

**VILLAGE OF CHAGRIN FALLS
BOARD OF ZONING APPEALS
October 8, 2013**

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

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

APPROVAL OF MINUTES

The minutes of the meeting held June 25, 2013 were approved.

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, PERMANENT PARCEL NO. 931-14-001 AND PERMANENT PARCEL NO. 931-15-016.

Mr. Himes said at the September 24, 2013 meeting Spillway presented variance requests and a number of those were granted for yard, flood plane issues, and things like that. The one remaining issue is to Section 1139.02(a)(6)(b)(2), and this code section sets a 250 seat maximum for restaurant seating. The developers have proposed 460 seats for a combination of two restaurants so they are here to seek that variance.

Mr. Fricke asked, this section was voted on by the citizenry back in 2009? Mr. Himes said correct. Mr. Fricke said we are not here to talk about a parking variance, we are here to talk about seats only. Mr. Himes said right, because unlike the downtown in this zoning district the parking requirement is based on square footage alone where as in the downtown it the greater of either square footage or seating. In this zone parking is only related to the square footage in the buildings. Seating does not impact their parking requirement. Mr. Fricke asked, even in the previous round there were no variance requests for parking spaces? They have been able to provide parking spaces based on the square footage of the proposal? Mr. Himes said right, they did need some setback and buffer variances but not the number of parking spaces.

Bob Darden, Spillway LLC, said regarding the seats and what happened five years ago, when we first approached Council our thought was having one restaurant with a maximum seating of 250 seats. At that time when it went before the public to be voted on we had close to 75,000 square feet of leaseable space, one proposed restaurant, and we had 132 parking spaces on site so we were going to have to seek other parking. Today as it stands, we have approximately 40,000 square feet of

leaseable space and 185 parking spaces, which is per code now. The parking that we have is solely based on square footage of the buildings. And even though we have a little over 70,000 square feet of building under roof, only 40,000 of it is being occupied. There is a lot of dead space and storage areas that we are going to be blocking off and not even using. At that time, we had a traffic study done and it was based on this information. The traffic study that was done back then was based on the 20,000 plus square feet more than we have today and it was also based on other uses at the time. I contacted the same company that we dealt with before and gave them a list of all the actual uses we are going to be having with the two restaurants, a small coffee shop, and the brewery. What they basically came back to me and said was: "Originally we did not consider a coffee shop in our original report. I would predict that the total trips for the development with the new usages will more than triple in the A.M. time and in the P.M. hours will only increase by approximately 40 trips." Mr. Darden said based on their original study there were 48 trips in the A.M., which brings it up to approximately 144 trips in the morning. Originally there was peak hours between 4:00 p.m. and 6:00 p.m. for 224 in and outs and now they are predicting 264. One thing I discussed with TMS Engineering was that he couldn't put it on the record here, but knowing that there is a 5,000 car traffic pattern that goes by there today, he seemed to think that a lot of the 144 trips in the morning would be coming out of those cars that are already going down the road but there is no way to prove that until we are open.

Mr. Darden said regarding the parking, we have what we have per code and I believe I misspoke or was misquoted in the Chagrin Valley Times last week regarding the Lutheran Church parking. We have discussed with them coming up with an agreement for 80 plus or minus spaces to be used at their facility. We do not have a formal agreement with them. Their attorney sent us a letter, and I believe you guys got it as well. We are still planning on talking to them about it; it is not off the table. We have had some positive feedback. Mr. Fricke asked, if you already have by code enough parking why are you worried about additional parking? Mr. Darden said we feel that one of the things we'd like to possibly do is, especially on the weekends, either have a valet service or have employees for the main restaurants park up there just to free up more spaces so we don't end up with people parking on the streets that they are not supposed to and things of that nature. I don't think there is anybody in this room that can deny that you can never have enough parking. Mr. Fricke said we are usually used to people coming before us who don't have the parking who are looking at arrangements like that. It is just unusual to see that someone who already has the parking by code is looking for anymore spaces or whatever the Lutheran Church would provide. Mr. Darden said we would like to keep the customers as close to the building as possible.

Mr. Darden said I do have a plan that does break down all the areas by usage. One thing about the seating, there are four gray areas on the left hand side that are all seasonal. There are 20 seats that are in a small outdoor patio, there are 100 seats in the rear patio, closer to the street we have room for about 10 seats adjacent to the coffee shop, and a small 25 seat patio for the restaurant that is in the front of the building.

