

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, FEBRUARY 18, 2021

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Thursday, February 18, 2021 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Kurt Ostoic, Chairman
Nancy Filsinger
Thomas Dunst
Catie Anderson
Mark Grady

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, and Village ordinances and posted on the official bulletin boards.

Approval of Minutes – December 3, 2020 Meeting

On the motion by Member Mark Grady, seconded by Member Nancy Filsinger, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the December 3, 2020 meeting, as amended and presented.

Case 2021-01: 522 W Bergen Drive

The applicant is requesting a variance pertaining to Section 745-15 of the Fox Point Village Code in the A-3 Residence District, concerning side and rear yard requirements. A rear yard of not less than 20 feet and a side yard of not less than 12 feet shall be provided for every building in the A-3 Residence District. The applicant is proposing to install a new 24-foot by 24-foot garage three feet from the rear (north) and side yard (west) of the property.

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.

Property Owner/Appellant/Applicant Michael Roginskiy

Property Owner/Appellant/Applicant, Michael Roginskiy stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Building Inspector Michael Rakow gave background, stating the applicant wants to construct an accessory structure - garage and is requesting the garage be three feet from the rear yard (north) and three feet from the side yard (west). The side setback cannot be less than twelve feet and the rear setback cannot be less than twenty feet.

Member Tom Dunst inquired according to 745-24, setback exceptions, if the property is adjacent to I-43, the side yard or rear yard setback, may be located not closer to the right of way line of I-43 than three feet and landscaping adequate to shield such accessory building or structure from said right of way is planted and maintained. Because according to the code, 3 feet is allowed. Then the Board only needs to consider the north side of the request.

Building Inspector Michael Rakow and the Board agreed and noted that the north side or rear yard would still need to be considered.

Member Mark Grady had two questions for Applicant Mr. Roginskiy. The diagram in the packet that was given to the Board the northeast corner of the lot has a proposed addition and that is not what the Board is reviewing and clarified the Board is reviewing the square in the northwest corner of the lot and not the rendering of the proposed addition in the northeast corner.

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Building Inspector Michael Rakow stated that is correct.

Member Mark Grady clarified that Member Thomas Dunst stated it is acceptable to be within three feet of the I-43 right-of-way, assuming the other provisions would be applied, such as the landscaping.

Building Inspector Michael Rakow confirmed that is correct.

Member Mark Grady inquired what the property to the north of the requested variance.

Applicant Mr. Roginskiy stated that is the I-43 property. Applicant Mr. Roginskiy also stated that used to be 6th street, but unfortunately, up until the north border of his lot is just a vacant lot, which may be owned by the state.

Village Attorney Eric Larson stated if we are finished with questions for the Building Inspector Michael Rakow, the Board should move on to the Applicant Mr. Roginskiy. Village Attorney Eric Larson addressed Chairman Kurt Ostoic stating he wanted to be sure we had a good record here and asked that the applicant be given time for testimony regarding his request for a variance.

Applicant Mr. Roginskiy gave testimony in regard to the request for a Variance at 522 West Bergen Drive.

Applicant Mr. Roginskiy as proposed before, he would like to have the setbacks minimized to three feet, as there is no harm and benefit to anyone except that it would be harmful to my lot. Otherwise, the garage structure will be sitting 20 feet off the property lines and it will be in the middle of his driveway and it will be useless. He would be wasting 20 feet of space and it will be nothing but a collection of weeds.

Chairman Kurt Ostoic asked if he looked at putting the garage anywhere else on the property. Applicant Mr. Roginskiy stated he had, but this is the most economical use of the space. This is not just a residential home; it is an assisted living residence. If there are additional vehicles to transport the clients, this would be the best use of space. Otherwise, the vehicles will be too far away from the house. He stated he has permission from WE Energies at that location. WE Energies needs to have access to their utilities and they are fine with the garage in that location.

Member Mark Grady stated to Applicant Mr. Roginskiy that the WE Energies letter says the structure has to be four feet away from the utility pole. Mr. Roginskiy said it is acceptable to have a five-foot set-back, but not 20 feet. Applicant Mr. Roginskiy reiterated he is asking for three feet.

