

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, NOVEMBER 23, 2022**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, November 23, 2022 at 5:00 p.m. The Village Clerk took roll call. Those present included: Village Clerk Kelly Meyer called the meeting to order at 5:01pm.

Mark Grady, Acting Chairman
Thomas Dunst, Board Member
Scott Ratke, Board Member
Lucille Sells (Alt. #1), Board Member
Alan Polan (Alt. #4), Board Member

Staff members also present were Acting Village Attorney Luke Martell, 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, Village ordinances and posted on the official bulletin board and the village website.

Selection of Acting Chair

Village Clerk/Treasurer Meyer asked for nominations for Office of Chairperson.

Member Thomas Dunst nominated Mark Grady for Acting Chairperson. Scott Ratke seconded the nomination. Hearing no other nominations, nominations were closed.

Motion by Member Thomas Dunst, Seconded by Member Scott Ratke, and carried by roll call vote (5-0), to nominate Mark Grady as the acting Chair.

Approval of Minutes of September 28, 2022 Meeting and the Findings of Fact, Decision and Order

Motion by Member Scott Ratke, Seconded by Member Thomas Dunst, and carried by roll call vote (5-0), to approve the September 28, 2022 Meeting Minutes and the Findings of Fact, Decision and Order of the last meeting, as revised.

Case 2022-12: 8643 N. Port Washington Road, Code Interpretation:

The applicant has appealed an Order to Correct dated August 12, 2022, which notes a violation of Section 756-7A of the Village Code concerning display of a sign without having obtained a permit. The applicant claims the Order to Correct was issued in error.

Village of Fox Point Building Inspector Michael Rakow

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

Acting Chair Mark Grady inquired of Michael Rakow to state where this case currently stands today without going through the whole history.

Building Inspector Michael Rakow gave background on Case 2022-12, stated there no temporary sign hanging. That has been down for some time now. There is no current sign permit; there is currently a wall sign up which was put up without a permit.

Acting Chair Mark Grady stated he thought he saw in the materials that a permit had been applied for and that allegations had been verbally approved, but approval had not been provided in writing.

Building Inspector Michael Rakow distributed Exhibit A – an Email dated July 18, 2022 from Michael Rakow to Deb Burton at Poblocki Sign Company and Exhibit B – a return Email dated August 12, 2022 from

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Deb Burton at Poblocki Sign Company to the Board of Appeals, notifying Michael Rakow that the sign permit dated 6/3/22 was being cancelled. Building Inspector Michael Rakow stated until he receives a sign permit application, the installed sign is currently in violation.

Mark Grady inquired if the only thing holding up approval of the sign pre-existing installation is an application for a permit with whatever fees have to be paid. From your standpoint, assuming that happens, you have no basis to deny that application at that point.

Building Inspector Michael Rakow stated that is correct.

Chair Mark Grady further stated that his understanding earlier the basis for denial was there was a temporary sign that had not been taken down and that is no longer the case.

Building Inspector Michael Rakow stated that is correct.

Member Alan Polan stated he has some timeline questions. On 8/12, the order to correct by the 15th – has this been corrected? As we sit here today, is it corrected or not corrected?

Building Inspector Michael Rakow stated it has not been corrected. He does not have a signed permit application for that sign.

Member Alan Polan stated upon the filing of an application and payment, you would anticipate that this would be approved.

Building Inspector Michael Rakow stated that is correct.

Member Alan Polan inquired if it were submitted and then approved, then where do they stand again? As of today, are there sanctions be accrued?

Building Inspector Michael Rakow stated he has only issued one citation and that was per my order to correct on September 13th. There was no citations pertaining to the August.

Member Alan Polan inquired if there were any citations for court appearance. Building Inspector Michael Rakow stated there was one, but not for this.

Member Alan Polan inquired what Building Inspector Michael Rakow's understanding what the remedy is they are asking the village for this Board to do.

Building Inspector Michael Rakow stated the applicants are appealing the August 12th occurrence. He stated all he needs is a sign permit application. He doesn't want more work.

