

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Thursday, May 20, 2021 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Kurt Ostoic, Chairman  
Nancy Filsinger  
Thomas Dunst  
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, and Village ordinances and posted on the official bulletin boards.

**Approval of Minutes – February 18, 2021 Meeting**

*On the motion by Member Mark Grady, seconded by Member Nancy Filsinger, and carried unanimously by roll call vote (5-0), the Board of Appeals approved the submission of minutes and determinations from the February 18, 2021 meeting, as presented.*

**Case 2021-03: 8377 N Port Washington Rd.**

The applicant is requesting a variance pertaining to Section 745-37 in the F-District and Section 756-34(b) of the Fox Point Village Code, concerning zoning setback requirements. The applicant is proposing to install a new generator within the 75-foot setback 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.*

Building Inspector Michael Rakow gave background, stating the applicant is requesting a variance for the property at 8377 North Port Washington Road for a generator within the set-back. This is on a corner lot so the setback for Dean Road is 75 feet and with the proposed location, the generator would be in violation of that setback on Dean Road. North Port Washington Road setback is 90 feet and the generator would be in compliance with the 90-foot setback.

Chairman Kurt Ostoic inquired about a rendering or drawing for depicting the location of the proposed generator.

Village Attorney Eric Larson noted submittal of **Exhibit A, E100 and C102**, a site plan of Muermann Engineering, which is two pages in length. He passed the rendering around to the Board members for review. This rendering showed the generator at the northeast corner of the lot.

Chairman Kurt Ostoic inquired if Dean Road runs through to other residences or if it was just a road the school was on.

Building Inspector Michael Rakow answered that there are properties across the street from the Maple Dale Indian Hill School property to the north and west of the property.

Village Attorney Eric Larson stated that the record needs to be straight so he asked for one person to speak at a time and this time asking questions of Michael Rakow. He asked that each person speak so they

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

can be heard for the record.

Building Inspector Michael Rakow clarified the location of the generator to the Board by explaining the rendering that was submitted by Muermann Engineering. He also pointed out all the residential properties near the Maple Dale Indian Hill School property. He then passed the rendering around.

Member Mark Grady asked the Building Inspector Michael Rakow if the generator was on the north side (Dean Road) of the school and asked if there was other equipment on that same side of the school.

Michael Rakow stated it was on the north/Dean Road side of the school and Michael Rakow stated he was unaware of whether there is any other equipment on that same side of the school.

Mark Grady inquired from the Clerk if anyone sent anything in regarding this property and the notice. The clerk responded that a neighbor did come in to review the records today. No written or verbal notice was given from anyone noticed.

Member Mark Grady also asked if Building Inspector Michael Rakow noticed that the application itself showed that the school is also in violation of the setback requirement. The school is also less than 75 feet from the center line.

Building Inspector Michael Rakow stated that is correct, but we are reviewing the proposed generator here today.

Member Mark Grady stated he understands, but the school building itself is within the setbacks because it pre-exists the setback requirement.

Member Mark Grady inquired from the Village Clerk Kelly Meyer if the proper notices were sent to those within a 500-foot buffer and asked if there were any comments from those property owners.

Village Clerk Kelly Meyer stated the correct notices were sent and there have been no comments from neighbors. Ms. Meyer did state there was one individual today who did review the file, but no comments were made in regard to the proposed generator and confirmed nothing was received in writing.

Member Mark Grady inquired if Building Inspector Michael Rakow was aware of any other issues with the generator being placed in the proposed location.

Building Inspector Michael Rakow stated the setback is the only issue. He further stated that the generators are typically pretty quiet. There is decibel information in the packet.

Member Scott Ratke inquired if Building Inspector Michael Rakow knew how often the generator will run.

Building Inspector Michael Rakow stated the generator is tested periodically.

Village Attorney Eric Larson reminded Board members to speak loudly for the record.

Chairman Kurt Ostoic stated sound decibel data that was submitted in the application packet looks like it is 70-80 decibels.

Village Attorney Eric Larson asked the Representative/Engineering Consultant from Muermann Engineering if she had any questions for the Building Inspector and she stated she did not.

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

Representative/Engineering Consultant Robin Savola for Owner of Maple Dale Indian Hill School District  
*Muermann Engineering Representative Robin Savola stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.*

Muermann Engineering Representative Robin Savola did state that the generator will run a test cycle once a month for approximately 30 minutes and can be electronically scheduled to run a certain time; it could run during the daytime hours.

Chairman Kurt Ostoic inquired if the school would run the test cycle typically when the maintenance staff was on site.

Muermann Engineering Representative Robin Savola stated it would generally be during the day.

