

**VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
WEDNESDAY, JUNE 23, 2021**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, June 23, 2021 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Kurt Ostoic, Chairman  
Thomas Dunst  
Nancy Filsinger  
Mark Grady  
Scott Ratke

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, Village ordinances and posted on the official bulletin boards.

**Approval of Minutes – May 20, 2021 Meeting**

*On the motion by Member Thomas Dunst, seconded by Member Mark Grady, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the May 20, 2021 meeting, as presented.*

**Case 2021-05: 7736 N Beach Drive**

The applicant is requesting a special exception from the fence ordinance to erect five-foot high wrought iron fencing along the side yards extending forward of the front line of the home and to install a six-foot high decorative iron driveway gate with supporting pillars approximately six and one-half feet high. The special exception request is made pursuant to 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Village 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.

Building Inspector Michael Rakow gave background on Case 2021-05, a request of a special exception from the fence ordinance to erect five-foot high wrought iron fencing along the side yards extending forward of the front line of the home and also a request for a special exception to install a six-foot high decorative iron driveway gate with supporting pillars approximately six and one-half feet high. Building Inspector Michael Rakow noted according to the Village Code, any time a fence is forward of the frontline of the home or any time a request for a gate comes to the Village for a permit, the request must come before the Board of Appeals for approval.

There were no questions for Building Inspector Michael Rakow.

**Appellant Tan Lo, 7736 North Beach Drive, Fox Point**

Appellant Tan Lo stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

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vonBriesen and Roper, S.C., Attorney Andrea Roschke and Representative for Appellant Tan Lo's

vonBriesen and Roper, S.C., Attorney Andrea Roschke was present but did not give testimony.

Village Attorney Eric Larson stated Attorney Roschke could decide how she wants to present her case. He noted typically the appellant will give a statement, but if you would prefer to ask questions, she could certainly do that.

vonBriesen and Roper, S.C., Attorney Andrea Roschke stated if it is ok with everyone because there was a letter submitted with the special points made, she was just going to ask Mr. Lo to elaborate on the points. This would include all the background in the letter. She further noted that, as the building inspector noted, there are two elements in the case. One element is the side yard lot lines between neighbors. The second element is the gate across the driveway and the supporting pillars. In this application there is no other fencing parallel to the street line. The letter does explain their position. She would like it if Mr. Lo would be able to explain his history in Fox Point in 30 seconds.

Appellant Tan Lo gave background on his history in the Village of Fox Point, for his ten years at 8800 Beach Drive and then his history beginning in 2015 at 7736 Beach Drive. He and his family were given an opportunity to purchase 7736 Beach Drive. The home was still under an insurance claim lawsuit in 2015. The only way he was permitted to purchase this property was if he agreed to raze the home and begin a new build. Following his purchase in 2015, he and his family began taking out permits to rebuild.

Prior to he and his family's purchase, the home sat vacant from 2009 through 2015. The home was an issue and an eyesore for the whole street at the time. Kids were hanging out on the property, climbing in and out of it, using it for prom pictures, beer cans found there often on the property, and pretty much anyone and everyone was using the property as they wanted. Trespassing was an immediate issue.

***[Appellant Mr. Tan Lo submitted 7 pages of photos, with an 8<sup>th</sup> page having a series of photos on the page]***

Appellant Tan Lo stated he collects cars and he also built a 7-car garage to house his cars inside, due to concerns of safety and theft on the property. For insurance purposes, a fence or gate would really help on this property.

vonBriesen and Roper, S.C., Attorney Andrea Roschke asked Appellant Mr. Tan Lo to explain further his family circumstances.

Appellant Tan Lo then explained further his family circumstances. He stated he has two young active boys, 11 years and 8 years, who play baseball and hockey. He stated Beach Drive is like a tourist attraction. Many people drive through and enjoy the view.

vonBriesen and Roper, S.C., Attorney Andrea Roschke asked Mr. Tan Lo to explain his dog further.

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Appellant Tan Lo stated he also has an American bully. Neighbors are intimidated by the dog's looks and size. His bark is also scary to those who do not know him. Many people have left and reported Appellant Tan Lo's dog to the Police Department. Police officers are constantly coming to the house to check on the dog because of reports from people stating there is a dangerous dog. Once the officers meet the dog, they know the Lo's dog is fine. The fence and gate would probably help the situation quite a bit.

Chairman Kurt Ostoic asked if people have driven up since the home was finished.

Appellant Tan Lo noted it happens quite often. Sometimes they pull in and back out, sometimes they pull in, up the driveway, and turn around. The neighbors have actually called Mr. Lo late at night to let the Lo's know there is an odd car in their driveway.