Member Mark Grady asked what the building just to the north is and Applicant Mr. Roginskiy stated that it is a residential single-family home. He further stated, there is a fence in the back yard where the utility pole is located.

Applicant Mr. Roginskiy provided the Board with a two-page document with a GIS map on each page, which will be marked as Exhibit A, page one and page two.

Member Mark Grady inquired if the neighbors to the north are aware of the request.

Applicant Mr. Roginskiy stated they were aware of the request until they sold the home. He also commented the new owners have been in the residence approximately one month since they closed on the property.

Member Mark Grady inquired if the neighbors had moved in yet.

Applicant Mr. Roginskiy stated he had no idea and he has no idea if they are aware of the variance request.

Member Nancy Filsinger inquired if the notices were sent out; Village Clerk Kelly Meyer responded that

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everyone within a 500-foot buffer of the home was mailed a notice on January 15, 2021.

Applicant Mr. Roginskiy commented he believed the new owner closed in mid-December on the home.

North 6th street ownership was discussed by the Board. The direct northern portion of the North 6th street parcel is believed to be owned by the State according Applicant Mr. Roginskiy. Applicant Mr. Roginskiy stated the Southern portion of North 6th street ownership is included in his legal description. He believes years ago it was included, as he never purchased the southern portion of North 6th street, where he has requested the variance to build the garage.

Member Mark Grady asked for clarification on ownership on the North end of North 6th Street on whether the northern property owners, Lot 1 and Lot 2 own the North 6th Street.

Applicant Mr. Roginskiy stated he is certain Lot 1 and Lot 2 do not own the Northern portion of North 6th Street. He also stated the GIS map shows confirms his knowledge of ownership. Applicant Mr. Roginskiy stated if you log onto GIS, the Board will see the boundaries of Lot 1 and Lot two do not have ownership of the northern portion of North 6th Street property, but the 522 W. Bergen Drive property does show the inclusion of the southern portion of North 6th Street, as is displayed in Exhibit A.

Member Mark Grady inquired if Building Inspector Michael Rakow know of the ownership of the North 6th Street property. Building Inspector Michael Rakow commented he believes Applicant Mr. Roginskiy is correct regarding the ownership by the State or the Department of Transportation. Building Inspector Michael Rakow stated it is not Village owned.

Member Mark Grady stated this property encroaches on the property to the north. If the Board is to believe Applicant Mr. Roginskiy and Building Inspector Michael Rakow, the property encroaches on State land, not on the neighbor's property.

Village Attorney Eric Larson stated he could not confirm the ownership of the northern portion of North 6th Street. He further stated, North 6th Street sounds like a Village Street, but maybe when it was vacated ownership changed. That is only a hypothesis, not a confirmation. Village Attorney Eric Larson confirmed when using GIS and clicking on the Northern portion of North 6th Street, there is no ownership information found at all. He further stated the owner may be the Department of Transportation.

Village Attorney Eric Larson stated the Board can decide if this is relevant to the variance request. For the purposes of this ordinance, it would be relevant if the parcel was I-43 and the parcel is not showing up as I-43 and it is not. This parcel is clearly not part of I-43.

Member Mark Grady asked Village Attorney Eric Larson to direct the Board to the setback standards that should be applied to this request.

Village Attorney Eric Larson referred to the *Wisc. State Statute Section 59.694 (7) (c) (3): A property owner bears the burden of proving "unnecessary hardship," as that term is used in this paragraph, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with the zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.*

Member Thomas Dunst asked if that was just one of the four standards that need to be applied for Area Variances. He asked if the Board should include the Unique Property Feature, Protection of the Public Interest and Additional

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Considerations standards. Village Attorney Eric Larson confirmed the other standards should be applied as well.

Member Mark Grady addressed Applicant Mr. Roginskiy, stating he is reviewing Applicant Mr. Roginskiy's diagram and the Board has determined it is okay to be within 3 feet of the I-43 land on the west. He asked why Applicant Mr. Roginskiy needs to be that close if he honored the 12-foot set-back to the north, Applicant Mr. Roginskiy still would have a driveway in front of the garage. If this rendering is to scale, the driveway would still be 20 feet; therefore, he is asking why Applicant Mr. Roginskiy cannot just move within the permitted set-backs.

