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IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO

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LICKING COUNTY

2007 OCT 24 P 12:49

John Thornborough, et al., :

Appellants, :

vs. :

Case No. 2007 CV 01076 FILED

Judge Spahr

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

Appellees. :

BRIEF OF APPELLEE VILLAGE OF GRANVILLE

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## LAW AND ARGUMENT

This is an appeal under R.C. 2506.01 *et seq.* from a final order of the Council of the Village of Granville which approved an architectural plan and zoning application for a proposed addition to Cleveland Hall which is located on the campus of Denison University.

The Village Planning Commission determined that the proposed design for the Cleveland Hall addition was “stylistically compatible with other new, renovated and old structures in the Village District,” and the Village Council, which heard the matter on appeal, affirmed the decision of the Planning Commission. This determination was both factually and legally correct. In what is fundamentally an aesthetic dispute, Appellants now wish to have this Court hold that the proposed plan is not “stylistically compatible with other new, renovated and old structures in the Village District,” contrary to the administrative decisions made by the proper Village officials.

In accordance with Section 1137.01(k) of the Zoning Code, the Village Council issued a written Decision with Findings and Conclusions of Fact, which is part of the record transmitted by the Village to this Court (referred to herein as the “Findings” of Council).

1. The Architecture Of The Proposed Addition To Cleveland Hall

Denison University proposed to construct a new addition to its 103 year-old Cleveland Hall which is used in the fine arts college as an artists’ studio. The facts are summarized in Council’s Findings adopted as part of its decision in the appeal:

The applicant before the Village Planning Commission was Denison University, which sought approval of the architectural plans for an addition to Cleveland Hall located on the lower campus of the University. Cleveland Hall is a building constructed in 1904 as a gymnasium. In the 1970’s, Denison converted the building to its studio arts building, although it is not adequate for that purpose according to University President Dale Knobel. Rather than demolish

the building, Denison plans to renovate the building and add the new addition to the building which will serve as the artist's studio.

The Village of Granville has an Architectural Review Overlay District (AROD) in its zoning code, which covers the downtown area and the central residential district of the Village. A small part or slice of the Denison campus is located in the AROD. Whenever a zoning permit is requested for "new construction, exterior modification and/or structural alteration" in the AROD, the property owner must submit the architectural plans to the Village Planning Commission which must determine whether the proposed design meets the primary requirement that it "is stylistically compatible with other new, renovated and old structures in the Village District" under Section 1161.02 of the Village Zoning Code.

The plans for the proposed renovation of and the addition to Cleveland Hall were prepared by architect Jack Beyer, who is a Denison graduate and founding partner of the large and internationally known New York architect firm of Beyer Blinder Belle, which has worked on Grand Central Station and at such schools as Columbia University and Indiana University. The design issues with the Cleveland Hall addition arise because the building is a 103 year-old structure and Denison University wanted the proposed addition to have sufficient natural lighting and to have the addition comply with the Guidelines for Rehabilitating Historic Buildings established by the U.S. Secretary of the Interior. This is set forth in the Council's Findings (page one):

In developing the architectural plan for the new addition, the University wanted to insure that sufficient light would come into the studio and that the renovation and the addition were consistent with the Guidelines for Rehabilitating Historic Buildings established by the Secretary of the Interior. Under the Guidelines, a new addition to an historic building should always be clearly differentiated from the historic building itself, such that it is clear what is historic and what

is new, and be compatible in terms of mass, materials, relationship of solids to voids, and color. (emphasis added)

As a result of the need for sufficient light and in consideration of the Guidelines for Historic Buildings, the proposed design for the addition to Cleveland Hall has a contemporary glass exterior which is distinctively different than the existing design of Cleveland Hall. The Village Planning Commission found that there was merit to the fact that the proposed addition was consistent with the Guidelines and the Village Council specifically determined that “[t]he proposed design of the addition satisfies these Guidelines.”