Mr. Fricke asked, do you already have agreements with the two restaurants, the coffee shop, and the brewery? Mr. Darden said the only thing we do not have right now is the coffee shop and one small

office space.

Mr. Holdren asked, you are adding about 210 more seats then I assume you are losing a lot of leaseable office space? Mr. Darden said on the original plan we had the front building being a bed and breakfast hotel. We had close to 7,000 square feet of retail space that we were going to put in. There was talk of having some second and third story town homes in the rear and it got out of hand and the economy dictated a lot of the retail portion. The original restaurant we had was actually going to be located in a different location but due to the 100-year flood plane we couldn't put a patio on it because it would be in the river; it would be above the river until the 100-year flood comes.

Mr. Fricke said one of the things that I am interested in is we grant variances based on a finding of practical difficulty so we frequently get a property owner who comes to us and says if I can't build a 2,000 square foot house the code will only allow me to build 1,600 to get my money out I can only build 2,000 so I need a 2,000 square foot house. And, we have instances where someone had an architectural feature that they want on their house and they needed a variance. What we found was that you can still build your house but you don't need to have the fancy whatever it is you want and in our judgement it is not a practical difficulty to the development of your property. So, what I wrestle with is you've got a big structure with all kinds of stuff going on. It is tough to look into your crystal ball and figure out what is going to be there but you did your best in 2008 and people voted on a package and now you've got a different package. I am wrestling with what happens if you don't get this? What happens if we say going from 250 to 450 is just too big; it just seems like a huge jump. One of the factors we consider is whether the variance request is substantial. Do you just reshuffle the deck and you have one bigger restaurant or what do you do? Mr. Darden said I think our immediate gut reaction would probably be to have to lose one of the restaurants right off the bat. Obviously the two restaurants are the two major tenants in the facility so it would free up quite a bit of space that we would have to find another use for, which would obviously be a detriment to our project because we feel that having two completely different types of restaurants there with the coffee shop/bakery, which is what we are leaning towards, and the brewery it really has a nice mix to it. If one restaurant is booked and you can't get in there is another restaurant right there.

Mrs. Freshman-Johnson said besides having options to go somewhere from a consumers prospective, how does it hurt the project? It is not clear how your project would be maybe financially impacted or otherwise besides just having options for a consumer. Mr. Darden said we do have a secure tenant right now so that is number one. Having to find another tenant that would be attractive for our uses that we are trying to create here and multi-use, to take that first floor space and put a retail shop in there we have talked to some experts and having a retail type store there of clothing or shoes or something like that really doesn't fit because you don't have foot traffic that you do in the heart of the village. We feel that it would be a tough spot to fill, which hurts the project if we can't fill it with a good tenant. Mrs. Freshman-Johnson said the original plan didn't include this. It was going to be dead space? Mr. Darden said no, the original space in that building was going to be a hotel. Mrs. Freshman-Johnson said a 16-room bed and breakfast, not a 200 person restaurant. Mr. Darden said at the time we thought we could only get 16 rooms and that is why we worked with the village on the mixed use of allowing 20 rooms just in case.

Mr. Fricke said as the plan currently exists, you've got restaurant A and restaurant B so restaurant A is in the front of the building. You are looking at approximately 100 seats in restaurant A from the building, 305 seats, so restaurant B, which will face back towards Whitesburg is 300 so even that is over the 250? Mr. Darden said correct, which includes the seasonal patio. So as you currently are proposing this you've got restaurant A in the front with 105 seats, restaurant B 305, tenant C, coffee shop 20, tap room 30, so that comes up to 460. Mr. Darden said out of those 460 I believe it is 155 that are seasonal.

Mr. Fricke said just in speculation, if you don't get your variance and you get 250 seats, it looks like restaurant B is already over that itself. What would you do? Have you looked at the project if you don't have 460 seats? Mr. Darden said if we couldn't get what we are looking for we would come back for another variance for a lesser amount and see how many we can get. We would have to go back to our tenants and see what they can survive on.

Mrs. Freshman-Johnson said in the beginning, in the previous code it was calculated based on square feet so the 185 was based on previous square footage of the project, is that correct? Mr. Darden said for this district it is 2.5 spaces per 1,000 square feet. Mr. Himes said they have 72,422 square feet in total so that multiplied by the 2.5 parking spaces per 1,000 square feet comes out to 182 seats required. Mr. Williams said the square footage from the original project to now has not changed. It is 72,000 square feet five years ago like it is today. The difference is the useable space. You originally proposed 64,000 square feet of useable space and now are down to 46,000 square feet of usable space. Mr. Darden yes, said that is in the traffic study. The square footage we had before I am not positive, but I don't believe they took into account a lot of the space that is unuseable, which obviously we didn't get into it as deep as we are now and finding out that these spaces are unuseable.

