as a mill and the variance will permit the restoration and reuse of the buildings for a lower impact mixed use.

9) With respect to the variance from Section 1139.02(a)(6)(b)(2), the Board of Zoning Appeals found that the 210 restaurant seating variance to permit 460 seats is substantial in that the Applicant is seeking to nearly double the restaurant seating permitted by the Code. The Applicant testified that other alternatives are available if the variance is denied and, therefore, the Board concluded that the variance sought is not the minimum necessary for the proposed Project. The spirit and intent behind the zoning requirements would not be observed by granting the variance because the zoning requirement, approved by the Village electors, was based on a different plan for this project which included only one restaurant.

10) With respect to the variance from Section 1353.06(a)(5), the Board of Zoning Appeals found that the variance is not substantial because the fill is being used to shore up the rear parking area which is in an area that has already been developed. The addition of limited fill will not increase the threat of safety or flooding or danger to persons or property.

Furthermore, the Board looked at FEMA's regulations and its exception for historic structures which this area is adjacent to. The Applicant showed that the proposed grades are within a few feet of existing grades, so the amount of fill required is small. Also, based on its engineer's report of the actual flood plain line, the Applicant intends to seek a flood plain map revision from FEMA which, if approved, would eliminate the need for this variance.

11) With respect to the variance from Section 1353.06(b)(2), the Board of Zoning Appeals found that failing to recommend approval of the variance would render the property unusable. The Applicant has demonstrated that it will improve the existing structures with flood resistant windows. Granting the variance will not increase the potential for flooding or put individuals at any greater risk of harm. The buildings are existing structures on the National Register of Historic Places for which FEMA's regulations provide an exception from certification of flood proof construction.

12) This Council finds that the proposed redevelopment project is an improvement to the Subject Property and does not adversely affect the essential character of the neighborhood.

13) With respect to the variances from Sections 1139.04(b), 1133.03, 1142.05(b), 1151.03, 1353.06(a)(5), and 1353.06(b)(2), this Council finds that the Applicant has demonstrated a practical difficulty in the use of the property which is a result of the strict application of the Zoning Ordinance.

14) With respect to the variances from Sections 1139.04(b), 1133.03, 1142.05(b), 1151.03, 1353.06(a)(5), and 1353.06(b)(2), this Council also finds that the proposed redevelopment project will not adversely affect the delivery of governmental services.

15) With respect to the variances from Sections 1139.04(b), 1133.03, 1142.05(b), 1151.03, 1353.06(a)(5), and 1353.06(b)(2), this Council also finds and determines that the spirit and intent of the Zoning Code is observed, and substantial justice is done, by granting the variances. This conclusion is supported by the fact that the Subject Property and the neighborhood will be improved by the proposed Project.

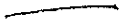
WHEREFORE, IT IS ORDERED that the variances to Codified Ordinance Sections 1139.04(b), 1133.03, 1142.05(b), 1151.03, 1353.06(a)(5), and 1353.06(b)(2), requested by the Applicant, the plans for which are on file with the Building Commissioner, be and are hereby granted. This document is deemed by Council to be the final order in this matter.

IT IS FURTHER ORDERED 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

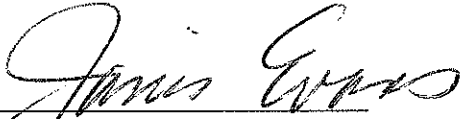
same, by first class mail, and note the mailing date upon this order. The decision of this Council shall be deemed final upon the date the Clerk mails this document, as provided herein.

Adopted this 11th day of November, 2013, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

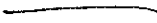
Village of Chagrin Falls Council



Steven Patton,
President of Council




Janis Evans,
Council President Pro Tem



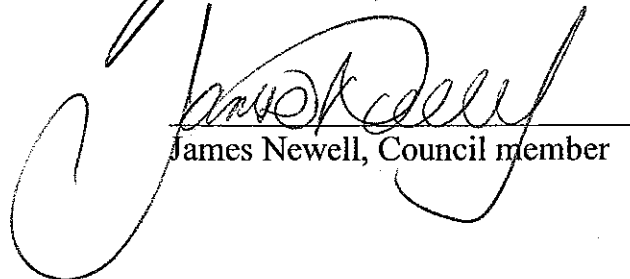
Justin Herdman, Council member




James Holdren, Council member



Janna Lutz, Council member



James Newell, Council member



Richard Subel, Council member

Notice mailed this 18 day of November, 2013.



Clerk of Council