

VILLAGE OF MORROW, OHIO  
BOARD OF ZONING APPEALS  
February 12, 2020

IN THE MATTER OF:

WARREN COUNTY PARK DISTRICT  
APPLICATION FOR VARIANCES,  
DATED JANUARY 1, 2020.

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Presiding Members:  
John Poe (Alternate)  
Susan Robinson  
Joe Stevens

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BOARD OF ZONING APPEALS DECISION

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*Background.*

In 2002, the Village conveyed several parcels of land to the Warren County Park District with the intention of protecting the parcels' associated well field while allowing park uses for the parcels. The land subject to the conveyance, including three contiguous parcels comprising the whole and situated within the Village of Morrow, Ohio, offers access to the Little Miami River, as well as active play fields, shelters, picnic areas, and a junction with the Little Miami Scenic River Bike Trail.

In 2016, a local community sports organization improved the property by installing a gravel parking lot with the permission of the Park District. It is uncontested that the construction of the lot did not comply with Village zoning ordinances related to the construction and setback. Further, it is uncontested that the Park District failed to apply for a permit to construct the improvement.

In March of 2019, Luanne M. Cain filed a complaint against the Village of Morrow and the Warren County Park District in the Court of Common Pleas for Warren County, Ohio, for failure to enforce the violation of zoning ordinances.<sup>1</sup>

*Procedural Posture.*

On January 7, 2020, the Warren County Park District filed an *Application for Variances and Special Use*. The application sought two variances: one for a parking lot driveway setback and

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<sup>1</sup> *Luanne M. Cain v. Village of Morrow, Ohio*, et al., Case No. 19 CV 092066.

another regarding screening, both variances for the three, above-referenced parcels which comprise the land more commonly known as Morrow Veterans Memorial Park. The property at issue is located at 200 Hamlin Street/104 Lincoln, situated in the Village of Morrow, Ohio, and presently used as a public park.<sup>2</sup> The application included a supplemental narrative along with various other documents, including copies of deeds and photographs of the subject matter before the Board.

Notice of the Board of Zoning Appeals (BZA) meeting was posted by the Village Clerk. Furthermore, notice of the application for variance was sent to interested parties by the Village Clerk.

The matter was before the Board on February 12, 2020, for consideration of the Park District's application and for public comment.

The meeting was called to order by Chairman Luanne Cain. Also present and comprising the Board were Susan Robinson and Joe Stevens. John Poe, Board Member Alternate, was present. Present on behalf of the Warren County Park District was Larry Easterly, Director for the Park District, and Assistant Prosecuting Attorney, Adam Nice. Additional Villagers were present in the gallery.

Prior to consideration of the application for variance, Chairman Cain recused herself, citing personal interest in the matter being considered by the Board.

*Testimony and argument.*

As it is the application of the Warren County Park District, Attorney Adam Nice provided an overview of the context for the Application, and thereafter called Larry Easterly, Director for the Warren County Park District, to provide testimony in support of the Application.

Attorney Nice stated in 2002, Warren County Park District purchased Veterans Memorial Park from the Village for \$1 as a cooperative effort. The County was to develop the park lands and the Village was to take care of the wellhead protection area.

Attorney Nice stated the park has road frontage on Lincoln Street and two platted alleyways, one to the south and one to the north. Lincoln Street is on the west side of the entrance. There is access to the river and there is some boating and fishing. The soccer field is the primary use for the park.

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<sup>2</sup> More specifically, the application references the subject property by SIDWELL number 13074540033.

In 2016, the local sports organization requested more parking. Attorney Nice averred that when the Village was contacted, the Park District was told no permit was required, which is now known to be a mistake. The gravel lot was installed without a permit.

A complaint was filed against the Village and the Park District. Attorney Nice represented that the Park District is trying to address it. The Park District obtained a permit for the site and asked to keep things as they are.

The park is narrower toward Lincoln Street and wider to the east; there is little room on the west side at Lincoln Street. Attorney Nice stated the public alley to the north was overgrown with trees. When the driveway was built, the group tried to hug the property line toward the north. It is anywhere from 4' to 17' in back from the alleyway. The code requires a 10' set back; the Zoning Code 16.02(E) requires a 10' set back if you have a corner lot with no houses facing the parcel. Attorney Nice represented that no homes face the county's parcel, only back yards. Thus, the Park District was asking for a 4' set back, allowing the driveway to remain.

The Park District was asking that the Board decline the demand for the screening. Attorney Nice argued that the code requires "adequate" screening. There are 34 acres with trees all around except for the entranceway. The entranceway must have visibility.