Village Attorney Luke Martell stated procedurally it does matter to the effect that the question before the Board was the order issued in error? That is the only determination that the Board is supposed to make tonight. Whether Michael's order from August 12 was issued in error. That is what the Board should focus everything around.

Member Lucille Sells inquired if the order they are discussing in regard to the temporary sign?

Building Inspector Michael Rakow stated the August 12th, is for the permanent wall sign, not the temporary sign. He further stated he does not have an application to issue a sign permit.

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Applicant/Summit Clinical Laboratories, Michael Matts and Adam Chansen

Michael Matts and Adam Chansen of Summit Clinical Laboratories stated their names and were sworn in to provide testimony by the Village Clerk Treasurer.

Acting Chair Mark Grady asked Director Michael Matts why they did not apply for the sign permit.

Summit Clinical Laboratories Michael Matts was told they had to work with a sign company. Poblocki Sign Company gives full services from their stand point.

Acting Chair Mark Grady stated he understands that Summit Clinical Laboratories is relying on Poblocki Sign Company to get the sign permit, Poblocki believed they had approval, but apparently, they didn't officially on paper. So, the sign permit never got issued.

When the sign was produced in early to mid-August. When Summit Clinical Laboratories called the village, the village stated they did not have a sign permit. They called Building Inspector Michael Rakow regarding the sign permit. Summit Clinical Laboratories reached out to the village several different times. They were offered an extended temporary sign permit. In late June when they found out they did not have to go before the board, which they appreciated. The process is not as easy as Summit Clinical Laboratories thinks it is. In June when Summit Clinical Laboratories found out that they did not have to go in front of the Board, they were under the impression that the permit was approved. Summit Clinical Laboratories thanked the village representatives. There was no return communication from the village, reaching out to let Summit Clinical Laboratories know the permit wasn't issued or wasn't going to be issued. Had Summit Clinical Laboratories know, they would have done whatever need to be done to complete the process to make this happen.

Acting Chair Mark Grady stated, no question that the communication was two ships passing in the night from the history that Summit Clinical Laboratories gave the Board. The Board is really trying to focus on where the process is at today. Technically this appeal is for Summit Clinical Laboratories to show why the August 12th issue was issued in error. Acting Chair Mark Grady is trying to ask a slightly different question. If Summit Clinical Laboratories applied for a sign permit tomorrow, the Building Inspector will issue it the next day and we are done. Acting Chair Mark Grady stated his question is why doesn't Summit Clinical Laboratories just apply for a sign permit.

Summit Clinical Laboratories Michael Matts stated let's do that right now. He stated that has never been a question.

Acting Chair Mark Grady stated he understands there is a history of noncommunication, but there is no reason to go through the whole history when there is a really simple solution to solve this.

Adam Chansen stated that on the call with Building Inspector Michael Rakow that was recorded that if they take the temporary sign that was up and take that down when the new sign is ready, how soon can they get that permit issued. Mr. Rakow's response was I have been dealing with this for two to three months now; if he gets to it, he will do it.

Acting Chair Mark Grady wants to propose is that the Board adjourn your appeal to the next Board of Appeals meeting in January. In the meantime, assuming that Summit Clinical Laboratories gets the permit, you would withdraw the appeal at that time. There would be nothing left to do at that time.

Acting Chair Mark Grady inquired of Building Inspector Michael Rakow, assuming Summit Clinical Laboratories gets the permit and you approve it sometime next week, will they have an issue

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with the September 12th citation?

Building Inspector Michael Rakow stated he would hold off on all citations. Acting Chair Mark Grady stated it would become Moot. There will be nothing left for the Board to decide.

Motion: Case 2022-12

Motion by Member Thomas Dunst, seconded by Member Scott Ratke, to adjourn case 2022-12 to the next Board of Appeals meeting on January 25, 2023 at 5:00 p.m., if necessary.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Lucille Sells (Alt #1)</u>	<u>Aye</u>
<u>Alan Polan (Alt #4)</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>

Motion carried.

Case 2022-13: Case 2022-13 7411 N Santa Monica Blvd.

The applicant is requesting a special exception to install a new 8-foot-high privacy fence replacing an existing 6-foot-high fence. The special exception request is made pursuant to 745-7 B.(3)(h) and 745-7 B.(3)(j) of the Fox Point Code.

