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**WATERS LANDING HOA MINUTES FROM 9/13/23 HEARING  
ON AERC APPEAL for 13401 Cloverdale Place**

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**Called to order** at 7:00 P.M. via Zoom

**Notation of Attendance:** John Pesce, President (who also serves as Chairperson of the Waters Landing Architectural and Environmental Review Committee and is believed to have voted in favor of the application at AERC level), Nic D' Ascoli, Vice President, Laura Magnuson, Treasurer, Anita Weinstein, Secretary, Mark Sagarin, At Large, Shelia Jenkins-Diaz, Executive Assistant to the General Manager

**Members of Community Present:** Courtney Egan, Steve Blum, Don Wiggins, Suzanne Wiggins, Sharon Black, Joe Thume as reported and provided by the office.

Applicant and Address: Matt Shallal, 13401 Cloverdale Place, Lakeforest

1. Board members introduced; This is the second application pending for this evening's hearing, this is second at 7:00 p.m. referred to the AERC minutes from July 10, 2023 approved by AERC on August 7, 2023
2. Evidence: The evidence which was made a part of this appeal file includes:
  - a. Application for 6-foot fence from Matt Shallal, 13401 Cloverdale Place and approval letter
  - b. AERC Minutes from July 2023 meeting—approved August 7, 2023
  - c. AERC. Appeal. Blanchard
  - d. AERC.Appeal.Faupel
  - e. AERC.Appeal.Wikman
  - f. Notice of Appeal Hearing for 13401 Cloverdale Place
  - g. AERC Guidelines
3. Appellants Comments: Read letter from Appellants into the record.
  - a. Letter May 13, 2023, from Chris and Jane Wikman—strongly opposes 6-foot fences that are prohibited in Waters Landing. Negatively impact visual aesthetics, changes the open design concept and there are other ways to provide privacy such as landscaping.
  - b. Letter from Frank Blanchard—asking for the Board to reconsider these decisions for the 6 foot privacy fences.
  - c. Third Letter from Jessica Faupel—May 16, 2023—strong opposition to 6-foot fencing granted on July 10. Want AERC to adhere to guidelines of the community; documents and guidelines given to buyers; opportunity to review guidelines and should not purchase if cannot agree to guidelines. Not understand why making exceptions to guidelines. Not about individuals but about adhering to guidelines. No 6-foot fencing exception granted where impact larger community; obligation to those who purchased with expectations that guidelines will be followed; exceptions haphazard; there is an obligation to those who expected the 6-foot guidelines prohibition to be followed.

4. Submitter's Comments (given 15 minutes to present): Matt Shallal presented the following comments to the Waters Landing Board of Directors serving as an appeal body pursuant to the Waters Landing Declaration and Architectural Guidelines:
  - a. He stated that he did not understand this rule and that he looked through AERC book and not seen anything about under 6-foot fences. He is backing to a bus stop and needs privacy on property. He commented that with a 4 foot fence people can see right over. There are about ten 10 foot fences within 5 minute walk on same street—old ones and new ones; all want is privacy on own property. Nothing in materials he saw said that say 6-foot fences are not allowed. He claims people should not have to go through this process for fences. He had to go through the process to get trees along back of his property taken down. All he wants is a fence on his property which is right next to bus stop which should give him the exception. He said he did not know about rule when bought the house. Finished at 7:11 p.m.
5. Rebuttal Comments from Appellants: None appeared
6. Final Comments from Submitter: Rebuttal from Applicants—since no comments from appellants, there were no further comments allowed.
7. Questions/Comments from Board: Board Responses:
  - a. Nic—we are all volunteers and your neighbors; our job is to adhere to the rules of the Association and maintain the neighborhood; if people don't like the rules, they should change them. Property line is different from the fence line? How far is it inside property line—1 foot within the property line on one side? Shallal responded that there is a berm behind the house, but the sidewalk is about same height as the backyard. Nic asked why not on property line and Shallal said he was told it should be one foot inside. Nic asked if at closing, you were given documents including AERC guidelines. He said the booklet he received had nothing about fences. Not received guidelines from anyone else.
  - b. Anita—asked about drawing in packet and where exactly the fence was going to be since there are no dimensions on the drawing. Shallah explained on the Neerwinder Street side, the fence is 10-15 feet inside the property line and inside trees; on Waters Landing 1 foot inside; on next door neighbor side it is a few feet although that neighbor was happy with going to the border; Shallal said he knows there is an HOA and that need approvals
  - c. Laura --We're pretty new on the board and previously the process had some failing points and no notice of the right to appeal. Six-foot fences are clearly not allowed under guidelines. Now people have filed appeals on these fences. As the board the question is do we follow rules which is a powerful argument or are there special circumstances; We try to understand where we need to improve our system. Question about the trees, I understand that you applied to take down 3 trees along the back property line and Shallal indicated he got approval before he took the trees down. He said it took about 2-3 months after filling out the application. He got four signatures which he thought was excessive for tree removal especially since he was concerned that trees were leaning and dying. Laura asked if he provided photos and if there was an arborist who could confirm that the trees were dying. Shallal said he then filed an application for fence because there is less privacy with trees down and bus stop which been there

