

## BOARD OF ZONING APPEALS

April 23, 2020

**CALL TO ORDER:** The Board of Zoning Appeals met on Thursday, April 23, 2020, at 7:30 PM via video conference for their regular meeting.

Chairman Behrens called the meeting to order at 7:30 p.m. and asked the Secretary to call the roll. Members in attendance were Mr. Ryan Briggs, Ms. Rene Aston, Mr. James Bartholomew, and Chairman James Behrens. Also in attendance were Assistant Law Director Jim Lyons; Assistant City Manager/Community Development Director Doug Lewis; and City Planner/Secretary Lynn White.

### **ACTION ON MINUTES OF PREVIOUS MEETING:**

Chairman Behrens asked for additions or corrections to the minutes of the Board of Zoning Appeals Meeting of November 21, 2019. Chairman Behrens indicated there was a spelling correction needed on the minutes. There being no other comments, Chairman Behrens asked for a motion. Motion by Ms. Aston, seconded by Mr. Briggs, to accept the Board of Zoning Appeals Meeting Minutes of November 21, 2019 as written. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Ms. Aston, Mr. Bartholomew, Mr. Briggs and Chairman Behrens answered "yes". **Motion carried, 4-0.**

Chairman Behrens asked for additions or corrections to the minutes of the Board of Zoning Appeals Meeting of February 20, 2020. There being none, Chairman Behrens asked for a motion. Motion by Mr. Bartholomew, seconded by Mr. Briggs, to accept the Board of Zoning Appeals Meeting Minutes of February 20, 2020 as written. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Bartholomew, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes". **Motion carried, 4-0.**

### **MEETING PROCEDURE AND SWEARING IN:**

Chairman Behrens explained that the meeting is being recorded via Zoom and informed the applicants that the results of the meeting will stand as an official public hearing. He asked each applicant present if they are agreeing to the meeting being held in this matter. Mr. Jason Boyd, representative for Refusal No.2346 indicated Lake County agrees with the meeting procedure; and Mr. Justin Severa, representative for Refusal No. 2347 responded yes.

Chairman Behrens explained the procedures for the meeting, and then swore in those who planned to speak for or against the variance request. Additionally, Chairman Behrens explained that the Board of Zoning Appeals has the right to adjourn the meeting to deliberate, if needed, and then return to resume the meeting.

Chairman Behrens indicated the Administrative Appeal, which is under tabled business, would not be addressed at this time.

### **TABLED BUSINESS:**

#### **ADMINISTRATIVE APPEAL (NO ACTION TO BE TAKEN AT THIS TIME)**

**APPLICANT/OWNER:** Julius A. & Catherine Sue Kovacs

**LOCATION:** 223 Chestnut Street, Painesville OH

Chairman Behrens moved onto the first item on the agenda. He asked the secretary to read the application for Refusal No. 2346.

### **NEW BUSINESS/PUBLIC HEARING ITEM(S):**

**REFUSAL NO:** 2346  
**APPLICANT:** BURGESS & NIPLÉ  
**OWNER:** LAKE COUNTY COMMISSIONERS  
**LOCATION:** 47 NORTH PARK PLACE (15-A-016-0-00-005-0)  
**DISTRICT:** B-3; CENTRAL BUSINESS DISTRICT  
**VARIANCE:** 1119.05 FENCE HEIGHT

An application has been submitted by Burgess & Niple requesting a variance to Section 1119.05 (b) (2) (A) of the Painesville Unified Development Code for a fence at 47 North Park Place (Permanent Parcel No. 15-A-016-0-00-005-0), Lake County Courthouse for parking lot security improvements. Section 1119.05 Nonresidential, states the following: *Fences in any side or rear yard shall not exceed eight feet in height in the M-1 and M-2 District and six feet in height in all other nonresidential districts.*-The applicant is proposing to construct a nine-foot high fence, which is a combination of face brick and decorative steel fencing on the south and east sides of the existing parking lot. The proposed fence is nine (9) feet; a variance of three (3) feet is being requested.

