

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

3576

IN RE: VARIANCE REQUEST OF)	<u>FINAL ORDER OF COUNCIL</u>
CARL VESSEL)	<u>AND CONCLUSIONS OF FACT</u>
FOR PROPERTY LOCATED AT)	
79 WEST STREET)	<u>ADMINISTRATIVE ORDER NO.</u>
PPN# 932-06-051)	<u>2011-30</u>

This matter is before the Chagrin Falls Village Council pursuant to the request of Carl Vessel ("the applicant"). The commercial property at 79 West Street ("the subject property") is owned by Chagrin Royal Oaks, LLC. The applicant has requested a variance from Section 1138.05(a) of the Village of Chagrin Falls Codified Ordinances to permit the construction of an outdoor dining area in the required front yard setback. Section 1138.05(a) limits outdoor dining service to "areas which are not located in required yards."

The Village of Chagrin Falls Board of Zoning Appeals met on April 26, 2011, received evidence and testimony, and heard the arguments of the applicant. The Board of Zoning Appeals, on a vote of 4-0, recommended that Council grant the requested variance.

This Council considered the matter upon the record created by the Board of Zoning Appeals on May 9, 2011. 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 West End Bistro is located at the subject property, and the West End Bistro building is approximately eleven feet (11') from the sidewalk and, therefore, is located within the twenty foot (20') required front yard setback. The building is a nonconforming structure.

2) The applicant seeks authority to construct a brick paver patio in the existing front yard setback that would accommodate approximately four to five tables for outdoor dining. The proposed brick paver patio will be constructed up to the sidewalk line and will be less than four hundred (400) square feet.

3) The applicant's representative, Mr. Tom Lutz, advised that the patio in the front yard setback will enhance the visibility of the West End Bistro.

4) The Board of Zoning Appeals noted that variances have been granted to other dining establishments in the area permitting outdoor dining activities in a required side yard or required front yard.

5) The Board of Zoning Appeals noted that if alcohol is served in an outdoor dining area, the applicant must construct a fence or appropriate barrier. It was also noted that a fence or permanent barrier must obtain the approval of the Architectural Board of Review.

6) The applicant, at the request of the Board of Zoning Appeals, agreed that the outdoor seating plan, including the means of ingress and egress, would be reviewed by the Fire Department and approved of the Fire Chief.

7) The Board of Zoning Appeals noted that the variance request may appear to be substantial, however, it is not substantial, as the proposed outdoor dining area is less than four hundred (400) square feet.

8) The Board of Zoning Appeals noted that the Village has encouraged outdoor dining and that granting of the requested variance is consistent with this encouragement.

9) The Board of Zoning Appeals heard no testimony against the proposed variance, and one neighboring property owner testified in support of the proposed variance.

10) This Council finds that the applicant has demonstrated a practical difficulty in the use of his property, which is a result of the strict application of the zoning ordinance. The Board determined that the applicant is prohibited from offering outdoor dining in the front of the West End Bistro, a feature that will enhance the visibility of the West End Bistro.

11) This Council further finds, as recommended by the Board of Zoning Appeals, that the variance is not substantial and will not substantially change the character of the neighborhood. The proposed outdoor dining is consistent with the outdoor dining of other dining establishments in the area and will enhance the area.

12) This Council also finds that granting of the variance will not adversely affect the delivery of governmental services.

13) This Council also finds and determines that the spirit and intent of the zoning code would be observed, and substantial justice will be done, by granting the variance.


WHEREFORE, IT IS ORDERED, that the variance to Codified Ordinance Section 1138.05(a), requested by the applicant, the plans for which are on file with the Building Commissioner, be and is hereby granted. The applicant may construct the proposed outdoor dining area upon obtainment of the Fire Chief's approval of the seating plan, including the means of ingress and egress. 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 9th day of May, 2011, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

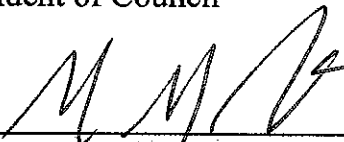
Village of Chagrin Falls Council



Steven Patton,
President of Council

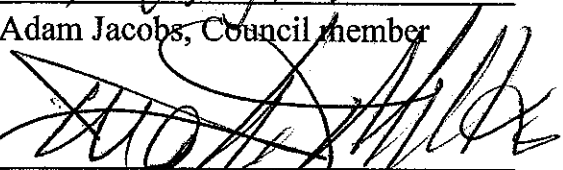


Janis Evans,
Council President Pro Tem

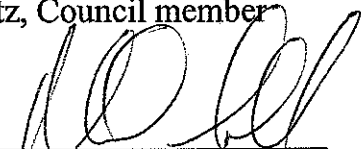


Adam Jacobs, Council member

Janna Lutz, Council member



Dwight Milko, Council member

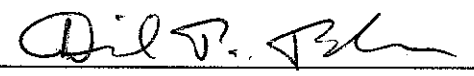


Richard Subel, Council member



Robert Williams, Council member

Notice mailed this 13 day of May, 2011.



Clerk of Council