

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL
CHAGRIN FALLS, OHIO

3811

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| IN RE: VARIANCE REQUEST OF |) | <u>FINAL ORDER OF COUNCIL</u> |
| ROBERT AND MARY JO WEBER |) | <u>AND CONCLUSIONS OF FACT</u> |
| FOR PROPERTY LOCATED AT |) | |
| 269 BENTLEYVILLE ROAD, |) | ADMINISTRATIVE ORDER |
| PERMANENT PARCEL NOS. 913-26-007, |) | <u>NO. 2014- 49</u> |
| 932-02-001, 932-02-002, 913-26-009 AND |) | |
| 913-26-008 |) | |

This matter is before the Chagrin Falls Village Council pursuant to the request of Robert H. Weber, Trustee of the Robert J. Weber Trust, and Mary Jo Weber, Trustee of the Mary Jo Weber Trust ("the Applicants"). The Applicants own the property at 269 Bentleyville Road ("the Subject Property"). The Applicants plan to construct a single-family dwelling on the Subject Property which, because of the topography of the property, will require a long driveway. The Applicants have requested a variance from Codified Ordinance Section 1165.04(I) which provides that the maximum grade on driveways shall not exceed 10%. The Applicants have proposed a driveway with a maximum grade of 12%.

The Village of Chagrin Falls Board of Zoning Appeals met on June 24, 2014, received evidence and testimony, and heard the arguments of the Applicants. The Board of Zoning Appeals, on a vote of 5-0, recommended that Council grant the requested variance.

This Council considered the matter on July 14, 2014, 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 south side of Bentleyville Road.
- 2) The Subject Property is a hillside lot with a significant down grade from Bentleyville Road to the Chagrin River. The topography of the property, including a large wooded area, creates a practical difficulty in developing the property in compliance with the zoning ordinances.
- 3) The Applicants seek to construct a single-family dwelling on the Subject Property at the point where it flattens out near the Chagrin River.
- 4) Robert Weber testified that a conforming driveway has been engineered by the prior owner, and could constructed, but would require a greater disturbance of the significant hillside and wooded area.
- 5) Mr. Weber testified that the proposed driveway will have a maximum grade of 12% and will be three hundred feet (300') shorter than the conforming driveway, which would cause less disturbance to the hillside.

6) The Board of Zoning Appeals noted that one-half of the proposed driveway will be at a grade of 12% and the other half will be at a grade of 8% or less.

7) Fire Chief Zupan testified that he is comfortable with the proposed 12% grade driveway. Mr. Weber testified that he incorporated Chief Zupan's comments in the design of the proposed driveway, including creating a greater turn radius and lessening the slope of the driveway in the area of the proposed dwelling.

8) The Board of Zoning Appeals noted that no neighbors spoke in opposition to the variance and the adjacent neighbor, Kathy Goldman of Moreland Hills, spoke in support of the variance.

9) The Board of Zoning Appeals found that the Subject Property can yield a reasonable return and beneficial use of the property can be made without the variance because a conforming driveway can be constructed, but a conforming driveway would be 300 feet longer having a greater adverse impact on the hillside and wooded area.

10) The Board of Zoning Appeals found that the variance is insubstantial because it will allow the Applicants to reduce the impact on the hillside and wooded area.

11) The Board of Zoning Appeals found that the essential character of the neighborhood would not be impacted by granting the variance because a driveway currently exists on the Subject Property and the Applicants acquired the property from a developer who proposed a number of homes and that development has been reduced to one single-family dwelling.

12) The Board of Zoning Appeals found that granting the variance will not adversely affect the delivery of governmental services and Chief Zupan testified that the proposed driveway will not negatively affect the Village's fire equipment or personnel.

13) The Board of Zoning Appeals found that while the Applicants' predicament can feasibly be obviated by constructing a conforming driveway, the conforming driveway would remove the benefits of disturbing less hillside and wooded area which are realized by permitting the proposed driveway.

14) The Board of Zoning Appeals recommended that the variance be granted with the condition that the driveway be engineered to maintain the stability of the slope, subject to the approval of the Village Engineer as required by the Village's hillside ordinance.

15) This Council finds that constructing one single-family dwelling with a driveway at a 12% grade is an improvement to the Subject Property when compared to the prior owner's plan to develop the property, and does not adversely affect the essential character of the neighborhood.

16) This Council finds that the Applicants have demonstrated a practical difficulty in the use of the Subject Property, which is a result of the strict application of the Zoning Ordinance because the intent of the hillside ordinance is to preserve and enhance the natural topographic features of the property, including the hillside and trees, and in this case, a conforming driveway

would cause a greater disturbance to the hillside and wooded area than the proposed driveway. These circumstances meet the spirit and the intent of the zoning regulation and warrant granting the variance to permit the Applicants to construct a driveway with a 12% grade. As a condition of this variance, the Applicants shall engage a qualified professional engineer to prepare plans and specifications to maintain the stability of the slope. The Village Engineer shall review the engineering plans and specifications as required by the Village's hillside ordinance. The Village Engineer's approval is a condition of this variance.

17) This Council further finds, as recommended by the Board of Zoning Appeals, that the variance is not substantial.

18) This Council also finds, as recommended by the Board of Zoning Appeals, that the granting of the variance will not adversely affect the delivery of governmental services.

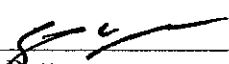
19) This Council also finds and determines that the spirit and intent of the Zoning Code is observed, and substantial justice is done, by granting the variance. This conclusion is supported by the fact that the neighborhood will not be changed by the proposed variance, no objections have been made to the proposed variance, and the Subject Property will be improved by the proposed project when compared to the prior owner's plans to develop the property with numerous houses.

WHEREFORE, IT IS ORDERED that the variance to Codified Ordinance Section 1165.04(I) requested by the Applicants, the plans for which are on file with the Building Commissioner, be and is hereby granted. The Applicants may construct the proposed project in accordance with the proposed plans. 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 14th day of July, 2014, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

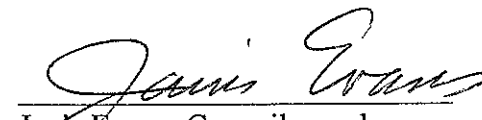
Village of Chagrin Falls Council




Steven Patton,
President of Council



Justin Herdman, Council member



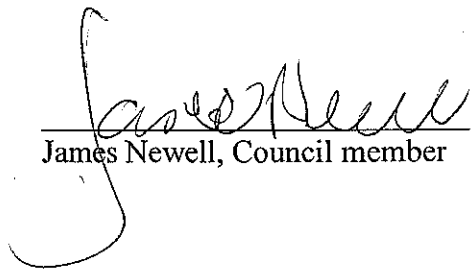
Janis Evans, Council member



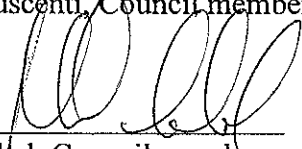
Janna Lutz, Council member



Thomas Muscenti, Council member

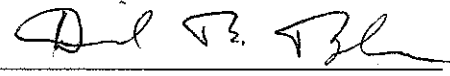


James Newell, Council member



Richard Subel, Council member

Notice mailed this 13 day of August, 2014.



Clerk of Council