Appellants argued before Village Council and now before this Court that the contemporary glass exterior of the proposed addition to Cleveland Hall prevents the addition from being “stylistically compatible with other new, renovated and old structures in the Village District.” In response to this claim, Council made two essential conclusions, which were set forth in Council’s Findings:

Council recognizes that it is essential to protect the historic character of the Village District, but it also recognizes that a modern or contemporary design for the addition to Cleveland Hall can contribute to the preservation of the historic character of Cleveland Hall and can be compatible with the historic character of the Village District under Section 1161.01 of the Codified Ordinances. [p. 2, para. 1]

The proposed design contributes to the improvement and upgrading of the historical character of the Village District by contributing to a historically accurate renovation of Cleveland Hall and by preserving the historic character of that building. The proposed design contributes to the vitality of the District, not only by the construction work which will have a financial benefit to the Village, but by providing an effective interaction between the campus and the Village and will tie these two areas closer together as the Village Institutional District was intended to do. [p. 3]

The determination that the Cleveland Hall plans are “stylistically compatible with other new, renovated and old structures in the Village District” is both reasonable and lawful. This Court is requested to affirm the decision of the Village Council.

2. The Village Ordinances

Section 1161.01 of the Village Zoning Code sets forth the principles that govern the Architectural Review Overlay District:

1161.01 PURPOSE AND BOUNDARIES.

The Village of Granville was first settled in 1805. Buildings in the community reflect the architectural styles of every period from the early nineteenth century to the present. These buildings demonstrate the Village’s ties to the past. The Village District itself has become a source of pride, enjoyment and prosperity to the residents of the entire area. It attracts many visitors each year. In the interest of promoting and protecting the public health, safety, general welfare and prosperity, there is hereby established the Architectural Review Overlay District which shall have the boundaries as shown on the Official Zoning Map and as amended in Ordinance 12-94. The District may be expanded by amendment to this chapter. (emphasis added)

Section 1161.02 of the Zoning Code also provides that “[t]he 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.”

The standards to be applied by the Planning Commission and Council in reviewing Denison’s application are set forth in Section 1161.02 and read as follows:

\*\*\* 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.<sup>1</sup>
- (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.

The Village Council reviewed each of these four requirements and determined that the design of the proposed addition to Cleveland Hall met all four requirements. In its Findings (page 2, paragraph one), Council stated the following: “As did the Village Planning Commission, Council finds that the proposed design meets all four of the standards set forth in Section 1161.02 of the Codified Ordinances.” As do the Appellants, the Village will direct this brief primarily to the requirement that a proposed design “[i]s stylistically compatible with other new, renovated and old structures in the Village District” under Section 1161.02(a). It is the position of the Village that if the proposed design is “stylistically compatible” with other structures in the Village zoning district then it also satisfies the other three requirements. As indicated above, however, Council found that the proposed design for the addition to Cleveland Hall satisfied all four requirements and it addressed the first three requirements in its written Findings.

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<sup>1</sup>. The “Village District” consists of four zoning districts or subdistricts. Section 1159.01 of the Village Zoning Code states that “The Village District is comprised of four subdivisions: The Village Residential District, the Village Business District, the Village Square District, and the Village Institutional District” (abbreviations omitted). Cleveland Hall is located in the Institutional Zoning District (Section 1159.02(a)(4)) and the permitted uses in that District include “University and school buildings, including residence halls, food service facilities, classroom buildings and auditoriums.”

*This is part of the Alternately Zoning Permit Process*

Section 1161.03(d)(1)(B) of the Village Zoning Code clearly implies that the Planning Commission can consider “[s]pecial architectural design problems.” This provision states that “Special architectural design problems” can be set forth in an application for approval of a proposed plan.

Section 1161.05 of the Zoning Code also identifies and sets forth eighteen “architectural styles” that are “considered consistent with existing architecture in the Village.” This section provides, in part, as follows:

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)

One of the issues raised by Appellants is whether a proposed architectural design must conform to one of the specifically listed eighteen “architectural styles” set forth in Section 1161.05, above; or whether the eighteen listed “architectural styles” are simply examples of styles that are “considered consistent with existing architecture in the Village” and are pre-approved styles, and it is not mandatory that a proposed design fall within one of the eighteen listed styles. If Council had

intended that a proposed design had to fall within one of the eighteen listed “styles,” then, of course, it would have said so and it would have repealed Section 1161.02(a) through (d) because these provisions would be entirely superfluous. The Village Council interprets these Village Ordinances to mean that an application can be approved if its meets the four standards set forth in Section 1161.02, even though the proposed design is not one of the eighteen “styles” referred to in Section 1161.05. This is set forth in paragraph 3 of Council’s Findings (to be discussed below).

