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IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

LICKING COUNTY
COMMON PLEAS COURT
2007 NOV -7 P 4:09

Appeal from the Village Council and
Planning Commission of Granville, Ohio

FILED
GARY W. WALTERS
CLERK

John Thornborough, et al.,

Appellants,

v.

Case No. 2007 CV 01076
Judge Jon R. Spahr

Council of the Village of Granville, Ohio,
et al.,

Appellees.

Reply Brief of Appellants

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REPLY TO APPELLEE'S LAW AND ARGUMENT

1. The Architecture Of The Proposed Addition To Cleveland Hall.
2. The Village Ordinances.

In the first two sections of the Appellee's brief, considerable effort is devoted to a discussion of facts concerning the details of Denison's proposed plans for the renovation of Cleveland Hall. These facts are not at issue here. The fact that Denison desires to construct a classroom addition with special lighting needs is not relevant. The fact that Denison's architect is a Denison graduate and world famous is not relevant. The fact that Denison desired to have the design comply with the Guidelines for Rehabilitating Historic Buildings established by the U.S. Secretary of the Interior may be commendable but it is not relevant. The issue of consequence is whether the design of the addition(s) is permitted under Section 1161 of the Village Zoning Code.

Section 1161 describes an Architectural Review Overlay District (AROD) that was specifically designed to preserve the historic character of the Village District. In Section 1159.01 PURPOSE AND INTENT of the Village District, for which the AROD is an overlay, historic preservation is highlighted:

The preservation of existing structures which have historical and architectural significance as well as the integration of new and renovated structures with the character and appearance of existing structures in the Village District is emphasized.

Counsel for Appellee is mistaken when he states that the "standards to be applied by the Planning Commission and Council ... are set forth in Section 1161.02." (Appellee's Brief, p. 4). Indeed, throughout Appellee's Brief, counsel repeatedly claims mistakenly that the four determinations of Section 1161.02 are "standards" or "standards and criteria." In fact, the standards are found in Section 1161.05, aptly named STANDARDS AND CRITERIA.

Appellants stipulate that both Planning Commission and Village Council found, by 3 to 2 votes in each case, that the design met the four determinations of Section 1161.02 by 3 to 2 votes in each case. (As noted previously in Appellant’s Brief, the Village Council failed to provide a specific review of the requirements of the fourth determination of Section 1181.02). While Appellee calls these “standards to be applied,” they are, in fact, part of an introduction and statement of purpose to the architectural review process. They are not “standards.” They are “determinations” to be made based upon the standards and criteria in Section 1161.05.

Section 101.07 DETERMINATION OF LEGISLATIVE INTENT of the Village Code, states:

- (a) In enacting an ordinance, it is presumed that:
 - (1) Compliance with the constitutions of the State and of the United States is intended;
 - (2) *The entire ordinance is intended to be effective;*
 - (3) A just and reasonable result is intended;
 - (4) A result feasible of execution is intended. (ORC 1.47) (Emphasis added.)

Clearly, any interpretation of any Section of Chapter 1162 must consider other sections of that chapter. Therefore, both the Planning Commission and Village Council should have made each determination in Section 1161.02 by applying the Standards and Criteria of Section 1161.05.

Neither body did that and their written findings confirm that.

It is instructive to follow the appearance and use of the terms “styles and stylistic” as they flow through Sections 1161.02 and 1161.05:

1161.02 APPLICATION FOR ZONING AND ARCHITECTURAL REVIEW PERMITS.

*The purpose of the Architectural Review Overlay District is to preserve and encourage good architectural **styles** within the Village, reflecting the distinct phases of the Village's history.* Therefore, in addition to the other requirements of this Zoning Ordinance, all applications for Zoning and Architectural Permits in the Architectural Review Overlay District which propose new construction, exterior modification and/or structural

alteration *shall be subject to review by the Planning Commission to determine that the proposed new construction, exterior modification or structural alteration:*

