



**VILLAGE OF SHOREWOOD
BOARD OF APPEALS MINUTES**

January 11, 2021

1. Call to Order

Ms. Tidwall called the meeting to order at 5:30 p.m.

2. Roll Call

Members present: Michael Paulson, April Toy, Jon Toutenhoofd, Karen Tidwall. A quorum was noted present.

Others present: Village Attorney Nathan Bayer, Building Inspector Justin Burris

3. Statement of Public Notice

Clerk Bruckman stated that the meeting had been posted and noticed according to law.

4. Approval of January 14, 2020 meeting minutes.

Mr. Paulson moved, seconded by Mr. Toutenhoofd to approve the January 14, 2020 meeting minutes. Motion carried 4 – 0.

5. Approval of October 13, 2020 meeting minutes

Mr. Paulson moved, seconded by Mr. Toutenhoofd to approve the October 13, 2020 meeting minutes. Motion carried 4 – 0.

6. Attorney to Review Standards by which the Board of Appeals must abide.

Ms. Tidwall outlined procedures for the meeting and introduced Attorney Bayer who outlined the procedures by which the Board of Appeals (BOA) must abide and the legal standards involved.

Attorney Bayer explained the power of the Board of Appeals to grant variances is granted under §535-55 of the Village of Shorewood Municipal Code. The Board of Appeals can hear and grant variances that are not contrary to the public interest whereby owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purpose of the building code shall be observed and the public safety, welfare and justice secured. Some specific findings must be reflected in the minutes before a request for a variance can be granted. If you decide to grant a variance, you must find the following “(a) Exceptional circumstances. There must be exceptional, extraordinary or unusual circumstances or conditions applying to the lot, parcel or structure that does not apply generally to other properties in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that this chapter should be changed. (b) Absence of detriment. The variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and the spirit of this chapter or the public interest.”

Board of Appeals members had no questions of the Village Attorney.

7. Public Hearing: Request for variance of Building Code 225-8 B. (4) no fence shall be erected or constructed which exceeds a height of six feet, at residential property 4425 N. Lake Drive.

Ms. Tidwall opened the Public Hearing at 5:37 p.m.

Clerk Bruckman noted three emails from Larry Golopol, Tim and Sara Christian, and Tom and Patrice Linn were forwarded to the Board of Appeals stating their support for the fence.

Ms. Tidwall closed the Public Hearing at 5:39 p.m.

7. Consideration of request for variance of Building Code 225-8 B. (4) no fence shall be erected or constructed which exceeds a height of six feet, at residential property 4425 N. Lake Drive.

Building inspector Justin Burris was sworn in.

The Village approved a Building Permit application (20-1399) on 08/24/2020 for the construction of a six-foot fence at residential property 4425 N Lake Dr. An inspection was made on 10/22/2020 where it was found that the height of the fence was in violation and exceeded six feet in height. A notice of correction was issued to Munson Inc. on 10/22/2020 to correct the height of the fence, and subsequent discussions between Building Inspector Tim Koepp and a representative of the company resulted in an agreement to do so.

After further discussion between Munson Inc. and the homeowner, the Village received a Board of Appeals application on 11/23/2020 from the homeowner requesting a variance to the Building Code.

The fence was constructed to enclose the rear and side yards of the property, and runs from the SE corner of the house to the South lot line, which lies on a shared driveway with the neighbor, and encloses the rear yard. The entire length of fence on the South lot line exceeds the maximum height requirement, and measures between 6'3" and 6'4". The section along the West property line also averages 6'3" in height; the section immediately adjacent to the SE corner (front) of the house is 5'9". The height of the fence on the North lot line increases from 6'0" to 6'3" as it continues to the West lot line.

Staff does not support the variance as the fence may have been constructed to a height of six feet or less, while maintaining a level elevation across the top. Additionally, the bottom of the fence could have been modified/cut to allow for any necessary drainage.

