

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL
CHAGRIN FALLS, OHIO

3563

IN RE: VARIANCE REQUEST OF) FINAL ORDER OF COUNCIL
THE FLESHER HOLDING CO.) AND CONCLUSIONS OF FACT
FOR PROPERTY LOCATED AT)
269 BENTLEYVILLE ROAD AND) ADMINISTRATIVE ORDER NO.
WEST ORANGE STREET) 2011-17

This matter is before the Chagrin Falls Village Council pursuant to the request of CSI: CHAGRIN LLC ("the applicant"). The applicant owns property that straddles the municipal corporation limit between the Village of Chagrin Falls and the Village of Moreland Hills, to the south of Bentleyville Road ("the subject property"). The applicant has appealed the Chief Administrative Officer's determination that the applicant's proposed "temporary access path" is a driveway. In the alternative, the applicant has requested a variance from Section 1125.04(b)(1) of the Village of Chagrin Falls Codified Ordinances to permit the construction of a driveway on two lots. Section 1125.04(b)(1) requires each residential building to be served by a driveway located on the same lot.

The Village of Chagrin Falls Board of Zoning Appeals ("Board") met on February 22, 2011, received evidence and testimony, and heard the arguments of the applicant. The Board, on a vote of 0-5, sustained the decision of the Chief Administrative Officer, concluding that applicant's proposed "temporary access path" is a driveway. On a vote of 0-5, the Board defeated a motion to recommend that Council grant the requested variance.

This Council considered the matter upon the record created by the Board on February 28, 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 subject property is located on the south side of Bentleyville Road and runs from the road to the Chagrin River; on the eastern boundary of the property, a portion of the property contains a portion of the river. The property straddles the Moreland Hills/Chagrin Falls municipal corporation boundary and is composed of nearly thirteen (13) acres in Chagrin Falls and a little more than seven and one-half (7½) acres in Moreland Hills.

2) The lot is fully wooded. There is a steep slope located on the Chagrin Falls portion of the lot.

3) The Board noted that "driveway" is defined in Section 1107.20(d) of the Codified Ordinances of the Village of Chagrin Falls. On lots that do not include a one-family or two-family dwelling, a "driveway" is "vehicle access provided between a street or land and a

parking space, parking area, loading areas, or between parking areas.” The Board concluded that applicant’s proposed “temporary access path” is a driveway. The Board also noted that the proposed “temporary access path” was a hard surface designed to be utilized by motor vehicles.

4) This Council concludes that the proposed “temporary access path” is a driveway and, therefore, affirms the decision of the Chief Administrative Officer.

5) The applicant, through Bob Flesher and the applicant’s attorney, Dale Markowitz, provided testimony to the Board regarding the location of the proposed “temporary access path.” The applicant advised that the “temporary access path” would be a gravel path that could be used for vehicular access to the property in order to show the property to potential buyers. The applicant indicated that the “temporary access path” would be used for three years. After that, it would “eventually” return to a natural state, as trees, grass, and other natural vegetation would grow through the gravel path.

6) Residents of Chagrin Falls and Moreland Hills objected to the proposed “temporary access path,” citing incidents of slope instability in the area and raised legitimate concerns regarding the impact of the path on the hillside.

7) The applicant, while testifying that the “temporary access path” would be constructed to comply with any requirements of the Village Engineer, did not present any testimony or provide the Board with any professional studies on the relationship between the construction of the “temporary access path” and the impact of the path on the stability of the hillside.

8) This Council takes notice of a Slope Stability Evaluation report, dated December 12, 2008, for the subject property prepared by Solar Testing Laboratories, Inc., for the applicant. The Slope Stability Evaluation report analyzes the impact of a proposed roadway in that project on the existing hillside and recommends the construction of retaining walls and stabilization of the hillside to support the proposed cuts and fills. This Council notes that the proposed “temporary access path” is not the roadway proposed and analyzed by Solar Testing Laboratories, Inc. This Council, however, concludes, based upon the analysis set forth in the Slope Stability Evaluation report and testimony before the Board of Zoning Appeals, that distribution and/or alteration of the hillside, including the steep slope located on the Chagrin Falls portion of the lot, in a manner that results in the construction of a hard surface for vehicular travel, creates a foreseeable danger of negatively impacting the stability of the hillside. There is insufficient evidence in the record to establish that this concern has been addressed in the current proposal.

9) This Council also takes notice of the report, dated March 24, 2009, prepared by EDP Consultants, Inc., for the Village, that identified property damage on the subject property “by active landslides,” in the vicinity of the existing driveway. It is this driveway that the applicant is requesting to extend with the “temporary access path.” This Council also

notes that this report concludes that “[i]t is obvious from site conditions that the slopes *** are actively failing.”

10) The Board, noting that access to the subject property by potential buyers may be gained by foot travel, a common manner of viewing vacant property, heard no convincing testimony that the applicant has a practical difficulty in the use of the property that would necessitate the variance.

11) The Board also concluded that the requested variance is substantial, as applicant is proposing the construction of a driveway that is seven hundred feet (700') long.

12) The Board also concluded that granting the variance would adversely impact governmental services, as police and fire responders could expend significant time and resources in responding to a vehicular emergency on the proposed “temporary access path.”

13) This Council finds that the applicant has not demonstrated a practical difficulty in the use of its property resulting from the strict application of the zoning ordinance.

14) This Council further finds, based upon professional reports on file with the Village and testimony before the Board, that adjoining properties could suffer a substantial detriment as a result of granting the variance. Such substantial detriment includes a foreseeable risk of injury to persons and damage to property based upon slope instability, which has not been addressed in the proposal.

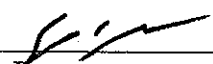
15) This Council finds that the spirit and intent of the Village Zoning Code would not be observed and substantial justice would not be done by granting the variance, as the granting of the variance, in the absence of evidence to the contrary, poses a risk to the health, safety and welfare of neighboring property owners.

WHEREFORE, IT IS ORDERED, that the variance requested by the applicant, the plans for which are on file with the Building Commissioner, be and is hereby denied. This document is deemed by Council to be the final order in this matter.

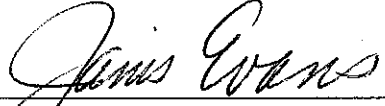
IT IS FURTHER ORDERED, that the Clerk of Council shall mail a copy of this Final Order of Council and Conclusions of Fact to the applicant, and any other parties requesting same, by first class mail, and note the mailing date upon this order. The decision of this Council shall be deemed final upon the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

Adopted this 28th day of February 2011, by a majority of the Village of Chagrin Falls Council, who have subscribed their names below.

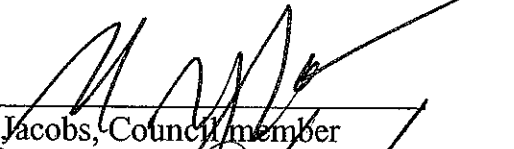
Village of Chagrin Falls Council



Steven Patton,
President of Council



Janis Evans,
Council President Pro Tem




Adam Jacobs, Council member




Janna Lutz, Council member



Dwight Milko, Council member

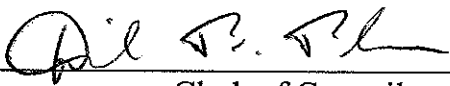


Richard Subel, Council member



Robert Williams, Council member

Notice mailed this 7 day of March, 2011.



Clerk of Council