Applicant/Owner Petrus V Lindeque

Owner Petrus V Lindeque was sworn in to provide testimony by the Village Clerk Treasurer.

Acting Chair Mark Grady stated his understanding is that Mr. Lindeque installed an eight-foot fence, 18 feet long between his home and the home behind him. Mr. Lindeque discovered after installing the fence that it was only allowed to be 6 feet without permission. Acting Chair Mark Grady asked Mr. Lindeque to briefly explain why he wants the fence to be eight feet.

Owner Petrus Lindeque stated the 6-foot fence has been there since 2001. The main floor is likely higher than the grade. If you stand on the mid-level floor, you are quite high up. A 6-foot fence does not give much privacy between the two homes. The neighbor (7416 N Bell Rd) has a large window in their kitchen, which is their breakfast nook area. They spend quite a bit of time in that area. 7411 has 12-foot floor to ceiling windows facing directly on the south wall which gives direct access to look into the neighbor's home and into their living room, dining room and kitchen with an unrestricted view. Putting up a six-foot fence in effect is only around four-foot because of the difference between the grade and the floor levels. Raising it to 8-foot, just gives both homes privacy. If Petrus stands in his kitchen, he can actually see what is for breakfast on the table. That is the only reason – specifically to give privacy. Mr. Lindeque had the opportunity to take photos to show the difference between a 6-foot fence and an 8-foot fence.

Acting Chair Mark Grady stated Mr. Lindeque noted there was a fence previously in the same location. He inquired what height the prior fence was.

Mr. Lindeque commented the prior fence was a 6-foot fence.

Acting Chair Mark Grady inquired on the photo submittals included in the Board of Appeals packet. Photo #2 and Photo #3 were of 7416 N Bell Road. He inquired if this was a photo taken from

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Mr. Lindeque's home at 7411 N Santa Monica Blvd of 7416 N Bell Road.

Mr. Lindeque stated that was correct.

Acting Chair inquired if photo #3 was taken from the neighbor's home looking at Mr. Lindeque's home.

Mr. Lindeque stated that was correct.

Member Alan Polan stated a lot of what you're talking about, is concern for you being able to see through their windows. But it is your fence that is keeping them from looking into your home, so from your perspective, what is your concern as to why there needs to be eight feet instead of six feet. You would have two more feet wide restricting their sightline.

Mr. Lindeque stated it actually just stops them from being able to look into each other's homes.

What is the visibility of the fence from those walking in the area.

Mr. Lindeque stated if you walk down Santa Monica, part of the fence approximately a quarter of it is visible.

Member Alan Polan when the code talks about impeding the purpose, spirit and intent section and we talk about a six-foot fence, why six feet? What is the purpose and the spirit of the code? Why six feet, why can't it be eight feet?

Village Attorney Luke Martell stated that is a great question; he was not there when it was passed and doesn't believe Village Attorney Eric Larson was either. Six feet is the standard across the board across the entire village with one exception. It allows for 11 feet but only if the property abuts a commercial. There may have been one recently or a few years back. There was a home next to a shopping mall and they were allowed to put up a high fence, but that is the only exception that he is aware of and that Village Attorney Eric Larson is aware of in the village for to exceed six feet. This was for uniformity and he is not aware of any other fences that are over six feet in the village at this time. It has been capped at six feet so far.

Acting Chair Mark Grady stated he wanted to clarify they have dealt with fences and front yards, but this is not that. For the Board's purposes, statutes and code provisions that the Board is supposed to be referring to is 745-7 (3)(h) and 745-7 (3)(j). Legitimate need for a special exception was discussed by the Board.

Village Attorney Luke Martell stated in regard to the definition of legitimate need, it is clear and convincing evidence that the applicant has a legitimate need that will not adversely affect the health, safety or welfare of the community and will not impede the purpose, spirit and intent of the subsection. It is up to the Board to determine what that means.

Representative for Neighbor and Owner Joan Shriver, Holly Trotter

Representative for Neighbor/Owner Joan Shriver, Holly Trotter was sworn in to provide testimony by the Village Clerk Treasurer.