Mr. David Jubelirer explained he was not present during the meeting with Mr. Koepp and Munson, but they did not agree to lower the height of the fence and the contractor objected to lowering it based on challenging site conditions. Mr. Jubelirer explained Mr. Koepp expressed remorse for the technicality but the property owner to the south complained to the Village about the fence. He further explained that statement was not accurate, the neighbors support the fence. He noted the height of the fence on the west side of the house as well as the north side of the house have been adjusted because the adjoining neighbors support the fence and there was uneven ground in that area. They purchased dirt and started grading so the area is even and abuts the bottom of the fence so that it's at six feet tall. He explained that isn't possible along the south property line because it's on shared concrete driveway.

Applicant David Jubelirer was sworn in.

Mr. Jubelirer explained Munson is a highly experienced and skilled fence company. They ran into challenging site conditions on the property with very large tree roots, uneven ground and challenging drainage conditions. The fence construction took twice as long as initially estimated. The installation was the best compromise they could make between functionality, structural integrity and aesthetics. They followed the spirit of the ordinance, some areas of the fence are below six feet and other areas are above six feet by two to four inches along the south property line. He noted it was very important for them to have it function properly while being aesthetically pleasing. He noted all the neighbors are in support of the fence. He explained the contractor has never run into an issue like this and has always used their professional knowledge. They have run into challenging site conditions on occasion and it's very difficult to have a fence be even at the top, look good and meet technicalities of ordinances but they use their best judgment. He noted if Munson is forced to remove or correct the fence, they will need to remove all of the panels of the fence, procure cedar materials from their source in Michigan, which are backordered because of the pandemic. New materials will not be available until the end of next summer. Mr. Jubelirer further explained while it's very important to enforce the ordinances to create a safe community, they are following the spirit and intent of the ordinance.

Mr. Paulson questioned if Munson at any time said they could not construct the fence at a horizontal top level four inches lower. Mr. Jubelirer explained this was the best installation in their professional opinion to follow the intent of the ordinance while keeping it as close to six feet as possible.

Ms. Toy questioned if the conversation happened after the fence was built. Mr. Jubelirer explained yes, after Mr. Koepp inspected the fence and sent an enforcement letter. Ms. Toy noted the building permits notes it will be six feet tall. Mr. Jubelirer noted Munson became aware of the site conditions when they started constructing the fence. He noted they did not inform him as the homeowner but followed the intent of the ordinance.

Mr. Toutenhoofd questioned if there was a fence on the driveway area before. Mr. Jubelirer explained there was a fence on the same property line but it did not go down the driveway, it stopped on the south property line where the soil meets the driveway. He noted the driveway pitches towards Lake Drive.

Mr. Paulson questioned if there was any reason a lower fence could not have been constructed. Mr. Jubelirer he is not aware but wanted a fence at the maximum height.

Ms. Tidwall questioned if Munson will correct this issue since they were aware of the ordinance? Mr. Jubelirer did not have the answer. He noted the panels are a standard six-foot height, fabricated in Michigan and they feel this determination is overly harsh in their opinion.

Mr. Burris questioned if Munson could saw the bottom of a six-foot panel down to meet the requirements. Mr. Jubelirer did not know, he was told they would need to replace the panels.

Ms. Tidwall questioned if there was anything extraordinary or unusual about the site conditions on the property. Mr. Burris explained no, there are changes on elevations on every property. Mr. Burris noted the section on the driveway measures about six feet continuously along the front and to the back along the concrete it is raised up off the driveway by three inches.

Tim Koepp was sworn in.

Mr. Koepp explained the meeting with Munson was very quick, the measurements were verified to be over six feet and the rep from Munson understood and said they would get the height corrected. Mr. Jubelirer explained Mr. Koepp talked with the owner of the company and not the installer, he was not aware of the issues until speaking with the crew.

Ms. Toy questioned other than uneven ground and drainage is there any other condition about this particular property that prevents meeting the six-foot requirement. Mr. Jubelirer explained it was just the site conditions as mentioned. Ms. Toy questioned what was meant by drainage. Mr. Jubelirer explained along the driveway, because the post and the fence on the south property run along the driveway, there is a pretty substantial pitch so the water moves towards the stormsewer on Lake Drive. There is also a pitch from both sides of the houses and comes to a low point right in the area where the fence is. The fence company was dealing with a sunken area between the two homes that pitches towards Lake Drive. There also needed to be clearance under the fence so it wouldn't be subject to wood rot from the elements.