- (a) *Is **stylistically** compatible with other new, renovated and old structures in the Village District.*
- (b) *Contributes to the improvement and upgrading of the historical character of the Village District.*
- (c) *Contributes to the continuing vitality of the District.*
- (d) *Protects and enhances examples of the physical surroundings in which past generations lived.*

1161.05 STANDARDS AND CRITERIA.

In reviewing an application, the Planning Commission shall determine, based on submitted materials, whether the proposed architecture follows or exemplifies any one or a combination of the following architectural styles:

Colonial	Greek Revival
Dutch Colonial	Victorian
French Colonial	Italianate
Georgian	Second Empire
Federal/Adamesque	Chateausque
Jeffersonian/Roman Revival	Homestead
Richardsonian Romanesque	Queen Anne
American Foursquare	Craftsman
Tudor	Bungalow

These styles are considered consistent with existing architecture in the Village, and depict the objectives of the Comprehensive Plan. So also must the Commission consider the "tout ensemble," or the totality of an architecturally or historically unique area. (Emphasis added.)

This simple exercise makes the logic and importance of the language of Section 1161.05 in making the determination of 1161.02(a) impossible to dismiss in the fashion that Appellee would ask us to do. Without Section 1161.05, the determination to be made in Section 1161.02(a) is void of guidance and is arbitrary and therefore up for grabs.

Section 1133.01 INTERPRETATION of the Planning and Zoning Code provides

guidance needed to use the code:

In their interpretation and application, the provisions of this Zoning Ordinance shall be held to be minimum requirements. Wherever this Ordinance imposes a greater restriction than is imposed or required by other provisions of law or by other rules or regulations or ordinances, the provisions of this Ordinance shall govern. The Zoning Ordinance is intended to be one regulatory "tool" by which the Comprehensive Plan of the Village of Granville is implemented. *Interpretive background to this Ordinance may therefore be found within that Plan.* (Emphasis added.)

In Section 1161.05, the drafters of the code define the objectives of the Comprehensive Plan within the Historic District. The 18 architectural styles that are “considered consistent with existing architecture in the Village, and *depict the objectives of the Comprehensive Plan.*” (emphasis added.) Section 1161.05 then goes on to list 11 other “standards and criteria” that the “Planning Commission shall also consider.” It should be noted that the requirement to follow or exemplify one of the 18 styles that meet the objectives of the Comprehensive Plan is put first in the section. The catalog of styles is clearly given prominence in Section 1161.05 as the law’s “Standards and Criteria.” Its importance is further underscored by the reference to the Comprehensive Plan. In short, Granville is trying to preserve the historic nature of the old village. A modernist glass cube, whatever its architectural merits, does not conform to the language or the intent of the law.

The record shows that in its Findings of Fact, the Planning Commission addressed only the four determinations of the introduction in Section 1162.02. The Commission failed to address any part of Section 1161.05, the Standards and Criteria. Not only did it fail to determine “whether the proposed architecture follows or exemplifies any one or a combination” of the 18 architectural styles and therefore meets the objectives of the Comprehensive Plan, but also it did

not bother to address any of the other 11 standards found in Section 1161.05. The Commission merely said:

“[t]he addition is not similar to other structures to [sic] the Village District but protects their historic design by not matching other structures.” (Emphasis added.)

Appellants do not contest this evidence from the Planning Commission Hearing. Appellants agree the proposed additions do not match any other structure in the Historic District. Clearly, the style of the additions also does not match one of the 18 styles listed in the standards of Section 1161.05.

In its Findings of Fact, Village Council followed the pattern set by the Planning Commission. Even though the appeal hearing before Council on June 6, 2007 was declared a *de novo* hearing, Council failed to “also consider the” additional 11 standards and criteria. Council merely addressed the four determinations of the introductory Section 1161.02 and conceded that the design did not meet the architectural style standard of Section 1161.05. Council wrote in their Findings of Fact:

“Council finds that the proposed contemporary architectural design of the addition to Cleveland Hall does not fall within one of the specific architectural styles identified in Section 1161.05 of the Codified Ordinances.” (Emphasis added.)

Village Council unlawfully chose to ignore the objectives of the Comprehensive Plan and the standards provided in Section 1161.05.