Applicant Mr. Roginskiy stated there is a ramp or pathway from the other portion of the house which is not on the GIS map. If the garage is closer, it will block that pathway. Applicant Mr. Roginskiy referred to the survey which was placed in the Board of Appeals packet. He drew the pathway and ADA ramp on the two-sided Plat of Survey rendering, which was marked as Exhibit B and circulated to the Board members.

Applicant Mr. Roginskiy stated the exit with pathway and ADA ramp is an emergency exit for the facility.

Chairman Kurt Ostoic asked to reference the electronic image of google maps to assist in clarifying the location of the proposed garage and the pathway and ADA ramp. Village Attorney Eric Larson stated the Board should not rely on google maps because the Board is unclear of the age of the google map.

Village Attorney Eric Larson inquired if the garage was placed where it would be permitted would it infringe on the ramp. The applicant stated that it would infringe on the path.

Member Catie Anderson inquired if the ramp could be placed on an angle and relocated. Applicant Mr. Roginskiy stated it could but this ramp was approved by the State. He stated it would be difficult to re-route the pathway and ADA ramp. He continued stating everything inside and outside the facility was approved by the State.

Member Mark Grady again inquired what prevents Applicant Mr. Roginskiy from installing the garage at 20 feet, as permitted. He stated that is feasible; the driveway would be at an angle running to the garage.

Village Attorney Eric Larson asked to clarify the "ramp" Applicant Mr. Roginskiy referenced. Applicant Mr. Roginskiy confirmed the "ramp" was an ADA ramp. Village Attorney Eric Larson inquired if the garage were built in a compliant location, would Applicant Mr. Roginskiy feel it would interfere with the ADA ramp.

Applicant Mr. Roginskiy stated the 16-foot ADA ramp is going from the deck to the west.

Village Attorney Eric Larson stated if the garage were in a compliant location, it would not actually be encroaching on the ramp. He asked Applicant Mr. Roginskiy if this was correct.

Applicant Mr. Roginskiy stated the ramp is too far out. It would encroach into a pathway.

Building Inspector Michael Rakow stated that if this variance would be approved, Public Works Director and Village Engineer Scott Brandmeier requested, if possible, to make the approval contingent upon grading, erosion, and filter control. There are currently some grading issues.

Member Mark Grady inquired of Applicant Mr. Roginskiy, reiterating if this garage was built compliant with the set-backs and without a variance, instead of running the concrete direct west to the drive, the concrete could be run from the end of the ramp to the southeast on an angle to the driveway. He asked what would prevent Applicant Mr. Roginskiy from constructing it in this manner.

Applicant Mr. Roginskiy stated the state would have to approve it and under a very smart Professional Engineer, the Engineer wanted to know every elevation and angle for this project. He approved what was there currently. It would take another five months to review and recreate everything with the state.

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Chairman Kurt Ostoic asked for further questions; no further questions were asked.

By unanimous consent and without objection, Chairman Kurt Ostoic closed testimony at 5:36 p.m.

Applicant Mr. Roginskiy inquired if he could comment at this time.

Village Attorney Eric Larson explained testimony is now closed and the Board is deliberating.

The Board discussed the uniqueness of the property and the standards regarding the request for a variance at 522 W. Bergen Court.

Member Mark Grady reviewed the standards with the Board on several aspects.

Village Attorney Eric Larson stated it does not comply in a technical sense because this refers to a special exception and the Board is here for a variance. He stated the Board can decide if it is worth talking about and he read the following: The Board of Appeals shall have the power and authority to grant a special exception from the dimensional requirements of this chapter where the Board of Appeals finds it necessary, based up the facts of an individual case, to provide a reasonable accommodation to a disabled person, subject to the following. He stated he would leave it to the Board to decide if they heard this based on the ADA ramp and other testimony.

