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In the Court of Common Pleas, Licking County, Ohio

John Thornborough, et al.,

Appellants,

v.

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

Appellees.

COURT
CASE NO. 07 CV 01076-10 P 2:19

JUDGMENT ENTRY

D. J. WALTERS
CLERK

I. NATURE OF THE PROCEEDINGS

This matter is before the Court on appeal pursuant to R.C. 2506.01 from a decision of the Council of the Village of Granville.

II. FACTS

On February 26, 2007, the Planning Commission of the Village of Granville approved Denison University's application for a zoning and architectural permit to renovate and construct additions to Cleveland Hall. Cleveland Hall is located in the Village Institutional District—one of four subdistricts in the Village District regulated by the Granville Village Code. On appeal from the Planning Commission, the Council of the Village of Granville affirmed the decision of the Planning Commission on June 20, 2007.

III. STANDARD OF REVIEW

R.C. 2506.04 provides the standard of review:

If an appeal is taken in relation to a final order, adjudication, or decision covered by division (A) of section 2506.01 of the Revised Code, 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. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court. The judgment of the court may be appealed by any party on questions of law as provided in the Rules of Appellate Procedure and, to the extent not in conflict with those rules, Chapter 2505. of the Revised Code.

Judge
Jon R. Spahr
740-670-5770

Judge
Thomas M. Marcelain
740-670-5777

Courthouse
Newark, OH 43055

IV. CONCLUSIONS OF LAW

Appellants submit three assignments of error:

- I. THE VILLAGE OF GRANVILLE ERRED IN ITS FINDING THAT THE PROPOSED ARCHITECTURAL DESIGN FOR THE CLEVELAND HALL ADDITIONS MET THE REQUIREMENTS OF ALL FOUR STANDARDS WHICH WERE TO BE APPLIED AS SET FORTH IN SECTION 1161.02 OF SAID CODE.
- II. THE VILLAGE OF GRANVILLE ERRED IN ITS FINDING THAT THE PROPOSED ARCHITECTURAL DESIGN FOR THE CLEVELAND HALL ADDITIONS MET THE REQUIREMENTS OF THE LIST OF ARCHITECTURAL STYLES SET FORTH IN SECTION 1161.05, SINCE THIS LIST OF ARCHITECTURAL STYLES IS EXCLUSIVE (EXHAUSTIVE) AND THE PROPOSED CLEVELAND HALL ADDITIONS ARE OF A STYLE NOT INCLUDED.
- III. EVEN IF THE COURT SHOULD FIND APPELLANTS' ASSIGNMENT OF ERROR NO. 2 UNPERSUASIVE, THE VILLAGE OF GRANVILLE ERRED IN ITS FINDING THAT SAID PROPOSED ARCHITECTURAL DESIGN WAS CONSISTENT WITH EXISTING ARCHITECTURE ACCORDING TO THE REQUIREMENTS OF SECTION 1161.05 WHICH CONTAINS A LIST OF 18 ARCHITECTURAL STYLES THAT "ARE CONSIDERED CONSISTENT WITH EXISTING ARCHITECTURE IN THE VILLAGE..."

Assignment of Error I

Appellants contend that the Planning Commission and Council erred in finding that Denison's proposed architectural plans met the requirements of Village Code Section 1161.02. Granville Village Code Section 1161.02 states:

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.

The Commission and Council determined that Denison's design met all four requirements. As to subsection (a), the Commission stated in its findings that "[t]he addition is not similar to other structures to the Village District but protects their historic design by not matching other structures." The Village Council affirmed the Commission's findings, but stated, "[t]he proposed architectural design of the addition to Cleveland Hall is stylistically compatible with some other institutional buildings in the Village Institutional District."

Section 1161.05 of the code requires the commission to determine "whether the proposed architecture follows or exemplifies any one or a combination of" eighteen listed architectural styles. The Commission failed to include a determination under this section in its findings. The Council stated, "the proposed contemporary architectural design does not fall within one of the specific architectural styles identified in Section 1161.05," but added that a design may be approved if it did not fall under one of the listed styles as long as the design met the requirements of Section 1161.02.

Section 1159.01 expresses the purpose and intent of regulating the Village District. It states:

The goal of regulation in the Village District is to insure that any land use changes which occur within the District are harmonious and compatible with the appearance and the character of adjacent land uses and that such changes enhance the Village District.

... 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.

The requirements of Section 1161.02 are clearly intended to carry out this purpose.

The Commission's finding that "[t]he addition is not similar to other structures to the Village District but protects their historic design by not matching other structures," is remarkably candid. This Court finds it difficult to construe this statement as a finding that the proposed design is stylistically compatible with the Village District. Further, the second half of the sentence addresses not the requirement of subsection (a), but the

requirements of subsections (b) and (d). The Council added the conclusory statement that the design "is stylistically compatible with some other institutional buildings in the Village Institutional District." This statement seems to contradict the finding of the Commission that the design was not similar to other structures.

The findings of the Commission and Council as to Section 1161.02(a) are not supported by a preponderance of the evidence in the record. While this Court does not reach the issue of whether the styles listed in 1161.05 are exhaustive, the Council admits the proposed design does not fall into one of the listed styles. Thus, there must be some other evidence to support the finding that the design was nonetheless stylistically compatible with other structures in the Village District. The record, however, is filled with evidence to the contrary. The proposed design is repeatedly referred to as "starkly modern" or in stark contrast to other structures and architectural styles in the District, and the Commission admitted it was "not similar."

Section 1159.01 states that land use changes should be "harmonious and compatible with adjacent land uses" and that "integration of new and renovated structures with the character and appearance of existing structures in the Village District is emphasized." Read in light of Section 1159.01 and the intent of Section 1161.02 "to preserve and encourage good architectural styles within the Village, reflecting the distinct phases of the Village's history," the finding of the Commission would render the requirement of Section 1161.02(a) meaningless. The Council's conclusory statement that the design is stylistically compatible with some other structures is similarly arbitrary and is unsupported by the record.

The Court finds appellants' first assignment of error to be well taken.

Assignments of Error II and III

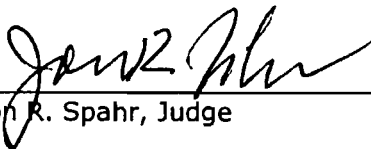
Since appellants' first assignment of error is sustained, the Court need not address the second and third assignments.

V. CONCLUSION

For the reasons set forth above, appellants' first assignment of error is SUSTAINED, and the decision of the Council of the Village of Granville is REVERSED.

Costs to appellees.

It is so ORDERED. There is no just cause for delay. This is a final appealable order.



Jon R. Spahr, Judge


Copies of the Judgment Entry were mailed by ordinary U.S. Mail to all persons listed below on the date of filing.

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