

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
JUNE 3, 2020

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, June 3, 2020 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Kurt Ostoic, Chairman
Nancy Filsinger
Catie Anderson
Tom Dunst
Mark Grady

Staff members present were Village Attorney Eric Larson, Building Inspector Michael Rakow, and Village Clerk Treasurer Kelly Meyer.

Notice of the meeting was provided to the North Shore Now, to all others as required by State open meetings laws, and Village ordinances and posted on the official bulletin boards.

Approval of Minutes – October 23, 2019 Meeting

On the motion by Catie Anderson, seconded by Nancy Filsinger, the Board of Appeals approved the submission of minutes and determinations from the October 23, 2019 meeting, as presented. Motion passed, 3-0-2 (Abstained-Mark Grady and Tom Dunst).

Case 2020-01: 7210 N Barnett Lane

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Mr. Michael Rakow stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

Building Inspector Michael Rakow stated that the applicant submitted a fence application requesting a special exception to erect a replacement cedar split rail fence 36 to 43 inches in height from an existing concrete/masonry fence with the gated entry to be retained by rebuilding flanking gate piers, in addition to rebuilding two five-foot short metal fence sections to connect rebuilt piers with gate stanchions is pursuant to Village of Fox Point code, to 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code. According to Village Code 745-7(B)(h)[2], the Section states if a fence is in the front yard, an application must come before the Board of Appeals to consider a special exception.

Board of Appeals members, Thomas Dunst and Mark Grady inquired on any fence height limitations in the front and back yards, and inquired on the pre-existing fence.

The Building Inspector Michael Rakow stated the owners are changing the material of the fence and the location as well.

Representative/Contractor Bryan Gore and Associates, Bryan Gore

Representative/Contractor Bryan Gore stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

Representative Bryan Gore stated they demoed an existing fence on the property and rebuilt

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some piers/pillars. A building permit was issued for the piers/pillars on the existing footings. The material of the fence is changing, but there is an infill between the existing iron gate and the pillar, approximately 4 feet. There had been some iron and masonry in that area. They had asked the Building Inspector Michael Rakow if they could continue the iron work from the new piers/pillars they built to the existing gate to tie it together. Building Inspector Michael Rakow could not approve them to continue because he construed the build as part of a new fence. The original fence that was there should be in the packet information. The owners were hoping to fill that area in and have a more holistic appearance. They removed the iron and masonry down to the foundation and they would now like to put a split rail on top of the existing concrete foundation. They would like to install a more appropriate fence for the neighborhood so the gate itself is married back with something that separates the remote area. Building Inspector Michael Rakow told the owners/contractor because they were changing the materials, he was not confident that they could go ahead with the modification of the project without going to the Board of Appeals.

Representative Bryan Gore clarified the gate is original and the height of the new fence will be lower than the prior fence.

Attorney Larson clarified what the Board of Appeals is being asked to consider. The clarification is the Board of Appeals consideration is regarding the split rail fence and the infill iron fence between the split rail and the pillars. It is not considering the pillars and the gate in this case.

Attorney Larson reviewed the standards in the event anyone wants to give any more testimony in regard to Case 2020-01, Village Code Section 745-7(B)(3)(h)[2], which talks about a special exception for placing a fence in the front yard. In the middle of that section, it states Board of Appeals may grant a special exception under this subsection only if it finds that the fence, wall, architectural screening device, arbor or driveway gate is reasonably necessary to protect the safety of people residing on the property, in addition to the additional findings and conditions. The next relevant section pertains to Village Code Section 745-7(B)(3)(j) special exception to the height, size, material, design, setback or other physical standards set forth in this subsection, which also applies. The standard in the middle of the section references the Board of Appeals may grant the request for a special exception upon finding that the property owner has shown clear and convincing evidence to believe that the applicant has a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of this section. That is what the Board of Appeals will have to apply when making its determination.

Representative Bryan Gore stated there are adjacent properties with stone fences, some hedging, and piers. They are not associated with light fixtures, meaning they do not fall into the category of light posts. The owner's intention was to be able to replace an architectural element that was existing for decades on the land and to be able to bring it into a more cooperative visual look with the neighborhood. Reducing the height and reducing the iron would make it more appealing with the split rail fence. This is not meant to keep out dogs or meant to protect people. This is an aesthetic design meant to replace a former fence that was already there. The intention is to be aesthetically supportive for some of the plants material that was originally there. As far as the other criteria about being detrimental to the neighborhood, a split rail fence is a nice delineation between a low-lying area and a woodland area. The intention of the original fence was to improve the general neighborhood feel. This would make it more residential rather than institutionalized. The fence currently looks like a dangling

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participate without a connection. The split rail fence will be 42-46 inches high. Representative Bryan Gore stated this is not going to keep out animals, protect people, the gate is not motorized so someone could enter the property, it is not for security. It is purely for aesthetics.

Neighbor Eric Stananis, 7800 N Lake Drive

Mr. Eric Stananis stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

Mr. Stananis stated they walk by 7800 North Lake Drive often. He commented although he has not seen the fence, it would be appealing and also beneficial to the neighborhood. He stated there was a lot of cement and it was older, if they are updating it would make it clean and professional. It would be a good addition to the neighborhood. He would have no issues with that style of the fence being installed.

