

# RESOLUTION 071-2024

*Resolution Amending Development Requirements for PPN 265-15-001  
Consistent With Adaptation of Court-Ordered Variances and 64-Lot Plan*

Cuyahoga County, Ohio

**Be It Resolved** by the Township Trustees of Olmsted Township

**WHEREAS**, this date, August 1, 2024, Trustee Altom moved the adoption of the following Resolution:

**WHEREAS**, the Board of Trustees (“Board”) previously considered a proposal for a zoning amendment which was initiated by Palmieri Builders, Inc. (for John Bergman, Owner), and;

**WHEREAS**, the subject proposal was originally submitted on January 31, 2017, and presented to the Olmsted Township Zoning Commission, and;

**WHEREAS**, the proposal concerned the rezoning of an estimated 29.32± acres of land within PPN 265-15-001 from Single Family, R-40, to Planned Residential Development, R-40, and consideration of a related development plan, and;

**WHEREAS**, the proposed amendment proceeded through the zoning amendment process pursuant to R.C. 519.12, with public hearings before the Zoning Commission and the Board of Trustees in due course, and;

**WHEREAS**, the Olmsted Township Zoning Commission recommended denial of the application for zoning amendment and denial of a corresponding development plan as submitted by Palmieri Builders (Zoning Commission Resolutions B-17 and C-17); and

**WHEREAS**, the Board previously passed Resolution No. 047-2017 overturning Zoning Commission Resolutions B-17 and C-17, and;

**WHEREAS**, following the passage of Resolution No. 047-2017, during further plan and project review, an inconsistency in a portion of Resolution No. 047-2017 came to light, and;

**WHEREAS**, the Board then passed a corrective resolution, Resolution No. 044-2018, on March 28, 2018, and;

**WHEREAS**, the Board further determines and concludes that the original intent of Resolution No. 047-2017 and Resolution No. 044-2018 (hereinafter referred to as the “Resolutions”) can be ratified and advanced through the adoption of this Resolution, amending development requirements for the subject project, to carry out the adaptation of the court-ordered variances addressed in the Resolutions.

**NOW THEREFORE**, it is hereby RESOLVED by the Board that:

1. The Resolutions overturning the recommendations as submitted by the Zoning Commission were adopted to accomplish the following:

- (a) Palmieri Builders submitted a modified plan with development of 64 homes which will account for more green space and provide the necessary buffers between existing property owners and the new development;
- (b) Although the density is more than the recommended 2.25 units per acre, the surrounding neighborhoods have densities between 2.7 and 4.15 units per acre;
- (c) PPN 265-15-001 cannot yield a reasonable return under the scope of the zoning restrictions, it being previously determined that there cannot be any beneficial uses of the property without recognition and adaptation of the previously-allowed, court-ordered variances;
- (d) The operative variances are not substantial given the changed conditions and densities in the area, according to the courts;
- (e) The essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of application of the variances, and Palmieri Builders has modified the plan since the Zoning Commission reviewed it allowing for more green space and less density;
- (f) The variances would not adversely affect the delivery of governmental services;
- (g) The Bergmans' predicament cannot feasibly be obviated through some method other than adaptation of the existing variances as modification or deviations from general PRD District regulations. The Bergmans application requires fewer variances or deviations than the 12 variances requested and affirmed by the Court of Appeals in 2008.

2. Included as part of Resolution No. 047-2017 was "a sketch of [the] related development plan for the development of 64 homes on parcel 265-15-001." Based upon that "sketch," the Board passed its Resolution, in part, approving "the rezoning request proposed by Palmier Builders, with modification of the Zoning Map and Zoning Resolution to the extent herein provided, as follows: Parcel 265-15-001 is rezoned from R-40 to Planned Residential Development; the Planned Residential Development will have 64 sublots . . . ."

3. Further, and again based upon the "sketch," the Board stated in Resolution No. 047-2017, that the prospective development of PPN 265-15-001 would have an open space calculation of 5.94 acres.

4. Following the passage of the initial Resolution, Palmieri Builders produced and submitted a more-detailed preliminary plan for the development of PPN 265-15-001, consistent with the zone change from R-40, Single Family, to Planned Residential Development, which reflected a development plan with an open space of 5.00± acres.

5. The inconsistency or discrepancy between the open space calculation contained in the Resolution and that calculated from the more-detailed preliminary plan resulted from a survey of the parcel (which disclosed more land within the development site than expressed in the deeds therefor) and a reconfiguration of the plan with increased (widened) individual lot sizes. The increased lot sizes allow for additional vacant space and common area which is the functional equivalent of green space for purposes of this development. Importantly, the more-detailed preliminary plan held to the development of 64 building lots.