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

Appellants do not claim in their brief to have suffered any specific injury or harm because the Village of Granville has approved the design of the proposed addition to Cleveland Hall. The homes of the Appellants are adjacent to the Denison campus, but the only complaint that Appellants have is that they disagree with the decisions of the Village Planning Commission and Village Council. All of the arguments made by Appellants are those that could be made by any member of the general public.

The Supreme Court held in *City of Willoughby Hills v. C.C. Bar’s Sahara*, 64 Ohio St. 3d 24, 26, 1992-Ohio-111, that an appellant in a zoning appeal has to prove “harm which is unique to himself” and that “his injury does not differ from that suffered by the community at large.” In *Wilkenfield v. Village of Granville* (Nov. 3, 1997), Licking App. No. 97 CA 42, the Fifth District Court of Appeals noted that “Appellant has not presented any evidence indicating that he would suffer an injury different from that suffered by the community at large.” In this regard, the Village Council stated in paragraph 4 of its Findings the following:

4. Lack of Injury to Adjacent Properties - Appellants claimed that the proposed architectural design for the addition to Cleveland Hall

Are these  
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be true

would injure them and the market values of their properties. While Council regards these claims with concern, it finds that there is not any substantial evidence in the record to allow Council to uphold these claims in these particular appeals.

In the appeal at hand, Appellants have not presented “any evidence indicating that [they] would suffer an injury different from that suffered by the community at large.” The Village ordinances require only a determination that the proposed design is “stylistically compatible with other new, renovated and old structures in the Village District.” Given the very general nature of this kind of standard, the Village must be very careful not to allow the ordinances to be used by one set of residents or a few residents of the Village to deny another resident or property owner the right to use real property in a constitutionally permitted or proper manner.

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

Appellants have the burden to prove that the decision of the Village is unreasonable or unlawful. The standard of review is set forth in R.C. 2506.04, which provides that “the court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record.” The Supreme Court has stated that “[i]n undertaking this hybrid form of review, the common pleas court must give due deference to the administrative agency’s resolution of evidentiary conflicts” (*Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St. 2d 108, 111, 17 O.O.3d 65, 407 N.E.2d 1265), and “the court may not, especially in areas of administrative expertise, blatantly substitute its judgment for that of the agency” (*Dudukovich v. Housing Auth.* (1979), 58 Ohio St. 2d 202, 207, 12 O.O.3d 198). The “court is bound by the nature of administrative

→ No evidentiary issues  
only a question of law - must apply  
to standard of 1161.05 - to 18 pages

proceedings to presume that the decision of the administrative agency is reasonable and valid.” *C. Miller Chevrolet, Inc. v. Willoughby Hills* (1974), 38 Ohio St. 2d 298, 313 N.E.2d 400.

In two decisions from the Fifth District Court of Appeals, *Benincasa v. Stark County Bd. of MRDD*, 2004 Ohio 4941, 2004 Ohio App. Lexis 4502, and *Doll v. Stark County Bd. of Mental Retardation & Developmental Disabilities*, 2001 Ohio 7052, 2001 Ohio App. Lexis 6037, the Court stated the following:

The common pleas court may not substitute its judgment for that of the agency. Instead, if a preponderance of reliable, probative and substantial evidence exists, the court must affirm the agency’s decision. *Dudukovich v. Lorain Metro. Housing Auth.* (1979), 58 Ohio St.2d 202, 207, 389 N.E.2d 1113.

Appellants have the burden to prove that the decision of Council is unreasonable or unlawful. In *Consolidated Management, Inc. v. Cleveland* (1983), 6 Ohio St. 3d 238, 240, 452 N.E.2d 1287, the Court stated that “[t]he board’s authorization (or denial in a given case) is presumed to be valid, and the burden of showing the claimed invalidity rests upon the party contesting the determination.” The second paragraph of the syllabus in *C. Miller Chevrolet v. Willoughby Hills* (1974), 38 Ohio St. 2d 298 [67 O.O.2d 358], states the following:

2. In an appeal, under R. C. Chapter 2506, from the denial of an application for a variance by a zoning board of appeals, there is a presumption that the board’s determination is valid, and the burden of showing invalidity of the board’s determination rests on the party contesting that determination.

