

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 2, 2022**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, March 2, 2022 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Kurt Ostoic, Chairman
Thomas Dunst
Nancy Filsinger
Scott Ratke
Adam Bazelon (Alternate 2)

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 of February 10, 2022 Meeting and the Findings of Fact, Decision and Order

Without objection and by unanimous consent, Chairman Kurt Ostoic and Board of Appeals approved the February 10, 2022 minutes and the Findings of Fact, Decision and Order of the last meeting.

Case 2022-02: 8303 N Greenvale Rd.

The applicant is requesting a variance pertaining to Section 745-16 of the Fox Point Village Code in the B Residence District, concerning front yard setback requirements. A front yard setback 60 feet from the centerline of Greenvale shall be provided for the building. The applicant is proposing to install an improved garage approximately 8 feet into the setback area.

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 2022-02. the applicant would like to build a garage. If you look at the drawings, page 1 of 4, you will notice that the garage is in the setback area by approximately 8 feet. That is the reason for the denial.

Chairman Kurt Ostoic inquired if the encroachment in the setbacks is the only reason for the denial.

Building Inspector Michael Rakow stated that is correct.

Owner's Representative Rory Palubiski with Fein Design

The Owner's Representative Rory Palubiski stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

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Chairman Kurt Ostoic asked Representative Rory Palubiski to offer comments on he placed the garage where he did in his design.

Representative Rory Palubiski of Fein Design gave background to Case 2022-02. Representative Rory Palubiski testified the existing home has a one-car garage. It is not deep enough to fit todays vehicles in it. The structure underneath the concrete floor is all failing. They have a rodent issue. The thought is that instead of fixing that up, lets make the garage a nice two-car garage so they can have a vehicle that can park in there. They have an SUV and a truck so they wanted to design it so that it could fit the vehicles. There would also be a little room for some bikes, garbage cans, among other miscellaneous items. They wanted to keep the charm of the pristine home with the two-car garage doors without one big garage door. This would be more of a carriage-style look. Although this Board is not interested in the overall look, we would match the architectural aspects, while trying to keep this design copacetic with the rest of the home. All the details would match with what is going on with the overall appearance. The question of whether they could go further towards the back of the yard, the way the home is designed, there is a door that is the entrance to the home from the outside that they would encroach upon and that allows natural light into their mudroom, the hallway and into the kitchen. That would all be lost and they don't want to lose that aspect of the home. In working with this driveway as well, the curve street may not be applicable to the setback scenario but because of that, their approach to turn into the garage makes it very challenging of a home just the way it is. The further he would go back into the property; he would be dealing with a setback there anyway. It is going to make it that much tighter and complicated for a car to pull into the driveway. That is one of the other reasons they are a little closer to the street than we would like to be but again in order to design a garage to fit the vehicles in todays standards, this is the minimum footprint that we came up with. The clients have already invested some money here to be sure that this will look nice and would fit.

Chairman Kurt Ostoic inquired of Representative Rory Palubiski if it appears that they would be encroaching on any other neighbor or anything like that.

Representative Rory Palubiski stated no it would not it is simply encroachment upon the side setback by the road.

Adam Bazelon inquired if the trees are still there in between the garage and the street so it is blocking the street view.

Representative Rory Palubiski stated they would not be messing with any of the trees in that area.

Appellant/Owner Lynn Carini

Appellant/Owner stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.

Appellant/Owner Lynn Carini commented, the large trees to the street would stay, as well as the ones on the other side of the garage.

Village Attorney Eric Larson stated if there are no more questions, the Board should close the

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testimony.

Closing of Testimony

Motion by Chairman Kurt Ostoic, seconded by Member Thomas Dunst, and carried unanimously to close testimony at 5:09 p.m.

Village Attorney Eric Larson stated this is a variance. Sometimes the Board is dealing with special exceptions which has a different set of standards. A variance is standards set by state law. Therefore, we will review what those standards are. WI State Stat. 62.23 (e) (7) (b), Board of Appeals shall have the following powers to authorize upon appeal, specific cases such variance from the 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. That statement used the phrase unnecessary hardship.