Mr. Holdren asked, the parking requirement, if it is on 46,000 is the parking requirement then only about 100 spaces? Mr. Himes said no, because the way the code is written it is based on their gross square footage. It doesn't matter if it is useable or not. When the Planning and Zoning Commission went through that they looked at the mixed use zoning rather than trying to make a parking requirement based on each individual use. They tried to blend them together and come up with one number. Mrs. Freshman-Johnson said the problem is the logic is flawed when you change the density of the useable space and that is the concern. Mr. Himes said that is why there were limits set on the number of seats. Mrs. Freshman-Johnson said large office space is less traffic but dense restaurant you could double, triple, or quadruple. I am not really talking traffic, I am talking parking. Mr. Darden said the zoning, the way it is written now, it allows us up to 4,000 square feet of dining area and we are under that with the 460 seats.

Mr. Fricke asked, the brewery is going to serve the tap room? Mr. Darden said correct. Mr. Fricke said there are 30 seats. This will be a different proprietor than the restaurant owner? Mr. Darden said yes, the brewery itself is going to be a manufacturing distribution and with that there will be a tap room bar. You will be able to buy and sample beers right there. There will be some food service with a limited menu and that is why the seating is limited down there.

Mr. Williams said you mentioned 5,000 cars per day going through the Mill Street/Cleveland Street area, is that in the original traffic study? Mr. Darden said yes.

Tim Ristau, attorney for the Valley Lutheran Church, said I am not in favor or against it. He said I got involved in this because of the quote that was set forth in the Chagrin Valley Times last week. My understanding is that there were discussions four to five years ago with the pastor and there has never been any formal decision by the church to enter into any particular type of agreement with the Spillway Partnership. Mr. Fricke asked, there are anticipated additional discussions and that is where it stands; there is nothing scheduled at this time? Mr. Ristau said at this point in time that is correct, no.

Doug Duffies said I am on the governing board at the Lutheran Church and when this article appeared in the paper it stunned me because I didn't know anything about it and other people at the church didn't know anything about it. I think it is important that the board knows that our church runs a preschool there 8:45 a.m. to Noon five days a week and there are children coming and going. There are afternoon classes there and a lot of events that go on there and my initial reaction to this was this is not something that we would be able to handle. There is a possibility down the road that we could expand into something even bigger than that; they could go to 5:00 p.m. When I heard the reference to 144 trips in the morning period that made me further nervous about the activity that might be coming into the church parking lot. My gut feeling right now, just so we don't mislead anybody, is that this doesn't look to me to be a viable project for us. There are some legal issues with respect to our status from a tax standpoint and some other things but it would have to be approved by a congregational vote and the governing board would have to pass on it. So, just so there is no misleading or anticipation here that might be something that doesn't happen.

Jim Black, Low Street resident, asked do you know how the other off-site parking agreements in the village have been handled, how they have been enforced, and the impact that they have? Mr. Himes said there were a couple. Most of those are no longer necessary because the existing buildings in the downtown are now exempt from the parking requirement. When Blake's initially went in they had an off-site parking agreement where they parked in the neighboring office building. That agreement worked well. Mr. Black asked about the theater seating. Mr. Himes said the seating limit is only on the restaurant seating. Mr. Fricke said the theater seating is included in the overall formula for mixed use. Mr. Black asked, regarding the unuseable space, what makes it unuseable? My concern would be that in the future it becomes useable. Mr. Darden said there are areas that we are just not useable space. We will be blocking those areas off. Mr. Black said there is an empty residential lot on Low Street so as things grow and change my fear is that you purchase that property and want to turn it into more parking. Mr. Himes said re-zoning is typically a fairly difficult process but it is not out of the realm of possibilities.

Joe Miller, 170 Cleveland Street, stated his concerns regarding the increase in noise, the increase in seats, and the overall scope.

John Tressler, 237 Bell Street and 100 Cleveland Street, stated his concerns regarding the changes

in the planned use of the site which appear to be at odds with its stated objective to fit into the residential neighborhood in which it resides, and are outside the bounds established by the agreement underlying the Spillway development. Mr. Fricke said there is a letter from Mr. Tressler dated October 4, 2013 that will be included in the record.

Mr. Darden said I have not seen this letter and I would like a copy of it. He said the vote that we had was not a referendum. We asked for a special election after Council approved what our zoning change was. We wanted the public's opinion and we wanted the village to be behind us and that is why we paid for this election. We had 937 people vote for us and the zoning change, which includes the parking and the seating, and only 88 against us.

Wendra Thurman, 166 High Street, stated her concerns regarding the parking.

Mr. Darden said after reading this letter, I don't necessarily agree with it. It is making us out to look like we intentionally proposed something five years ago with the thought of changing it today and I find that offensive. We came with an honest vision that followed with what the village had in mind as well through the Mayor's vision committee or paper mill committee. Things have changed and we had to scale some things back and we are making a viable project. To make it attractive for people to come is why we managed to get the new pursuit and another restaurant. As far as the noise that I see brought up in this letter, this was brought up years ago. I was down there myself with Mr. Tressler and some other individuals including the Mayor. The sound down there gets muffled. The waterfall from the dam was louder than anything else you could hear down there and with the surrounding trees during that seasonal time the sound does not travel out of that area. If we are in violation of a sound ordinance then we will be fined and reprimanded but our goal is not to be a nuisance. Again, that is why we put this to the vote of the village and wanted their support. If that vote would have been opposite of what it was five years ago we wouldn't be sitting here today. There would be another developer trying to do something down there.

Mrs. Freshman-Johnson asked, was there outdoor seating in the original plan? Mr. Darden said yes, there was always plans on having patio seating outside just like every other restaurant in Chagrin, ours would just be more remote than everybody else.

Mr. Fricke asked, was the original restaurant always designed to be on the back side, the Whitesburg side of the building? Mr. Darden said our original thoughts were actually to have it on the side facing the river but now it is facing Whitesburg, facing the back. Mr. Fricke asked, was there an observation deck? Mr. Darden said no. We always agreed with the village that we will have a designated path from the front of our property through to Whitesburg and we still have that. There were talks of putting the observation deck in, which we are going to have that is going to be overlooking the falls. It is going to be open to the public.

Mrs. Freshman-Johnson said at the last meeting there was discussion about a sidewalk being built by the city as part of support of this project or otherwise infrastructure update, is there a formal status on that to be done on Mill Street? Mr. Himes said yes, the village received a Safe Routes to School

grant fund to build a sidewalk that connects Orange Street with Washington Street so the students can get from the north side to the high school. It will run down the river side of Mill Street, on piers because the slope drops off so much, and then staying on that side of the road run up to Bell Street and then at that point cross Cleveland Street and then it will go up the other side of the street to Washington. It is an O.D.O.T. project and they will likely award the bid in the next couple of months so we anticipate the contractor may do some work this Fall but the bulk of the construction will be in the Spring.

Mr. Fricke asked, have fire and police looked at the new proposal as it is proposed and opined on it? Mr. Himes said they both have the plans but I have not received comments back from them.

Mr. Fricke said the traffic study that was done was paid for by Spillway, is the village undertaking a traffic study? Mr. Himes said Spillway did a traffic study and we did a second traffic study to confirm their results.

Mrs. Freshman-Johnson asked, have you done a market study for your tenants? Mr. Darden said no. Mr. Williams asked, do you have tenants in mind for the space now? Mr. Darden said correct, we are working on the leases right now. The only spaces we have left are about 1,000 square feet of office space and just under 1,000 square feet for a cafe/coffee shop/bakery type thing.