3. Appellants Have Failed To Show That They Have Been Injured By The Decisions of the Village of Granville.

In both City of Willoughby Hills v. C.C. Bar's Sahara , 64 Ohio St. 3d 24, at 27, 1992-Ohio-111, and Wilkenfeld v. Village of Granville , (Nov. 3, 1997), Licking App. No. 97 CA 42, the matter requiring a demonstration of injury was the question of standing. Willoughby Hills dealt primarily with the issue of whether a city had standing to appeal a decision from its own zoning board regarding a variance. In Willoughby Hills , *supra*, the Court reasoned that "[t]he private litigant has standing to complain of harm which is unique to himself. In contrast, a private property owner across town, who seeks reversal of the granting of a variance because of its effect on the character of the city as a whole, would lack standing because his injury does not differ from that suffered by the community at large."). In Wilkenfeld , *supra*, the appellant resided far from the site of the zoned property and failed to show the court a unique injury distinguishable from that of the community at large.

In the present matter, Appellants' standing was granted by the Planning Commission and reaffirmed by Village Council, and Appellee should be estopped from raising it successfully as an issue now. The record is replete with evidence of this. Nevertheless, Appellant James Jung and his wife, Joy, who live on South Broadway in Granville and have a clear and intimate view of the proposed construction in question, clearly demonstrated the potential injury which they would uniquely incur during the Appeal Hearing before Village Council. (Record, Hearing Transcript, Pages 90, 91.) Appellant Dennis Cauchon claimed and was granted standing as a resident of the Historic District whose home is adjacent to and across the street from commercial structures which, with the precedent set by the Commission and Council in this case, could

reasonably be expected to be permitted similar additions to their structures. Finally, Appellant John Thornborough claimed and was granted standing under the essentially all-encompassing Section 1141.05 (c) (4). In this section, anyone who “claims that a direct, present injury or prejudice to a personal property right will occur if the application is approved or denied” may “appear at hearings as parties and be heard in person or by attorney.”

4. Appellants Have Failed To Prove That The Decision Of Village Council Is Unreasonable Or Unlawful.

Contrary to the claims of Appellee, Appellants have not asked the Court to substitute its judgment of facts in this matter. The case turns on questions of law. Appellants have asked the Court to review the record, including the transcripts of the hearing before Granville Village Council and its subsequent deliberations, and to review the resulting decision in light of a full reading of all of the applicable Granville Village Code sections which purport to fulfill the goals of the Granville Village Comprehensive Plan within the Historic District.

Appellee complains in its brief that Appellants register but one objection, that of modern design, and that the Appellants cannot demonstrate that such design cannot be “stylistically compatible with other new, renovated and old structures in the Village District.” This complaint rings hollow when one reviews the applicable Granville Village Code sections. As previously articulated in this Reply Brief, the Granville Village Council glossed over or ignored sections of Chapter 1161 of the Code and their application to the facts of this case— facts which are largely undisputed. The fourth argument of Appellee’s Brief fails because it is based on a non-recognition of the full significance of Code Section 1161.05. In the final paragraph of that

argument, Appellee nears derision in its assessment of Appellants' characterizations of the design in question as "...inflict[ing] a burden upon the environment of the historic Village District" and as "...an unwarranted presence which would loom over West College Street." This criticism is ironic since these two characterizations epitomize concerns which gave rise to the protections which were built into the code sections regarding the Village District, and which have gone unrecognized thus far in this matter.

Appellee mistakenly declares again that the four determinations of Section 1161.02 are "standards" (Appellee Brief, p. 4, 5) and that the Village Council can approve an application if it meets the "four standards set fourth in Section 1161.02 even though the proposed design is not one of the eighteen "styles" referred to in Section 1161.05." In finding that the proposed design did not meet the standard of Section 1161.05 and therefore did not meet the objectives of the Comprehensive Plan, the Village Council erred and its decision was unreasonable and unlawful.