Chairman Kurt Ostoic inquired about the wrought iron fence Mr. Lo is requesting for the side yards and extending past the front lines of the home. He asked if the fence would be going all the way around the front of the home also or if it is just along the sides of the home.

Appellant Mr. Lo stated the fence would just be along the sides of the property.

vonBriesen and Roper, S.C., Attorney Andrea Roschke stated on that topic, there are two legal things she wanted to touch on which does not qualify as giving testimony. She stated if the purpose of the ordinance is to have somewhat of an open feel, a compromise to not having everything fenced in along the road, the need would be to at least have the front gate across the driveway, which will somewhat inhibit people from coming onto the property and the children from riding a bicycle out into the street. The owners would then do something with landscaping. In that sense we feel that the application is respectful to the code. The final point is the application submission also included some photos of properties on his street of other driveway gates to show that the neighborhood has some driveway gates and it doesn't seem to be problematic. Those photos also included fences, not just gates. No neighbors seemed to have concerns about this proposal. They do not feel it is a negative impact on the neighborhood.

Member Mark Grady commented he wanted to follow the comments up. Member Grady stated he does see them as two separate questions – the gate versus the side fences. He asked what the plan is with respect to the front along the roadway, assuming there is no fence there. Will there be landscaping or nothing?

Appellant Mr. Lo stated there would be trees and plantings.

Member Mark Grady inquired how does Mr. Lo feel that the side fences help with security whether it is the home or security of your sons or anything else. It seems like side yard fences do not add much to the security. He stated he is having a hard time trying to figure out what the security reason is for the side yard fences.

Appellant Mr. Lo stated the south side property just had a neighbor who purchased it two years ago. There will soon be a construction site coming up at that property. The home will be razed. Through the construction period at least, there will be construction workers and people they don't know coming and going. The newsletter stated work trucks are being broken into during the construction times due

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to workers being in the house and robberies taking place while they are inside working. He stated he did not really want to be part of that operation with the side yards being wide open. He stated that would be protection for his family as they are unsure how long the construction will last – 1 year or 2 years.

Member Mark Grady inquired if Appellant Tan Lo's home is still under construction or what the status is.

Appellant Tan Lo stated they are now doing the final grading.

Chairman Kurt Ostoic stated his issue is that without a complete enclosure, kids, dogs, neighbors, passersby, or anyone could still access the property. He stated he is very concerned that they are putting up fences that aren't really going to keep out things that you're looking to keep out.

Appellant Tan Lo stated their intent was to enclose the whole yard before, but it wasn't successful. Therefore, they have to find some kind of a compromise and still try to protect the home. The original plan was the ideal plan for he and his family, but it was denied.

Chairman Kurt Ostoic stated he recalled there was a two-foot fence which doesn't keep anyone out of the property. He explained that the Board has to follow the codes and statutes for what we are trying to accomplish for the Village of Fox Point. Sometimes it doesn't always work for individuals. So, he stated that is why we have to understand exactly how this is going to help protect your property.

Appellant Tan Lo inquired if a five-foot fence in the front of your property be okay with the Board.

Chairman Kurt Ostoic clarified he did not say that, he is just saying you have to convince us that the security is absolutely necessary.

vonBriesen and Roper, S.C., Attorney Andrea Roschke corrected, saying "reasonably necessary." She stated also not a factual statement but common sense tells me if some nefarious person is coming to your property, it is possible they will run across your landscaping and your arborvitae, but it is also more possible that they would drive up with a car. Having that driveway blocked is getting a lot of protection with less fencing. While not 100 percent, you can still do things with landscaping.

Member Mark Grady stated he wanted to follow up on the driveway gate a little bit. He asked Appellant Mr. Lo if he felt the driveway gate, with or without the side yard fence, would be the primary thing to prevent people from threatening you and your family or do you think something else is more important than the drive way gate?

Appellant Mr. Lo stated yes, to him and his family, having the whole property fenced would be the most effective, but if a compromise is necessary, having the gate across the driveway is better than just leaving the driveway open. The gate would definitely help.

Chairman Kurt Ostoic pointed out that the Board, Appellant and Building Inspector all received copies of the two letters, one letter dated June 13, 2021 and one letter dated June 16, 2021 from the Village of Fox Point Police Department for review.

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*On motion of Member Mark Grady, seconded by Chairman Kurt Ostoic, and carried unanimously, the Board closed the testimony at 5:25 p.m.*

Village Attorney Eric Larson wanted to clarify what is currently in the Board's record. The letters just referenced from Police Chief Chris Freedy dated June 13, 2017 and June 16, 2021. There is also a letter dated April 27, 2021 from Alan Marcuvitz, which includes the Board of Appeals application. The application itself has attachments with photographs of the site plan. Today the Board received photos: 7 photos with an 8<sup>th</sup> page which provides 16 small photos. That is the complete record.

Village Attorney Eric Larson walked the Board through the standard that applies to Case 2021-05 to refresh their recollection. The general provision Section 745-7(B)(3)(h), regarding location and height restrictions and Section 745-7(B)(3)(h)[2], provides that 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) below. Every special exception granted by the Board of Appeals for a driveway gate shall be conditioned upon the applicant filing with the Village Clerk/Treasurer the written approval of the Village Police Chief in consultation with the Fire Chief for the specific driveway gate and gate location that is proposed; and if such approval is denied, the special exception is thereby denied, and Section 745-7(B)(3)(j) provides 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, in addition to such other specific findings as may be required by other subsections of this section. These are the relevant sections of the Code. Those are the same sections that were cited by Appellant Tan Lo's attorney.

Village Attorney Eric Larson did comment on something that came up in the testimony. It is not that the fence is absolutely necessary to protect the safety of people residing on the property; the standard is **reasonably** necessary to protect the safety of people residing on the property.

Member Mark Grady opened the discussion with the Board. From his earlier comments, he sees these two requests differently. The side yard fence with this presentation being so different from the presentation we saw earlier. Frankly, it is not any different from any other normal fence request that the Board receives. The only time the Board has approved a special exception, since he has been here, was when someone was located on a very busy property, such as, on Lake Drive, then the Board felt it was necessary. Otherwise, the rationale included in Mr. Marcuvitz's letter related to children in the yard and dogs in the yard has not been accepted by the Board in the past. I don't see any reason now for this property being significantly different. It is a more expensive property and a more expensive home, but other than that, he doesn't see it any differently than most residential properties in the village. He is not convinced that they have shown that the side yard fence is reasonably necessary to distinguish it from any other property regarding safety. He does however feel and is convinced differently with respect to the driveway gate. What convinced him that the gate is reasonably necessary to protect the safety of the people on the property is the car collection and the nature of the property. The enticement of potential theft which can lead to potential violence on the property does create a need for the driveway gate. It is consistent with other driveway gates. Not

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every house down there has a driveway gate, but there are other homes that do have driveway gates. The access up and down the driveway is clearly the access that could be used by anyone committing substantial theft to the property. That is the most likely way to commit theft. Therefore, Member Mark Grady would be inclined to grant the special exception for the six-foot high decorative iron driveway gate with supporting pillars and deny the special exception for the side yard.

Member Thomas Dunst stated that he was leaning the very same way as Member Mark Grady was regarding the special exceptions. He stated the gate does add some added protection to the property which is reasonably necessary.

Member Nancy Filsinger noted due to concerns with the construction at the neighboring property, there is something in the Village Code, Section 745-7(B)(c) regarding temporary fencing during construction.

Village Attorney Eric Larson commented this has not come up in the past, but there is a Code Section regarding temporary fences. He noted it does state that the temporary fence may be put in place for a period not to exceed 120 days, unless extended by the Village Manager. This is for the purpose of safety, protection from the elements or protection from deer. Temporary construction fences are allowed at the discretion of the Village Building Inspector. He noted he does not see where temporary fences are allowed to be located; he is not sure offhand if the location restrictions are different for a temporary fence opposed to a permanent fence. He stated it is ultimately up to the Village Manager and the Village Building Inspector to decide. It is not up to the Board to decide today, but it may be an option for the property owners to explore.

Village Attorney Eric Larson stated his recommendation is that the motion include the delegation to staff to put the decision whatever it may be into a formal form and brought back at the next meeting for the final adoption of the findings. The nature of this matter warrants a formal decision.

*Member Mark Grady moved to deny the request for the special exception for the side yard fencing and grant the special exception request for the driveway gate and direct staff to bring back formalized findings of fact, conclusions of law and decision for the Board's review and approval, seconded by Thomas Dunst.*

<u>Nancy Filsinger</u>	<u>Aye</u>
<u>Thomas Dunst</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Kurt Ostoic</u>	<u>Aye</u>

*Motion carried unanimously by roll call vote (5-0).*

**Adjourn**

*On the motion by Member Mark Grady, seconded by Member Nancy Filsinger, and carried the Board adjourned at 5:33 p.m.*

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Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kelly A. Meyer". The signature is written in a cursive style with large, flowing loops.

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