

APPLICATION TO VILLAGE PLANNING BOARD

Re: North Avenue Heights Subdivision

Introduction:

By letter dated September 11, 2002, then-Mayor of the Village of Avon, Richard E. Burke, wrote to Mr. Samuel J. D'Angelo that:

“The Village Board agrees to accept dedication of the entire subdivision (phase I and phase II) contingent upon the completion and the installation of all sidewalks. A bond in the name of the Village of Avon (Letter of Credit) shall be provided to the Village to be held in escrow pending the completion of the sidewalks. If the sidewalks are not completed within six months from the date the Village first obtains the Bond, the Bond will be liquidated and the Village will use the funds to construct and install the sidewalks.”

To date, the sidewalks have not been completed and, therefore, the bond has been liquidated. The Village, through its Department of Public Works, intends to complete the sidewalks to complete the subdivision and fulfill its obligation as agreed to in 2002. The Village Department of Public Works has investigated the site, alongside the Village Engineer MRB Group, to determine the best location for the sidewalks to be installed. MRB Group developed a map showing the optimal location for the sidewalks.

A public hearing regarding this matter commenced at a Village Planning Board meeting held on Tuesday, October 20, 2020 at the Village offices. Public comments were heard and the map generated by MRB Group was available for viewing. The public hearing remained open at the conclusion of the October 20 meeting pursuant to a motion, second, and unanimous vote in favor of holding the public hearing open.

Relief Requested:

Due to the passage of time, growth of vegetation in the area, and the topography of the land, the Village seeks to modify the location of the sidewalks within the subdivision.

Specifically, in the approved subdivision plans, the sidewalks were initially intended to be located primarily on the interior of the semi-circle shaped street. It is impractical for the sidewalks to be placed in the initially-planned location due to growth of vegetation, topography, utilities being placed in the area, etc.

Legal Standing:

The Village has “stepped into the shoes” of the developer in order to complete the installation of the sidewalks. The Village Planning Board has the ability to grant Variances (Village Code §31.71) and Waivers (§31.72) from strictly requiring compliance with the Subdivision Regulations contained within Chapter 31 of the Village Code (Subdivision Regulations).

Specifically, if “the Planning Board finds that extraordinary and unnecessary hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured; provided that such variations will not have the effect of nullifying the intent and purpose of the official map, the comprehensive plan, or the zoning ordinance (Chapter 30 of this Code).” (§31.71).

Further, if “the Planning Board finds that due to the special circumstances of a particular plat the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements subject to appropriate conditions.” (§31.72).

In this instance, the Village (and the residents of the subdivision) would suffer extraordinary and unnecessary hardships if it had to install the sidewalks where initially planned in 2002 and prior. Also, those subdivision residents who reasonably expected sidewalks to be installed would be unduly harmed without the sidewalks being installed.

Further, varying the location of the sidewalks does not nullify the intent or purpose of the official map, the comprehensive plan, or the zoning ordinance. The sidewalks will be installed within the Village’s right of way, as the Village often does, without landowner consent, throughout the Village. Finally, special circumstances exist such that the public health, safety and general welfare of the subdivision residents will be promoted by (1) installation of the sidewalks and (2) relocation of the sidewalks according to the map prepared by MRB Group in conjunction with the input of then-Village Public Works Superintendent John Barrett.