

RESOLUTION NO.: 67-2009
INTRODUCED BY: MORGAN

A RESOLUTION CONFIRMING AND REVERSING CERTAIN RECOMMENDED ACTIONS OF THE ZONING BOARD OF APPEALS WITH RESPECT TO REQUESTS FOR VARIANCES AT THE HIGHLAND RIDGE SUBDIVISION, PHASE I.

WHEREAS, DMD Richmond, LLC("DMD"), for Phase I of the Highland Ridge subdivision located at the southwest corner of Highland Road and Donna Drive, filed an application with the Zoning Board of Appeals (Case No. 766) requesting the following area/size-type variances for its proposed re-subdivision plat for Phase I of this residential cluster development ("RCD"):

- a. VARIANCE OF 16' FROM THE 60' BUILDING SETBACK REQUIREMENT FROM THE BOUNDARY OF A RCD [ZONING CODE SECTION 1135.03(g)(3)A] FOR SL# 216.
- b. VARIANCE OF NOT GREATER THAN 2.5' FROM THE 7.5' SIDE YARD SETBACK REQUIREMENT [ZONING CODE § 1135.03(g)(6)A] CREATING A SIDEYARD SETBACK OF NOT LESS THAN 5' AND A VARIANCE FROM THE REQUIREMENT THAT THE SIDES OF ALL SINGLE-FAMILY DETACHED HOMES BE AT LEAST 15' FROM THE SIDES OF EVERY OTHER BUILDING IN THE SUBDIVISION FOR THE FOLLOWING SUBLOTS: SL# 209 through SL# 230.
- c. VARIANCES TO PROVIDE FOR A 13' FRONT YARD SETBACK FROM THE REQUIREMENT OF A 20' FRONT YARD SETBACK [ZONING CODE § 1135.03(G)(6)B] AND FROM THE REQUIREMENT OF A 25' FRONT YARD SETBACK FROM THE GARAGE DOOR ON THE FOLLOWING SUBLOTS: SL# 209 through SL# 230.
- d. VARIANCES TO THE MINIMUM LOT AREA REQUIREMENT OF 5,000 SQUARE FEET FOR THE LARGER LOT OPTION FOR RCDs [ZONING CODE § 1135.03(g)(6)D] FOR THE FOLLOWING SUBLOTS AND IN THE FOLLOWING AMOUNTS:

SL# 210	=	158 SQ. FT.
SL# 211	=	158 SQ. FT.

SL# 212	=	239 SQ. FT.
SL# 213	=	380 SQ. FT.
SL# 223	=	269 SQ. FT.
SL# 224	=	131 SQ. FT.
SL# 225	=	107 SQ. FT.

e. VARIANCES TO THE MINIMUM LOT WIDTH REQUIREMENT OF 50' [ZONING CODE § 1135.03(g)(6)F] FOR THE LARGER LOT OPTION FOR RCDs FOR THE FOLLOWING SUBLOTS AND IN THE FOLLOWING AMOUNTS:

SL# 213	=	12'
SL# 214	=	10'
SL# 216	=	2'
SL# 220	=	5'
SL# 221	=	7'
SL# 223	=	4'
SL# 227	=	4'
SL# 228	=	4'

WHEREAS, pursuant to Section 1185.07 of the Zoning Code, the Zoning Board of Appeals recommended that the Council grant the variances set forth in items b and c above, as recorded in the minutes of the Board's public hearing for Case No. 766; and

WHEREAS, the Zoning Board of Appeals did not pass motions to recommend the granting of the variance requests by DMD for items a, d, and e above, as recorded in the minutes of the Board's public hearing for Case No. 766; and

WHEREAS, pursuant to Zoning Code Section 1185.08(b)(5), in the event the Zoning Board of Appeals fails to recommend a variance or takes no action, Council may, on the basis of the record and the applicable provisions of the Zoning Code, either grant or deny the requested variance; and

WHEREAS, the Planning Commission has recommended the approval of the re-subdivision application by DMD to convert the townhome portion of Phase I of the Highland Ridge subdivision to single-family detached home lots, conditioned upon the approval of the within variance requests, which recommendation is pending before this Council, that being the subject of proposed Council Resolution No. 63-2009; and

WHEREAS, this Council finds that upon its review of the requested variances, the circumstances surrounding the request for the variances and the re-subdivision plat for said RCD Subdivision, there exists a practical difficulty which outweighs the limitation set forth in the Zoning Code and the granting of the variances is not contrary to the public purpose and intent of the Zoning Code, due to the special circumstances that exist with this particular site and this application;

NOW, THEREFORE, Be it Resolved by the Council of the City of Richmond Heights, State of Ohio, that:

Section 1: The action of the Zoning Board of Appeals of the City in recommending the granting of the following requested variances of the applicant, DMD Richmond, LLC, in Case No. 766, at Phase I of the Highland Ridge subdivision located at the southwest corner of Highland Road and Donna Drive, is confirmed:

VARIANCE OF NOT GREATER THAN 2.5' FROM 7.5' SIDE YARD SETBACK REQUIREMENT [ZONING CODE § 1135.03(g)(6)A.] CREATING A SIDEYARD SETBACK OF NOT LESS THAN 5' AND A VARIANCE FROM THE REQUIREMENT THAT THE SIDES OF ALL SINGLE-FAMILY DETACHED HOMES BE AT LEAST 15' FROM THE SIDES OF EVERY OTHER BUILDING IN THE SUBDIVISION FOR THE FOLLOWING SUBLOTS: SL# 209 through SL# 230. VARIANCE TO PROVIDE FOR A 13' FRONT YARD SETBACK FROM THE REQUIREMENT OF A 20' FRONT YARD SETBACK [ZONING CODE § 1135.03(G)(6)(B)] AND THE 25' FRONT YARD SETBACK FROM THE GARAGE DOOR ON THE FOLLOWING SUBLOTS: SL# 209 through SL# 230.

