

BOARD OF ZONING APPEALS
STAFF REPORT

TUESDAY, NOVEMBER 28, 2023

CASE No: BZA 23-0010
PROJECT NAME: PANDORA DRIVEWAY ADMINISTRATIVE APPEAL
PROJECT ADDRESS: 408 PANDORA DRIVE, RIVERSIDE, OH 45431
PARCEL ID: I39 01103 0007
APPLICANT/PROPERTY INFO: ERIC VAN HOOSE, ICON GCS, 2282 E. CENTRAL AVENUE, MIAMISBURG, OH 45342
OWNER/PROPERTY INFO: MARGARGET MCCLELLAN, 549 DUNDEE CIRCLE, RIVERSIDE, OH 45431
ZONING DISTRICT: R-3 MEDIUM DENSITY RESIDENTIAL
CURRENT USE: SINGLE-FAMILY RESIDENCE

REQUEST:

AN APPEAL OF AN ADMINISTRATIVE DECISION TO DENY THE INSTALLATION OF A SECOND CURB CUT ON A RESIDENTIAL LOT.

CASE SUMMARY/BACKGROUND:

The applicant, and contractor for the property owner, submitted an accessory structure permit application on October 2, 2023 for the subject site. In review of the application staff found the proposal included the construction of a second driveway. On October 4, 2023 staff sent an email to the contractor to notify them that only one driveway is permitted on a residential lot under UDO §1113.13.A and other revisions. A revised plan was requested. A revised plan was submitted on October 5, 2023 to the City while the applicant consulted with the owner, but it did not address the removal of the existing driveway. Staff granted a conditional approval of the accessory permit the same day with the below conditions:

1. A code compliant driveway must be associated with the garage with required permits prior to construction;
2. The driveway can be constructed of asphalt, concrete, paver brick, or flagstone (gravel is not permitted);
3. Only one (1) driveway is permitted per residential lot.

Pursuant to §11105.17 of the Unified Development Ordinance (UDO) the Board of Zoning Appeals shall hear and decide upon appeals where it is alleged there is **an error** in any written order, requirement, decision, interpretation, or determination by City of Riverside staff in the enforcement of the UDO. Appeals must be taken to the first meeting occurring after the required public notice. The application was submitted to the City on November 06, 2023 and the notice was published in the newspaper on November 17, 2023.

ATTACHMENTS:

- Zoning Map
- Aerial Map
- Appellant Statement
- Staff Decision Documentation
- Public Service Director Letter
- Supplemental Information

STAFF ANALYSIS AND REVIEW

The following sections of the Unified Development Ordinance are applicable to this case:

1113.13. Access Control for Streets & Highways Purpose.

A. Purpose. The intent of this section is to:

- 1. Regulate driveway access to public streets to lessen the impact of future development on the City of Riverside's thoroughfare system. These standards are designed to minimize safety hazards, traffic congestion, and other adverse impacts thereby protecting the integrity of the thoroughfare system.*
- 2. **Minimize the number of driveways and access points onto public streets. These regulations should be interpreted to that end whenever possible.***
- 3. Require that sidewalks be constructed along thoroughfare, collector, local and public access streets to provide for safe and convenient pedestrian access to neighborhoods, businesses and other community facilities.*

1115.01 Accessory Building and Use Standards

C.1 Provision Applicable to all Districts

a. No accessory building, use, or structure shall be located in a recorded easement.

C.2. Provisions Applicable to Residential Districts.

d. A driveway, in accordance with Section 1113.13 of the Unified Development Ordinance (UDO shall be required for any private garage.

1) A resident driveway shall be a minimum of two (2) feet from any property line.

1113.11 Parking and Loading Standards

B.2. Requirements Applicable to a Residential Premises.

b. Vehicles may be parked outdoors on an approved parking area of a residential premises provided that:

- 1) The vehicle is a self-propelled motor vehicle that is licensed for operation on a public street.*
- 2) **Parking of all other types of vehicles not specifically permitted by this UDO, including Recreational Vehicles, between the front building line and the public right-of-way shall be prohibited.** However, any one vehicle, may be temporarily parked between the front building line and the public right-of-way for loading or unloading*

purposes for no more than two days (48 hours) in any seven-day period beginning the first day the recreational vehicle is parked on the property.

- 3) *A visitor's recreational vehicle may be parked in the driveway for a time not to exceed seven days in any six-month period beginning the first day the recreational vehicle is parked on the property. At no time shall said recreational vehicle be connected to utilities while parked on the property.*
- 4) *A maximum of two recreational vehicles may be parked outdoors per dwelling unit.*
- 5) ***Recreational vehicle shall be parked or stored in the side or rear yard of a residential premises unless otherwise provided for within this section.***

c. Storage of Vehicles.

- 1) ***A vehicle shall be considered to be stored when it is not in general day to day use by the property owner or tenant, or exhibits signs of inactivity.***
- 2) ***A maximum of two vehicles may be stored outdoors per dwelling unit.***
- 3) *A stored vehicle shall be on an approved hard surface.*
- 4) *No vehicle shall be stored in a required front yard.*

After the conditional approval was granted on the accessory structure permit, the applicant filed an appeal claiming:

1. The second driveway will not create any additional access point to the road since it will be constructed parallel to the neighboring driveway; and
2. The existing driveway is too short for modern day vehicles and does not provide adequate space for sidewalk clearance when vehicles are parked.

It is unlikely that an additional access point will **not** be created by the construction of a second driveway. The neighboring driveway at 418 Pandora Drive is five (5) feet from the property line due to an easement that runs between the properties. The property owner will need to obtain permission from the easement holder to place the driveway in the easement and enter an agreement to create a shared driveway with the owner of 418 Pandora Drive. Both owners would also need to request a variance to eliminate the two (2) foot setback required for a new driveway and for the neighbor to expand their driveway/curb cut to the property line. This is the only way one access point is truly created.

Staff visited the subject site in advance of the hearing. The site was inspected by the Service Department on November 6, 2023 and on November 15th by the Zoning Official. Staff did not observe vehicles obstructing the sidewalk. The existing driveway is similar in size to many others in the neighborhood. However, on both dates City staff observed an unpermitted camper parking in the driveway. A notice of violation was sent to the property owner and occupant. Staff did not observe any houses in the general vicinity with two (2) driveways.

STAFF CONCLUSIONS:

It clearly states in §111.13.A that it is the purpose of the code to limit the number of access point to the public street. Therefore, staff granted a conditional approval which included the limitation of one (1) driveway at 408 Pandora Drive. The options before the owner are (1) remove the

existing drive and replace it with grass to allow a new driveway to accommodate the proposed garage or (2) leave the property as it exist today.

Permitting a second driveway at this property would present the owner with several regulatory challenges. They will be required to seek several variances, permission from the easement holder, and will need to work with the neighboring property to create a shared driveway. The second driveway will be out of character for this neighborhood. There are no properties with second driveways in the area. It should also be kept in mind that City Council passed a Stormwater Utility Fee under Ordinance No. 22-O-813 which will go into effect some time in 2024. The increased impervious surfaces will increase the fee amount the property owner will be required to pay.

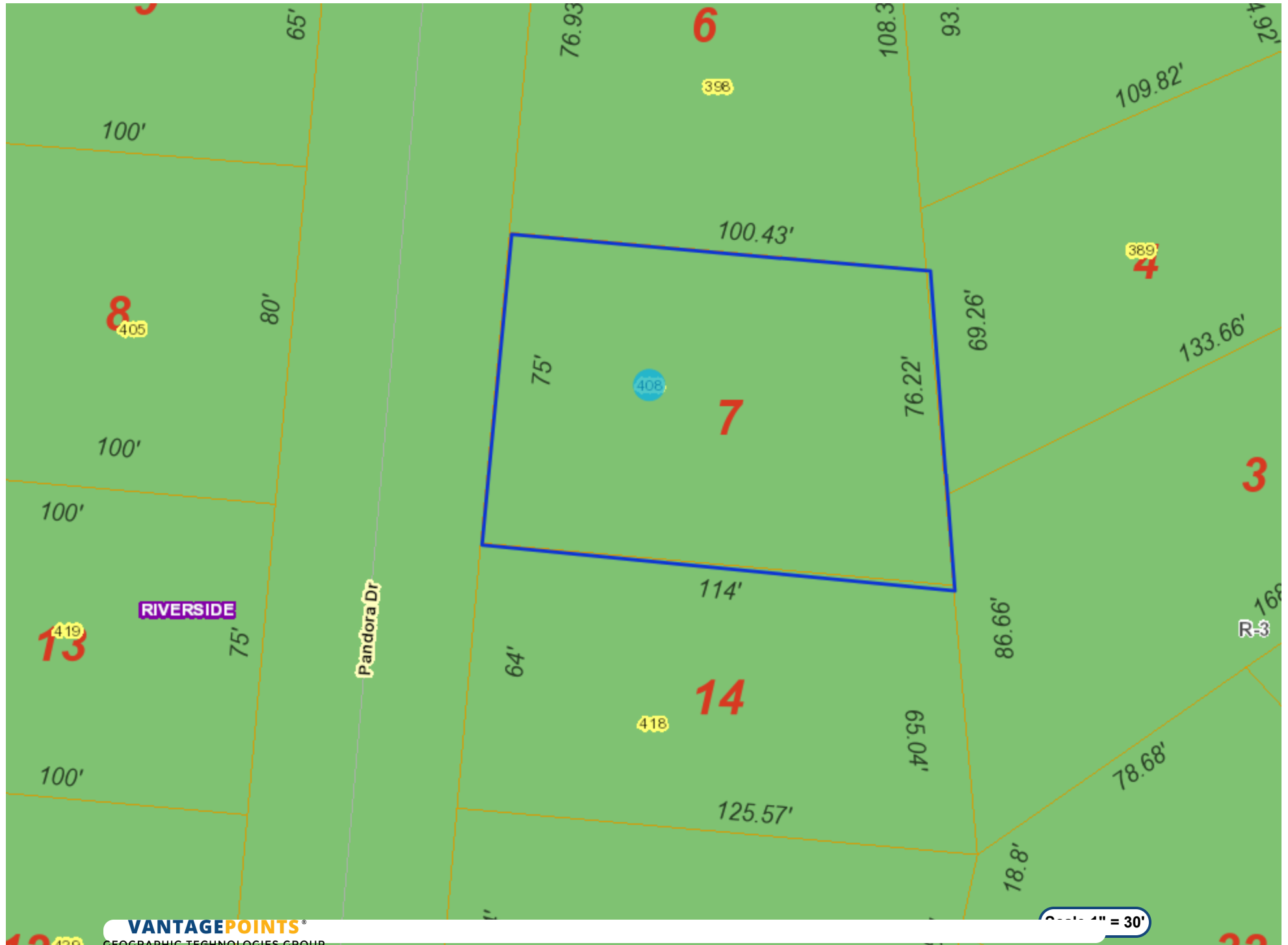
STANDARD OF REVIEW:

Based on the case file, staff report, and the evidence and testimony submitted at the public hearing, the Board must determine if there was an error in the staff determination or decision. The question before the Board of Zoning Appeals is:

- ***Did the Zoning Administrator make an error in her interpretation of the zoning code?***

If the answer is **YES** to the above question, then the Board would concur with the appellant, and the approval of such motion would **overturn staff's determination**. The appellant would need to apply for all the required permits and approvals.

If the Board answers **NO** to the question listed above, then an approval of such a motion would **affirm staff's decision**. Furthermore, the applicant would need to (1) remove the existing drive to accommodate the new driveway to the proposed garage or (2) leave the property as it exists today. All required permits and approvals would need to be obtained if the appellant moves forward with option 1.





Grounds for Appeal Form:

Please answer all of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

- 1. Cite specific provision of the code that are alleged to have been interpreted in error or the specific action being appealed and the grounds on which the appeal is being made.**

1113.13 Access control for streets and highways.
We believe this code has been cited in error because the proposed "driveway" would be parallel to the neighbor's driveway, therefore it would not be adding any additional road access points. In addition to this, by approving our appeal, the additional space would allow for the removal of several vehicles from the street.

- 2. A statement as to why the appellant has standing as an aggrieved party to pursue the appeal.**

The driveway is parallel w/the neighbors and therefor not adding any additional traffic as it becomes an extension of an already existing outlet.

- 3. Provide any other relevant information to your appeal.**

Existing driveway is too short for today's vehicles and doesn't allow enough room for them to clear access for the pedestrian sidewalk. By approving this appeal, the additional length of the driveway would allow the homeowner the ability to park their vehicles without obstructing the existing sidewalk.

Change of Nonconforming Use Description Form:

Please answer **all** of the following questions. Use additional sheets if needed. **A response of yes, no, or N/A is not acceptable.**

1. **Description of Existing Nonconforming Use.** Please be as detailed as possible when describing the use and areas in which the use takes place.

Current use of the existing driveway is regularly in non compliance with city statutes as the vehicles parked there commonly block a portion of the pedestrian walkway.

2. **Description of New Nonconforming Use.** Please be as detailed as possible when describing the use and areas in which the use takes place.

To remedy the existing non conforming use of the existing driveway it has been proposed that a second, longer drive be installed alongside the neighbor's drive, thus not adding additional traffic or outlets, as it is the far right of the homeowners property adjacent to the neighbor's drive.

3. **Is the New Nonconforming Use in the same classification or of a less intensive classification than the first Nonconforming Use?**

The non conforming second driveway will ease local congestion by elimintating several large vehicles from the roadside and garaging them. In addition, this opens up the existing drive up to a smaller vehicle that wouldn't block the pedestrian sidewalk.

4. **Is the New Nonconforming Use no more offensive and as equally appropriate as the first Nonconforming Use?**

The proposed non conforming use will help alleviate traffic congestion at the corner by reducing parked vehicles blocking the view of the existing stop sign.

Your garage permit has been conditionally approved.

Zoning Permit

City of Riverside

Riverside, Ohio

Planning

5200 Springfield Street, Suite 100 Riverside, OH 45431

937-233-1801

Zoning Permit Number: 2300362

**ADDRESS: 408 PANDORA
DR**

PARCEL NO.: 139 01103 0007

ZONING: R-3

**ISSUED TO: MCCLELLAN MARGARET R
549 DUNDEE CIR
DAYTON OH 45431,**

PERMIT TYPE: Certificate of Zoning Compliance

**DETAILS A 480 sf garage in the rear yard. Conditions of approval: (1)
A code compliant driveway must be associated with this
garage with required permits prior to construction; (2)
driveway can be constructed of asphalt, concrete, paver
brick, or flagstone (gravel is not permitted); (3) Only one (1)
driveway is permitted per residential lot.**

PERMIT DATE: 10/02/2023

FEE: 40.00

EXPIRE DATE: 10/05/2024

It is hereby certified that the above use as shown on the plats and plans submitted with the application conforms with all applicable provisions of the Riverside Unified Development Ordinance (UDO). The issuance of this Certificate does not allow the violation of City of Riverside UDO or other governing regulations.

The applicant is responsible for obtaining a building permit (if required) prior to commencing work on the proposed improvement. Information regarding building permits can be obtained from Montgomery County Building Regulations at 937-225-4622 or email at build@mcoho.org. A final inspection must be obtained for Right-of-Way permits.

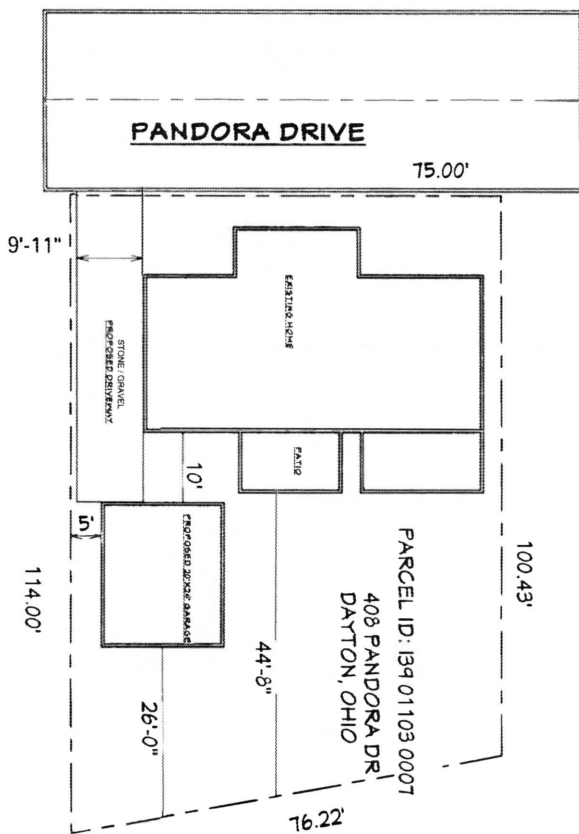
APPROVED BY:

DATE:



October 05, 2023

PROPOSED DETACHED GARAGE



SITE PLAN
SCALE: 1"=20'-0"

PLANS APPROVED
RIVERSIDE ZONING
DATE 10/5/23 PROJECT 23-00362
[Signature]
AUTHORIZED ZONING OFFICIAL

SHEET: A-1	NOTED	SCALE: 08/08/2023	DATE: 08/08/2023	CONTRACTOR: Icon General Contracting Services, LLC 2282 E. Central Ave. Miamisburg, OH 45342 (937) 365-1810 info@iconGCSohio.com CONTACT: Eric Van Housen	PROJECT DESCRIPTION: NEW DETACHED GARAGE 408 PANDORA DR. RIVERSIDE, OHIO 45431	SHEET TITLE: SITE PLAN	
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DATE: November 09, 2023
TO: Board of Zoning Appeals
FROM: Kathy Bartlett, PE, Public Services Director
SUBJECT: 408 Pandora Drive – Second Driveway

This letter is to inform the Board of Zoning Appeal of the Public Service Department's position based on the City of Riverside's Codified Ordinances. The City cannot approve the property owners' request for a second drive under the following City Code:

1113.01 - Purpose.

Chapter 1113 expands upon the zoning district and subdivision development standards of Chapters 1109 and 1111 by addressing additional details of site planning, project design, and the operation of land uses. The intent of these standards is to ensure that proposed development is compatible with existing and future development on neighboring properties, and produces an environment of stable and desirable character, consistent with the Comprehensive Plan.

(Ord. 17-O-618, Passed 3-16-17)

1113.13 - Access control for streets and highways.

Purpose. The intent of this section is to:

1. Regulate driveway access to public streets to lessen the impact of future development on the City of Riverside's thoroughfare system. These standards are designed to minimize safety hazards, traffic congestion, and other adverse impacts thereby protecting the integrity of the thoroughfare system.
2. Minimize the number of driveways and access points onto public streets. These regulations should be interpreted to that end whenever possible.
3. Require that sidewalks be constructed along thoroughfare, collector, local and public access streets to provide for safe and convenient pedestrian access to neighborhoods, businesses and other community facilities.

(Ord. 17-O-618, Passed 3-16-17)

I would also invite the Board of Zoning Appeals members to consider the additional Code sections below in reviewing the appeal request for 408 Pandora Drive. Should this appeal be granted the property owner would need to seek a variance from the Board for maximum lot coverage and maximum driveway coverage in the front yard.

Chapter 1113.13.C.6.b. Single Family and Two Family Residential Uses.

1. A driveway for a single family or two family residence shall have a minimum width of eight feet, a maximum width of 30 feet, and a minimum length of 20 feet. In no case shall any driveway exceed 24 feet in width at the public right-of-way nor cover more than 35 percent of the required front yard area.

2. At minimum a driveway shall extend from the public right-of-way or curb line of a private street the garage door of any principal detached garage, or to the rear building line where no garage may exist, whichever is greater.

(Ord. 17-O-618, Passed 3-16-17)

a.	Minimum Lot Width:	60 feet
b.	Minimum Lot Area:	5,400 square feet
c.	Front Yard Set-back:	20 feet
d.	Side Yard Set-back:	5 feet
e.	Rear Yard Set-back:	25 feet
f.	Maximum Lot Coverage:	50%

(Ord. 17-O-618, Passed 3-16-17)

The Service Department has been consistent in this determination since the 2017 UDO revision. Thank you for your consideration.

Sincerely,



Kathy Bartlett, PE
Public Services Director
City of Riverside, Ohio



Front of Subject Site



Adjacent Property to the North



Adjacent Property Across Pandora Drive



Adjacent Property to the South



Existing Driveway



Proposed Second Driveway Location



Single Driveway Residences on Pandora Dr



Single Driveway Residences on Denny Ln

RECORD OF ORDINANCES

Ordinance No. 22-O-813

Passed DEC 15 2022

Riverside, OH

AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY IN THE CITY OF RIVERSIDE, OHIO.

WHEREAS, the City of Riverside is required by law to manage the stormwater system which provides for the collection, treatment, storage, and disposal of stormwater in the City of Riverside; and

WHEREAS, the City Manager has recommended creation of a stormwater management ordinance to regulate the collection, treatment, storage, and disposal of stormwater as outlined and attached in Exhibit "A"; and

WHEREAS, the City desires to establish a stormwater management utility fee as described in Exhibit "A" to support the cost of stormwater management in the City of Riverside; and

WHEREAS, the City of Riverside Administrative Code must be amended to accurately reflect these changes; and

WHEREAS, the Council of the City of Riverside, Ohio has held a public hearing thereon after notice of the time and place thereof had been given as required by law.

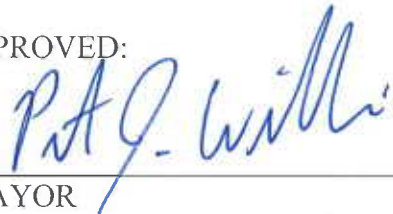
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF RIVERSIDE, STATE OF OHIO:

Section 1: That the Council of the City of Riverside hereby adopts Chapter 935 entitled "Stormwater Management Code" of the Code of Ordinances as set forth in Exhibit "A" attached hereto and incorporated herein as is fully set forth is hereby enacted.


Section 2: That this Ordinance shall take effect and be in force from and after the earliest date allowed by law.

PASSED THIS DAY OF DEC 15 2022.

APPROVED:


MAYOR

ATTEST:


CLERK