Attorney Nice described the criteria for granting a variance. He discussed the property yielding a reasonable return; the park is a not-for-profit entity. The Park District exceeded the Zoning Code by 6' with the parking lot. He stated he didn't feel it was substantial. Attorney Nice referred to the Zoning Code and information provided to the board members.

Attorney Nice advised the property was purchased in 2002 and the Zoning Code went into effect in 2003. He stated he did not believe there was a feasible solution. With regard to intrusion, there are no night soccer games. The Carriage House sits on the alley. At that point, Attorney Nice suggested testimony would be appropriate from Park District Director Larry Easterly. Warren County Parks Director Larry Easterly was then sworn in. Attorney Nice questioned Director Easterly:

Director Easterly testified that he had been Parks Director for over twenty years. The property was purchased from the Village in October 2002, prior to the adoption of the Zoning Code. Calls were made, donations sought and six dumpsters of material/garbage were removed. The park opened in 2003 with sports games. In 2004, with a watercraft grant, the Parks District

gained access to the Little Miami River. The Park District likes to be good neighbors for their parks. He stated he believed all the people who use the park love it.

Attorney Nice inquired about installation of the gravel lot. A soccer group who used the park contracted with a company to do it. Director Easterly had asked for drawings and brought them to the Village before work was started and was advised no permit was needed. Ultimately, however, Director Easterly eventually obtained a permit for it. Referencing Applicant's Exhibit 2, page 3, pictures were provided by Director Easterly for the gravel lot. Exhibit 5 was referenced, as were Exhibits 4, 6 and 7, after paving.

With respect to the matter of the setback, Director Easterly testified the distance to the parking lot from the northern side to be twenty feet. As to the southern alley, Director Easterly testified that it was built from seventeen to seven feet distant.

Alternate Member John Poe asked Attorney Nice to show the referenced area on the exhibit. Attorney Nice advised Exhibit 4 was the setback from the tree line. He highlighted the north and south side in the photos and drawings.

Member Robinson asked why there is no screening at the homes and asserted there is not adequate screening at the homes. She proffered that there are various kinds of screening that can be used. Director Easterly stated a vinyl fence was added. Attorney Nice elaborated further. Member Robinson stated the fence is open and not adequate for the situation, as the area is very tight.

Member Stevens made comment as to Morrow's history, stating he liked the park, then asked what other residents are saying. Solicitor Kaspar advised that others could be sworn in after Director Easterly finished his testimony.

Attorney Nice opined that a variance was needed. He referred to the deed and zoning permit and described the old plat and other highlighted exhibits.

Attorney Jeff Forbes was present in the gallery on behalf of Mrs. Luanne Cain. Mr. Forbes was permitted to enquire of Director Easterly based on the presentation of Attorney Nice and the testimony of Director Easterly.

Director Easterly testified on cross-examination that the parking capacity of the park is twenty-eight parking spots. When the park is in use, the spots are full, including at night and on weekends. Where the alley on the southern side doesn't connect to the lot, Director Easterly represented that the Park District has no intention to connect to the parking lot. Regarding screening, if the Park

District was asked to put additional screening or fencing on the south side, Director Easterly testified that such screening would not prevent access to the parking lot.

Attorney Nice concluded his presentation to the Board regarding the application.

On behalf of Mrs. Cain, Attorney Jeff Forbes requested that all must not lose sight of the purpose of the hearing: there is a code which must be followed; there is a provision for variances; there is a list of factors to be considered. If the Park District is not able to satisfy the criteria, they are not entitled to a variance. Attorney Forbes had questions for Mrs. Cain. Mrs. Cain was sworn in and presented testimony.

Mrs. Cain is a resident of the Village of Morrow, Ohio, at 350 E. Pike Street. Her house faces Pike Street and Lincoln. She has resided there for nine years, or since approximately 2011. Before the parking lot was constructed, the setting was peaceful, like living next to a green space. The boy scouts used the space occasionally. Since the installation of the parking lot, it is horrible. Where she lives, it does not connect to the river. People cut through her yard to access the park. In the week preceding her testimony, a man climbed the fence, came in the yard between the cars and startled her.

Mrs. Cain testified that adequate screening or fencing as required by Code would help and deter people from cutting through the park. She speculated that the current situation has not positively affected her property value and could not see why anyone would want to buy her property.

Mrs. Cain noticed the parking lot in March of 2016 and contacted the Village offices immediately. The administration advised that no permit had been issued for the improvement. Mrs. Cain also spoke with the trucking company who was starting the installation. Mrs. Cain testified that there are two access points to the park. She resides on the South side of the park. She denied that screening would not stop anyone from accessing the park, including emergency vehicles.

