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IN THE COURT OF COMMON PLEAS  
LICKING COUNTY, OHIO

2007 NOV 30 P 4: 01

PAUL  
CARL WALTERS  
CLERK

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

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  
To Appellee Denison University

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## REPLY TO APPELLEE'S LAW AND ARGUMENT

In its Argument, Appellee Denison University adopted the Law and Argument of the Village of Granville in this matter. Denison continued on its own behalf to say "...that the University was most concerned with the preservation of a historical building [Cleveland Hall] on its campus and its compatibility with the campus periphery and surrounding and adjacent uses."

In so stating, Denison erroneously pointed to Section 1169.01 of the Granville Village Zoning Code, entitled Purpose and Intent. Chapter 1169 in its entirety concerns Granville's Institutional District, which includes the Denison campus with the exception of Cleveland Hall and some other Denison properties which are located downhill within one of four areas which comprise the Village District. These are governed instead by Chapter 1159 (Village District) and also Chapter 1161 (Architectural Review Overlay District). See Appendix for pertinent copies of Granville Village Zoning Code.

While Section 1169.01 itself stresses "compatibility of use between the Denison University campus periphery and surrounding and adjacent uses" within the Institutional District, the level of scrutiny of compatible uses is very much higher in the historic Village District, where the Architectural Review Overlay District is applicable specifically through Sections 1161.02 and 1161.05. This is the level of scrutiny by which the contemporary additions to Cleveland Hall by law must be measured.

At every stage of the review of Denison's application, the Village of Granville focused upon Denison University as a unique member of the community, which it surely is – but it is still subject to the Planning and Zoning Code of the Village of Granville. Under the guidance of the law director, who prepared not only its appellate brief but who also crafted the Decision of Council and the Findings and Conclusions of Fact from which we appeal, the Granville Village

Council meandered its way through a determination under Section 1161.02 of the Code. Council relied upon the Guidelines for Rehabilitating Historic Buildings of the United States Secretary of Interior supplied by Denison itself rather than correctly applying Section 1161.05 and the rest of Chapter 1161.

In the resulting Decision of Council and Findings and Conclusions of Fact drafted by the law director, the terms “standards” and “styles” and “determination,” as used by the drafters of the Code in Sections 1161.02 and 1161.05, were interchanged confusingly and used without relation to their original usages in those Sections. This had the effect of obfuscation. (These terms continued to be interchanged confusingly in the brief of Appellee Granville Village to the same effect. See Reply Brief (to Brief of Granville Village) of Appellants at 1-4, for a fuller discussion and clarification of the usages of the interchanged terms in Chapter 1161.) As a result of this confusion, conclusions were drawn by Council concerning the benefits and compatibility of contemporary design in the Village District which are foreign to the intent of the drafters of Chapter 1161 of the Code.

An exception to the Village District has been made for the Cleveland Hall addition. In effect, Denison and its architect with his guidelines were allowed to dictate designs and uses within the Village District rather than the reverse. It is ironic that the applicable sections of the Granville Village Zoning Code, drafted and passed to ensure that all projects within the historic Village District conform to well-defined requirements, were designed predominantly in response to past encroachment by Denison.

It is slightly ironic also that the Village of Granville chose to mention in its brief Section 1161.03(d)(1)(B), Alternative Zoning and Architectural Permit Procedures, in an apparent attempt to bolster the extent to which “[s]pecial architectural design problems” would be

acceptable within the Village District. Section 1161.03(d)(1)(B) is only one in a list of items of descriptive information required for submission in the first phase of an alternative and optional two-phase permitting procedure. Section 1161(d)(1)(B) is not relevant here since Denison did not utilize the alternative procedure. The “[s]pecial architectural design problems” presented here by Denison University through the regular permitting process have to do with the non-conforming contemporary design of the new additions to Cleveland Hall. The current design for these additions cannot stand under a proper review under the applicable Code sections of 1161.02 and 1161.05; the permitting decision should be reversed as to the design of the additions. The Village clearly erred by incorrectly interpreting and applying the law.

Appellants’ argument challenges only Denison’s contemporary facade on the additions to Denison’s historic building within the Village District. It does not threaten the additions if they are modified to conform with Chapter 1161, the Architectural Review Overlay District – a task which can and should be accomplished. The Cleveland Hall project is not threatened by an adverse outcome here. It would not threaten a historically accurate renovation and Denison’s “greatest concern,” preservation of the historical building. Neither are the additions to that building threatened. Nor would it threaten a proposed art studio, since an art studio with proper light sourcing is not dependent on the current non-conforming facade.

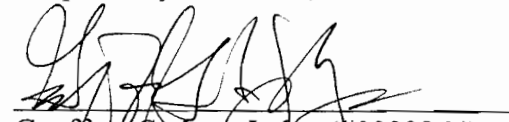
Conversely, the intrusion of contemporary design into the Village District does threaten Granville. It changes the character of that special historic area which was sought to be protected by the changes drafted in Chapter 1161 following the construction of Denison’s Burke Hall. Those drafters made their intentions much clearer than Appellees would have us believe according to their briefs and the material written into the Decision of Council and Findings and Conclusions of Fact. We need only to give a logical and clear reading to the Village Code and

its aims, and follow the law that has been given to us. If Village Council wanted the flexibility to operate in the Village District that it purported to find in its Decision of Council and Findings and Conclusions of Fact, it needed to have amended Chapters 1159 and 1161 of the Granville Village Code prior to the inception of this matter.

### CONCLUSION

Appellants respectfully request this Court to reverse the decision rendered in this matter by the Village of Granville, Ohio, and 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. The permit is manifestly contrary to law, arbitrary, capricious, and unreasonable under Chapter 1161 of the Granville Village Code.

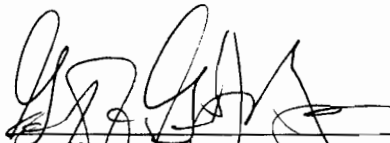
Respectfully submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Reply Brief of Appellants to Appellee Denison University was delivered by regular U.S. Mail to James R. Cooper, Esq., Morrow, Gordon & Byrd, Ltd., 33 West Main Street, P.O. Box 4190, Newark, Ohio 43058-4190; D. Michael Crites, Esq.; and James R. Gorry, Esq., Rich, Crites & Dittmer, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, on this 30<sup>th</sup> day of November, 2007.



Geoffrey Graham (Judge 0003264)  
Attorney for Appellants