VARIANCE TO PROVIDE FOR A 13' FRONT YARD SETBACK FROM THE REQUIREMENT OF A 20' FRONT YARD SETBACK [ZONING CODE § 1135.03(G)(6)(B)] AND THE 25' FRONT YARD SETBACK FROM THE GARAGE DOOR ON THE FOLLOWING SUBLOTS: SL# 209 through SL# 230.

Section 2: Upon the Zoning Board of Appeals' failure to take action on the applicant's requests for variances set forth as items a, d, and e in the preamble to this Resolution by the Board's failure to pass a motion made to approve those variances and its failure to adopt a motion to recommend the denial thereof, this Council grants the following requested variances of the applicant, DMD Richmond, LLC, in Case No. 766, at Phase I of the Highland Ridge subdivision, as follows:

VARIANCE OF 16' FROM THE 60' BUILDING SETBACK REQUIREMENT FROM THE BOUNDARY OF A RCD [ZONING CODE SECTION 1135.03(g)(3)A] FOR SL# 216.

VARIANCES TO THE MINIMUM LOT AREA REQUIREMENT OF 5,000 SQUARE FEET FOR THE LARGER LOT OPTION FOR RCDs [ZONING CODE § 1135.03(g)(6)E] FOR THE FOLLOWING SUBLOTS:

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VARIANCES TO THE MINIMUM LOT WIDTH REQUIREMENT OF 50' FOR THE LARGER LOT OPTION FOR RCDs [ZONING CODE § 1135.03(g)(6)F] FOR THE FOLLOWING SUBLOTS:

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SL# 228	=	4'

Section 3: The granting of the aforesaid variances in Sections 1 and 2 is conditioned upon: (a) the approval of the re-subdivision plat for Phase I of this subdivision by this Council; (b) prior to recording of the revised plat, the placing of an adequate deposit with the City for reviews and inspections for Phase I by the City Engineer's office going forward; (c) installation of the public safety access driveway from Donna Drive in accordance with the approved improvement plans; (d) prior to the recording of the revised plat, DMD shall provide to the City a demand note and mortgage on all Highland Ridge RCD properties owned by DMD to secure the amounts owed to the City by DMD.

Section 4: This Council finds there exists a practical difficulty which outweighs the limitations set forth in the Zoning Code and the granting of the variances is not contrary to the public purpose and intent of the Zoning Code due to the extraordinary and special circumstances that exist with respect to this particular property and this particular application, which include, but are not limited to:

- a. Phase I of the subdivision in question will not yield a reasonable return in the current real estate market in Richmond Heights with the originally planned 31 townhome lots and, therefore, the re-plat of the subdivision to substitute 22 single-family lots for detached homes is necessary to maintain

the economic viability of Phase I and the 22 lots are necessary for the property to yield a reasonable return based upon the cost of the infrastructure and public improvements that have already been installed;

- b. The variances are insubstantial because rather than having attached townhomes in this phase of the subdivision, there will be detached single-family homes with property surrounding the homes that will be held in fee simple by the homeowners and that will actually meet or exceed the *de minimis* lot provisions of the Zoning Code;
- c. The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer interference with their proper future development and rights as a result of the variances because the detached single-family homes and lots are more consistent with the residential neighborhoods in the City of Richmond Heights and will not interfere with the value of the townhome condominiums that currently exist on the east side of Donna Drive;
- d. The variances would not adversely affect the delivery of governmental services since much of this development will be under the private control of the homeowners association, certain services will be provided by the homeowners association, and the re-plat of Phase I to eliminate the townhome lots results in 9 fewer homes to be served;
- e. The property in question has unique and exceptional circumstances and conditions such as extensive federally-designated wetlands, stream corridors, steep ravines, and a considerable amount of open space surrounding the lots which are not characteristic neighboring residential properties in residential zoning districts;
- f. The applicant's predicament feasibly cannot be resolved through some method other than a variance because when the plat is revised from townhome lots to the option of larger, single-family detached home lots that are more compatible with residential development in the City it provides an economically beneficial use of the property since the improvements have already been installed at substantial cost; and
- g. The purpose, intent and objectives of the Zoning Code and the Master Plan of the City would be observed and substantial justice done by granting the requested variances for all of the reasons set forth above.

Section 5: The Clerk is hereby instructed to mail a copy of this Resolution to the applicant, DMD Richmond, LLC.

Section 6: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution 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 Section 121.22 of the Ohio Revised Code.

Section 7: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council