

1<sup>st</sup> reading \_\_\_\_\_  
2<sup>nd</sup> reading \_\_\_\_\_  
3<sup>rd</sup> reading \_\_\_\_\_  
Voted On \_\_\_\_\_  
Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_  
PASSED \_\_\_\_\_ DEFEATED \_\_\_\_\_

**ORDINANCE NO. 2017-38**

**AN ORDINANCE  
GRANTING A BUILDING SETBACK VARIANCE TO  
PINECREST PROJECT PARTNERS LLC FOR THE  
CANOPY ON THE SOUTH SIDE OF BUILDING 1 OF THE  
PINECREST DEVELOPMENT.**

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, Pinecrest Project Partners LLC (the “Commercial Developer”) is the owner of the Commercial Portion of the Pinecrest Development (the “Property”); and

WHEREAS, the Property is located in the Pinecrest Planned Development District (“PPDD”); and

WHEREAS, Section 1175.06(b) of the Codified Ordinances of Orange Village, Ohio, sets forth the requirements for building and parking in the PPDD and its various Sub-Districts and provides that in the PD-2 Sub-District the building setback from Harvard Road shall be no less than one hundred ten feet (110’); and

WHEREAS, the Commercial Developer is requesting a variance of twenty-seven feet (27’) from the one hundred ten foot (110’) setback requirement so that it may construct a canopy over a previously-approved outdoor patio/dining area attached to the south side of Building No. 1, adjacent to the southwest corner of the building, in the Pinecrest Development; 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 a variance of twenty-seven feet (27’) from the building setback requirements set forth in Section 1175.06(b) of the Codified Ordinances to permit the construction of a canopy over a previously-approved outdoor patio/dining area attached to the south side of Building No. 1, adjacent to the southwest corner of

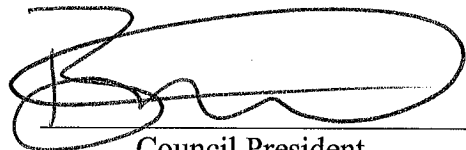
the building, in conformance with the plans and specifications on file with the Building Commissioner.

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 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 Council, by enactment of this Ordinance, waives, for purposes of this variance request only, the provision in Section 1142.06(a)(2) of the Codified Ordinances specifying when legislation concerning a variance application may be introduced.

SECTION 4. That this Ordinance shall be in full force and effect at the earliest time permitted by law.

PASSED: Dec. 13, 2017

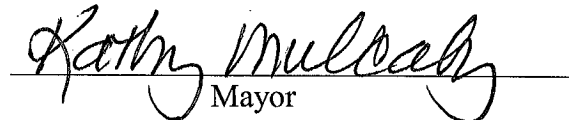
  
\_\_\_\_\_  
Council President

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

4600 Lander Road • Orange Village, OH 44022 • 440-498-4400 • Fax 440-498-4404  
www.orangevillage.com

DATE: DECEMBER 5, 2017

TO: ALL MEMBERS OF COUNCIL

FROM: PLANNING & ZONING COMMISSION

RE: REPORT & RECOMMENDATION OF THE PLANNING & ZONING COMMISSION

## ORDINANCE NO. 2017-38

AN ORDINANCE GRANTING A BUILDING SETBACK VARIANCE TO PINECREST PROJECT PARTNERS LLC FOR THE CANOPY ON THE SOUTH SIDE OF BUILDING 1 OF THE PINECREST DEVELOPMENT.

Ordinance No. 2017-38 was referred to the Planning & Zoning Commission on November 8, 2017 by the Council President for review and a recommendation. On December 5, 2017 a motion to recommend passage of the ordinance was made and was approved / defeated.

The vote was as follows:

Ayes: Lazco, Kline, Mulcahy

No: \_\_\_\_\_

Absent/Abstain: Hitt, Lewis

Kathy U. Mulcahy  
Mayor Kathy U. Mulcahy

12/5/2017  
DECEMBER 5, 2017

MEMORANDUM

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

FROM: Paul J. Singerman, Special Counsel to the Village

DATE: December 6, 2017

SUBJECT: Final Order and Decision of Council, Conclusions of Fact

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**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.**

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Attached is a draft of the Final Order and Decision of Council and Conclusions of Fact regarding the variance requested by Pinecrest Project Partners LLC related to the development of Pinecrest (Ordinance No.: 2017-38). The Final Order is based upon the recommendation of the Planning and Zoning Commission to Council that it grant the requested variance. If you should have any additions, deletions or corrections to this document please let me know.

**PLEASE CALL ME IF YOU ARE NOT IN FAVOR OF THE REQUESTED VARIANCES.** 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 variances at the December 13, 2017, Council meeting at 8:00 p.m. A motion to adopt the Final Order will be in order at that meeting, and then a separate motion to adopt the Ordinance will be in order. Council members voting to grant the variance should vote "yes" on the Final Order and "yes" on the Ordinance.

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.

If you have any questions please do not hesitate to contact me.

**BEFORE THE ORANGE VILLAGE COUNCIL  
ORANGE VILLAGE, OHIO**

<b>IN RE: VARIANCE REQUESTS OF</b>	)	<b><u>FINAL ORDER AND</u></b>
<b>PINECREST PROJECT PARTNERS LLC)</b>	)	<b><u>DECISION OF COUNCIL</u></b>
<b>FOR COMMERCIAL PORTION OF</b>	)	
<b>THE PINECREST DEVELOPMENT</b>	)	<b><u>CONCLUSIONS OF FACT</u></b>

This matter is before the Orange Village Council pursuant to the request of Pinecrest Project Partners LLC (the "Applicant"). The Applicant is the owner of the Commercial Portion of the Pinecrest Development (the "Subject Property"). The Subject Property is located in the Pinecrest Planned Development District ("PPDD").

The Applicant has requested a variance from Section 1175.06(b) of the Orange Village Codified Ordinances to permit a canopy over a previously approved outdoor patio/dining area to extend by 27 feet into the minimum 110-foot building setback from Harvard Road.

Ordinance Nos. 2017-38 is before this Council and would, if passed, grant the requested variance (the "Set-Back Variance Ordinance").

The Orange Village Planning and Zoning Commission ("Commission") met on December 5, 2017 and considered the application filed by the Applicant. A representative of the Applicant and the Applicant's counsel were present at the Commission meeting. No one attended the Commission meeting in opposition to the application. The Commission on a vote of 3 to 0, recommended that Council pass the Set-Back Variance Ordinance.

This Council held a public hearing on December 13, 2017, and considered the Set-Back Variance Ordinance. 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:

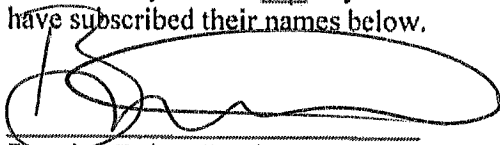
1. The Subject Property is part of the PPDD, which zoning district was created and approved by the voters of Orange Village to accommodate the Pinecrest commercial development in the southern portion of the PPDD and a residential development in the northern portion of the PPDD.
2. The Applicant has asserted it has encountered a practical difficulty or unnecessary hardship and that such difficulty or hardship is not necessary to advance any purpose of the Zoning Code.
3. The Applicant has further asserted that if the variance is not granted the Applicant will be prevented by weather conditions in northeast Ohio from making adequate use of the previously approved outdoor patio/dining area over which the canopy is proposed, which will undermine the intent of the PPDD by, among other things, interfering with the fostering of pedestrian movement among facilities within the Subject Property and to and from the adjacent areas and will interfere with the economic vitality of the Subject Property.
4. The Commission concurred with the arguments of counsel for the Applicant and noted that the requested variance is consistent with the intent of the PPDD and the overall land planning and site development principles set forth in Section 1175.11 of the Village's

Codified Ordinances and that 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 Building Commissioner, be and is hereby granted. The members of Council subscribing their name hereto will vote yes on the Side-Yard Set Back Variance Ordinance, 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 14 day of December, 2017, by a majority of the Orange Village Council, who have subscribed their names below.



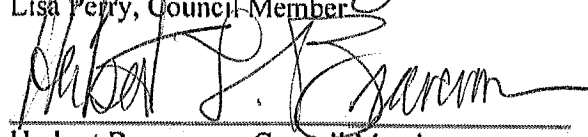
Brandon Duber, President of Council



Lisa Perry, Council Member



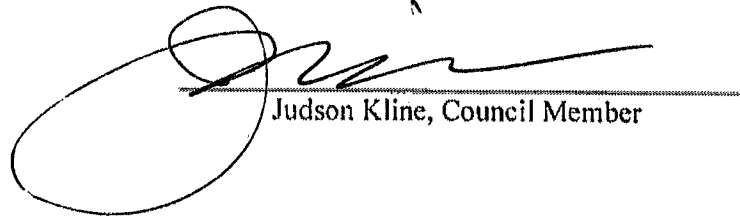
Ronald Barron, Council Member



Herbert Braverman, Council Member



Frances Kluter, Council Member



Judson Kline, Council Member

Notice mailed this 14 day of December, 2017.

*Mary Catherine Knight*  
Clerk of Council