6. The Board previously recognized that the primary function of the initial Resolution was to allow the zone change for PPN 265-15-001 from R-40, Single Family, to Planned Residential Development and to allow for the development of a total of 64 building lots within that parcel.

7. The misnomer contained in Resolution No. 047-2017 as to the open space calculation, resulting from what was depicted in the “sketch” attached to that Resolution, was not an essential subject of the zone change Resolution.

8. Importantly, the original intent of Resolution No. 047-2017 was to effectively address and ameliorate, by way of the re-zoning authority of the Board, a previous court ruling rendered on December 31, 2008, by the 8<sup>th</sup> District Court of Appeals involving the site. That opinion affirmed a judgment of the Cuyahoga County Court of Common Pleas wherein the court reversed the Board of Zoning Appeals’ denial of 12 area variances and permitted the Bergmans to construct a development of townhomes (“one hundred sixteen homes, a community clubhouse, and a swimming pool”). Specifically, the court rulings found:

Parcel 265-15-001 cannot yield a reasonable return under the current zoning restrictions, there cannot be any beneficial uses of the property without the requested variances;

The Variances are not substantial given the changed conditions and densities in the area;

The Essential character of the neighborhood would not be substantially altered and adjoining properties would not suffer a substantial detriment as a result of the variances;

The variances would not adversely affect the delivery of government services;

The property owner’s predicament cannot feasibly be obviated through some method other than the requested variances;

The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the property owner's requested variances; and

The granting of the variances requested will not confer on the applicant any special privilege.

9. It remains the original intent of the Board of Trustees, as expressed in Resolution No. 047-2017 and ratified through the correction, to recognize that variances are said to "run with the land," meaning that the judicially-imposed variances attaching to PPN 265-15-001 remained in effect and had to be applied to consideration of the revised rezoning plan and revised development plan in question. Consequently, the additional development requirements and deviations from the Zoning Resolution requirements for PRD enacted through the Resolutions represented an adaptation of the existing court-ordered development variances and, further, the proposed alternatives relating to density and open space achieved the purposes of the PRD district to the same degree as the general standards, the proposed alternatives achieved the goals and intent of the resolution and land use plan to the same degree as the standards, and the proposed alternatives resulted in reasonable benefits to the township that are equivalent to the established standards.

10. The Township hired the Engineering Consulting firm of Stantec to review drainage issues in the Southwest corner of Olmsted Township. Their report titled "Future Development Flood Risk and Mitigation Analysis" dated January 24, 2023, provided options for stormwater management in the area. As per Alternate 3 titled Regional Detention basins in the Stantec Report, the developer's Engineers proposed that Regional Detention B of approximately 1.8 acres be constructed on the Belmont site. Specifically, the developer has submitted a plan for review which includes a regional stormwater detention basin/fishing pond in the southeast section of the site to be constructed with the development. This feature will, according to the development plan, include an ancillary walking path, and will be maintained by a homeowner's association, post development. The impact of the creation of this basin on open space calculations will reduce the open space by approximately 1.73 acres. The stream corridor of the existing creek is calculated as 0.79 acres. According to Township open space regulations detention basin areas should not be counted as open space. The resulting reduction of Open Space in the proposed development to accommodate the creation of the Regional Detention Basin is consistent with the Olmsted Township is acknowledged.

11. This Resolution, as an amendment to the prior Resolutions and supplemental thereto, serves as approval of the modification to the augmented development plan. To the extent the modified plan further adjusts the open space reflected on the plan, this Resolution continues to ameliorate the judicially-imposed variances attaching to PPN 265-15-001, and any additional development requirements and deviations from the Zoning Resolution requirements for PRD enacted through this Resolution, represent an adaptation of the existing court-ordered development variances. The further proposal, as it relates to or affects density and open space, achieves the purposes of the PRD district to the same degree as the general standards, the proposed alternative achieves the goals and intent of the Zoning Resolution and land use plan to the same degree as the

standards, and the proposed alternative results in reasonable benefits to the township that are equivalent to the established standards.

12. The modified development plan provides the functional equivalent of green space for purposes of this project site, and the modified plan holds to the development of 64 building lots.

Trustee Zver seconded the Motion, and thereupon, the votes in favor of this Resolution were recorded and reflected by the signatures hereto.

**BE IT FURTHER RESOLVED:** that it is hereby found and determined that all formal actions of this Board of Township Trustees concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and any of its committees that resulted in such formal action, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted the 1<sup>st</sup> day of August, 2024.

*Riley A. Thomas III*  
*Chairman*  
*Chairman of the*  
*Township Trustees*

Attest: Ann W. Gifford  
Township Fiscal Officer