Ms. Trotter clarified she is the daughter and power of attorney for neighbor and owner Joan Shriver.

The land between the two homes have enough space between them, approximately 12 feet, but

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the windows are all very tall. It is not the houses that were built in the 1940's anymore. The home is more contemporary and they can see each other. Ms. Trotter stated she is only 5 foot, 5 inches. When the 8-foot fence went up, it gave them the privacy they needed and they were very happy with the fence. When they found out the fence was outside of the regulations, Ms. Trotter came to represent her mother. The Shriver family would like to see the eight-foot fence due to the closeness of the homes. The fence is running perpendicular to the Santa Monica Blvd and the Shriver home is blocking it from Bell Road. Anyone driving by would have a difficult time being able to view the fence. The Shriver's feel it is the right decision to permit the eight-foot fence.

Ms. Trotter further stated that no one is currently living in the home and she is planning on selling the home in the future. It would be a great selling point. Anyone moving into the home, would want that privacy. She would like a buyer to be able to have the privacy she would want if she were to live there. Ms. Trotter noted she does believe that the houses are above the grade of where the fence is and the fence may not actually be a full 8 feet.

Member Alan Polan inquired what the legitimate need from Mr. Lindeque's perspective, as far as it being 8 feet instead of 6 feet.

Mr. Lindeque stated the first photo actually shows you only have about four feet of privacy and that is the crux of the matter. The homes have very high windows from floor to ceiling. Since the installation of the fence, the homeowners can now leave the blinds open in the home, to let the sunlight in, to have more privacy. Previously they always kept the shades down in the home. If it has to be a 6-foot fence, it is not the end of the world, but why not have a fence that enhances the property. The 8-foot fence is a benefit to the homes on both sides.

Acting Chair Mark Grady stated he understands in his words from what Mr. Lindeque is saying, the differences in the height of the homes and the land, an 8-foot fence is needed to be equivalent to a 6-foot fence to bring it up to grade.

Member Alan Polan inquired if the concern was that the next owners coming into the home will have the privacy that they need based on the higher ground grades so they will be unable to look into Mr. Lindeque's home.

Mr. Lindeque stated he does have a concern with new owners coming into the home once it sells, as one could see into the home. The current neighbors have actually experienced living with both the old fence and the new fence.

Member Alan Polan inquired if there is a window from Mr. Lindeque's home that you can see directly into the neighbor's home.

Mr. Lindeque stated absolutely, as in photo three on the right-hand side of the photo, you can actually see the picture in the kitchen. You can see all the way through the home. It is uncomfortable to see the neighbors while you're eating.

Ms. Trotter noted is uncomfortable; it would be more comfortable knowing that there is not someone eating breakfast, able to see into the home.

Member Lucille Sells asked for clarification on the survey in the packet.

Closing of Testimony, Case 2022-12

Without objection and by unanimous consent, Acting Chairperson Mark Grady closed testimony at 5:45 p.m.

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Motion: Case 2022-13

Mark Grady stated he sees this as an 8-foot fence that is seen by these two properties...

Motion by Member Thomas Dunst, that the applicant has demonstrated a legitimate need for a special exception based on the differences in height of the properties and this will not adversely affect the health, safety or welfare of the community or immediate area and will not impede the purpose, spirit and intent of the ordinance. Member Lucille Sells seconded the motion.

Acting Chair Mark Grady asked for any discussion on the motion. A brief discussion took place.

Acting Chair Mark Grady stated what he asked the applicant, he sees this as an 8-foot fence that will not affect anyone's properties in the community or the surrounding area. The applicant needs an 8-foot fence to have the functionality of a 6-foot fence. Therefore, he agrees with the motion.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Lucille Sells (Alt #1)</u>	<u>Aye</u>
<u>Alan Polan (Alt #4)</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>

The application for the special exception for the eight-foot fence was granted by roll call vote, 5-0.

Case 2022-14: 7644 N Beach Drive

The applicant is requesting a variance pertaining to Section 745-13 B. (3) of the Fox Point Village Code in the A1 Residence District, concerning side yard setback requirement of not less than 20 feet. The applicant is proposing to install a new generator 16.25 feet from the property line to replace the current generator in the same location.