Member Mark Grady asked if there was other equipment along that side of the school. Muermann Engineering Representative Robin Savola commented technically there is not really on that side; that is typically where the services come in from Dean Road. She further stated there is a transformer that is on the northwest corner of the building, but it is technically on the west side.

Chairman Kurt Ostoic inquired if that is the reason for placing the generator in that location due to the utilities coming in at that point.

Muermann Engineering Robin Savola commented that was correct.

Member Mark Grady asked Muermann Engineering Robin Savola to clarify the application stating that this is the only placement for the generator location that works. Muermann Engineering Robin Savola expounded, stating that the runs would have to be further for the gas and water. The only other place the generator could be placed would be on the paved playground area so that was not an ideal place. The only other scenario would be on the other side of the building and then it would be in the playground area.

Member Mark Grady asked what the risk was with the generator being placed in the playground area. Muermann Engineering Robin Savola commented it is a larger piece of equipment in the playground area and would be an obstruction in the playground area.

Member Nancy Filsinger inquired if it would be a safety issue in the playground area. Muermann Engineering Robin Savola stated that it could be fenced in for safety, but that would eat up a bigger portion of the playground area for the children. The natural gas line would also have to go around for hook-up to the generator in the playground area if it were placed there.

Member Mark Grady commented the application says that the building is 58.2 inches from the center line so obviously within the set-back already. Mr. Grady inquired how large is this unit and how much further into the centerline is the generator being placed. Muermann Engineering Robin Savola stated on sheet E-100, it would stick out maybe a couple of feet beyond the existing line because the building itself is drawn back at that location. Member Mark Grady stated according to the rendering it puts the generator in line with the north wall of the school. Ms. Savola noted there will be landscaping and shrubbery would be placed in front of the generator on the north side to hide the generator.

Member Thomas Dunst asked Muermann Engineering Robin Savola to expand upon the decibels of the generator. Ms. Savola noted they did add the covering that helps with sound attenuation. This has a little bit of a surround on the generator to help to reduce the noise. This generator will run for the monthly test, approximately 30 minutes and if there is ever an emergency, the generator would also run. The generator would run all the emergency services, including the emergency lighting for ingress and the elevator. Currently the building has a battery back-up only; this is not a generator replacement.

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

*On motion of Member Thomas Dunst, seconded by Member Mark Grady, and carried unanimously, the Board closed the testimony at 5:18 p.m.*

Village Attorney Eric Larson reviewed the standard that applies to the variance with the Board, this includes the Village of Fox Point Building Code, Section 756, which refers to the Village Zoning Code, Section 745 and also includes portions of the Wisconsin State Stats, Section 62.23(7)(e)(7) regarding an area variance.

*Member Mark Grady moved to grant the variance for the generator, seconded by Member Kurt Ostoic based on findings it is:*

Member Mark Grady's rationale to grant the variance is the following:

1) Not detrimental by noise and sight: the noise level will be relatively low due to the additional sound deafening cabinet and additional to the sound decibels of 70-80 without the cabinet and the nearest home is at least 125 feet away from the location of the generator. Noise will not be an issue for this. The few times it is run, it can be run in the daytime. Noise is not detrimental to adjoining structures. It will also be shielded by planting and bollards in terms of sight. It does meet that standard.

2) In terms of the variance, it is not contrary to public interest. The argument being it is in the public's best interest in regard to safety. This is about a school building that has been there for 60 or 70 years. Without this generator in this location, it would have to be placed at a substantial additional cost for the gas line in an area that is actually less safe and less in the public interest at the side of the school where the playground is. Therefore, it is not contrary to the public interest for this variance. Using the WI State Stats Section 62.23(7)(e)7b., a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, seems to be very unnecessary to force the school district and the tax payers of the school district to pay for an additional cost to run a gas line all the way around the building to the other side to put a generator on the playground and it creates a practical difficulty because the school building is already in violation of the setback. If the building wasn't already in violation of the setback as a non-conforming building use, there would not be an issue.

3) Allowing the variance is in the spirit of the ordinance because we are trying to do what is best for the community's interests for the Fox Point taxpayers and Fox Point residents. The solution proposed here is in fact the best solution and is in the best interest of the ordinance to allow this variance in this situation which is somewhat unique because of the institutional district and the nature of it and the pre-existing non-conforming use of the building and lack of reasonable alternatives.