By not properly considering the 18 styles of Section 1161.05, Village Council failed to evaluate the proposal according to the Comprehensive Plan and acted unconstitutionally (Pepper Pike, 63 Ohio App. 2d 34 and First Hudson Development Association v. Village of Hudson, No. CA-15142, 1991 Ohio App. LEXISA 5841 (Summit Cty. November 27, 1991).

5. There Is A Preponderance Of Reliable, Probative And Substantial Evidence To Support The Decision Of Village Council.

There is little in Appellee's fifth argument that has a bearing on this appeal that has not been addressed elsewhere in this Reply Brief or in Appellant's Brief filed on September 24, 2007. In this argument, however, Appellee argues that

“[b]oth the Planning Commission and the Village Council determined that there was merit in Denison’s proposal to have the new addition be consistent with the Guidelines for Rehabilitating Historic Buildings established by the U.S. Secretary of the Interior.” (Appellee’s Brief, p. 12)

Appellee continues, stating “[t]he Secretary’s Guidelines have been adopted and incorporated into zoning codes by other municipalities” (Appellee’s Brief, p. 12) and provides several citations. Appellee does, however, fail to note that the Village of Granville is not one of those municipalities that have adopted these guidelines. The issue at hand is not about these guidelines, but about whether the modernest part of the proposed construct comply with the standards of the Granville ordinance.

6. A Proposed Architectural Design Does Not Have To Be One Of The Eighteen Styles Listed In Section 1161.05 Of The Village Zoning Code.

The material in the sixth argument of Appellee’s Brief has been largely addressed previously in this Reply Brief. Appellee states in argument six, however, without attribution or explanation “[t]hat the standards for review and approval of an architectural design are the four specific standards set forth in Section 1161.02, which do not require a proposed design to fall within one of the eighteen listed styles.” (Appellee’s Brief, p. 13) Appellee continued, “[t]he test is whether the proposed architecture ‘[i]s stylistically compatible with other new, renovated and old structures in the Village District’ and not whether the style is one of the eighteen listed styles in Section 1161.05.” (Appellee’s Brief, p. 14) While proceeding like this under the fiction that Section 1161.05 of the code is not really a set of standards and criteria meant to be necessarily applied in making the stylistic determination required under Section 1161.02, the


actual decision regarding stylistic compatibility becomes amorphous, arbitrary, and subject to whim. Granville Village Council suffered this fate in their deliberations.

In the final sentence of the final argument of Appellee's Brief, irony surfaces once again as Appellee delivers the same advice which had occurred to Appellants to offer to the other side, months prior to this appeal: that the village should amend provisions of the zoning code if it wants to approve a modernist cube in the village historic district. The decision was legislative, not administrative. Denison's architect, Jack Beyer, conceded as much in the hearing before the Village Council when he testified, "you have the right, you have the legislative right, to make a decision on every case..." (Record, Transcript of Hearing before Village Council on June 6, 2007, page 140, 23.)

CONCLUSION

For the foregoing reasons, Appellants respectfully request this Court to reverse the decision rendered in this matter by the Village of Granville, Ohio through its Planning Commission and its Village Council, and thereby rescind and deny the Zoning and Architectural Permit granted to Denison University for the construction of the portion of the Cleveland Hall refurbishment which includes three modern contemporary-styled additions at the East end of Cleveland Hall. As to these significant additions, the permit is manifestly unlawful and unreasonable under Chapter 1161 of the Granville Village Code.

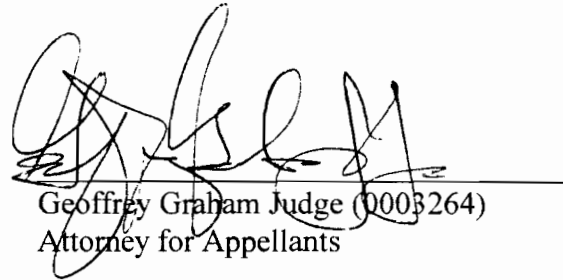
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Brief of Appellants was delivered by regular U,S, Mail to D. Michael Crites, Esq. and James R. Gorry, Esq., Rich, Crites & Dittmer, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, on this 7th day of November, 2007.



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