

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

IN RE: VARIANCE REQUEST OF)	<u>FINAL ORDER AND</u>
SUZANNE TOMSICH TO)	<u>DECISION OF COUNCIL</u>
EXTEND A DECK INTO THE)	
REQUIRED REAR SETBACK AT THE)	
PROPERTY LOCATED AT)	<u>CONCLUSIONS OF FACT</u>
128 ORANGE LAKE DRIVE)	
)	

This matter is before the Orange Village Council pursuant to the request of Suzanne Tomsich (“Applicant”). The Applicant owns the property at 128 Orange Lake Drive (the “Property”). The Property is located in a S-1A Zoning District and is a part of the Lakes of Orange development.

The required rear yard setback in this location is twenty-five feet (25’). The Applicant seeks to extend a deck into the required rear setback by up to four and eighty-one one-hundredths feet (4.81’) on one side of the residence and up to fourteen and eight one-hundredths feet (14.08’) on the other side of the residence, in accordance with the site plan prepared by Neff & Associates drawn on May 29, 2018.

Ordinance No. 2019-5 is also pending before this Council. The ordinance was first read by Council when legislative action was needed for Council to grant a variance. While the Village’s charter and ordinances no longer require legislative action, Council will be concurrently passing Ordinance No. 2019-5 so there is no confusion regarding the approval of the variance.

The Orange Village Planning and Zoning Commission (“Commission”) met on Tuesday, February 19, 2019, received evidence and testimony, including a report by Village Planner David Hartt, and heard arguments of behalf of the Applicant. The Commission, on a vote of 5-0, recommended that Council grant the variance and pass Ordinance No. 2019-5.

This Council held a public hearing on March 13, 2019, and considered the matter. This Final Order and Decision of Council is predicated upon all of the evidence and testimony on the record before the Planning Commission and Council and, in consideration thereof, the following conclusions of fact are made:

- 1) The lot is located on a curve on the south-west side of Orange Lake Drive. For ease of reference, these facts will assume that Orange Lake Drive is a north-south road at this location and that the residence faces east.
- 2) The Property is larger than most of the lots in the subdivision and is one hundred eighty feet (180’) wide along the rear property line. Most lots in this portion of the development are one hundred feet (100’) wide, or less.

- 3) The rear yard on this property opens onto common open space which is heavily wooded. Commercially zoned property abuts the open space to the west.
- 4) The rear lot line of the nearest residential lot – at an angle across the open space on Lake Victoria Court, is more than one hundred fifty feet (150') from the proposed deck. The property to the south is a model home and continues to be owned by the developer.
- 5) The side yard setbacks for the deck are several times greater than the required side yard.
- 6) Substantial wooded areas continue to exist on the north and west sides to screen the deck from adjacent and nearby properties to the north and west.
- 7) The conditions described above are unique to the Property and the literal application of the Zoning Code results in practical difficulties for this parcel.
- 8) The proposed deck is reasonably sized for the size of this property, and the strict application of required setback does not advance the Village's interests in setbacks because there is plenty of space between this unit's proposed deck and all of the other buildings in proximity to where the deck will be placed.
- 9) The site's size and relationship to adjacent property will not interfere with the development rights on adjacent property and, further, the owner of the property to the south of the Property, has accepted the construction of the deck, as proposed.
- 10) Additional and appropriate landscaping can be provided along the south side when a landscape plan, as required for the Property, is submitted at the time of occupancy.
- 11) The granting of the variance will not be contrary to the general purposes, intent and objectives of the Zoning Code and will not compromise any legitimate public interest.
- 12) The Applicant's proposed project is reasonable in that it will create an increased investment in, and improvement of, the Property without disrupting the character of the neighborhood.
- 13) The reasoning in the report from David Hartt is persuasive as to whether or not the variance should be granted and incorporates that reasoning into this decision.
- 14) The requested variance is not substantial, given the nature of the project and the layout and location of the Property. There is no adverse impact on neighboring properties that would result from the granting of the variance, so the strict application of the Zoning Code does not advance the legitimate governmental purpose of the requirement.

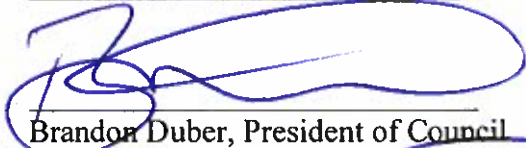
- 15) The spirit and intent of the Zoning Code are observed by granting the variance.
- 16) This Council concludes that the Applicant has demonstrated that practical difficulties exist in the use of the Property that justify the granting of the variance that has been requested.

WHEREFORE, IT IS ORDERED, that the variance requested by the Applicant, the plans for which are on file with the Chief Building Official, is granted. The members of Council subscribing their names hereto will vote yes on Ordinance No. 2019-5, 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 March, 2019, by a majority of the Orange Village Council, who have subscribed their names below.

ORANGE VILLAGE COUNCIL




 Brandon Duber, President of Council

NOT PRESENT AB

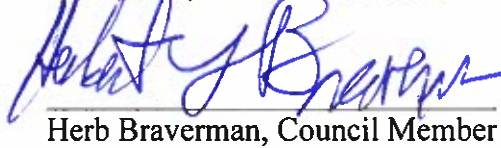
 Ronald Barron, Council Member



 Scott Bilsky, Council Member



 Jud Kline, Council Member



 Herb Braverman, Council Member

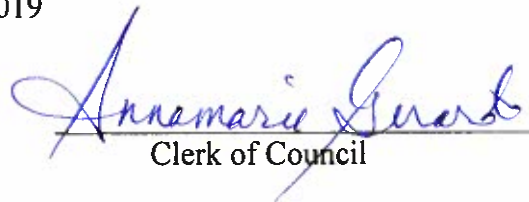


 Frances Kluter, Council Member



 Lisa Perry, Council Member

Notice mailed this 13 day of March, 2019



 Clerk of Council