Moved by Mr. Williams, seconded by Mrs. Freshman-Johnson to recommend approval of the variance to Council to Section 1139.02(a)(6)(b)(2), the applicant's request to increase the number of seats for restaurant seating from 250 to 460. That is a 210 seat variance. The applicant has stated that five years ago when the original zoning was done the concept for one restaurant with 132 on-site parking spaces, a 70,000 square foot facility of which some 60,000 square feet had planned to be used and also one bed and breakfast has changed due to economic circumstances over the last five years. The applicant has said that the actual useable square footage in the facility will drop from the original proposed square footage down to about 46,000 square feet. The number of spaces on-site has increased from the original 132 spaces in the original plan to 159 spaces and the applicant has also said that whether you use the number of 3,675 cars per day or 5,000 cars per day the change in the use of the facility and the increase in seating would increase during peak hours 200 additional trips, which the applicant is saying that an additional 200 trips relative to the 3,600 or the 5,000 is relatively minor. Will the property yield a reasonable return or will there be any beneficial use of the property without a variance? The applicant has said that the best possible result for a successful project would be in granting this variance. Is this variance substantial? When you look at just the number of seats, 460 versus 250, a 210 seat variance is substantial; it is nearly double. However, the applicant has said that the overall impact both on traffic and safety is negligible in that consideration. Would the essential character of the neighborhood be substantially altered or would the adjoining properties suffer substantial detriment? If the traffic volume does not increase substantially the essential character would not be changed and the overall project as it was stated five years ago is basically desired by the community so this is obviously one more piece to the puzzle of actually improving the neighborhood. Will the variance affect the delivery of governmental services? No, I think the traffic patterns in and out of the facility will remain the same as will they

be on side streets. Did the property owner purchase the property with the knowledge of the zoning restriction? The property was acquired based on the original plan and approval of the Council based on that plan. The circumstances over the last five years have changed, the original analysis of what will work on this property. So yes, he did know but he is here requesting this variance based on those changes. Can the property owner's predicament feasibly be obviated through some other method other than a variance? He is saying no, it can not be. The best use for this facility is with the two restaurants, the coffee shop, and the tap room that will be attached to the brew pub. Will the spirit and intent of the zoning requirement be observed and substantial justice be done by granting the variance? Yes it would be. This is an area that had special zoning applied to it when the project was first conceived and put together. Had the people who met and agreed upon what the zoning code was going to be five years ago knew it was going to happen in the following five years they would probably understand the change in the use of this project.

Williams: I am going to actually vote aye for recommending this variance to Council. Two hundred and ten seats is a huge variance request when considered just within that particular part of the code, 250 seats versus 460. However, I think the overall impact on the project and the relatively minor changes to the traffic patterns that will occur there will not exacerbate either traffic or safety concerns.

Loomis: I have mixed feelings. I guess I will say I am going to vote aye. I think that if this plan had come before them five years ago then that would have been the plan that the code would have been written to. We are not voting on the parking, we are voting about the seating and a lot of that number is seasonal and so when you look at just what the added annual seating is it is not as much so I am voting aye.

Fricke: I know many of the individuals who are involved in this project. From a personal standpoint I think they are first rate people. I can't wait for the project to happen. I suspect everyone in this room wishes the developers nothing but success and wants this project to go off wonderfully. That being said, my subjective feelings of the applicant, my desire to have a beer in the brew pub are not relevant to the inquiry which is have we met the standards of 1111.07? Bob, I appreciate your honesty of saying well if I don't get this I will go back and I will talk about what we really need. To me, that indicates that we haven't met the standard. I think going from 250 to 460 is significant. I think that it sounds like there is some room to discuss further with the tenants. I have concerns about the parking even though it is not before us even though there is no apparent need for a variance on the number of spots. I, with looking objectively at the standard, am not convinced that we have met, that we are at the end of the project here so I would vote no. I fully believe that you have nothing but the best intentions at heart and that this is not the bait and switch that some might indicate it to be. I think that

the market, you did your best in 2008, and the village supported you. Whether the village would support you now or not none of us can conjecture but I fully believe that you have nothing but the best interest of your project and the village at heart. I want to make it clear on my vote that I don't think this was a bait and switch or anything of ill will at all from your standpoint.

Freshman-Johnson: I also am a big fan of this project fundamentally for what it is going to be and a property that has been sitting fairly stagnant for awhile in a beautiful place in this town. However, I really struggle with the materiality of this variance. We have had similar variances come before the board and based on materiality alone, and nothing further, it has been denied. I think this sets precedence that just because it is a cool project and certain people really want to see a cool place come into the town, it doesn't encourage me to approve based on the code before us. I also do believe it is not in the spirit and intent of the code that was written because it was written based on a different plan. It went before tax payer votes, it went before committee after committee, and it is not appropriate for a committee of five people for a simple variance to have this come through as a, and oh, by the way we want an extra 210 seats. That plan was reviewed by so many different experts and boards and committees and voters. I think that if you want to have a material change you should follow the same process or maybe consider a less material change to the original plan. So, my vote is no.

Holdren: Nay.

Mr. Himes said this will go to Council on October 14, 2013 for final action.

The meeting adjourned at 9:08 p.m.

Wade Fricke, Chairman
lgb