

1st reading _____
P&Z Action _____
2nd reading _____
3rd reading _____
Voted On _____
Ayes: _____ Nays: _____
PASSED _____ DEFEATED _____

ORDINANCE NO. 2017-37

**AN ORDINANCE
GRANTING A VARIANCE TO CHAGRIN HIGHLANDS,
LTD. FOR GRADING IN A LIMITED PORTION OF THE
RIPARIAN SETBACK.**

WHEREAS, the Charter of Orange Village, Article III, Section 9(g), provides that Council may grant variances after public hearing where there is substantial and unreasonable hardship in carrying out the spirit and intent of the Zoning Code; and

WHEREAS, Chagrin Highlands, Ltd., has presented a request for a variance on behalf of the City of Cleveland, as owner of real property commonly known as Permanent Parcel No. 901-03-018, Orange Village, Ohio (the "Property"); and

WHEREAS, Chapter 1176 of the Codified Ordinances of Orange Village, Ohio, establish rules and regulations governing the structures, uses, and related soil disturbing activities within a riparian setback along designated watercourses in Orange Village; and

WHEREAS, Section 1176.08 of the Codified Ordinances of Orange Village, Ohio, prohibits soil disturbing activities of any kind within riparian setbacks in the Village; and

WHEREAS, Section 1176.10 of the Codified Ordinances of Orange Village, Ohio, authorizes the Village to grant variances to uses prohibited in riparian setbacks in the Village; and

WHEREAS, Chagrin Highlands, Ltd. is requesting a variance to perform grading in a limited portion of the riparian setback on the Property; and

WHEREAS, this Ordinance was referred to the Planning and Zoning Commission for recommendation and report; and

WHEREAS, a public hearing has been held regarding this matter; and

WHEREAS, Council has adopted conclusions of fact regarding the requested variance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF ORANGE VILLAGE, CUYAHOGA COUNTY, STATE OF OHIO:

SECTION 1. That this Council hereby grants and approves Chagrin Highland, Ltd.'s request for a variance from the prohibition against soil disturbing activities of any kind within riparian setbacks in the Village as established by Section 1176.08 of the Codified Ordinances to

permit Chagrin Highlands, Ltd. to perform grading in a limited portion of the riparian setback, in conformance with the plans and specifications on file with the Chief Building Official.

SECTION 2. That actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Chapter 105 of the Codified Ordinances of Orange Village.

SECTION 3. That this Ordinance shall be in full force and effect at the earliest time permitted by law.

PASSED: Dec. 13, 2017



Council President

Submitted to the Mayor for approval
on this 13 day of Dec., 2017

Approved by the Mayor this
13 day of December, 2017

ATTEST:



Clerk of Council



Mayor



Orange Village

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www.orangevillage.com

DATE: NOVEMBER 21, 2017
TO: ALL MEMBERS OF COUNCIL
FROM: PLANNING & ZONING COMMISSION
RE: REPORT & RECOMMENDATION OF THE PLANNING & ZONING COMMISSION

ORDINANCE NO. 2017-37

AN ORDINANCE GRANTING A VARIANCE TO CHAGRIN HIGHLANDS, LTD. FOR GRADING IN A LIMITED PORTION OF THE RIPARIAN SETBACK.

Ordinance No. 2017-37 was referred to the Planning & Zoning Commission on November 8, 2017 by the Council President for review and a recommendation. On November 21, 2017 a motion to recommend passage of the ordinance was made and was approved / defeated.

The vote was as follows:

Ayes: Lazar, Lewis, Hitt, Kline, Mulcahy

No: _____

Absent/Abstain: _____

Kathy U. Mulcahy
Mayor Kathy U. Mulcahy

11/21/2017
NOVEMBER 21, 2017

MEMORANDUM

TO: The Honorable Kathy U. Mulcahy, Mayor, Orange Village
All Members of Orange Village Council

FROM: Stephen L. Byron, Law Director
Benjamin G. Chojnacki, Assistant Law Director

DATE: December 8, 2017

SUBJECT: Final Order and Decision of Council, Conclusions of Fact
In re: Variance Request of Chagrin Highlands, Ltd. for Grading in a Limited Portion of the Riparian Setback

THIS IS A CONFIDENTIAL MEMORANDUM WITHIN THE ATTORNEY-CLIENT PRIVILEGE AND IS NOT INTENDED FOR COPYING OR REVIEW BY ANYONE OTHER THAN THOSE SET FORTH IN THE CAPTION ABOVE

Attached is a draft of the Final Order and Decision of Council and Conclusions of Fact regarding the variance requested by Chagrin Highlands, Ltd. to engaged in grading activities in the riparian setback on the Chagrin Highlands South Property located on Harvard Road (Ordinance No. 2017-37). The Final Order is based upon the recommendation of the Planning and Zoning Commission to Council that Council grant the requested variance. If you should have any additions, deletions, or corrections to this document please let us know.

PLEASE CALL US IF YOU ARE NOT IN FAVOR OF THE REQUESTED VARIANCE.

In the absence of four (4) members requesting a different result, the current document, with any necessary revisions, should serve the intended purpose.

Council is scheduled to hold a public hearing on the requested variance at an December 13, 2017 Regular Meeting at 8:01 p.m. A motion to adopt the Final Order will be in order at that meeting, and then a motion to adopt Ordinance 2017-37 will be in order. Council members who want to grant the variance should vote "yes" on the Final Order and "yes" on Ordinance No. 2017-37.

Please be advised that this memorandum and the draft Final Order are subject to attorney-client privilege and will be kept in confidence by this office unless Council, by a majority vote, waives the privilege. As long as these documents are subject to the attorney-client privilege, they are **NOT** public records and should not be produced pursuant to a public records request nor otherwise released to any person. After the vote upon the Final Order, the Final Order will become a public record. This memorandum contains legal advice intended solely for use by the recipients hereof, and the use of this document is restricted to the recipients.

As always, if you have any questions please do not hesitate to contact us.

BEFORE THE ORANGE VILLAGE COUNCIL
ORANGE VILLAGE, OHIO

IN RE: VARIANCE REQUEST OF)	<u>FINAL ORDER AND</u>
CHAGRIN HIGHLANDS, LTD. FOR)	<u>DECISION OF COUNCIL</u>
GRADING IN A LIMITED PORTION OF)	<u>CONCLUSIONS OF FACT</u>
THE RIPARIAN SETBACK)	

This matter is before the Orange Village Council pursuant to the request of Chagrin Highlands, Ltd. ("Applicant"). The Applicant has presented a request for a variance on behalf of the City of Cleveland, as owner of real property commonly known as Permanent Parcel No. 901-03-018, Orange Village, Ohio (the "Property").

Section 1176.08 of the Codified Ordinances of Orange Village, Ohio, prohibits soil disturbing activities of any kind within riparian setbacks in the Village. However, Section 1176.10 of the Codified Ordinances of Orange Village, Ohio, authorizes the Village to grant variances to perform activities otherwise prohibited in riparian setbacks in the Village.

The Applicant is requesting a variance to perform grading in a limited portion of the riparian setback on the Property.

Ordinance No. 2017-37 is before this Council, and would, if passed, grant the requested variance.

The Orange Village Planning and Zoning Commission ("Commission") met on November 21, 2017, received evidence and testimony, and heard the argument of the Applicant. The Commission, on a vote of 5-0, recommended that Council pass Ordinance No. 2017-37.

This Council held a public hearing on December 13, 2017 and considered the matter. This Final Order and Decision of Council is predicated upon all of the evidence and testimony on the record before Council and, in consideration thereof, the following conclusions of fact are made:

- 1) The Property is located on Harvard Road, Permanent Parcel No. 901-03-018, Orange Village, Ohio, and is commonly referred to as the "Chagrin Highlands South Property."
- 2) The Applicant intends to develop the Property according to a site layout and design submitted to the Village Engineer and Chief Building Official.
- 3) As part of the Applicant's development of the Property, the Applicant intends to perform certain grading and soil disturbing activities within the riparian setback on the Property.
- 4) Section 1176.10 of the Codified Ordinances of Orange Village, Ohio, authorizes the Village to grant variances to allow for soil disturbing activities in riparian setbacks in the Village.


- 5) The Village Engineer has reviewed the Applicant's proposed site layout and the contemplated soil disturbing activities within the riparian setback on the Property, and has made comments and recommendations on the same. The Applicant has changed its site layout to address the Village Engineer's concerns by shifting the Hotel parcel thirteen feet (13') to the east, which has moved all proposed pavement areas outside of the riparian setback and reduced the impact the development will have on the riparian area on the Property.
- 6) The Village Engineer has approved the Applicant's request for a variance, provided that the Applicant address the comments and concerns set forth in his October 24, 2017 letter to the Village's Chief Building Official Robert McLaughlin, a copy of said letter is attached hereto and incorporated herein.
- 7) The Applicant intends to address the Village Engineer's comments.
- 8) The neighbors were provided the required notice of the proposed variance and no objections have been received by the Village from any neighbors.
- 9) The granting of the requested variances will yield a reasonable return on the Property by allowing for its meaningful use and without materially affecting or disrupting the Village's riparian areas.
- 10) There will be no adverse impact on neighboring properties that would result from the granting of the variance, so the strict application of the setback requirement does not advance the legitimate governmental purpose of the requirement.
- 11) The spirit and intent of the Zoning Code are observed by granting the variance.

WHEREFORE, IT IS ORDERED, that the variance requested by the Applicant, the plans for which are on file with the Chief Building Official, be and is hereby granted. The members of Council subscribing their names hereto will vote yes on Ordinance No. 2017-37, but this document is deemed to be the final order in this matter.

IT IS FURTHER ORDERED, that the Clerk of Council shall mail a copy of this Final Order and Decision of Council and Conclusions of Fact to the Applicant, and any other parties requesting same, by Certified Mail, return receipt requested, and enter proof of mailing in the record of this case. The decision of this Council shall be deemed to be final upon the date the Clerk mails this document, as provided herein.

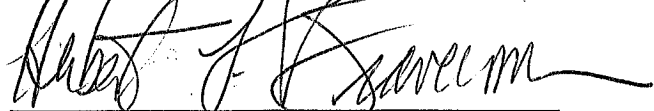
Adopted this 13th day of December, 2017, by a majority of the members of the Orange Village Council, who have subscribed their names below:


ORANGE VILLAGE COUNCIL

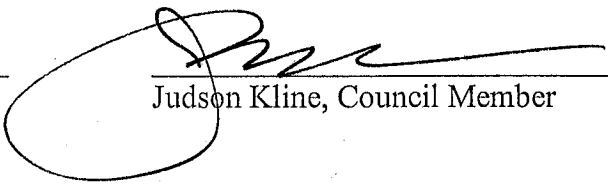

Brandon Duber, President of Council

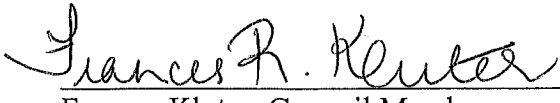

Lisa Perry, Council Member


Ronald Barron, Council Member


Herbert Braverman, Council Member


Evan S. Hirsch, Council Member


Judson Kline, Council Member


Frances Kluter, Council Member

Notice mailed this 14 day of December, 2017.


Clerk of Council