

IN THE COURT OF COMMON PLEAS
LICKING COUNTY, OHIO

John Thornborough, et al.,
Appellants

-vs-

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

Appellees.

Case No. 2007 C 01076

Judge Spahr

FILED
GARY R. WALLERS
CLERK
2008 APR - 8 P 3 35
LICKING COUNTY
COMMON PLEAS COURT

MEMORANDUM CONTRA APPELLEE DENISON UNIVERSITY'S MOTION FOR PARTIAL MODIFICATION OF THE JUDGMENT FILED MARCH 10, 2008, OR ALTERNATIVELY, MOTION FOR PARTIAL STAY OF EXECUTION OF SAME

Appellants continue to desire that Cleveland Hall be preserved and renovated, and have no objection to continued work on the interior of the original building or any work necessary for safety and security of the site. Appellants do not wish to see Denison University suffer unnecessary costs and delays.

Appellants are reminded, however, that when appeal was taken in this matter, Denison University was openly admonished at a public meeting by Granville Village Council that it would proceed with construction at its own risk as appeal proceeded in this Court. Furthermore, it should be noted that the steel that Denison now wishes to "brace" was actually erected only after this Court's decision was handed down and the building permit was rendered void. As long as matters of public safety only are involved, Appellants would never stand in the way of touching up an existing area for that end only, but Appellants strongly oppose the accomplishment of tasks that have essentially been forbidden by the lawful process of the Court in interpreting fairly the Granville Village Code as it relates to the Historic District. Appellants

suggest that the steel erected be taken down rather than "braced" if the steps taken to stabilize the steel would result in appreciable further construction on a contemporary addition which is not approved under the code.

Throughout this case, the totality of exterior design has been at issue. The glass cube studio may have drawn most of the attention at times in the discussion, but the Granville Village Code requires that the design of all three additions to Cleveland Hall conform with its regulation of the Granville Village Historic District. From the beginning, Appellants' filings in this Court have referred repeatedly to three modern additions. To allow the construction of two contemporary additions (Office and Foundry) to continue under the requested Partial Modification of Judgment or Partial Stay of Execution would undermine compliance with village law. It would overturn a significant portion of the decision which was sought by Appellants in their efforts to promote compliance.

Appellants have argued from the first lawful Planning Commission hearing on February 26, 2007, and this Court now has upheld in its decision of March 10, 2008, that the architectural style of the three additions is inappropriate and unlawful under the Planning and Zoning Code of the Village of Granville. In the first assignment of error in Appellants brief, all three proposed additions were clearly included (note plural usage):

1. 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. [*Emphasis added.*]

This language is controlling since it is incorporated by reference in the March 10, 2008 decision when this Court stated, "The Court finds appellants' first assignment of error to be well taken."

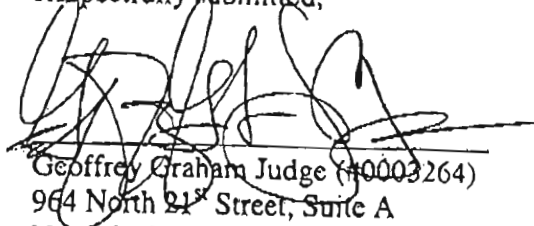
It is noteworthy that the Village of Granville has filed a memorandum in support of Denison's attempt to modify the result of the appellate decision, and that in so doing the village

acknowledged that it is appropriate only to allow Denison the ability to seek a construction permit and perform work which is restricted solely to things which have nothing to do with the three additions which did not meet the restrictions of the Architectural Review Overlay District (the Historic District).

Therefore, Appellants oppose the attempt by Denison University to continue the construction of two of the three additions to Cleveland Hall as listed in item 2. Continue Work on North Additions (Office and Foundry) of EXHIBIT A. Appellants do not support the granting of permission to work toward the completion of any of the three contemporary additions. Appellants, however, agree to items 1. Proposed Work for Original Cleveland Hall Structure, 3. Proposed Site Utility Work, and 4. Proposed Safety and Protection Work, as listed in EXHIBIT A of Appellee Denison University's motion.

In conclusion, the motion by Appellee Denison University is not opposed by Appellants with respect to items 1, 3, and 4 of Appellee's EXHIBIT A only, but it is opposed with respect to item 2 of EXHIBIT A. Therefore, Appellants are prepared to agree a partial stay of the execution of this Court's Judgment dated March 10, 2008, relating to items 1, 3, and 4 of said Appellee's EXHIBIT A only.


Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum Contra was delivered by regular U.S. Mail to James R. Cooper, Esq., at MORROW, GORDON & BYRD, Ltd., 33 West Main Street, P.O. Box 4190, Newark, Ohio 43055-4190 (facsimile transmission also for Mr. Cooper); and D. Michael Crites, Esq. and James R. Gorry, Esq., at Rich, Crites & Dittmer, 300 East Broad Street, Suite 300, Columbus, Ohio 43215, on this 8th day of April, 2008.



Geoffrey Graham Judge (#0003264)
Attorney for Appellants