before. With the trees down, there is no privacy. Laura asked a question about screening the fence with landscaping. Shallal did not attend the AERC meeting. Laura asked about News Ashore if he was aware of that communication tool and indicated that people might be less caught by surprise if they were up to date. And had access to News Ashore. Shallal said prior to filing the application he had spoken with neighbors, and he spoke with Shelia once the application was filed. Originally, he applied for board on board, and they suggested shadow box style and he agreed if have to. He said he was confused because there are so many privacy fences. Laura commented that everybody needs to understand rules. Shallal said he did not get a copy of appellant's letters prior to hearing them today and questions how this fence concerns them? Are they even near my house? He speculated that the only thing that makes sense is that they are trying to abide by rules that I did not know about. He feels he should get an exception because of the bus stop. Laura said that in guidelines there is a lot of reference about landscaping—planting proposals need to be made. The failure to have a complete plat which indicated how many feet from property line is problematic and nothing is clear about this application. She said the Board is trying to figure out how to be consistent. If applicant was relying on the section about screening lots on major roadways, Waters Landing Drive is Waters landing is not considered a major roadway in the existing guidelines. She asked how the 4 feet from the property line got put into your application because it is clear that Shallal did not intend to have the fence placed 4 feet within the property line. If have a patio or deck, then you can have 61 inches or 6 feet of privacy trellis just around the patio. Laura asked Shallal if the Board should require owners to take fences down if they did not get approval—he says absolutely. Laura talked about the process and noted that all appeals of 6-foot fences disapproved. If there is no appeal, the board can do nothing.

- d. Mark— He knows where Shallal lives and what you are talking about. He walks all over Waters Landing and walks by your house 4-5 times a week. We are all volunteers and neighbors and love the community. Thanks for following the correct procedure and we need to do a better job communicating the requirements. When we talk about design, we constantly mention open space and the open design look which makes us distinct and beautiful. Even with recent 6 foot fences before the appeals process and even if walk along Waters Landing Drive through single family homes—the majority of homes have split rail or no fences. Shallal responded that there are quite a few 6 foot fences. Mark says small minority. Matt says he has a short back yard—no distance from street. Understand bus stop situation.
- e. John—no questions or comments—not on property line so limitation does not apply but applies as privacy screening partition.
- f. Nic—Matt says privacy and wants space for dog to roam. Did consider Leyland cypress trees along property line? He says each application dealt with on its own. The association should have robust inspection process.
- g. Laura—wants to see the previous application to remove trees.
- h. Matt asked why appellants are not here and Laura responded that they feel intimidated.

8. Decision to be announced 6 p.m. via Zoom on September 26. Motion to reconvene--- Sept. 26 at 6:30 by Anita /Laura seconded and all approved (four). Motion to Adjourn at 7:49 p.m. made by Anita/seconded by Laura -all four approve. Adjourned until September 26 at 6 p.m. and reconvene on *by Zoom*

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**WATERS LANDING HOA MINUTES FROM 9/13/23 RECONVENED HEARING  
ON AERC APPEAL for 13401 Cloverdale Place**

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**Called to order** at 6:39 via Zoom.

**Notation of Attendance:** President John Pesce (who also serves as Chairperson of the Waters Landing Architectural and Environmental Review Committee and voted in favor of the application below), Vice President Nic D’ Ascoli, Treasurer Laura Magnuson, Secretary Anita Weinstein, At Large Representative Mark Sagarin, Shelia Jenkins-Diaz, Executive Assistant

**Members of Community Present:** Courtney Egans, Don Wiggins, Suzanne Wiggins, Sharon Black, Steven Blum, Andy Williford, Kate Snyder, Joseph Thume, Timothy Johnson, John Cancalosi, John Degroff, Karen Keizer, Steve Blum. Anna Vargas, Heidi Grunwald as reported and provided by the office.

**Applicant:** Matt Shallal, 13401 Cloverdale Place—not present at the reconvened hearing

1. John Pesce—Chairperson. No open floor.
2. Purpose of meeting: To vote on whether to affirm, reverse, modify or remand the AERC approval for the 6’ fence application at 13401 Cloverdale Place, Lakeforest
3. Questions for Johnson:
4. Board Discussion:
  - a. **President John Pesce:** None
  - b. **Vice-President Nic D’Ascoli :** Our role as the appeal body for the AERC decisions is to defend documents. If you do not like founding documents, change documents but it is not done by not enforcing them. If your purpose is privacy, it can be achieved through other ways.
  - c. **Secretary Anita Weinstein:**
    - i. Described Shallal application and described procedure before AERC and that the 6-foot fence application was approved by AERC.
    - ii. Went through testimony in the Appeal before the Board of Directors.
    - iii. Reviewed the provisions in Declaration for appeal of an AERC decision and criteria for appealing AERC decision.
    - iv. Explained that appellants can be anyone impacted by the AERC decision, as long as they appeal within 15 days.
    - v. Prior to April of this year, fences were approved with NO notice to the public either before the application was heard or after decision...so impacted or affected parties could never appeal because more than the allowable 15 days for appeal had passed once the fences were constructed and visible to the community.
    - vi. All time requirements were met for hearing and for notice.
    - vii. There was discussion by AERC about Montgomery County fence requirements for corner properties—but it was not believed to be pertinent. The requirements calls for 3 foot high fences on corner lots