The only objection made by Appellants to the proposed design of the addition to Cleveland Hall is that the addition would be a “contemporary-styled addition” (brief, p. 3); a “modern contemporary-styled addition” (brief, p. 5); and a “strikingly modern, contemporary addition” (brief, p. 9). From this mere description alone, with nothing else, Appellants then raise the claim that the

proposed design of the addition is not “stylistically compatible with other new, renovated and old structures in the Village District.” In no sense have the Appellants demonstrated that such a design cannot be “stylistically compatible with other new, renovated and old structures in the Village District.” As set forth above, Council specifically determined “that a modern or contemporary design for the addition to Cleveland Hall can contribute to the preservation of the historic character of Cleveland Hall and can be compatible with the historic character of the Village District under Section 1161.01 of the Codified Ordinances” (Findings, p. 2, para. 1). Council also determined that “[t]he proposed design contributes to the improvement and upgrading of the historical character of the Village District by contributing to a historically accurate renovation of Cleveland Hall and by preserving the historic character of that building” and “by providing an effective interaction between the campus and the Village and will tie these two areas closer together as the Village Institutional District was intended to do” (Findings, pp. 2-3). Appellants have presented nothing to demonstrate that these findings are inaccurate or erroneous.

As a factual matter, Appellants have not proven that the proposed design is stylistically incompatible with “other new” or “renovated” structures in the Village zoning district. Appellants did not present an expert witness to the Planning Commission or Council, and Appellants did not present the Planning Commission or Council with a detailed study of all architecture within the Village zoning district. In the absence of any such evidence, Appellants cannot prove that the proposed design of the Cleveland Hall addition was not “stylistically compatible” with any other structures within the entire Village zoning district (which includes the village residential district, the village business district, and the institutional district).

Appellants must, therefore, be arguing that as a matter of law a “modern contemporary-styled addition” cannot be “stylistically compatible” with any other structures within the entire Village zoning district. There can be no merit to this claim. To support this claim, Appellants point to the statement made by the Planning Commission in its decision that “[t]he addition is not similar to other structures to [sic] the Village District” (Brief, p. 7). From this, Appellants claim, of course, that a proposed design which is not “similar to other structures” in the Village District cannot be “stylistically compatible” with any other structures within the District. However, the statement of the Planning Commission is not significant because Council specifically stated in its Findings that:

The proposed architectural design of the addition to Cleveland Hall is stylistically compatible with some other institutional buildings in the Village Institutional District. [page 2, second paragraph]

The Village Institutional District (referred to in the quotation given above) is part of the Village District and a finding that an addition to an institutional building is stylistically compatible with other “institutional buildings in the Village Institutional District” is sufficient, alone, to justify the approval of the application under the requirement that the design be “stylistically compatible with other new, renovated and old structures in the Village District.” Appellants acknowledge, for instance, that the proposed design of the addition to Cleveland Hall is compatible with another building located on the Denison campus (Brief, p. 11).

Second, Appellants have failed to present any good reasons that would justify the denial of Denison’s application. Appellants claim, for instance, that the proposed design will “inflict a burden upon the environment of the historic Village District” and will constitute “an unwarranted presence which would loom over West College Street” (Brief, p. 10). These claims are too vague and far too general to justify a denial of Denison’s application.