On the motion of Chair Kurt Ostoic, seconded by Member Catie Anderson, and carried unanimously, 5-0, to close the testimony at 5:27 p.m. for the Board of Appeals to make a determination.

Attorney Larson again reminded Board of Appeals that they must meet the standards, as the law exists in the determination. They must meet these standards for granting a special exception.

On the motion of Member Mark Grady, seconded by Member Catie Anderson, and carried unanimously by roll call vote (5-0), the Board of Appeals finds the new infill section of fencing together with the pre-existing gate is reasonably necessary to protect the safety of the people on the property and the applicant has shown clear and convincing evidence to believe there is a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of Section 745-7(B)(3)(j) and for all the reasons Mr. Gore has expressed, but denies the special exception for the split-rail fence, as it does not meet the standards.

Case 2020-02: 7800 N Lake Drive

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Mr. Michael Rakow stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

Building Inspector Michael Rakow stated that the applicant submitted a fence application requesting a special exception to erect a driveway gate with a fence along the front yard. He is also proposing a fence in the backyard with a portion in forward of the front line of the home. new black aluminum fence five feet in height, with a black powder coated steel gated seven-foot entry. Therefore, pursuant to Village of Fox Point code, to 745-7(B)(3)(h)[2], a resident cannot have a fence or a driveway gate without the Board of Appeals approval and pursuant to 745-7(B)(3)(j) of the Fox Point Code, regarding the Special Exception requirement.

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Applicant/Appellant Eric Stanenas

Applicant Eric Stanenas stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

The property in the northwest corner has a fence installed; that property is completely fenced in. The south end also has an installed fence as well. The south end of the property has a chain link fence, approximately 5-6 feet tall. The neighbor to the north has a 4- or 5-foot aluminum fence. The south long strip also has a fence there as well. It is a chain link fence 5-6 feet tall. The neighbor to the east has a 5-6-foot black chain link fence as well.

Mr. Stanenas noted he is attempting to fill the gaps in the fence in to keep their new child due in August and their dog safe in the yard. Safety is the primary goal. With the highlighted areas being fenced, the yard would be completely enclosed.

Catie Anderson inquired if the owners considered fencing the backyard in only.

Mr. Stanenas stated if they fenced a portion of the yard in, it would make the usability of the whole lot uncomfortable. He stated with children playing and having to be concerned about the front yard and back yard division would be too much. Mr. Stanenas stated the whole lot is approximately 2.5 acres. He stated the gate would be electronically operated without a latch anywhere.

Board of Appeals members asked if there was a safety feature on the gates in the event emergency vehicles would be necessary. Mr. Stanenas stated, similar to a garage, there would be an override. Board of Appeals stated it would be necessary to have access for emergency vehicles, if necessary.

Board of Appeals member Mark Grady stated, this proposal would need the Police Chief and Fire Chiefs approval.

The gate would remain closed if the owners were using the yard and open when the yard is not in use by the family.

Mr. Stanenas noted the entrance currently has a 7-foot wall/gate that is flanking the driveway. The reason for the height would be to make the entrance more aesthetically pleasing to match the 7-foot-tall existing fence. The gate between the existing stone and pillars/wall will begin at the end of the stone piers. The current pillars currently have lights and they are set to go on at night.

The applicant submitted a neighbor's letter from Sushil and Ethel Sabnis, 7816 North Lake Drive in support of the special exception. A letter was also submitted to the Village Clerk from Eric Fonstad, 7405 North Beach Drive in opposition of the special exception.

Mr. Stanenas responded to Mr. Fonstad's letter and understands the concern to continue with the traditional bucolic character. He stated younger families come into the community and want to have a yard that the children can play safely in. This fence will add to the property's aesthetics.

Chairman Kurt Ostoic closed testimony to begin deliberation at 5:57 p.m.

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Village Attorney Eric Larson read the standards for this case, pursuant to Sections 745-7(b)(d)(h)[2] and 745-7(b)(3)(j) of Village Code and pertaining to the special exception the owner must show clear and convincing evidence to believe that the applicant has a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of this section.

Motion by Member Mark Grady, seconded by Member Catie Anderson, and carries unanimously to re-open the testimony.

Mr. Stanenas asked the Board of Appeals members to consider over half of the property already has been fenced in. Currently the property fence is piecemealed together. With regard to being on Lake Drive, when a buyer buys a property, they typically buy the property in hopes of doing what they feel is best for the property. He is asking the Board of Appeals to consider the safety factor of a fence on their property with traffic on busy Lake Drive, which winds into downtown Milwaukee with young children and animals. This would be a nice addition to the neighborhood in lieu of a chain link fence and it allows the owners to use their whole property safely.

Motion by Chairman Kurt Ostoic and carried unanimously without objection to close testimony at 6:01 p.m.

On the motion of Chairman Kurt Ostoic, seconded by Member Thomas Dunst, by roll call vote, the Board of Appeals finds the applicant has shown clear and convincing evidence to believe there is a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of Section 745-7(B)(3)(j) and grants the special exception. Motion passed 3-2, (Nay-Nancy Filsinger and Catie Anderson).

Chairmen Kurt Ostoic noted the property owner should make sure to get approval from the Building Board, Police Chief and Fire Chief.

Adjourn

On the motion by Member Catie Anderson, seconded by Member Nancy Filsinger, and carried unanimously, the Board adjourned at 6:17 p.m.

Respectfully Submitted,



Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer