

BOARD OF ZONING APPEALS

January 20, 2022

CALL TO ORDER: The Board of Zoning Appeals met on Thursday, January 20, 2022, at 7:30 PM in Courtroom 1 of City Hall.

City Planner Rita McMahon called the meeting to order at 7:30 p.m. Ms. McMahon explained that this was the first meeting of 2022 and that it was also an organizational meeting, meaning that the members of the Board would need to elect a Chairperson and Vice-Chairperson.

Mr. Briggs made a motion to re-elect Mr. Behrens as Chairman, seconded by Mr. Dunay. On Roll Call, Mr. Dunay, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes". **Motion carried, 4-0.**

Ms. Aston made a motion to re-elect Mr. Briggs as Vice-Chairman. Seconded by Mr. Behrens. On Roll Call, Mr. Dunay, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes". **Motion carried, 4-0.**

Ms. McMahon turned the meeting over to Chairperson Behrens, who asked the Secretary to call the roll. Members in attendance were Mr. Dunay, Ms. Aston, Mr. Briggs, and Chairman Behrens. Mr. Bartholomew was absent. Also in attendance were Assistant Law Director, Jim Lyons; Assistant City Manager, Derek Feuerstein; City Planner Rita McMahon, and Secretary Tara Baumgartner.

ACTION ON MINUTES OF PREVIOUS MEETING:

Chairman Behrens indicated the Board had a set of minutes from the previous meeting that required action by the Board. Chairman Behrens asked for additions or corrections to the minutes of the Board of Zoning Appeals Meeting of August 19, 2021. There being no comments, Chairman Behrens asked for a motion. Motion by Mr. Briggs, seconded by Ms. Aston, to accept the Board of Zoning Appeals Meeting Minutes of August 19, 2021. Chairman Behrens asked the Secretary to call the Roll. On Roll Call, Mr. Dunay, Mr. Briggs, Ms. Aston, and Chairman Behrens answered "yes". **Motion carried, 4-0.**

MEETING PROCEDURE AND SWEARING IN:

Chairman Behrens explained the procedures for the meeting, and then swore in those who planned on speaking 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. In addition, representatives of the City Administration are present; Mr. Lyons, the City's Legal Counsel, Assistant City Manager Derek Feuerstein, and Ms. McMahon the City Planner.

Chairman Behrens explained that the meeting is being recorded and informed the applicants that the results of the meeting will stand as an official public hearing. He asked the applicants if they agree to the meeting procedures. The applicants in attendance agreed with the meeting procedures.

NEW BUSINESS/PUBLIC HEARING ITEMS:

Chairman Behrens moved to the first item on the agenda. He asked the secretary to read the application for Refusal No. 2375.

Refusal No: 2375
Applicant/Owner: Branislav & Seniha Jajcanin
Location: 1425 Elizabeth Blvd (35A-001-A-00-019-0)
District: R-1-60; Single Family Residential District
Variance: 1119.0 5(b) (1) B Fence Height on Corner Lot

An application has been submitted by Branislav & Seniha Jajcanin requesting a variance to Section 1119.05 (b)(1)B of the Painesville Unified Development Code to allow the placement of a 6-foot high white vinyl fence within the front setback adjacent to Roberta Drive. The setback on Roberta Drive is 35 feet. Section 1119.05 (b)(1)B Fences, states the following:

B. Fences within the front setback line of record or existing main building line whichever is less shall not exceed three feet in height. On corner lots all sides adjacent to the right of way shall be treated as a front setback line.

A 3-foot height variance is being requested for the placement of approximately 168-feet of fence within the front setback along Roberta Drive. The setback on Roberta Drive is 35 feet.

Chairman Behrens provided a summary of the information the Board received on this request. He asked the applicant to state their name and address for the record prior to presenting their case.

