

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
JANUARY 16, 2019

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, January 16, 2019 at 5:00 p.m. Chair Don Zien noted a quorum is present. Roll call was taken. Those present included:

Don Zien, Chair
Nancy Filsinger
Kurt Ostoic
Jeff Davis
Bob Cory

Also, staff members 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 31, 2018 Meeting

On the motion by Jeff Davis, seconded by Nancy Filsinger, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the October 31, 2018 meeting, as presented.

Case 2019-01 803 E Calumet Road

Applicant/Appellant Ruth Lebed, 7536 N Boyd Way was present for this agenda item.

The applicant Ms. Ruth Lebed, a neighbor to the subject property residing at 7536 N. Boyd Way, requested and shall have an opportunity to be heard and to show cause why the applicant has standing to bring this case and why the application is timely; and, subject to the foregoing, why the Village Building Inspector erred in issuing a fence permit; and if the Board finds it has jurisdiction and that the Village Building Inspector erred, the Board may consider whether a special exception should be granted per Section 745-7 B.(3)(h)[1] of the Village of Fox Point Zoning Code. This appeal is brought pursuant to Section 745-36 B. of the Village of Fox Point Zoning Code and Wisconsin Statutes Section 62.23(7)(e)7.b.

Village Attorney Eric Larson gave a brief synopsis of the process and background on the questions related to case 2019-01. We may hear from the applicant and property owner. Village Attorney Eric Larson distributed the Rules and Procedures for Board of Appeals, in addition to Case Law.

Applicant Ruth Lebed, 7536 N Boyd Way

The applicant, Ms. Ruth Lebed stated her name and address and was sworn in to provide testimony by the Village Clerk Treasurer.

Applicant/Appellant Ms. Ruth Lebed stated she has been aggrieved due to improper referral to the Board of Appeals. She looks at a chain link fence daily in her yard every day. The potential

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
JANUARY 16, 2019

devaluation to her property should be considered. The photos following the installment of the fence are decidedly different and unappealing.

Property Owner, Phil Musickant 803 E. Calumet Road

The applicant, Mr. Phil Musickant stated his name and address and was sworn in to provide testimony by the Village Clerk Treasurer.

On the Grievance, Mr. Phil Musickant stated that he is the owner of the property in question at 803. E. Calumet Road. Under advisement from his legal counsel. He stated there is nothing in the code that states he cannot put up a fence. The fence that is installed meets every aspect of the village code. They only enclosed the rear yard with the fence. Mr. Phil Musickant stated they have property rights as the owners to put a fence up in the rear yard. He stated he has numerous photos of fences put up on corner lots in the rear yard; therefore if those other property fences are permitted in the village of Fox Point, then their property fence should be permitted on his property as well. If fences were an issue of property value, the village code should have been changed years ago due to all fences in the area. He noted again that under the village code he has been compliant. Under advisement from the Building Inspector, as the property owners, they made sure that the fence was off the property line. Mr. Musickant stated that when he went to the neighbor, Ms. Lebed, showing her where it would go, he was told that he should run the fence in front of the shrubs, cutting off a large portion of his yard footage. He has a legal right to enclose the yard. Advice was given to Mr. Musickant by the professional view of the Village Building Inspector.

Ms. Lebed stated in regard to the grievance, the Board of Appeals special exception should be heard without charge. A corner lot is different from a regular lot and this should have been referred to the Board of Appeals.

Village Attorney Eric Larson noted the decision should be made whether Applicant/Appellant Ms. Ruth Lebed has standing with respect to the grievance. The neighbor's complaint is that the property owner of 803 E. Calumet Road should have been submitted to Board of Appeals.

The Board of Appeals discussed whether there was standing with this grievance. Board of Appeals member Jeff Davis noted the interpretation of chapter 68 in the village code. The case says that the unsuccessful adjoining landowners can be aggrieved and can have standing in an issue.

By unanimous consent, Board of Appeals agreed that Ms. Lebed has standing.

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.

Village Building Inspector Michael Rakow gave background on Case 2019-01 on the neighbor's desire to install a chain link fence.

Building Inspector Michael Rakow referenced, 745-7B.(3)(h)[1] pertains to going to the Board of Appeals because the referenced property is a corner lot. 745-7B.(3)(h)[5], states for the purpose of this section the side yard of any corner lot that abuts a road shall be treated as a front yard. He noted, this property is on a corner lot. The village code as continued, states however, if the building footprint

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
JANUARY 16, 2019

is anything other than square or rectangular in configuration the provisions of village code subsection 745-B.(3)(h)[1], generally shall control over the provisions of this subsection. Mr. Rakow noted, therefore, since this fence is not in the front yard, in his interpretation, that is why he chose 745-7B.(3)(h), subsection [5] for this because there is really no need to go to the Board of Appeals because this fence was not proposed to project forward of the front line of the principal building. That is the reason this was not sent to the Board of Appeals.

Village Building Inspector Michael Rakow confirmed the fence was not a replacement fence on the property; it was a new fence.

Board of Appeals member Jeff Davis inquired if 745-B.(3)(h), subsection [1] would apply only if there was a front yard fence and asked for more clarification on the interpretation of the code.

Building Inspector Michael Rakow stated if it is a corner lot, subsection five is used. If it is a corner lot, whichever side has street frontage is considered the front yard. If a fence is in the front yard, it automatically should go to the Board of Appeals no matter what. If the fence was to be installed on Boyd or Calumet roads, then this matter would have had to go to Board of Appeals. Since the fence is not technically in the front yard, according to 745-B.(3)(h), subsection [5], this was the code to use. Therefore, it was not necessary for the matter to be reviewed by Board of Appeals.

Applicant Ms. Ruth Lebed expressed her concerns on the issue in regard to the Village Building Inspector's zoning code interpretation in this matter.

Building Inspector Michael Rakow did confirm that the property fencing does meet all the zoning code requirements.

Village Attorney Eric Larson stated the question is whether the Building Inspector erred in issuing the permit instead of referring the fence installation to the Board of Appeals.

Property Owner Mr. Phil Musickant stated he did go through the Village of Fox Point Building Inspector, who showed him the relevant code and was told several times by the village's professional staff that this fence was to code in every area.

Property Owner Mr. Phil Musickant passed out photos of the fencing to Board of Appeals members.

Village Attorney Eric Larson reiterated the question is whether the Building Inspector erred on referring this to the Board of Appeals. He noted that code 745-7B.(3)(h), subsection [1] and 745-7B.(3)(h), subsection [5] should be reviewed, reconciled and a decision made if this is ambiguous. The general rules of zoning is that it has to be interpreted in favor of free and unrestricted use of property. Any ambiguity is interpreted against the restriction. Therefore, if it is ambiguous, the property owner is not restricted.

Property Owner Mr. Phil Musickant reminded the Board of Appeals that the professional advice of the Village Building Inspector was followed. He stated, his attorney has made it clear there is no language that prohibits them from erecting a fence or enclosing their rear yard. Mr. Phil Musickant gave further clarification.

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
JANUARY 16, 2019

Chairman Don Zien closed the testimony at 6:03 p.m. for the Board of Appeals to make a decision.

On the motion by Kurt Ostoic, seconded by Nancy Filsinger, and carried by roll call vote, the Board of Appeals finds that the Village Building Inspector did not err in issuing the fence permit and furthermore, had the Building Inspector referred this to the Board of Appeals, the Board would not have required an alternative location to this.

Adjourn

On the motion by Kurt Ostoic, seconded by Nancy Filsinger and carried unanimously, the Board adjourned at 6:10 p.m.

Respectfully Submitted,

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

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer