

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

3700

IN RE: VARIANCE REQUEST OF)
RIVERWALK)
AT CHAGRIN FALLS, II)
FOR PROPERTY LOCATED AT)
PERMANENT PARCEL NOS.)
931-12-018, 019 AND 020)

FINAL ORDER OF COUNCIL
AND CONCLUSIONS OF FACT

ADMINISTRATIVE ORDER
NO. 2013- 21 v.1

This matter is before the Village of Chagrin Falls Council pursuant to the request of Riverwalk at Chagrin Falls, II, ("the Applicant"). The Applicant owns the properties recorded as permanent parcel numbers 931-12-018, 019 and 020 ("the Subject Property"). The applicant has requested variances from Section 1125.03(j), 1125.03(b) and 1125.03(c), 1125.03(f), 1125.04(g), 1125.04(b)(1) and 1125.04(b)(3) of the Village of Chagrin Falls Codified Ordinances to permit the construction of three single family residential structures on the Subject Property in zoning district R2F.

The Riverwalk Development received variances in October, 2009, for building height, hillside disturbed area, lot coverage, driveway coverage, shared driveway and rear setbacks. The Board of Zoning Appeals made geotechnical investigations a condition of the variances to protect surrounding property owners. Phase I consisting of three two-family buildings has been constructed.

Phase II has been redesigned in part to meet the Village's engineering requirements for Factor of Safety on the retaining wall design. The developer is now proposing three single-family units where three duplex units had originally been planned. The western most unit is rotated 90 degrees and moved towards Orange Street.

The variances requested by the Applicant are as follows:

Under Section 1125.03(j), the height of a dwelling is limited to thirty-five feet (35'). The proposed maximum height of the structures is forty-six feet (46').

Under 1125.03(b) and (c), the code requires a lot width at the street and building line of fifty feet (50'). Unit #44 has a proposed lot width of forty-four feet (44').

Under 1125.03(f), the required front yard is thirty feet (30'). Unit #48 has a proposed front yard depth of eleven feet (11').

Under 1125.04(g), the code requires a side yard depth of three feet (3'). Unit #48 has a proposed side yard on the east side of one foot (1').

Under Section 1125.04(b)(1), each lot must be served by a driveway situated on the lot. A shared driveway arrangement is proposed.

Under 1125.04(b)(3), driveway coverage of the front yard is limited to twenty-five percent (25%). Units number 44 and 46 have driveway coverages of ninety percent (90%) and eighty-six percent (86%) respectively.

The Village of Chagrin Falls Board of Zoning Appeals met on January 22, 2013, and February 26, 2013. The Board received evidence and testimony and heard the arguments of the applicant, opponents, and concerned residents. The Board of Zoning Appeals, on a vote of 4-0 with one abstention, recommended that Council grant the requested variances.

This Council met on March 11, 2013, and again on March 18, 2013, and considered the matter upon the record created by the Board of Zoning Appeals and the information received from the Applicant and the Village's engineer. 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 slopes steeply from the northwest corner to the southeast corner, and this unique topography presents a practical difficulty when attempting to develop the property in compliance with the zoning code. The Board of Zoning Appeals noted that work on the property has disturbed the hillside area, but this work was done pursuant to a previously granted variance. The condition for satisfactory geotechnical analysis remains in effect and must be satisfied for permits to be issued. That condition is restated here; "As a condition of this variance the applicant shall engage a qualified professional engineer to design the slope retention system necessary to protect this property and surrounding properties from slope failure that may result from the construction of this development. The Village Engineer shall review the slope retention system and the Village Engineer's approval is a condition of this variance." The Village Engineer testified that there is general agreement with the Applicant's geotechnical engineer on the conceptual design calculations. Final engineering approval will be required before permits are issued.

2) The Board of Zoning Appeals noted that the site plan has been redesigned to provide room for slope retention structures that meet the Village's engineering requirements. It was also noted that the proposed buildings are smaller in footprint and height than the previous design for which similar variances were approved and, thus, the variances sought are smaller in size and scale than those sought under the prior plan.

3) The Applicant testified that its geotechnical engineer performed sixteen (16) soil borings at the Subject Property with borings largely along the area of the proposed retaining wall, the western line of the property, and the front of the property. A potential slip plane was identified in four or five of the boring sites and largely in the corner of the Subject Property where no building is being proposed. The Applicant said these four or five boring sites serve as the design standard to the retaining wall. Based on this data, the Applicant will design the retaining wall to create an improved slip level of 1.3 where original conditions had a slip level of 1.0 and current conditions show a slip level of .95 to .97.

4) The Village Engineer testified that the Village does not have a design standard for this retaining wall, but that a slip level of 1.3 can be achieved and will provide the needed safety to the Subject Property and surrounding properties.

5) The Applicant testified that development of the Subject Property as proposed is necessary in order for it to be economically feasible to build the proposed retaining wall at a slip level of 1.3. The Applicant said if the variances are not granted, Phase 2 will not be developed and a less expensive retaining wall will be constructed closer to West Orange Street.

6) With respect to the height variances, the Board of Zoning Appeals found that due to the topography of the Subject Property, the basement of each unit is included in the height calculation which is not a customary circumstances and, the proposed units match the height of the existing units on the Subject Property.

7) With respect to the lot width variance for Unit number 44, the Board of Zoning Appeals found that even with the variance, there exists appropriate spacing between the Phase 1 and Phase 2 buildings due to the configuration of the buildings on the Subject Property.

