

**BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL  
CHAGRIN FALLS, OHIO**

3661

<b>IN RE: VARIANCE REQUEST OF</b>	)	<b><u>FINAL ORDER OF COUNCIL</u></b>
<b>LESTER M. AND LAURA W. SCOTT</b>	)	<b><u>AND CONCLUSIONS OF FACT</u></b>
<b>FOR PROPERTY LOCATED AT</b>	)	
<b>10 WEST WASHINGTON STREET</b>	)	<b><u>ADMINISTRATIVE ORDER</u></b>
	)	<b><u>NO. 2012-41 v.3</u></b>

This matter is before the Chagrin Falls Village Council pursuant to the request of Lester M. and Laura W. Scott (“the applicants”). The applicants own the commercial property at 10 West Washington Street (“the subject property”). The applicants have requested a variance from Section 1138.02(a) of the Village of Chagrin Falls Codified Ordinances. The variance, if granted, would permit an optometrist to occupy the ground floor of the building.

Section 1138.02(a) of the Codified Ordinances permits, in the Central Shopping District: “General and medical office uses as permitted in Office Districts provided that no office use shall occupy a ground floor space with frontage on a public street from which that space has access.” Thus, optometrists, which are a “medical office” use as defined by Section 1107.14 of the Codified Ordinances, are a permitted use in the Central Shopping District, but such a use is not permitted on the ground floor as a matter of right.

The Village of Chagrin Falls Board of Zoning Appeals (“Board”) met on August 28, 2012, received evidence and testimony, and heard the arguments of the applicants. The Board, on a vote of 4-0, recommended that Council grant the requested variance. The Board also unanimously recommended that the variance be conditioned on the building being used as depicted in the plans presented to the Board: the office must be in the rear of the building, located behind the retail sales area, and the office space may not be more than about twenty-five percent (25%) of the floor area of the building.

This Council twice tabled the matter, then considered the matter upon the record created by the Board of Zoning Appeals on October 8, 2012. 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 subject property is located on the north side of West Washington Street and was, until recently, occupied for many years by Polly Brown clothing retailer.
- 2) The applicants seek to allow Craig Smargiasso to operate a high end “boutique” style optometry business on the ground floor. The code does not permit an office use to be located on the first floor of buildings in the Central Shopping District, which means that a variance for the location of the office space would be necessary.
- 3) The applicants argued to the Board of Zoning Appeals that the property was different than the other properties in the Central Shopping District because it is around the corner from the other shops, not in line with them. The owner stated that people who are shopping downtown do not turn the corner and go past the store unless they have a car in the parking lot, and this location does not get the same foot-traffic as the other properties in the District. Thus, the applicants would like to

make this property a “destination business,” i.e. one that has a regular clientele that is coming to the professional in the building, rather than just shopping in the Village.

4) Aside from the applicants’ assertions, there was no evidence submitted that supports a conclusion that the subject property does not get the same foot-traffic. Council notes that the property is located next to a large parking lot, and a number of retail shoppers necessarily pass the subject property both leaving and returning to their vehicles.

5) Applicants’ practical difficulties argument is contradicted by the fact that Polly Brown was located at the subject property for some number of years, indicating that a use of the property for retail sales (exclusive of a medical office use) is an economically feasible use of the property. Applicants did not submit evidence to address this apparent contradiction.

6) Council finds that the applicants have failed to establish that there is a practical difficulty in the use of the property. Council finds, contrary to the determination of the Board of Zoning Appeals, that the record does not establish that Applicants submitted insufficient evidence that the property could not be put to an economically viable use without the variance. As noted, Polly Brown recently left the subject property after being located there since 2008. Polly Brown was preceded by a clothing store, Safiro, which was located at that site since 2003.

7) This Council finds that the granting of this variance is substantial, as the subject property will be used for a medical office located on the first floor. As further elaborated below, this variance is wholly inconsistent with the main purpose of the Central Shopping District, and a variance of this magnitude would require significant evidence that the property could not be used in a manner that is wholly consistent with the requirements of the Zoning Code. Given the recent usage of the property exclusively for retail sales, the Applicants have not met their burden in this matter.

8) This Council also finds that the variance would alter the essential character of the neighborhood, which is a retail shopping district. Council is cognizant of the impact of permitting medical offices on the first floor of the Village’s retail spaces, and the adverse impact this would have on the character of the neighborhood as a center for retail sales and the retail uses directly across the street from the subject property.

9) Council also notes that the Applicants presented no evidence of any attempts to lease to a retailer who would comport with the Village’s Zoning Code. From this, Council concludes that insufficient evidence has been submitted to establish that the Applicants have sought to comply with the Zoning Code but were prevented from doing so by practical difficulties.

10) This Council also finds and determines that the spirit and intent of the zoning code would be violated by the granting of this variance on the present evidence. The Village is known as a retail center, and the Central Shopping District is zoned so that usage of the retail properties in the Central Shopping District mutually reinforce each other. The organizing theme of the zoning of the downtown area is that first floors of each building are dedicated to retail sales uses, and the intention of this zoning is to provide a critical mass of retail shops which mutually support each other with foot traffic. If this Council were to begin granting variances to permit the location of a medical professional on the first floor in the Central Shopping District without requiring that an applicant show practical difficulties, the purpose of the zoning code would be defeated.

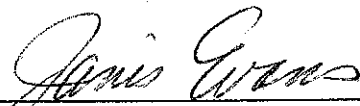
WHEREFORE, IT IS ORDERED, that the variance requested by the applicants be and is hereby denied. This document is deemed by Council to be the final order in this matter.

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 applicants, 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 October, 2012, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

Village of Chagrin Falls Council

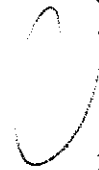
  
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Steven Patton, President of Council

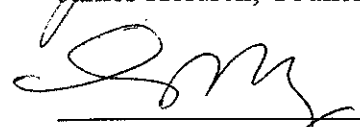
  
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Jan Evans, Council President Pro Tem

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Michael Chess, Council member

  
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James Newell, Council member

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James Holdren, Council member

  
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Richard Subel, Council member

  
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Janna Lutz, Council member

Notice mailed this 12 day of October, 2012.

  
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Clerk of Council