Village of Fox Point Building Inspector Michael Rakow

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

Acting Chair Mark Grady stated his understanding is that this generator has been in this spot for approximately 24 years, within the 20-foot setback. He inquired of Building Inspector Michael Rakow, as far as he knows does this pre-date the setback requirements and was this installed without permission.

Building Inspector Michael Rakow stated he could not tell him that.

Acting Chair Mark Grady inquired whether or not this generator is a nonconforming use and whether there are any provisions of the code related to nonconforming structures that would apply to the Board's consideration today.

Village Attorney Luke Martell stated governing statutes is 756-34 (b), which states a generator is an exterior structure. The legal nonconforming structure section of the village code is 745-4 (c) (2). That code states that a legal nonconforming use of a nonconforming structure existing at the time of the adoption of the amendment may be continued even though the size and location does not conform to

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the setback. From what Village Luke Martell understands, there is not much modification here other than that it is within a smaller footprint. Therefore, the sentence of the last section, 745-4 (c) (2) of that code states, in addition, such structure may be totally rebuilt if such reconstruction is identical in size and shape and use to the original structure.

Village Attorney Luke Martell stated his understanding based on the application, that would apply assuming the structure was put in place prior to the adoption. He does not know when it was adopted.

Applicant/Owner Paul Sternlieb

The Property Owner Paul Sternlieb was sworn in to provide testimony by the Village Clerk Treasurer.

Acting Chairperson Mark Grady inquired of Mr. Sternlieb if he knew at the time the generator was installed whether the setback requirements were in place or whether it was installed without looking into the issue. He also inquired whether Mr. Sternlieb owned the home back at that time.

Applicant/Owner Paul Sternlieb stated he did not know the answer to that. He purchased the home just this past summer. He understands there were multiple previous owners. He stated he did speak to Building Inspector Michael Rakow and at the time, he also did indicate that he was not here at that time. He is also unaware if this pre-dates the generator section of the code. There was a permit taken out for the generator previously; that is in the files for the home property.

Acting Chairperson Mark Grady directed to Village Attorney Luke Martell that he would assume based on that testimony that if a permit was issued either the setback requirement didn't exist or a variance was granted at a Board of Appeals meeting or the building inspector at the time made a mistake.

Village Attorney Luke Martell noted that is correct, which you can also take into account when making the decision on a variance

Acting Chairperson stated that it is his understanding that they do not have to make a decision on the variance issue if we can assume that this generator was placed prior to the setback requirements being adopted. Assuming that is true, this is a pre-existing, non-conforming use that is not being altered in any way that requires the applicant to get a variance. They can replace it in the same footprint and continue that non-conforming use.

Village Attorney Luke Martell stated that is correct. It would be a continuation of the legal non-conforming structure so long as it is built in the same footprint as the previous one.

Acting Chairperson stated it strikes him as an easier decision for this Board to make to find that it is a continuation of a non-conforming use than addressing the variance question. This issue is determinative if they do not have to get to the variance issue. He asked for discussion on that particular matter.

The Board members stated they agreed with the above discussion. Based on the consensus by the Board, Acting Chairperson Mark Grady moved to close testimony at this time.

Closing of Testimony, Case 2022-14

Without objection and by unanimous consent, Acting Chair Mark Grady closed testimony at 7:11 p.m.

Motion: Case 2022-14

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Motion by Acting Chair Mark Grady, the Board of Appeals find that this generator replacement using the same or smaller footprint as the prior generator is a continuation of a previous existing non-conforming use and therefore, may be allowed to continue assuming it is installed as described. Member Thomas Dunst seconded the motion.

Roll call vote was called.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Lucille Sells (Alt #1)</u>	<u>Aye</u>
<u>Alan Polan (Alt #4)</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>

Motion carried by roll call vote, 5-0. The variance was not granted; however, you may continue the non-conforming use assuming you install as the Board has described.

Case 2022-15: 8001 N Lake Drive

The applicant is requesting a special exception to install a black aluminum decorative 4-foot-tall fence. The special exception request is made pursuant to 745-7 B.(3)(h), 745-7 B.(3)(h) [1-2], 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 in to provide testimony by the Village Clerk Treasurer.

Acting Chair Mark Grady asked Building Inspector Michael Rakow to give the Board his understanding of what the request is and what the issue is before the Board.

Building Inspector Michael Rakow stated the applicant is installing a 4-foot-high fence. The address is on Lake Drive; if you look on the northwest corner of Bradley, the southwest corner of the property on Bradley Road jogs out parallel with the house and then jogs forward to head south, which is technically the way he views forward of the front line of the home.

Acting Chair Mark Grady stated this is a corner lot; the Board would have to determine where the front of the house is. For the sake of argument, if the front of the house is Lake Drive. Because it is a corner lot, the fence without permission from the board, could not extend beyond the western corner of the home. Essentially there are two front yards under the Village Code.

Building Inspector Michael Rakow stated that is correct. There are multiple things, corner lots, irregular shaped lot, and determination of the location of the front of the home.

Acting Chair Mark Grady stated the issue is the place the fence forward of the frontline of the home from either side.

Building Inspector Michael Rakow stated that is correct and is the reason he sent it to the Board.

Acting Chair Mark Grady stated either way, the request is to put the fence under any definition, forward of the front line of the house, extended on the Lake Drive side. It is also forward of the front line if we use the side of the house as a front now. Either way, it is in the front yard.

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Building Inspector Michael Rakow stated he agreed.

Acting Chair Mark Grady stated this is the reason Building Inspector Michael Rakow could not grant it and it was sent to the Board of Appeals.

There were no further questions for the Building Inspector.

Owner Nathan Kopydlowski

The Property Owner Nathan Kopydlowski was sworn in to provide testimony by the Village Clerk Treasurer.

Acting Chairperson Mark Grady asked the owner(s) to provide testimony regarding case. He stated there are a couple of things they have to do as a Board. The first provision is to determine where the Board believes the front of the home is; he will operate under the assumption that Lake Drive will be the front of the home. The second provision, the home is on a corner lot, the side yard is also essentially treated as a front yard in the fence ordinance. No fence can essentially go onto the side yard without permission from this Board. Not only the little small bump out along the driveway, but it is also the entire section that is on the south side of the house that needs approval. The Board also has to find that the special exceptions is necessary to protect the safety of the persons within and a couple of other provisions as well. He asked the applicant to focus on that provision and tell the Board why you feel that fence is necessary for the safety of the persons within the home.

Mr. Kopydlowski stated the main concern for safety is their 16-month-old daughter. They live on the busiest road in Fox Point with the highest speed limit in Fox Point. Cars travel at 35 miles an hour at the low end of the speed limit. Therefore, they want to have a sizeable yard for the children to play in without having to worry about them running into the road. They moved into the home in September; since they moved in, they have had a car accident in the middle of the night that ended up in the lot down from theirs in the front yard. It is a very curvy road. They just want their children to have a sizeable yard to play in and to be safe from the road. Part of the problem is that they need a fence to go from western corner to use a very sizeable area of their yard so the back yard is not cut in half. The fence that they are proposing to install would be a see through fence, very decorative, and 4-foot high. Determining the front of the house and what passes the front of the house, having to determine whether it is based on whether the house is parallel to the road or not may not need to be discussed. The fence does not go in front of the corner of the house that is parallel to the front should be Lake Drive. It goes west-southwest from the house and then drifts south towards Bradley Road from there. The reasons for having those provisions on a corner lot is to alleviate blocked viewing for cars making turns. The proposed fence is well back from the corner. As you can see in the pictures, the south side of that fence would actually be hidden from view from Bradley Road with the plants that are already planted there. The fence would then go up the west side of the lot be against the neighbor's lot. The fence is a see through fence, so it would not block any visuals of the neighbor. As far as the safety portion, it is to keep my daughter safe. As far as provisions in placing the fence, because it is a corner lot, he doesn't feel it violates any of the nature and spirit of the code.

Acting Chair Mark Grady inquired about the section regarding the safety of persons.

Village Attorney Luke Martell cited Section 745-7 B.(3)(h) [2].