Ms. Toy noted there is a portion of the fence that does not seem to be level. Mr. Jubelirer noted yes, for his wife to create a gate that looks appealing. Ms. Toy questioned the section of fence without the gate that is the section of the fence with the drainage issue. Mr. Jubelirer explained that is the section of fence where the two driveways slope together and create a low point along the fence and the driveway pitches towards the east. Munson wanted to keep the fence line straight with the fence line along the west side of the property and in order to do that it became two to four inches taller and they couldn't lower it all the way to the concrete.

There was discussion on modifying the panels. Mr. Burris noted one of the panels was modified to create the gate and is less than six feet.

Testimony was closed and moved into Board consideration.

Mr. Paulson moved, seconded by Ms. Toy to a variance be granted to permit a 6-foot fence at the locations indicated in the application at the property address of 4425 N Lake Drive.

Discussion:

Mr. Paulson noted the legal standard the Board of Appeals needs to meet cannot support the motion. The Village zoning code is explicit that no fence over six feet. There are no exceptional circumstances that don't apply generally to other properties that different panels or adjustments to the current panels could not be made. If a variance would be granted, the board would be defeating the purpose of the ordinance that no fence should be over six feet. The existing fence does not have to come down until a replacement can be made. Mr. Paulson does not support the variance.

Mr. Toutenhoofd noted all the neighbors have approved and most of the fence has been replaced by what was originally there. Mr. Toutenhoofd supports the variance.

Ms. Toy noted there is no evidence of exceptional circumstances. No one has been able to prove that changes in the grade are an exceptional circumstance. She noted the contractor knew there was a six-foot ordinance. She does not support the variance.

Ms. Tidwall noted the contractor should have been able to foresee that this is an issue and adjust it accordingly. She noted setting precedent about fences over six feet.

Motion failed by roll call vote, 1 – 3 by a roll call vote with Mr. Toutenhoofd voting aye.

Ms. Toy moved, seconded by Mr. Paulson to adjourn the meeting at 6:40 p.m.

Respectfully submitted,

Sara Bruckman, CMC/WCMC, Village Clerk

Sara Bruckman

From: Justin Burris
Sent: Sunday, January 10, 2021 6:04 PM
To: Larry Golopol; Crystal R. Kopydlowski
Cc: Sara Bruckman
Subject: RE: Fence at 4425 N lake Drive

Mr. Golopol,

Thank you for providing your position.

We will provide this to the Board of Appeals, and it will become part of the record.

Justin Burris
Building Inspector
Village of Shorewood
3930 N. Murray Ave.
Shorewood, WI 53211
(414)847-2643

[Village Website](#)



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Given the current situation with the pandemic, in-office staff schedules within our Department have been modified to mitigate risk of exposure. We will continue on as normal, but please be patient as response times may take longer than usual.

From: Larry Golopol [mailto:lgolopol@gmail.com]
Sent: Sunday, January 10, 2021 12:39 PM
To: Justin Burris <JBurris@villageofshorewood.org>; Crystal R. Kopydlowski <ckopydlowski@villageofshorewood.org>
Subject: Fence at 4425 N lake Drive

Dear Mr. Burris and Ms. Kopydlowski,

We are writing to support allowing the recently installed fence at 4425 Lake Drive to remain as is. It is our understanding that parts of the fence are higher than the 6 feet specified by Shorewood village ordinance, but it is visually even across the top and attractive as it currently stands.

We live at 4422 N Stowell Ave, and part of our back yard abuts the fence. Removing the fence would be disruptive for us, as it provides privacy, contributes to an enclosed space for our dog, and limits the noise coming from Lake Drive.

We would respectfully ask that you allow the current fence to stay.