Mrs. Cain represented that she can see the parking lot from her kitchen window. It is as if cars are driving on her porch. She represented that there are twenty-six paved spaces, four vehicles can park in the grass, another ten in front of the shelter, or approximately forty vehicles when the park is in use.

Mrs. Cain has a concrete pad on her property with a capacity for up to five vehicles. The more intense use for parking is, however, the park. She described the parking lot as nearer to

commercial use than residential. With adequate screening, Mrs. Cain cited that she would benefit from less trash, more safety, and adequate screening would act as a deterrent to people cutting through her yard. She represented this started four years ago and argued that she would have consequences as a private citizen if she constructed something out of Code.

Mrs. Cain stated she has original drawing and plans. She stated the park is used at night and provided pictures taken from her window. She also offered a DVD of the view from her home not shown in pictures provided. Mrs. Cain offered a video of people cutting through her yard and testified that screening would definitely help her. She represented that the Zoning Code went into effect in December 2002, earlier than Easterly stated.

Attorney Forbes argued that Mrs. Cain is not asking for special treatment, only compliance. The burden is on the Park District to show they need and deserve a variance. Cain's focus is on adequate screening. It would not change the essential character of the neighborhood.

Attorney Forbes discussed the parking lot use. He stated 12 years later, after acquiring the property and implementing the zoning code, the parking lot was constructed without a permit or approval. Attorney Forbes referenced Sections 17:02, 17:01, 19:01 and 24:02 from the Zoning Code. Attorney Forbes argued a variance should not be granted if it negatively impacts adjoining property. On Mrs. Cain's behalf, Attorney Forbes asked that the variance be denied, in short because it is better to get permission than to ask forgiveness.

Attorney Nice asked to cross-examine Mrs. Cain, who remained under oath. Mrs. Cain clarified that she purchased the property in 2010 and took occupancy in 2011. The public property existed behind her property at that time, north of her garage. There was a small parking lot behind her house to the North. There was an alleyway behind her property at that time. Mrs. Cain acknowledged a prior effort on her part to vacate the alley. She proposed the vacation of the alley as a resolution to the problem at hand. Her petition to vacate the alley was, however, denied by the Village. Mrs. Cain acknowledged that she will still live next to a public alleyway regardless of whether the Park District's application is approved or denied.

Regarding Mrs. Cain's property value, she did not have it appraised. She is a realtor and has been for fourteen years. The concrete parking pad on her property was already installed at the time she purchased the property.

Mrs. Cain acknowledged being on the Zoning Board of Appeals, and her familiarity with the Zoning Code. She distinguished the current use of the public park from residential use due to

the intensity of use. Mrs. Cain advised people use the space at night, but acknowledged the uses were not for the soccer fields, and there being no use of lights or the public address system.

Mrs. Cain acknowledged living next to a church and that the public is allowed to travel down Lincoln Street and Pike Street to attend the church. Mrs. Cain lives at the corner of Lincoln and Pike streets. Attorney Nice concluded his questioning.

Ron Kilburn, Zoning Inspector, opened the floor to the public for comments.

*Public Comment.*

Villager Art Husted stated he owned the property at 106 Lincoln Street. When he purchased it, he saw the park and pavement and thought it looked nice. He stated he would like trees taken down for more parking spaces. There are not enough parking spaces. Mr. Husted did not have a problem with the park. He believes in making Morrow better.

Villager Vincent Husted stated there is an easement in their back yard. He would be okay to convert the property subject to the easement into parking spaces. Questions followed. Member Stevens asked for specific location of Mr. Husted's property. Mrs. Cain asked if Mr. Husted planned to stay in the property or sell it. Another party asked if he lived in the property. Mr. Husted replied in the negative, unsure of his ultimate intent for the property.

Pastor Randy Haas addressed the Board. Alternate Member Poe asked Pastor Haas' opinion of the park and what is happening there and, further, how it affected the church. Pastor Haas responded that the church has allowed the soccer team to use the church parking except on Wednesday nights, Sunday morning, or during special events.

Mrs. Cain's neighbor, Mr. Ballard, professed to own two pieces of property next to Mrs. Cain. He did not live there, however. His daughter lives there now. Mr. Ballard couldn't dispute what Mrs. Cain stated. His property is on the other end of the alley. Mr. Ballard asked if it was possible to put some screening in for Mrs. Cain, arguing she needs the screening for her property, considering where it's located. Mr. Ballard's end of the street would not require screening.

A local resident represented that there is a problem with screening.

