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

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

Kurt Ostoic, Chairman
Nancy Filsinger
Tom Dunst
Mark Grady
Scott Ratke (Alternate #2)

Staff members also 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 15, 2020 Meeting

On the motion by Member Mark Grady, seconded by Member Thomas Dunst, and carried unanimously by roll call vote (5-0), the Board of Appeals approved the submission of minutes and determinations from the October 15, 2020 meeting, as presented.

Case 2020-06: 6811 N Barnett Ln.
The applicant is requesting a special exception from the fence ordinance to erect a 4-foot-high, stacked-rail fence forward of the frontline of the home. The special exception request is made pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code.

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 gave background, stating the applicant/appellant is requesting a special exception from the fence ordinance to erect a 4-foot-high, stacked-rail fence forward of the frontline of the home. The special exception request is made pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code. Since this property is on a corner, odd-shaped lot and it is a special exception for a fence; therefore, this special exception has to be determined by the Board of Appeals.

Member Mark Grady asked if Michael Rakow in his opinion, determined the front lot to be.

Building Inspector Michael Rakow stated he utilizes the address side of the property. In his opinion, due to Barnett being the address side, he presumes Barnett is the front lot of the property.

Member Mark Grady inquired if it would then appear that the front door of the home is on the Barnett side of the property.

Building Inspector Michael Rakow commented he could not make that determination.

Member Mark Grady stated if you review 745-7(B)(3)(h)[4], just below Subsections [1], [2], and [3], if the homeowner wanted to build this fence to a height of no more than 3 ½ feet, and if the homeowner was willing to install the fence 20 feet from his lot line, he would not need any approve from the Board of Appeals to do so.

Building Inspector Michael Rakow stated that is correct.

Member Mark Grady stated, if we assume the front of the home is as you indicated, he would not need approval to build a 4-foot-tall split rail fence, as long as the end of the fence did not extend further to the east than the front of the house.

Building Inspector Michael Rakow stated that is correct.

Member Mark Grady asked the Building Inspector, using the exhibit that was attached to the application with the drawing of the proposed location of the fence, which extends around and beyond the front of the home and little further to the east along Barnett, as currently proposed, this Board would need to approve/deny the application. If it stopped parallel with the front line of the home, the fence would not need approval from the Board or the Building Inspector.

Building Inspector Michael Rakow stated it depends on how someone would interpret the Village Code. As indicated in 745-7(B)(3)(h)[1], if it is on a corner lot, it must come before the Board of Appeals.

Member Mark Grady stated, if this body was not willing to approve the fence as proposed, the homeowner does have two other options, as he sees it: (1) to stop the fence parallel to the front of the home, and (2), to build the fence no more than 3 ½ feet tall and 20 feet from his lot line. This is assuming the front of the home is as discussed, on Barnett.

Building Inspector Michael Rakow concurred.

<u>Property Owner/Appellant Matt Gailey</u>

Property Owner/Appellant, Matt Gailey stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Property Owner/Appellant Matt Gailey stated his determination is that the fence proposal isn't to complex so he doesn't want to make this complex. Essentially, he and his wife have a young child. A second child is on the way. They are effectively looking for a barricade opposed to an enclosed fence. What they determined to be a less intrusive and aesthetically pleasing was what is a stacked-rail-fence. They are not intending on installing any posts into the ground; this would be a movable object. Effectively it is stacking roughly 11-foot rails, in length, on top of one another. This allows the homeowners to: (a) be aesthetically pleasing and the least intrusive possible, and (b) provides some flexibility with having the ability to easily move it as well. That is generally the point as to why he is in front of the Board of Appeals today and is happy to answer any additional questions to provide further detail.

Member Thomas Dunst inquired on how the chose their end-point of the fence. What was the

purpose with stopping the fence where proposed rather than bringing it further around the property or less installation of fencing?

Property Owner/Appellant Matt Gailey asked for clarity on whether Member Thomas Dunst was referring to the point at which it ends on Barnett Lane.

Member Thomas Dunst stated that reference was correct.

Property Owner/Appellant Matt Gailey stated it is a tricky lot as the Board can see from the renderings. They picked that end-point because they tried to reach as close to Barnett as possible. It is for aesthetic purposes so it is not an awkward stop in the middle of a lot. The owners major concern is Lake Drive and the traffic flow.

Member Nancy Filsinger inquired where the Appellant Matt Gailey's driveway is located.

Property Owner/Appellant Matt Gailey stated the driveway is L-shaped. It ends on Barnett Lane. It heads west towards their home. There is a little inlet that heads north into their garage.

Chairman Kurt Ostoic inquired if the fence stops at the edge of the driveway.

Property Owner/Appellant Matt Gailey stated it does stop relatively close to it.

Member Mark Grady asked Mr. Gailey if there was a driveway or something along Lake Drive.

Property Owner/Appellant Matt Gailey stated there is not.

Member Mark Grady inquired if Mr. Gailey would consider the front of the home and front door to be on Barnett Lane.

Property Owner/Appellant Matt Gailey stated they would consider the front side and front door to be on Barnett Lane.

Member Mark Grady commented the Village Ordinance indicates that the primary concern for this Board is supposed to look at in granting a special exception is that the fence is reasonably necessary to protect the safety of people residing on the property, in addition to the additional findings and conditions required by Subsection B(3)(j). Therefore, can you directly address why you think this fence is reasonably necessary to protect the safety of people residing on the property.

Property Owner/Appellant Matt Gailey stated they have some protection from landscape cover, such as a few bushes and greenery. This is not effective in stopping an especially small child who does not have the awareness to understand the danger that potentially Lake Drive could present. They have witnessed this first-hand when relative have visited the property with small children. Seeing it first-hand, it is understanding that what the property currently has is not the prohibitor for small children that they would like it to be. They are trying to find a middle ground where it is not a comprehensive barricade that is a ten-foot-high vertical fence. They are looking for something that would act as a barricade, primarily there to stop a small child who is playing in the yard. They feel that this design would do that without being too cumbersome and too much of a permanent, immovable

object.

Member Mark Grady asked how important is it to you, in terms of safety factor, as you indicated it was primarily Lake Drive that you are concerned about to have the fence extend to the east beyond the front of your home. In other words, as far around the curve as you proposed. If your primary concern is Lake Drive, it would seem to me that stopping it on the diagram parallel with the front of your home, does create a barrier with Lake Drive and does not put a fence in your front yard and therefore, does not require a special exception from the Board. Wouldn't that also serve the purpose you are looking for, although it may not be as aesthetic. This would be in terms of security purposes.

Property Owner/Appellant Matt Gailey it would. For a small child, every incremental piece of barricade/fence is helpful. To what degree it is tough to put your finger on. To your point, Lake Drive is the primary concern in regard to safety.

Member Mark Grady also stated you could build this stacked-rail-fence slightly shorter and twenty feet away from the edge of your lot and not require any approval from the Board. Are you aware of that and is that something you have considered?

Property Owner/Appellant Matt Gailey stated he was not aware of that. Secondly, that would not be of interest to the them just given they are on a corner lot and they do not have much of a lot to work with. It has just become rather restrictive of the property they are on. The twenty-foot set-back creates a problem.

Chairman Kurt Ostoic asked for any further questions or thoughts.

Member Nancy Filsinger wanted clarification on where the fence ends in the front and if it does abut the driveway.

Property Owner/Appellant Matt Gailey stated that is true. There is a drainage pipe that goes underneath the edge of the driveway, next to Barnett. There is a little channel for the water. It would be in and around that area.

Without objection and by unanimous consent, Chairman Kurt Ostoic closed testimony at 5:15 p.m.

On the motion of Member Mark Grady, seconded by Member Thomas Dunst, and carried unanimously by roll call vote (5-0), the Board of Appeals finds that the front of the house yard is the side of the home facing Barnett Lane for the purposes of determining the side yards and back yard regarding the special exception from the fence ordinance made pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code to erect a 4-foot-high, stacked-rail fence forward of the frontline of the home.

Village Attorney Eric Larson reminded and inquired if the Property Owner/Appellant has met the standard of the ordinance for the small portion of the fence that is forward of the frontline of the home, which may be 1/5 or 1/6 of the entire proposed fence. The ordinance pursuant to and stated appropriately earlier by the Board, The 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 required by Subsection B(3)(j). The most relevant part of that 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.

Discussion ensued between Board members.

Member Mark Grady the main idea is to protect the those residing from Lake Drive. Obviously, this extra section forward of the frontline of the home is not directly on Lake Drive. But it is also illogical to me to install a fence that goes along Lake Drive and then leave a 20 to 30-foot opening that would sort of invite a small child to go around the end of that fence towards Lake Drive. Barnett and Lake Drive are pretty close there. Clearly that fence is not needed to protect the people from Barnett Lane. But the question is if that section is eliminated, do you impede the viability of the fence as a protector for Lake Drive.

Member Thomas Dunst stated by ending it at the driveway, you are giving the children the idea that this is the end and if you didn't have that, the children would be more apt to go out of the fenced area.

On the motion of Member Mark Grady, seconded by Member Thomas Dunst, and carried by roll call vote (5-0) to grant the special exception from the fence ordinance made pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code to erect a 4-foot-high, stacked-rail fence forward of the frontline of the home on the basis that the extra portion of fence that is to the east of the front of the home is necessary in order to serve the purpose of the entire fence along Lake Drive to protect the minor children, creates a visual barrier to children even though it is not a physical barrier, but is a visible barrier to try to prevent the children from running into Lake Drive and the extension around and toward Barnett Lane is necessary to make the entire fence viable for that purpose and the Board finds that 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.

Friendly amendment of the motion by Member Mark Grady, Seconded by Chairman Kurt Ostoic, and carried by roll call vote (5-0) to grant, as above for the special exception and conditional upon the fence being installed within one year of today's date, December 3, 2020.

Adjourn

On the motion by Chairman Mark Grady, seconded Member Nancy Filsinger, and carried unanimously by roll call vote (5-0), the Board adjourned at 5:30 p.m.

Respectfully Submitted,

Kelly A. Meyer, *CMC/WCMC*
Village Clerk Treasurer