Village Attorney Eric Larson stated there is a subsequent WI State Stat. 62.23 (e) (7) (d), that defines what unnecessary hardship is. A 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. 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. So those statements are the standards tonight.

Member Nancy Filsinger stated that she believes the circumstances are unique to the property.

Chairman Kurt Ostoic stated he believe that is true because obviously the lot is not rectangular and it has a bearing on this. In order to fit the house on the lot, they had to place the home on there on an angle to begin with.

Member Nancy Filsinger stated it is not encroaching on the neighbor.

Member Thomas Dunst stated there does appear to be some case law that a need for a larger garage does not qualify. His understand in this case is a different circumstance that is causing this, as opposed to just a need for the garage.

Village Attorney Eric Larson asked Member Thomas Dunst to articulate why he sees it as a different circumstance.

Member Thomas Dunst stated it is due to the shape of the lot and the positioning of the home.

Chairman Kurt Ostoic stated the current owners did not build the home this way.

Member Thomas Dunst noted it is possible that they only had a one-car garage because of the homes position and lot shape. But there is no way of knowing that.

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Member Scott Ratke stated he doesn't feel that this would create a public safety issue with a larger garage from what he can see.

Chairman Kurt Ostoic commented, if anything it would give them space to park the cars inside, which would actually be better.

Member Adam Bazelon inquired if there were any similar cases where requests were made that were taken up in the last couple of years?

Village Attorney Eric Larson stated it is all based on fact and circumstances presented. That being said, Attorney Larson does not remember a case with this similar issue coming up in the past. He further stated, Member Adam Bazelon raises a good question. The one-car versus the two-car garage. Is it really necessary to have a two-car garage in Fox Point? He does understand the way the Board is analyzing that and feels the Board is on pretty solid ground. He noted he is not sure if the Board wants to set a precedence from a one-car to a two-car garage because from time to time, you will receive other applications.

Chairman Kurt Ostoic stated the way he is looking at this is it doesn't have to do with a one-car or two-car garage. It is because of the shape of the lot and the road; they really don't have a lot of options to expand and make better use of the land.

Village Attorney Eric Larson stated that a question was asked earlier and he wants to be sure the Board really thinks about it as well. It looks like this encroachment is toward the road and not toward a neighbor. It also appears to be quite a distance from the actual pavement. This is a road not likely to be expanded and a neighborhood street. Those are all relevant and raised by your questions.

Member Scott Ratke stated he doesn't feel they have an alternative here because of the shape of the lot, as was mentioned already and it is in the public's best interest that the car is in a garage and not on the road.

Member Thomas Dunst inquired if the right-of-way would affect the Board's decision.

Village Attorney Eric Larson if they are encroaching on the right-of-way, they are going to have to get a separate approval. I assume that they are not, but he isn't sure.

Building Inspector Michael Rakow stated he doesn't think they are encroaching on the right-of-way, but he would have to take a better look.

Village Attorney Eric Larson stated if they are encroaching on the right-of-way, they will need the approval of the Village Board.

Board of appeals discussed the uniqueness of the property. Thomas Dunst stated the shape of the lot and position of the home makes this a unique property and therefore circumstances make it difficult.

Building Inspector Michael Rakow stated he will verify if the garage would encroach upon the

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village right-of-way.

Motion by Member Adam Bazelon, to grant the variance based on the points made in the Board's discussion and subject to the village right-of-way encroachment; if encroaching on the village right-of-way, the variance is subject to further review and approval by the Village Board.

Seconded by Member Nancy Filsinger.

<u>Scott Ratke</u>	<u>Aye</u>
<u>Thomas Dunst</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>
<u>Kurt Ostoic</u>	<u>Aye</u>

Granted by roll call vote, 5-0.

Adjourn

Without objection and by unanimous consent the Board adjourned at 5:21 p.m.

Respectfully Submitted,



Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer