

ORDINANCE NO. 21, 2016

APPROVING THE CONSTRUCTION OF A FENCE AT 401 JACKSON AVENUE ON VILLAGE PROPERTY BY THE OWNERS, CAROL A. & DANIEL S. CANNADY, REQUIRING EXECUTION AND RECORDING OF AN INDEMNITY AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, Carol A. & Daniel S. Cannady have built a fence on their property located at 401 Jackson Avenue within the Village of St. Bernard; and

WHEREAS, The fence was built along the sidewalk on the West side of their property; and

WHEREAS, the Village of St. Bernard owns the streets, sidewalks and adjacent lands beyond the sidewalk called Village right-of-ways; and

WHEREAS, the Village seeks to limit all liability of the wall by executing an indemnity agreement with the adjacent land owners and recording the agreement to run with the land and bind both present and future land owners of the adjacent property; and

WHEREAS, Carol A. & Daniel S. Cannady agree to sign the indemnity agreement and thereby agree to hold the Village harmless from all liabilities arising from the existence of the retaining wall; now therefore,

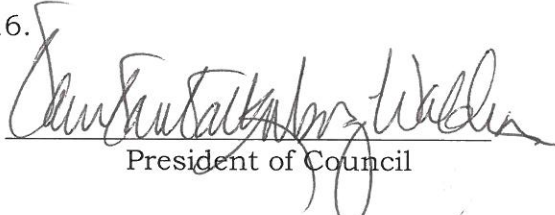
BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ST. BERNARD, STATE OF OHIO:

Section 1. The Village of St. Bernard hereby approves the retaining wall, as defined pursuant to as built on Village property located at 401 Jackson Avenue, by land owners, Carol A. & Daniel S. Cannady.

Section 2. That such approval, as set forth in Section 1 of this ordinance, is hereby conditioned on the proper execution of an indemnity agreement, as attached hereto, by property owners, and where such agreement shall be recorded with the Hamilton County Recorder's Office and shall be binding upon all future land owners of the property located at 401 Jackson Ave.

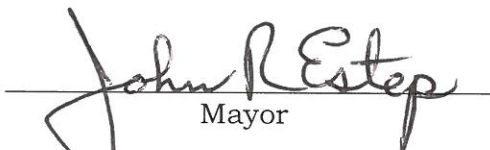
Section 3. This Ordinance is hereby declared to be an emergency measure necessary to the immediate preservation of the public peace, health and safety. Therefore, this Ordinance shall take effect immediately by and upon its passage, and the approval of two-thirds of the members of said Council. However, this Ordinance shall take effect on the earliest date provided by law if approved by no more than the majority of the members of Council and in that event the emergency provisions herein are set at naught.

Passed this 20th day of October, 2016.



President of Council

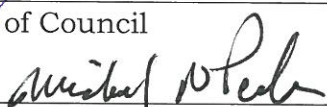
ATTEST: 
Clerk of Council

Approved this 20th day of October, 2015.


Mayor

I, M. SUE KATHMAN, CLERK OF COUNCIL, VILLAGE OF ST. BERNARD, STATE OF OHIO, DO HEREBY testify that the publication of Ordinance No. 21, 2016, was made by posting true copies of the same in the most public places designated by Council: St. Bernard Square Bus Stop; Vine Street and Washington Avenue; Bertus Street Park; Greenlee Avenue and Johnson Alley; Park on Heger Drive; each for a period of fifteen (15) days or more commencing 10-20, 2016.

ATTEST:  DATE 10-20-16
Clerk of Council

Approved as to form  DATE 10-20, 2016
Director of Law

 ORIGINAL

AGREEMENT

This Agreement entered into this 25th day of September, 2016 by the Village of St. Bernard, Ohio and Carol A. and Daniel S. Cannady.

WHEREAS, The Village of St. Bernard, (the "Village") is the owner of certain public sidewalk that is adjacent to the private property located at 401 Jackson Avenue, St. Bernard, Hamilton County, Ohio 45217 and more fully described in the legal description attached hereto and incorporated herein as Exhibit "A" (the "Cannady Property"); and,

WHEREAS, Carol A. and Daniel S. Cannady ("Cannady") are the owners of the Cannady Property; and,

WHEREAS, Cannady desires to construct a Fence to improve the Cannady Property; and,

WHEREAS, Cannady desires to construct the Fence in such a manner that the completed Fence would extend onto the property owned by the Village; and,

WHEREAS, Cannady and the Village agree that the construction of the Fence will benefit the public good, Cannady and the Village hereby agree, covenant, and acknowledge as follows:

Cannady agrees, covenants, and acknowledges that construction of the Fence will be completed in a good and workmanlike manner according to local and state law and according to industry specifications and practices; and,

Cannady agrees, covenants, and acknowledges that the Fence will be constructed in strict compliance with the plans and specifications detailing the construction of the Fence attached hereto and incorporated herein as Exhibit "B"; and,

Cannady agrees, covenants, and acknowledges that Cannady will maintain the Fence as well as any and all land enclosed by the Fence in a good and workmanlike manner according to local and state law and according to industry specifications and practices; and,

Cannady agrees, covenants, and acknowledges that they will defend and hold harmless and indemnify the Village forever for any claims or actions of any nature whatsoever that may arise from the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Fence; and,

Cannady agrees, covenants, and acknowledges that this agreement shall be recorded in the Official Record of the Recorder of Hamilton County, Ohio; and,

Cannady agrees, covenants, and acknowledges that this agreement shall be binding upon any and all future transfers of the Property; and,

Cannady agrees, covenants, and acknowledges that no additional property rights whatsoever shall accrue in favor of Cannady and/or any future transferees of the property or any other persons or entities by operation of law or equity, including, but not limited to, adverse possession or prescriptive easement by the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Fence; and,

Cannady agrees, covenants, and acknowledges that the Village shall not relinquish any ownership interest in the certain public sidewalk by the construction, existence, maintenance, and/or destruction, either intended or unintended, of the Fence; and

Cannady agrees, covenants, and acknowledges that, in the event that the Village finds it necessary at any time after the execution of this agreement to utilize any or all of its property encroached upon by the Fence, Cannady, at Cannadys' expense, shall, immediately upon request of the Village, remove the Fence in a good and workmanlike manner according to local and state law and according to industry specifications and practices.

In return for the above agreements, covenants, and acknowledgements by Cannady, the Village agrees as follows:

The agrees, covenants, and acknowledges that Cannady is permitted to construct the Fence pursuant to the above agreements, covenants, and acknowledgements that Cannady is permitted to construct the Fence pursuant to the above agreements, covenants, and acknowledgements made herein by Cannady.

Approved as to form by:

Mike Peck
Mike Peck
Law Director
Village of St. Bernard, Ohio

Village of St. Bernard, Ohio by:

Thomas J. Paul
Thomas J. Paul
Service Director
Village of St. Bernard, Ohio

Andrew Alb
Andrew Alb
Witness

[Signature]
[Signature]
Witness

STATE OF OHIO)
) SS.
) COUNTY OF HAMILTON)

Sworn and subscribed to before me this 25th day of September, 2016 by Thomas J. Paul

Cheryl Abrams
Cheryl Abrams
Notary Public, State of Ohio
My Commission Expires 07-09-2019

[Signature]
[Signature]
Witness



[Signature]
Daniel S. Cannady

Alexa Culbertson
Alexa Culbertson
Witness

[Signature]
[Signature]
Witness

STATE OF OHIO)
) SS.
) COUNTY OF HAMILTON)

Sworn and subscribed to before me this 25th day of September, 2016 by Daniel S. Cannady.

Cheryl Abrams
Cheryl Abrams
Notary Public, State of Ohio
My Commission Expires 07-09-2019

[Signature]
[Signature]
Witness



Carol A. Cannady
Carol A. Cannady

Heidi Culbertson
Witness

[Signature]
Witness

STATE OF OHIO)
) SS.
COUNTY OF HAMILTON)

Sworn and subscribed to before me this 25th day of September, 2016 by Carol A. Cannady.



Cheryl Abrams
Notary Public, State of Ohio
Commission Expires 07-09-2019