Acting Chair Mark Grady read Subsection, [2] of 745-7 B. (3)(h), regarding safety of persons on the property. In Subsection (j) of 745-7 B. (3), a legitimate need for a special exception that is not contrary to the public interest.

Member Scott Ratke inquired if Mr. Kopydlowski considered a smaller fence, not quite all the way to the front.

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Applicant/Owner Mr. Kopydlowski stated they would be cutting off half of their yard to do this. They would have to go straight southwest corner of the house. They would leave this very large area of their yard behind.

Acting Chair Mark Grady stated for the benefit of the Board members who have not been here previously, every case is unique. There have been cases in the last few years on corner lots on busier streets or roads. There has been some precedents in the past for approving fences like this on corner lots on busier streets. That doesn't mean that the Board has to approve every single one that comes before the Board. Again, he just wanted the newer Board members to know that has happened.

There were no further questions.

Closing of Testimony, Case 2022-15

Without objection and by unanimous consent, Acting Chairperson Mark Grady closed testimony at 6:08 p.m.

Motion: Case 2022-15

Member Alan Polan commented that it looks like the Board is still doing Subsection (j) of 745-7 B. (3). So, if the Board is talking about having to come in front of the Board for a special exception to build this fence and the reference to it will not impede the spirit and intent of the section, what would be the purpose, spirit and intent of the section to where the Board would limit that as opposed to allowing via an exception.

Acting Chair Mark Grady stated that another Board, Member Mr. Bazelon talked about it. The spirit of the fence ordinance in Fox Point is openness, on the whole the appearance and feel of the village to be as open, rural, and as non-urban as possible. It is also due to sight lines; obviously on a corner you have sight lines you have to be concerned about. That has been discussed as well. The overall spirit of the fence ordinance is to keep fences in backyards under the ordinance so that they don't change the appearance of the village. That is the spirit you are weighing against this request. Due to safety reasons and then due to the area.

Member Alan Polan inquired of Applicant/Owner Mr. Kopydlowski if he has one child and if the 16-month-old would ever be outside unsupervised. Mr. Kopydlowski stated no. Member Alan Polan inquired if there was more of a comfort level if there was fencing. Mr. Kopydlowski stated absolutely, especially since children sometimes make thoughtless decisions and he is a physician and works at the hospital. He sees what happens when children end up in front of cars. It is a scary situation and probably colors his view a little more. If there is a fence there it would most definitely bring more peace of mind for, he and his family. It should also bring more peace of mind to everyone driving around on the roads. Yes, it is a corner lot, but on any other lot the fence would be in the back yard.

Due to testimony being closed, without objection and by unanimous consent, Acting Chair Mark Grady received the testimony for record just given by Mr. Kopydlowski.

Acting Chair Mark Grady stated testimony is technically closed now. It can be re-opened if there are any other questions, but otherwise it is closed. It is time to deliberate.

Acting Chair Mark Grady noted he goes by the property running frequently so he is very familiar with the appearance of the lot. He believes this is very similar to a couple of requests we have received previously. Not that he wants a fence on every busy street in the village, but the Board has granted

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some requests when there have been primarily children involved, in order to protect the safety of the children from traffic and at a minimum, protecting children from going out into traffic. I am predisposed to granting the special exception.

Member Thomas Dunst stated twice previously the Board has considered Lake Drive to be a special case in terms of the speed and the risk.

Motion by Acting Chair Mark Grady to grant the special exception, as requested: for the reasons the applicant made, for the safety of the children residing on the property, due to the legitimate need for it, due to the circumstances with traffic on Bradley Road and on Lake Drive, and although it is contrary to the overall spirit of the ordinance to keep the village open and non-urban, there is also a provision for the special exception in circumstances where needed. Member Lucille Sells seconded.

Roll call vote was called.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Lucille Sells (Alt #1)</u>	<u>Aye</u>
<u>Alan Polan (Alt #4)</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>

The special exception was granted, as submitted by roll call vote, 5-0.

Adjourn

Without objection and by unanimous consent, the Board adjourned the meeting at 6:15 p.m.

Respectfully Submitted,

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