Chairman Behrens asked who would be presenting on this request. Mr. Mark Hutson, 3380 Narrows Road, Perry, OH, of Burgess & Niple (B&N) introduced himself and indicated he and Mr. Ray DeLaMotte would like to speak on behalf of the County if there are any questions related to the design of the proposed fence. Mr. Jason Boyd would speak on the need for the requested variance.

Chairman Behrens explained to the applicant the various documents that were sent to the Board on this request. He asked if there were any questions from members of the Board on this matter. Mr. Hutson explained the need for the fence is related to security for the Judges at the Courthouse. There was a recent shooting in Ohio where a Judge was targeted. Due to this event, there has been more concern among Judges across Ohio with concern of their safety and the areas where they park. The Lake County Judges would like a more secure area for parking that does not allow access to the general public.

Mr. Bartholomew asked what issue is the county trying to solve with the construction of this fence.

Mr. Jason Boyd, Lake County Administrator, 4802 Glenwood Avenue, Willoughby, OH, thanked the Board for their time and stated the Judges have been in discussion with the Commissioners for a couple of years. Increased security in our court's campuses (Probate and Juvenile) has been addressed; the four common pleas judges have expressed this interest in security. We retained the services of B&N about one year ago to look at ideas for this matter. The county wanted to finish the administration project prior to beginning another construction project. After a number of meetings with the common pleas judges, they stressed their need for security. It is important to understand the judges control the courthouses and their respective parking areas. The County Commissioners, while they own them, do not control them. Mr. Boyd indicated the design submitted was created knowing the city's expectations, working with the Board previously and through the Administration, we knew the quality that is expected. The design took a lot of time and effort, with the brick, the wrought iron, to address the aesthetics. The importance of the urban core of downtown Painesville and the security needs were part of the design process. The nine-foot number is harder to scale for potential intruders; an eight-foot fence was considered. However, this is the desired height that the judges requested and is what is in front of the Board. Mr. Boyd explained parts of the design for the area. There is a controlled access gate to the north, which will be connected to the access control center, which is being implemented Countywide; there are two pedestrian gates to the south and one adjacent to the Methodist Church on the east. Low impact lighting has been integrated into the brick on the interior for safety in the evening; and some lighting is included on the walls. He asked if there were any questions he could answer.

Mr. Bartholomew asked if there were any local concerns for safety, this is stemming from the shooting in Ohio. Mr. Boyd stated there is definitely a local concern. The judges have been asking for increased security for a couple of years. Mr. Bartholomew inquired if there had been a viable threat or an incident where the police had to respond. Mr. Boyd stated that he does not have the police reports. The incident that occurred happened in Steubenville. We have had the Supreme Court in our courthouse and the security reports dictate a need. Upgrades have been done for the north and south entrances of the courthouse; we are looking for increased security at the probate court entrance. The parking/safety issues have been addressed for the juvenile court about two years ago, as this was an easier solution. This particular location has no easy solution. A parking garage is not economically feasible, so the option before the board is the solution for the safety at this location.

Chairman Behrens commented that Judge Lawson has been addressed and nothing else will be done at that court. Mr. Boyd responded that is correct, an existing sally port was converting into a secured parking area. Mr. Lewis commented that anytime you are dealing with judges and courts security is a priority. This is a preventative measure to prevent something from happening in the future. They have been concerned for a number of years, which is what lead to the proposal on the fence. Mr. Boyd explained some security measures that have already been implement at the courthouse, lower level windows have security bars to restrict access, camera systems around the perimeter of the properties, increased lighting. These preventative measures have been done throughout the county facilities.

Chairman Behrens asked if there were any other questions from the Board. Mr. Briggs asked for an explanation of how the security interests would not be served by a six-foot fence versus the nine-foot fence. Mr. Boyd responded this creates an additional obstacle for someone wanting to scale the fence. Mr. Briggs commented on the history of fence variances that were provided in the Staff Report. There has never been a request granted for a height of nine-feet. Mr. Briggs asked if there are any instances of fences at this height. Ms. White stated she does not know of any. Mr. Lewis commented that fence variances are typically for a maximum of an eight-foot height, which is not done for security reasons; it is done mainly for screening purposes. He stated that he has been involved with the Board of Zoning Appeals for 14-years. This is the first request that he has seen for security. A six-foot fence is easy to run up over the post and jump over; where a nine-foot would be much more difficult to get over. It was explained that Judge Lucci, who has a background in police work, had requested the nine-foot due to the difficulty to get over the fence.

Chairman Behrens commented on the request that came before the Board from the Health District for an eight-foot fence for security at 33 Mill Street, which was denied. Mr. Lewis responded the difference is the security for vehicles versus security of people. Chairman Behrens understood, however, the reason for the particular request was for security. Chairman Behrens commented that the courthouse has been there for a hundred years and this has not been a problem until now. Mr. Lewis replied that times have changed concerning security and protection.

Ms. Aston asked if there were plans on having a security guard in the fenced in area. Mr. Boyd responded there deputies throughout the facility at all times. A deputy will not be stationed at this location; however, there will be video surveillance of the area at all times. Ms. Aston commented that she is concerned that having an enclosed area like this there is no way to get out if there were to be a situation. Mr. Hutson commented that the fence the county has requested is a combination of a fence and a wall. It is a three-foot, eight-inch high brick wall with a five-foot high wrought iron black fence installed at the top. This was done to provide an open-air look, not a nine-foot high wall of fencing. This will provide a visual into the area in the case something was to happen inside the enclosed area. Chairman Behrens asked how this would stop someone armed with a rifle. Mr. Boyd responded that if someone wanted to get through, regardless of the fence, they would attempt to get through. He stated this is the option the County agreed to knowing the expectations of the City and the Board in terms of how this would impact the look of the Downtown. Mr. Hutson explained the major concern from the judges was the close contact within the parking area. Mr. Lyons commented this also eliminates any confrontation that can occur at the side of the car. Discussion continued on the safety issues surrounding the fence. The area will be secured and there will be no access through this area. Mr. Lewis reiterated the design of this fence was important to both the city and the county and the aesthetics of the proposed fence is compatible with the existing courthouse and the church next door.

Chairman Behrens asked if there were any other comments from members of the Board. There being none, he asked if there was anyone wishing to speak in favor of the request. There being no comments, he asked if there was anyone wishing to speak against the granting of the request. Pastor Jan Yandell, Painesville United Methodist Church, responded that she is not speaking against the request. She indicated that she understands of the safety of the judges. The church is concerned about the church door on the west side of the building, which is heavily used. As shown in the photograph, accessibility to the door will be restricted with the addition of the fence. The only access currently is through the parking lot area. Pastor Yandell explained there is a sidewalk that comes around the southwest side of the church and goes immediately into the parking lot. The judges have granted access after 5:00 P.M. every evening and from 5:00 P.M. Friday through Sunday evening. This has been very helpful; it is the closest door to the sanctuary and aids in transporting items into the church. There was concern about the location of the fence due to some of the existing pylons at the location now are on the church property. The fence would have to be completely on the county property and could not be located on the churches property since there is little property on this side to work with. Pastor Yandell indicated they have asked the county if they would place a sidewalk in this area from the back of the church to access this door. She stated that they have also inquired how this fenced area provides security for the judges and about the continuation of access of the parking lot. It is their understanding that the church would lose access in the evenings, which is disappointing. The access on the weekends is particularly important, as they do not have a lot of parking. The church has been very helpful to the county during the last three to four years during their projects. Pastor Yandell stated that their main concerns are the access and the sidewalk. She stated the Fire Marshal did inspect the church to determine the impact of the request concerning the use of this door. It was noted the sidewalk is essential for the safe exit of the church. The other concerns were fire and safety access to this area in the event of an accident or fire.

Chairman Behrens stated the Fire Marshal issued a statement that a sidewalk needs to be put in for safety reasons, correct. The reply was yes. Chairman Behrens commented that there were also drainage issues that needed to be addressed as well. Ms. White replied yes, Pastor Yandell had expressed concern on the northeast corner of the county parking lot, which overflows during a heavy rain creating drainage issues for the church property. The City Engineer was consulted about this issue. The drainage of the parking lot would be addressed during the construction of the new parking area and fence. Pastor Yandell stated the solid wall fence could prohibit the water from draining properly. Mr. Hutson explained there is a four-foot section of fence at the end, which will be all wrought iron, allowing for drainage. There is an existing storm catch basin in the current parking lot that the slope of the new parking area will be directed to. Chairman Behrens asked if this would then be addressed. Mr. Hutson stated that they have been working on this issue and will have the contractor address the storm drainage for this site.

Chairman Behrens asked if there are any setback issues that the Board should be aware of on the placement of the fence. Ms. White responded the code allows fences to be placed on the property line.

Chairman Behrens asked if anyone else wished to speak on the matter. Mr. Briggs asked if the county would address the sidewalk issue for the church. He did not know if this was something that had been worked out between the two property owners. Mr. Boyd stated that he and Pastor Yandell have exchanged emails on this subject. He indicated that he would consider this and would need to talk with the Commissioners about how to resolve this matter. Mr. Boyd commented about the access to the parking area. The judges control the area; however, he will continue to work with the church. As of right now, the gates will open at 6:00 P.M. on Friday and remain open until 10 or 11 PM on Sunday. The judges excluded the weeknight parking. The design of the parking area was discussed with the location of the gate next to the west side of the church. The open gate would allow access to the stairs on this side of the church during the weekends.

Chairman Behrens asked if there had been any correspondence on this issue. Mr. White replied there has been none. Chairman Behrens asked for comments from the Assistant Law Director. Mr. Lyons discussed the situation that occurred in Steubenville and the concerns that judges have had in terms of security. This has created an increase in all security measures with courthouses. This is not something that is unique to Lake County. Mr. Lyons stated from a legal perspective, judges have certain authority that others do not. If the judges believe this is a good plan and if the board approves it all of the security issues are with the judges so the city would not be responsible if something were to happen inside the enclosed area.

Chairman Behrens asked for comments from the Assistant City Manager. Mr. Lewis stated in designing this the county has worked with the city to design something that works in the historic downtown area. Having worked with judges in the past, the judges have been accommodating with the parking area. This would not be seen in other circumstances. This is important to understand the church and the county have had a very good working relationship over the years. We want to continue this working relationship as we move forward, this project is important to both parties. As long as the county is willing to look at the sidewalk that is needed for the church, this is a good compromise. Mr. Bartholomew asked if the police or the city have any concerns about the wall. Doug stated that there are no concerns with the wall in this area. This will block the area off from the general public. Once the area is blocked off, the City would not have any concerns of what happens in that area. Mr. Bartholomew indicated that the wall might create an issue for the police, as this will block access if they need to get through this area. Have the police been asked about the installation of this wall. Mr. Lewis responded that he could not speak to that; they were not consulted about the wall. The sheriff has access to this building and the surrounding areas. Mr. DeLaMotte, 616 Mentor Avenue, commented that this would be worked out with the safety forces to allow access to the area at any time. He stated the reason behind having the wrought iron at the top and not having a solid wall, allows visibility inside the area. Mr. Boyd indicated the county would arrange access to the safety forces into the area. If this were a standard 6-foot fence, that would not require a variance, this would be addressed, and arrangements will be made.

Chairman Behrens asked for comments from the City Planner. Ms. White reiterated Mr. Lewis's comments regarding working with the county to create a design that works within the downtown. She commented on the variance request and the unique circumstances that are found within this zoning district. The courthouse is within a commercial district and the code permits a six-foot high fence. However, due to the security concerns of the judges, this is a special circumstance, which is the reasoning behind the request.

Chairman Behrens asked if there were any further comments or questions. Hearing none, he asked for a motion.

Motion by Mr. Briggs, seconded by Ms. Aston to approve **Refusal No. 2346** with the stipulation that Lake County shall (a) work with Painesville United Methodist Church in good faith to (i) build a sidewalk on the property on the Church property that is adjacent to the fence location; (ii) provide weekend parking access; and (iii) ensure the Police Department has appropriate access to the parking lot; and (b) shall construct the parking lot so that the drainage issue identified during the hearing will be corrected.