- for a distance of 15 feet from the intersection on the front and side street sides.
- viii. The documents submitted did not specify exactly where the fence would be located and there were no dimensions or setback lines on the drawing. When questioned at the appeal hearing, the applicant seemed uncertain exactly where the fence would be located.
  - ix. Reviewed standard in Declaration for AERC Committee which is safety, harmony of external design, color, and location in relation to surrounding structures and topography by an Architectural and Environmental Review Committee designated by the Board of Directors.” Among the standards of review are the relation to the Open Space Concept which specifically provides that fencing can have a damaging effect on open space. Additionally, there is a focus on location and impact on neighbors specifically that fences can obstruct views.
  - x. As stated in the Guidelines: “Fundamental to Waters Landing is plan is the concept of common open space. The preservation of green space and natural features, as well as a feeling of openness, contributes significantly to Waters Landing' s difference from typical subdivisions. The purpose of this community open space is to provide each residential lot with the atmosphere of a larger open area. Fencing, if it is carelessly used or placed, encroaches upon open space, and can even destroy it.”
  - xi. Guidelines further provide: “Fence height must not be greater than is necessary for its intended use since fencing can have a significant impact on adjoining properties and community open space.” The architectural guidelines also provide that long lengths of continuous solid fencing will NOT be approved.”
  - xii. Guidelines recognize the need for six-foot fencing along four-land highways such as Crystal Rock and Father Hurley Boulevard but that does not apply in this case. In fact the major roadway section includes a provision that fences placed at least 4 feet within the property line with evergreen material on the outside of the fence is permissible assuming a planting proposal is included.--- but that is not the case here, the property is on Waters Landing Drive, not a major roadway like Father Hurley or Crystal Rock.
  - xiii. It is interesting that this application deals with a fence that is not on the property line, which seems to be a way the applicant was trying to circumvent the prohibition on 6-foot property line fences, although it was curious that the applicant didn't even know about this. The only problem with that this fence is essentially a property line fence and is a long continuous stretch of solid fencing which is not permitted. In addition, the applicant was not sure of exactly where the fence would be located, how far it was from the roadway and ...did not even seem to know of the provision allowing higher fencing along major roadways and didn't provide a landscape plan.

- xiv. The fence guidelines have not been changed, or modified, nor do the previously granted exceptions by the AERC serve to supersede the written guiding principles of Waters Landing.

**d. Treasurer Laura Magnuson:**

- i. We have a unique setting in this community... an open aspect that makes it unique and different. Consistency of fencing is important to HOAs. There are procedural problems here. Shallal did not get signature from neighbor across street—but HOA did mail a notice but simply said “to the resident.” It should be mailed to the named person and would more likely be read.
- ii. I looked at the photos of trees along Waters Landing Drive which were removed and the applicant did not have privacy from trees before they were taken down. The plat showed purported fence placements with no dimensions...but details matter here. It was approved not on property line and screened on Waters Landing side but setting the fence inside the property line may have been raised by AERC. However, it is a Distinction without a difference. A long stretch of 6 foot fencing that interferes with an open design concept should be disapproved. There are other ways to get privacy from the road. Other houses down the road have shrubbery and other greenery. This approval is deficient—what is the planting—who will tend to plants on other side of fence.
- iii. She stated that applicants can have short stretches of higher fencing along a patio or deck.
- iv. Laura asks staff and AERC to focus in on details...here there were no measurements, no idea of placements or what type of screening.

**e. At-Large Mark Sagarin:**

- i. One thing specific to this address. If go along WL Drive—the overwhelming majority have split rail fences. Still look and feel –open concept at this time

**f. Board Questions and Comment----** None

**5. Voting: John Pesce is not voting as chair**

**a. Remand: Remand**

- i. John Pesce –not voting
- ii. Nic D’Ascoli -- no
- iii. Anita Weinstein no
- iv. Laura Magnuson no
- v. Mark Sagarin no

**b. Modify—Modification**

- i. John Pesce – not voting
- ii. Nic D’Ascoli – no
- iii. Anita Weinstein -no
- iv. Laura Magnuson - no
- v. Mark Sagarin – no

**Affirm/Reverse—There are 4 votes in favor of reversal of AERC decision.**

- i. John Pesce – not voting
- ii. Nic D’Ascoli – reverse
- iii. Anita Weinstein - reverse
- iv. Laura Magnuson - reverse
- v. Mark Sagarin – reverse

John reports out vote: There are 4 votes in favor of reversal of the AERC decision to approve the 6-foot fence. Notice will be given to the applicant, and they will be advised on their right to resubmit or appeal to CCOC.

**Motion to Adjourn:** At 6:58 p.m. Nic D’Ascoli made a motion to adjourn/seconded by Magnuson-- **all in favor**