Sincerely,
Lawrence and Angelika Golopol
4422 N Stowell Ave
Shorewood, WI 53211

Sara Bruckman

From: Justin Burris
Sent: Tuesday, January 12, 2021 9:25 AM
To: tchristian7475@gmail.com
Cc: David Jubelirer; Sara Bruckman
Subject: FW: Fence - 4425 N Lake Dr Shorewood

Hello Tim and Sara,

Thank you for providing your position.

We will provide this to the Board of Appeals, and it will become part of the record.

Justin Burris
Building Inspector
Village of Shorewood
3930 N. Murray Ave.
Shorewood, WI 53211
(414)847-2643
Village Website

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-----Original Message-----

From: Tim Christian [mailto:tchristian7475@gmail.com]
Sent: Sunday, January 10, 2021 9:18 AM
To: Crystal R. Kopydlowski <ckopydlowski@villageofshorewood.org>; Justin Burris <JBurris@villageofshorewood.org>
Cc: djubelirer@gmail.com
Subject: Fence - 4425 N Lake Dr Shorewood

Dear Mr. Burris and Ms. Kopydlowski:

We are adjoining neighbors of the Jubelirer's, who live at 4425 N Lake Dr in Shorewood. We live at 4428 N Prospect Ave, adjacent and west of the Jubelirer's property. We understand there is a concern with the new perimeter fence they installed in 2020. We were thankful when they installed the new fence, we greatly appreciate the appearance and privacy it provides us, and sincerely hope the fence remains as-is, with no changes whatsoever.

Thank you greatly for listening and understanding our position with the fence.

Sincerely,

Tim and Sara Christian
4428 N Prospect Ave
Shorewood, WI 53211

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Tim Christian
630-639-6380
tchristian7475@gmail.com

Sara Bruckman

From: Justin Burris
Sent: Monday, January 11, 2021 10:52 AM
To: Tom and Patrice Linn
Cc: David Jubelirer; Sara Bruckman
Subject: RE: Fence at 4425 N Lake Drive , Shorewood WI 53211

Tom and Patrice,

Thank you for providing your position.

We will provide this to the Board of Appeals, and it will become part of the record.

Justin Burris
Building Inspector
Village of Shorewood
3930 N. Murray Ave.
Shorewood, WI 53211
(414)847-2643
Village Website

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-----Original Message-----

From: Tom and Patrice Linn [mailto:tandplinn@gmail.com]
Sent: Monday, January 11, 2021 8:30 AM
To: Justin Burris <JBurris@villageofshorewood.org>; Crystal R. Kopydlowski <ckopydlowski@villageofshorewood.org>
Cc: David Jubelirer <djubelirer@gmail.com>
Subject: Fence at 4425 N Lake Drive , Shorewood WI 53211

To:
Village of Shorewood Inspectors and the Board of Appeals
From :
Thomas and Patrice Linn
4415 N Lake Drive
Shorewood, WI 53211

Dear Members of the Board of Appeals and Village Inspectors,

Regarding the fence that is located at 4425 N Lake Drive ,the property of David and Jessica Jubilier, our adjacent neighbors to the north, we have no objection to the height of their fence. We also want to reiterate that we never complained about the fence to anyone.

The top of the fence is on a level plane . Apparently the aesthetic judgement of the installer was to follow that plane as it is a standard six foot factory stockade fence.

The installation was done so the top line of the fence would follow a uniform plane around its perimeter of the yard; if it varies from the code in our opinion any variance is minor and was not willfully violating the code as the fence is a six foot standard factory premise section six foot stockade fence. We support granting a variance to the code and allowing the Jubilier's to leave the fence as is, given that the variance is not a willful violation building code but rather an aesthetic judgement of the installer to keep the top of the fence on a uniform plane . It is reasonable and rational to grant a variance to the Jubilier's fence, in our judgement , as it conforms to the spirit of the code.

If you have any further questions , Patrice can be reached at 414 801 7719 and Tom can be reached at 414 379 5466.

Sincerely,

Tom and Patrice Linn
4415 N Lake Drive
Shorewood , WI
53211

Sent from my iPhone

Sent from my iPhone