Having considered the Application, taken testimony from the Park District as applicant, testimony from interested property owners, and comments by the public, the Board commenced to deliberate.





*Deliberation of the Board.*

I. *Set back.*

16.02 SCHEDULE OF REGULATIONS All buildings, uses and parcels of land shall comply with the regulations set forth in the following Schedule of Regulations and footnotes hereto. \*\*\* \*\* (D) Permitted non-residential uses shall comply with setback requirements set forth in this Ordinance for specific uses. Where setback requirements are not specified in this Ordinance, permitted non-residential uses shall comply with the minimum setback requirements set forth in the Schedule of Regulations, except that the minimum setback shall be twenty (20) feet.

(E) On corner lots there shall be maintained a front yard along each street frontage, except that the minimum setback on side yards facing a street where no other housing units in the block face the street shall be ten (10) feet.

II. *Screening.*

1.02 LAND USE POLICY STATEMENTS OVERALL GOAL: To promote a community that is residential in character with a small town and historical identity balanced by a strong local economy that supports essential services. \*\*\* \*\* (B) SUBGOAL: To maintain and strengthen the Municipality's village character and historical identity \*\*\* \*\*

24.02 SITE PLANS (F) Standards for Site Plan Approval (16) Screening. Off-street parking, loading and unloading areas, outside refuse storage areas, and other storage areas that are visible from adjacent homes or from public roads, shall be screened by walls or landscaping of adequate height.

19.01 INTENT AND SCOPE OF REQUIREMENTS (A) Landscaping enhances the visual image of the Municipality, improving property values and alleviating the impact of noise, traffic, and visual distraction associated with certain uses. Screening is important to protect less intensive uses from the noise, light, traffic, litter and other impacts of more intensive, non-residential uses. Accordingly, these provisions are intended to set minimum standards for the design and use of landscaping, greenbelts, and screening, and for the protection and enhancement of the Municipality's environment. \*\*\* \*\*

III. *Standards for Variances and Appeals.*

24.05 (D) **Standards for Variances and Appeals** Variances shall be granted only in accordance with the findings set forth in this section. These include general criteria as set forth under Section 1 and specific criteria applicable to variances under Section 2. Such variances may be granted generally where (1)(f) [t]he granting of a variance or appeal will not be materially detrimental to the public welfare or materially injurious to other nearby properties or improvements; (h) the granting of a variance or appeal will not unreasonably diminish or impair the value of surrounding properties; or (i) the granting of a variance or appeal will not impair public health, safety, comfort, welfare or morals.

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Member Susan Robinson stated the park is huge. Mrs. Cain is concerned about privacy, just for her home. She could not see what the problem is with providing a solution, some privacy, where she can enjoy her back yard. She is a citizen of the Village.

Member Stevens asked why Mrs. Cain could not pay for her own screening, subject to Village approval.

Alternate Member Poe stated the trees and driveway vary on footages. He suggested the Board allow the variance for the first phase and asked other Board members if they agreed. Both concurred on the first phase.

Alternate Member Poe stated he believed screening is in order and asked “[w]hat is adequate?” He stated he would like to eliminate the problem. Member Stevens commented as to what he felt Mrs. Cain was asking for and Member Robinson stated she disagreed with his assessment of Mrs. Cain’s request. Poe reiterated his question: “What is adequate screening?”

The deliberation concluded among the sitting Members.

Zoning Inspector Kilburn asked who favored the variance regarding the setback. Zoning Inspector Kilburn called the roll:

Poe – YES.

Robinson – YES.

Stevens – YES.

The Board FINDS that the application regarding variance as to the setback is APPROVED.

With respect to the application regarding the variance as to screening, the Board indicated it was prepared to vote. Zoning Inspector Kilburn called the roll.

Poe – YES.

Robinson – NO.

Stevens – YES.

The Board FINDS that the application regarding variance as to screening is APPROVED.

As a post-script to the hearing before the Board, Alternate Member Poe asked Director Easterly to work with Mrs. Cain to provide adequate screening. Director Easterly stated he would meet with the Warren County Parks Board regarding the issue.

*Adjournment.*

Zoning Inspector Kilburn called for adjournment at 7:20 p.m. The Board subsequently adjourned.

APPROVE:

*Janet Poe, POA for*  
*John Poe*  
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JOHN POE, Member (Alternate)

*Susan Robinson*  
\_\_\_\_\_  
SUSAN ROBINSON, Member

*Joseph M. Stevens*  
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JOE STEVENS, Member

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Ron Kilburn, Zoning Inspector

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John C. Kaspar, Esq., Solicitor