Village Attorney Eric Larson read Section of Wis State Stats 62.23, (7)(b), To authorize upon appeal, the specific cases of such variance in terms of the ordinance will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or **unnecessary hardship**, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. (7)(d), And the property owner bears the burden of proving “unnecessary hardship” as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner’s property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance . . . and in all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

On the motion of Member Catie Anderson, seconded by Member Thomas Dunst and carried unanimously by roll call vote (5-0), the Board of Appeals denies this variance based on findings there is no hardship to overrule or trump the bias against granted variances that exist.

Case 2021-02: 7539 N Bell Rd

The applicant is requesting a special exception from the fence ordinance to erect a replacement 4-foot-high, open design, horizontal plank, cedar fence on a corner lot. The special exception request is made pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2], 745-7(B)(3)(h)[5], 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 to provide testimony by the Village Clerk Treasurer.

Property Owner/Appellant/Applicant, Lam Le

Property Owner/Appellant/Applicant, Lam Le stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Building Inspector Michael Rakow gave background, stating as visible on the survey, the Applicant’s property is on a corner property. Pursuant to the Village Code, if a property is on a corner lot, the Board of Appeals must determine the front and side of the home and may make a special exception based on the findings from the fence ordinance to erect a

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pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2], 745-7(B)(3)(h)[5], and 745-7(B)(3)(j) of the Fox Point Code.

Chairman Kurt Ostoic stated the address is 7539 North Bell Road and inquired of Building Inspector Michael Rakow if that would be the determining confirming front of the home.

Building Inspector Michael Rakow confirmed that would be his determination, but this is the Board's decision.

Chairman Kurt Ostoic stated his understanding is this is a replacement fence. He stated the fence is already there.

Building Inspector Michael Rakow corrected that at one time there was a fence there, but there is no longer a fence at that location.

Catie Anderson inquired how long ago the fence was removed.

Building Inspector Michael Rakow stated he did not know when the fence was removed.

Member Mark Grady asked Building Inspector Michael Rakow if this was not on a corner lot, the fence would not otherwise require a special exception. He further commented, if this were the case, the fence being requested is not forward of the frontline of the home. The fence would be considered in the side yard and back yard of the home and if the Board assumes the front of the home is on North Bell Road. This fence would have been approved by the Building Inspector.

Building Inspector Michael Rakow stated, since this is on a corner lot, Board of Appeals will make the decision.

Member Mark Grady stated in terms of height, the fence is in compliance with the ordinance.

Building Inspector Michael Rakow stated that is correct.

Mr. Le gave testimony regarding his request for a special exception to erect a fence on the property, as described above at the location of 7539 North Bell Road.

Applicant Mr. Le stated he would like to replace the fence. Applicant Mr. Le commented he is concerned about safety with family children, friends' children, and pets that run on the property. North Bell Road is a very busy road. Applicant Mr. Le is requesting the enclosure of the court yard between the main house and the garage.

Chairman Kurt Ostoic inquired how long ago the prior fence was removed.

Applicant Mr. Le stated it was removed early last year by the prior owners during a remodel. Applicant Mr. Le commented the front door is on North Bell Road and the fence would be placed in the same location as .

Without objection and by unanimous consent, Chairman Kurt Ostoic closed testimony at 5:58 p.m.

On the motion of Member Mark Grady, seconded by Member Catie Anderson, and carried unanimously by roll call vote (5-0), the Board of Appeals finds that the front side of the home is on Bell Road, the side yard is on Calumet Road.

On the motion of Member Mark Grady, seconded by Member Catie Anderson, and carried unanimously by roll call vote (5-0), the Board finds 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 and therefore, grants the special exception from the fence ordinance for 7539 North Bell Road.

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On the motion by Member Mark Grady, seconded by Member Nancy Filsinger, to re-open Case 2021-01.

Village Attorney Eric Larson stated if this is going to be re-considered, this should be laid over until the next meeting and re-notice this; in the respect, the Applicant/Appellant will know to attend the meeting, as well as the neighbors.

On the motion by Member Mark Grady, seconded by Member Nancy Filsinger, to withdraw the motion to re-open Case 2021-01.

Adjourn

On the motion by Member Catie Anderson, seconded by Member Thomas Dunst, and carried unanimously by roll call vote (5-0), the Board adjourned at 6:08 p.m.

Respectfully Submitted,

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