8) With respect to the front yard variance for Unit number 48, the Board of Zoning Appeals found that due to the retaining wall, Unit number 48 has been rotated ninety degrees, but this building rotation improves ingress and egress to Phase 2 and permits a safe distance between Unit number 46 and Unit number 48.

9) With respect to the side yard variance for Unit number 48, the Board of Zoning Appeals found that because this is the western most variance on the Subject Property, located at the end of the driveway, its impact is negligible and despite the variance, there remains a twelve feet (12') separation between Unit number 46 and Unit number 48.

10) With respect to the shared driveway variances, the Board of Zoning Appeals found that a similar variance was approved for Phase 1 and safe vehicular circulation requires the use of a common drive to avoid rearward exit from the property. This Council confirms that finding.

11) With respect to the driveway coverage variances for Unit numbers 44 and 46, the Board of Zoning Appeals found that while the percentage of the variances seems substantial, the variances are necessitated by the fact that the shared drives exist in the front yard and, furthermore, the Village's safety forces approve of this configuration.

12) The Board of Zoning Appeals found that the Subject Property does not yield a reasonable return without the variance because the Applicant testified that if the variances are not granted, Phase 2 will not be constructed and the Subject Property will be improved only with a less expensive retaining wall.

13) The Board of Zoning Appeals found that the variances are not substantial because the existing conditions at the Subject Property present challenges to any development, and the proposed plan reduces the size and scope of the variances originally sought.

14) The Board of Zoning Appeals found that the character of the neighborhood will not be adversely affected by the proposed development, and the benefit to the property owner and the neighborhood by the completion of Phase 2 exceeds the cumulative impact of the variances.

15) The Board of Zoning Appeals found that the variances will not negatively affect the delivery of governmental services because the Fire Chief has approved of the site configuration.

16) The Board of Zoning Appeals found that the Applicant's predicament cannot feasibly be obviated through some means other than a variance because the Applicant testified that Phase 2 will not succeed without the variances.

17) The concerns of the neighbors were heard by the Board of Zoning Appeals and discussed, and this Council is persuaded that no harm will result to the neighborhood if the variances are granted and the adjacent property owners will benefit from the increased slope stability factor provided by the retaining wall system.

18) This Council notes the Board's findings that the variances proposed are substantially similar to, or less than, previous variances approved for development on the Subject Property on two separate occasions. With the exception of the front yard variance, it was found that the retaining wall requirements are the reason for this request, and the eleven foot (11') setback of Unit number 48 is necessary to provide adequate room for the slope retention system and moves this unit away from the steepest part of the slope.

19) This Council finds that the Applicant has demonstrated practical difficulties in the use of the Subject Property, which are a result of the strict application of the height ordinance. The steep slope to the front of the property results in a high front elevation, where the measurement is taken, in relation to the overall height of the building. The neighbors' views will be substantially maintained by virtue of their relative height above the proposed development. It was noted that a greater impact on neighboring property views is caused by a house that complies with the height requirement of the code, but is located adjacent to the new house on flat land. This Council confirms the finding of the Board of Zoning Appeals. Accordingly, this Council concludes that the Applicant has established that there are exceptional circumstances which distinguish the Applicant from other property owners who are, or have been, required to comply with the regulation as written.

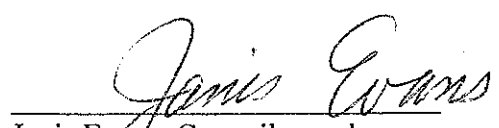
WHEREFORE, IT IS ORDERED, that the variances requested by the Applicant, the plans for which are on file with the Building Commissioner, be and are hereby granted. The Applicant may construct the proposed residential structures in accordance with the proposed plans. This document is deemed by Council to be the final order in this matter.

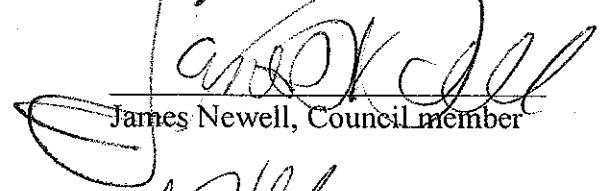
IT IS FURTHER ORDERED, that the Clerk of Council shall mail a copy of this Final Order of Council and Conclusions of Fact to the Applicant, and any other parties requesting same, by first class mail, and note the mailing date upon this order. The decision of this Council shall be deemed final upon the date the Clerk mails this document, as provided herein.

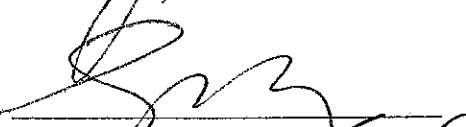
Adopted this 18th day of March, 2013, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

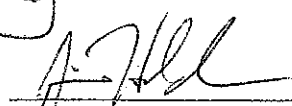
VILLAGE OF CHAGRIN FALLS COUNCIL

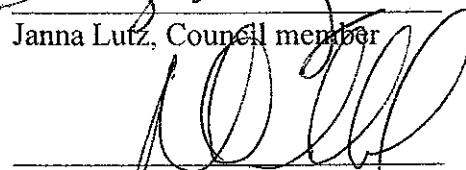

Steven Patton, President of Council



Janis Evans, Council member


James Newell, Council member

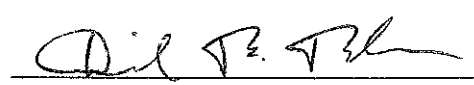

Janna Lutz, Council member


James Holdren, Council member


Richard Subel, Council member


Michael Chess, Council member

Notice mailed this 30 day of April, 2013.


Clerk of Council