The applicant, Seniha Jajcanin of 1425 Elizabeth Blvd. explained that she and her husband were asking for the variance mainly for privacy and safety reasons. She stated that their property had been vandalized and they had filed a police report, however the perpetrator(s) had not been apprehended. She also stated that they have dogs that can jump a 3 foot fence and they really have no privacy.

Mr. Briggs asked for clarification as to why they didn't build what they pulled a permit for. Ms. Jajcanin responded that they hadn't pulled the permit, her contractor, Safe Surroundings did. Mr. Briggs then asked Ms. McMahon if all contractors need to be registered with the city. Ms. McMahon responded that they do, but that it's still the property owner's responsibility because they have to sign off on the permit.

Ms. Jajcanin stated that they signed and paid for a whole fence and then found out that it wasn't allowed and that they'd need to remove it. She said that they never knew it was against the rules.

Jim Behrens asked for clarification that Safe Surroundings received notification from the City that they were in violation and went ahead and installed the fence anyway. Ms. McMahon stated that that was what happened and that she also sent a copy of the violation letter to the property owner. Mr. Briggs asked Ms. Jajcanin if she had received that letter. She responded that she did, but that she didn't understand it.

Ms. McMahon stated that she had been in contact with both the property owner and Safe Surroundings about the situation.

Mr. Briggs asked how big their dog was. Mr. Jajcanin stated that it was a Maltese Shitzu mix and can go between the fence slats on the shorter fence.

Ms. Jajcanin stated that they thought it was approved because their Home Owner's Association approved it. Mr. Behrens responded that it's up to the City to issue approval, not the HOA.

Mr. Lyons asked if the home owners ever saw the permit. Ms. Jajcanin stated that they had not. Mr. Lyons then pulled a copy of the permit up on his tablet and asked whether or not they signed it. Mr. Jajcanin stated that they only saw the permit in the beginning. Mr. Lyons asked if a 4ft fence would work for them. Mr. Jajcanin stated that 6ft would be better, but they would take anything.

Ms. McMahon stated that there are other critical factors to consider, such as there are utilities in the easement and the City Engineer would prefer that there wasn't a fence in the easement.

Discussion ensued about different possible options regarding setbacks and the easements.

Ms. Aston stated that she was concerned about the easement and what would happen if the house sells. Ms. McMahon stated that the home owners would sign an affidavit and it would be recorded at the Lake County Recorder's Office.

Mr. Feuerstein stated that he was concerned about building over the easement.

Motion by Mr. Briggs, seconded by Ms. Aston to approve the two options for the homeowner to move forward with stipulations:

They can either erect a 6ft fence at 15ft setback with the following stipulation;

1.) The applicants will apply for a new fence permit

OR

They can erect a 4ft fence at a 5ft setback with the following stipulations:

1.) The applicants are responsible for the removal and reinstallation on the 4ft fence should work be required in the utilities easement.

2.) The applicants will contact the Ohio Utilities Protection Service prior to installation of the 4ft fence.

3.) The applicants will file an Affidavit of Agreement of Their Responsibilities with the County Recorder's Office

4.) The applicants will apply for a new fence permit

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

The applicants stated that they understood that if work was needed in the easement they would be responsible for removing the fence.

The applicant was advised that the Code requires a waiting period of five (5) days to acquire a permit.

Chairman Behrens then moved on to the next item on the agenda, the Administrative Appeal.

Ms. McMahon stated that the owner of 141 East Jackson had requested that his appeal be moved to the next meeting due to health reasons.

Motion by Mr. Dunay, seconded by Ms. Aston to table the Administrative Appeal until the next meeting. On Roll Call for the motion, Ms. Aston, Mr. Dunay, Mr. Briggs, and Chairman Behrens answered “yes” **Motion carried 4-0.**

ADJOURNMENT

Chairman Behrens asked if there was any further business the Board should address. There being no further business, the meeting was adjourned at 8:40 p.m.

Tara Baumgartner, Secretary

Jim Behrens, Chairman