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

Both 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. The Village Council is entitled to give its own ordinances a reasonable and lawful interpretation. In this regard, Council stated in its Findings that:

Council finds that in reviewing the architectural plans for an addition to an institutional structure like Cleveland Hall, the ordinances do provide some flexibility to the Planning Commission in determining whether the proposed design 'is stylistically compatible with other new, renovated and old structures in the Village District' under Section 1161.02(a) of the Ordinances. [Decision of Council and Findings and Conclusions of Fact, p. 3]

The Secretary's Guidelines have been adopted and incorporated into zoning codes by other municipalities. See *Sherman v. Dayton Bd. of Zoning Appeals* (1992), 84 Ohio App.3d 223, 225, 616 N.E.2d 937 (motion to certify den., 66 Ohio St.3d 1469 (1993), 611 N.E.2d 327); *Old West End Association, et al. v. City of Toledo* (May 29, 1988), Sixth Appellate District Case No. L-97-1386, 1998 Ohio App. Lexis 2312; *Springfield v. Pullins* (October 5, 1992), Second Appellate Dist. Case No. 2927, 1992 Ohio App. Lexis 5189; and *City of Tipp City v. Peachey* (July 14, 2000), Second Appellate Dist. Case No. 99-CA-27, 2000 Ohio App. Lexis 3147.

The Planning Commission and Council were entitled to conclude that an addition to Cleveland Hall which was clearly different than the original design, and which maintained and preserved the original structure, was "stylistically compatible with other new, renovated and old structures in the Village District." As Council properly determined, such a design would also

“contribute to the improvement and upgrading of the historical character of the Village District” and “contribute to the continuing vitality of the District.” These are reasonable and lawful determinations which both the Planning Commission and Council have the power to make under the Village Charter, the Ohio Constitution, and the relevant ordinances of the Village.

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.

Appellants argue that an application for architectural review must be denied if the proposed design does not fall within one of the eighteen architectural styles set forth in Section 1161.05 of the Village Zoning Code (Appellant’s propositions of law no. 2 and 3; Brief, p. 11). The design of the addition to Cleveland Hall does not fall with any of the eighteen listed styles.

To the contrary, the Village Council specifically determined that a proposed design does not have to fall within one of the eighteen styles in question. In its Findings, Council stated the following:

3. Architectural Styles - 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. However, Council finds that the styles set forth in Section 1161.05 are not exhaustive and that the proposed design of the addition to Cleveland Hall can be permitted if it satisfies the four standards set forth in Section 1161.02. (emphasis added)

There is no requirement that a proposed architecture design must fall into one of the eighteen different styles set forth in Section 1161.05. 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. In fact, Section 1161.02 makes no

reference to any of the eighteen styles listed in Section 1161.05 and only requires that the proposed architecture is “stylistically compatible with other new, renovated and old structures in the Village District.” Section 1161.05 states that the eighteen listed styles “are considered consistent with existing architecture in the Village.” The purpose of the listing is to provide an approved list of styles upon which an applicant can rely. However, a proposed architecture design that does fall within one of the styles listed in Section 1161.05 can be, and must be, approved if it otherwise meets the four specific requirements set forth in Section 1161.02. The 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.

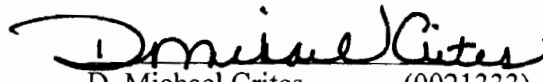
Appellant’s make much of the fact that Section 1165.05 requires the Planning Commission “to determine, based on submitted materials, whether the proposed architecture follows or exemplifies any one or a combination of the following architectural styles[.]” While the Planning Commission is required to determine whether the proposed architecture “follows or exemplifies” any one or more of the styles in question, there is no provision in the zoning code which states that an application can be denied because the proposed style does not follow or exemplify one of the eighteen listed styles. If a zoning application is to be denied by the Village, the ordinances must specifically set forth the grounds for the denial in clear and concise language.

Appellants also make a number of other claims about the interpretation of the provisions of Section 1161.05 (Brief, p. 14) which are neither plain on the face of the ordinance nor supported by the actual language of the ordinance. Appellants would be better advised to seek an amendment to the relevant provisions of the zoning code than to waste time and effort in appealing an otherwise correct decision of the Village Council.

CONCLUSION

For these reasons set forth herein, the Appellee Village of Granville respectfully requests this Court to affirm the decision of the Village Council which approved the application of Denison University for the zoning and architectural review permit for the new addition to Cleveland Hall.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon Geoffrey Graham Judge, 964 North 21st Street, Suite A, Newark, Ohio, 43055, by ordinary U.S. mail, postage prepaid, this 24rd day of October, 2007.

  
James R. Gorry