On Roll Call for the motion, Mr. Bartholomew, Ms. Aston, Mr. Briggs, and Chairman Behrens answered "yes". **Motion carried, 4-0.**

Chairman Behrens moved onto the next item on the agenda. He asked the secretary to read the application for Refusal No. 2347.

**REFUSAL NO: 2347**

**APPLICANT/OWNER: JUSTIN SEVERA**

**LOCATION: 434 BANK STREET (15-B-008-0-00-034-0)**

**DISTRICT: R-1; SINGLE FAMILY RESIDENTIAL**

**VARIANCE: 1119.04 (E) (1) DETACHED STRUCTURES**

An application has been submitted by Justin Severa requesting a variance to Sections 1119.04 (e) of the Painesville Unified Development Code for a Detached Accessory Building. The applicant is proposing to construct a detach garage with an overall height of twenty-three (23) feet. Section 1119.04 (e) (1) states: The maximum height shall be: (1) Sixteen (16) feet or the height of the main structure, whichever is less in residential districts. A variance of seven (7) feet is required for the proposed construction of the detached structure.

Chairman Behrens reviewed the information provided to the Board and asked the applicant to present his case. Mr. Severa, 434 Bank Street, indicated that the garage structure that is before the Board shows a roofline that matches the house. The pitch of the roof is 12/12, which is in keeping with the main structure on the property. The elements of the slope at the bottom of the gable end. The same roofing materials will be used on the garage and the structure will match the home.

Chairman Behrens asked if there were any questions or comments from members of the Board on the information presented. Mr. Bartholomew commented on the previous variance request and asked what the outcome was on the foundation. Mr. Severa commented the previous garage foundation was inadequate to

reconstruct the garage. This structure will comply with the setbacks however; the height is the only concern. He indicated there are nine garages in the immediate area that have a height taller than the code allows. The structures are design to match the homes that are on the property. Mr. Severa stated that he believes the garages that were built not as tall do not fit the look and feel of the properties.

Ms. White presented photos of taller garages in the neighborhood. The design of the proposed garage at this location is suitable for the property as well as the neighborhood.

Chairman Behrens asked if there were any other comments or questions from the Board. There being none, he asked if there had been any correspondence on this matter. Ms. White replied no.

Chairman Behrens asked for comments from the Assistant Law Director. Mr. Lyons replied that he had no comments. Chairman Behrens asked for comments from the Assistant City Manager. Mr. Lewis replied that he had no comment. Chairman Behrens asked for additional comments from the City Planner. Ms. White stated that the memorandum submitted to the Board outlines the request and there are no further comments.

Chairman Behrens asked for a motion on Refusal No. 2347.

Motion by Mr. Bartholomew, seconded by Mr. Briggs to approve **Refusal No. 2347** as submitted.

On Roll Call for the motion, Mr. Bartholomew, Ms. Aston, Mr. Briggs, and Chairman Behrens answered "yes".  
**Motion carried, 4-0.**

#### **ORGANIZATIONAL MEETING:**

Chairman Behrens asked for nominations from the members of the Board of Zoning Appeals for a Vice-Chairperson to be selected. A nomination was made to appoint Mr. Ryan Briggs as Vice-Chair for the Board of Zoning Appeals. There being no other nominations, Chairman Behrens asked for a roll call of the members. On Roll Call, Ms. Aston, Mr. Bartholomew, Mr. Briggs, and Chairman Behrens answered "yes".

#### **BUSINESS OR ANY OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE BOARD OF ZONING APPEALS:**

None

#### **ADJOURNMENT:**

Chairman Behrens asked if there was any further business the Board should address. Ms. White informed the Board that the Administrative Appeal that has been on the Agenda would not be heard until such time an "in-person" meeting can be held due to the nature of the Appeal. There being no further business, motion by Ms. Aston and seconded by Mr. Briggs to adjourn. The meeting was adjourned at **9:18 p.m.**

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Lynn M. White, Secretary

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Jim Behrens, Chairman