STATE OF OHIO	)	IN THE COURT OF COMMON PLEAS
	)SS:	
CUYAHOGA COUNTY	)	CASE NO. CV-492859

THOMAS J. SARFI, ET AL	)	
	)	
	)	
Plaintiffs-Appellants	)	
	)	
vs.	)	**OPINION AND ORDER**
	)	
VILLAGE OF WOODMERE, ET AL	)	
	)	
Defendants-Appellees	)	

MICHAEL J. RUSSO, JUDGE:

The Court has pending before it cross-motions for summary judgment. For the following reasons, the motion for summary judgment of Plaintiffs-Appellants is granted, and the motion for summary judgment of Defendants-Appellees is denied.

Facts and Procedural History

Initially, the Court notes that neither party has requested to expand the record and introduce additional evidence pursuant to R.C. 2506.03. The Court finds that the record supplied by the Clerk of Council is complete. The following facts are not in dispute and are gleaned from the record submitted. Thomas and Megan Sarfi (hereinafter "Appellants") were the titled owners of two contiguous parcels of land on Maplecrest Road in Woodmere Village. Parcel No. 891-01-003 (hereinafter "Parcel One") has a house on it, and Parcel No. 891-01-002 (hereinafter "Parcel Two") is vacant. Thomas Sarfi's

grandparents purchased Parcel One in 1946, and subsequently purchased Parcel Two in 1947. The parcels passed from Thomas Sarfi's grandparents to his parents, and then from his parents to him. The Sarfi family thus has owned both parcels since 1947. Parcel Two has a frontage of 84.58 feet and a depth of 257.5 feet. The lots north and south of Parcel Two are developed with residences. When Parcel Two was purchased in 1947 it was a buildable lot. On November 16, 1988, Woodmere Council passed Codified Ordinance section 1165.01(d) which provides that: "No new dwelling unit … may be erected on any lot with a front footage of less than 145 feet, unless at the time of the passage of this subsection, such lot is already improved with a dwelling unit."

Appellants sold Parcel One in 2002. Appellants then applied for a permit to build on Parcel Two, but the Village Building Inspector denied their application because the lot did not meet the frontage requirements of section 1165.01(d). On March 14, 2002 Appellants applied for a variance from the limitations of section 1165 and for a declaration that the lot is buildable. The Planning and Zoning Commission considered Appellants' application at its regularly scheduled meetings on April 10, 2002, May 8, 2002, June 12, 2002, and July 10, 2002. The Planning and Zoning Commission conducted a public hearing on June 12, 2002, at which a number of residents expressed their concerns about granting the variance. Ultimately, at its July 10, 2002 meeting, the Planning and Zoning Commission unanimously passed Recommendation and Findings 2002-02 denying Appellants' application for a variance.

On August 2, 2002 Appellants filed an appeal with the Clerk of Council, and the Village of Woodmere Council heard the appeal at its regularly scheduled meetings on October 16, 2002 and December 18, 2002. Based upon the hearing before Council and the recommendation and findings of

the Planning and Zoning Commission, the Council passed Resolution 2002-192 upholding the denial of Appellants' application for a variance. Appellants thereafter filed an administrative appeal with the Court which included a cause of action for declaratory judgment challenging the constitutionality of Section 1165.01(d) of the Codified Ordinances of the Village of Woodmere as applied to the Appellants. As this Court's ruling on the administrative appeal is dispositive of the case, the Court need not address Appellants' declaratory judgment. See *Community Concerned Citizens v. Union Township Board of Zoning Appeals* (1993), 66 Ohio St.3d 452, 454.

Analysis

"In an appeal, under R. C. Chapter 2506, from the denial of an application for a variance by a zoning board of appeals, there is a presumption that the board's determination is valid, and the burden of showing invalidity of the board's determination rests on the party contesting that determination." *C. Miller Chevrolet Inc. v. City of Willoughby Hills* (1974), 38 Ohio St.2d 298, at Syllabus 2. Nevertheless, when a zoning ordinance is enforced in an unreasonable and arbitrary manner, it is the responsibility of the trial court, reviewing the action pursuant to R. C. Chapter 2506, to reverse the findings of the board of zoning appeals. The scope of review by the trial court is set forth in R. C. 2506.04, which requires the Court to examine the "substantial, reliable and probative evidence on the whole record." *Kisil v. City of Sandusky* (1984), 12 Ohio St.3d 30, 34.

Based on the entire record, the Court finds that the final order from the Council of Woodmere Village denying Appellants' request for a variance is unreasonable and arbitrary and amounts to a taking or confiscation of the Appellants' property. Without a variance, the property is effectively useless.

Parcel Two has always been a separate parcel (i.e., with a separate parcel number and taxed separately) and was buildable at the time it was purchased. But for death, the Sarfi family has owned the property since 1947. The zoning ordinance as applied to Parcel Two denies the owner economically viable use of his land. See *Shemo v. Mayfield Heights* (2000), 88 Ohio St. 3d 7.

While the Village relies on *Clark v. Village of Woodmere* (1985), 28 Ohio App.3d 66, Appellants offer *Negin v. Mentor Bd. of Zoning Appeals* (1982), 69 Ohio St.2d 492, which the Court finds is directly on point. In *Negin*, the property in question had a frontage of 44.79 feet and a depth of 110 feet and was recorded in 1923. The dimensions had never changed. Negin's father bought the property in 1966, three years after a change in the zoning code requiring a 75-foot frontage for a residential lot. Negin inherited the property and requested a variance so he could build a home on it. The variance was denied. On appeal, the Mentor Zoning Board argued that the lot could be joined with another parcel, or could be used for a church, school or for some recreational use. The Supreme Court found such uses so "illusory and unlikely" that by law the property was useless and had no value. *Id*. at 169. The Court further found that the rendering of such a lot useless for any practical purpose goes beyond mere limitation of use and becomes a confiscation.

In this instance, Appellants' family owned the land prior to the enactment of the ordinance requiring a 145-foot frontage. Appellants did not create the hardship. The lots to the north and south of Parcel Two have residences on them, so Appellants cannot purchase land to meet the frontage as required by the ordinance. Appellants sold Parcel One, but the parcels could not have been combined to create a buildable lot and satisfy the frontage requirement because a house already existed on Parcel One. Simply put, without a variance Appellants are deprived of any beneficial use or value for their property.

On the other hand, granting the requested variance will not adversely affect the delivery of governmental services, the essential character of the neighborhood will not be substantially altered, and the Appellants' predicament cannot be obviated through some method other than a variance. See *Duncan v. Middlefield* (1986), 23 Ohio St.3d 83, 86. The Court hereby reverses the Council of Woodmere Village as its decision is arbitrary, unreasonable, and unconstitutional as applied to the Appellants, and the decision is not supported by a preponderance of reliable, probative and substantial evidence.

IT IS SO ORDERED.

_____ _____

DATE: MICHAEL J. RUSSO, JUDGE

CERTIFICATE OF SERVICE

A copy of the foregoing **Opinion and Order** has been sent by regular U.S. Mail this ____ day of September, 2004 to: Timothy J. Armstrong, Esq., 1725 Midland Building, 101 Prospect Avenue, West, Cleveland, Ohio 44115-1091, Counsel for the Appellants and Janet Beck, Law Director, Village

of Woodmere, 7650 Chippewa Road, Suite 308, Brecksville, Ohio 44141, Counsel for the Appellees.

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MICHAEL J. RUSSO, JUDGE