

BEFORE THE VILLAGE OF CHAGRIN FALLS COUNCIL
CHAGRIN FALLS, OHIO

3673

IN RE: VARIANCE REQUEST OF) FINAL ORDER OF COUNCIL
WINSTON AND TRICIA BREEDEN) AND CONCLUSIONS OF FACT
FOR PROPERTY LOCATED AT)
106 W. WASHINGTON STREET) ADMINISTRATIVE ORDER
) NO. 2012- 53

This matter is before the Chagrin Falls Village Council pursuant to the request of Winston and Tricia Breedem ("the applicants"). The applicants own the residence at 106 W. Washington Street ("the subject property"). The applicants propose to demolish the existing dwelling and to build a new dwelling and accessory building (a gazebo). The new dwelling proposes a cupola which exceeds the maximum height permitted by the zoning code. The proposed gazebo is 432 square feet and to be located in the required River Buffer approximately 20 feet from the edge of the Chagrin River. The lot is currently served by an existing historic accessory structure of 340 square feet. The construction of the new dwelling requires grading work at the rear of the new dwelling and within the River Buffer to provide for positive drainage on the subject property.

Section 1125.04(a)(2) states that the total area coverage for all accessory buildings on a lot shall not exceed 700 square feet in total area. Because the applicants propose to construct the gazebo bringing the total accessory structure area to 772 square feet, they are requesting a variance from Section 1125.04(a)(2).

Section 1125.03(j) sets a maximum height of a dwelling at thirty- five feet above finished grade. Because the proposed dwelling includes a cupola that extends approximately 9 feet above the allowable height limit, the applicants are requesting a variance from Section 1125.03(j).

Section 1353.08 establishes a River Buffer. The minimum boundary of the buffer area is set at 120 feet in a horizontal plane outward from the normal low water mark of the stream channel. Because the proposed gazebo is wholly within the River Buffer and the grading around the new dwelling extends into the River Buffer by approximately 50 feet, the applicants are requesting a variance from Section 1353.08.

The Village of Chagrin Falls Board of Zoning Appeals met on October 30, 2012, received evidence and testimony, and heard the arguments of the applicants. The Board of Zoning Appeals, on a vote of 2 -2, defeated a motion to recommend the variance from Section 1125.03(j) for the height of the building. The Board of Zoning Appeals by a vote of 1-3 defeated a motion to recommend the variance from Section 1125.04(a)(2) for lot coverage of accessory structures. The Board of Zoning Appeals by a vote of 4-0 approved a motion to recommend the variance from Section 1353.08 for a River Buffer zone, whereby the applicants may construct a gazebo that meets the total area coverage requirement within the River Buffer and may perform the proposed grading work within the River Buffer.

Council met on November 12, 2012 and considered the matter upon the record created by

the Board of Zoning Appeals. 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 north side of West Washington Street and is bordered on the north by the Chagrin River.
- 2) The applicants seek to build a new dwelling and gazebo on the subject property, and to grade a portion of the property for drainage purposes.
- 3) The Board of Zoning Appeals ("BZA") found that while the design of the house was aesthetically pleasing with the cupola, it did not meet the standards of the practical difficulty test.
- 4) The BZA took into consideration that the cupola height of 9 feet is substantially over the 35 foot limit and the house will yield a reasonable return without a cupola.
- 5) With regard to the accessory structure coverage, the BZA determined that there was no compelling testimony provided to justify a variance, specifically there was no compelling testimony as to why an additional 66 square feet was necessary.
- 6) With regard to the River Buffer the BZA noted that the variance requirements for this building code requirement are related to flood hazards and are not the "practical difficulty" standard required for zoning code variances.
- 7) The BZA noted that the entire proposed dwelling is located outside the River Buffer and the grading is the minimum necessary to provide for positive drainage to the river. The BZA took note of the neighbor's concern that storm water is drained properly.
- 8) The BZA is satisfied that the applicants are taking all necessary precautions to minimize damage due to flooding.
- 9) The BZA made clear that it is the intent to grant relief from the River Buffer setback for both the grading and the gazebo so long as they otherwise meet code requirements.
- 10) This Council finds, as recommended by the BZA, that the applicants have not demonstrated a practical difficulty in the use of their property, relative to the height variance and the accessory building coverage variance.
- 11) This Council further finds, as recommended by the BZA, that the requested River Buffer variance meets the standards for such a variance and will not result in increased flood heights, additional threats to public safety or extraordinary public expense and is located above the Base Flood Elevation.

WHEREFORE, IT IS ORDERED, that the variances from Section 1125.04(a)(2) and 1125.03(j) of the Codified Ordinances be and are hereby denied.

IT IS FURTHER ORDERED, that the variance requested by the applicants from the River Buffer requirement be and is hereby granted. The applicants may construct the project in accordance with the proposed plans relative to River Buffer issues including a gazebo if it is so sized as to meet the code requirement. Assuming that the design and location of the accessory structure remain substantially the same, and the design change is a reduction of the square footage, this Council grants this variance to authorize the smaller accessory structure to be located as proposed. 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 12th day of November, 2012, 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



Jan Evans, Council President Pro Tem




Michael Chess, Council member



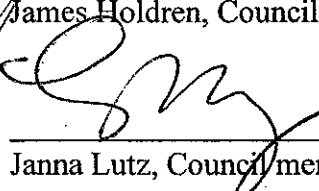
James Newell, Council member



James Holdren, Council member




Richard Subel, Council member



Janna Lutz, Council member

Notice mailed this 18 day of December, 2012.



Clerk of Council