<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).*

**Case 2021-04: 7424 N Santa Monica Blvd**

The applicant is requesting a variance pertaining to Section 745-37 and Section 745-20 D. (1) and 745-16 B (3) of the Fox Point Village Code in the F-District, concerning side yard requirements. A side yard of not less than 10 feet shall be provided for every building. The applicant has installed a new garden shed 8-foot by 10-

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

foot, four feet from the side yard (north property line) 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.*

Building Inspector Michael Rakow gave background, stating the applicant is requesting a variance pertaining to Section 745-37 and Section 745-20 D. (1) and 745-16 B (3) of the Fox Point Village Code in the F-District, concerning side yard requirements. There is an installed garden shed in the back yard, 8-foot by 10-foot in which a ten-foot setback is needed and there is currently a four-foot setback (north property line) if the property. This is in violation of the Village Code which states a side yard of not less than 10 feet shall be provided for every building.

Member Mark Grady asked Building Inspector Michael Rakow if the applicant is four feet into the setback or six feet into the setback.

Building Inspector Michael Rakow confirmed it is four feet from the property line.

Property Owner/Appellant/Applicant, Eric Davidson

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

Representative Ideal Property Management Rick Dassow

*Representative Ideal Property Management Rick Dassow stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.*

Member Mark Grady asked Property Owner Mr. Davidson when the shed was put up. Property Owner Eric Davidson stated it was installed in December of 2020.

Member Mark Grady asked Mr. Davidson how he became aware it was in violation of the setbacks. Property Owner Eric Davidson responded he received a phone call from Building Inspector Michael Rakow approximately in February of 2021.

Member Mark Grady asked Property Owner Mr. Davidson how Building Inspector Michael Rakow had learned of this violation. To clarify, Member Mark Grady inquired if there was a complaint regarding the violation. Property Owner Eric Davidson stated it is his understanding that the neighbor to the north, Ms. Scheibler made the complaint. He stated this is coming from second hand knowledge, not direct knowledge. Property Owner Eric Davidson stated the neighbor has a history of complaints.

Member Mark Grady asked Property Owner Mr. Davidson to describe the shed.

Chairman Kurt Ostoic inquired of Village Clerk Kelly Meyer whether there were any submissions of verbal or written concerns regarding the variance request. Village Clerk Kelly Meyer stated there were no submission verbally or written of anyone in favor of or opposed to the variance.

Packets brought in by Property Owner Mr. Davidson were distributed to the Board as **Exhibit A** for Case 2021-04. Village Attorney Eric Larson stated for record, the Board has received a packet that is 21 pages in length with a depiction on the first page and photographs on the remainder of the pages. You also have before you the materials that were submitted with the application.

Member Nancy Filsinger inquired of Mr. Davidson if there is a fence along a side of the garden shed.

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

Mr. Davidson stated yes there is only one side of the shed with their fence along side of it.

Member Mark Grady asked for further clarification as to the side the fence is on. Mr. Davidson stated it is on the north side of the garden shed.

Exhibit A is being passed out with the photos of the property. A packet of 21 pages in length with a lot depiction on the front page with photos included. This is in addition to the packet materials submitted earlier for the property.

Mr. Davidson gave testimony regarding his request for a variance to install a new garden shed 8-foot by 10-foot, four feet from the side yard (north property line) of the property, as described above at the location of 7424 N Santa Monica Boulevard. The shed is within a foot or two of the fence.

Member Mark Grady asked for clarification on the 21 pages within the handout. Property Owner Mr. Davidson specifically clarified each page as Member Mark Grady and the Board reviewed the pages.

Member Mark Grady stated he assumes the hardship to moving the shed would be cost. Mr. Davidson agreed that that was correct and also added re-location as an issue. Moving it more to the middle yard, would take away space for the children to run; moving it to the east end of the property on the northeast corner is too wet; there is not good drainage there. The width of the lot is 55 feet.

Member Scott Ratke inquired about moving the shed to the south. Property Owner Mr. Davidson stated moving it to the south, aesthetically would not look right.

Representative Ideal Property Management Rick Dassow moving the shed to the south also falls into their footprint for expansion to their home. The southern face of the shed is almost in line with the northern line of the home. Bringing it south would be in line with the addition that would be built.

Member Scott Ratke inquired how close the shed is to the home currently. Representative Ideal Property Management Rick Dassow stated it is 20 feet.

Village Attorney Eric Larson inquired if there was any reason that the future construction could not include the additional storage space needed that the shed is currently holding. Property Owner Eric Davidson stated this was built so that his wife could place her car in the garage.

Chairman Kurt Ostoic asked if anyone else had any more questions. He asked Property Owner Eric Davidson if his lot is 55 feet wide. Property Owner Eric Davidson stated that is correct. Chairman Kurt Ostoic stated the norm for lots in Fox Point is typically a width of 80 feet wide. This lot is non-conforming, according to Village of Fox Point Village Code.

Village Attorney Eric Larson stated that is in the F-District. This lot is in the B-District. Structures have to comply with the B-District, according to the Village Code and he also noted it is spelled out in the agenda notice. The lot width is really not an issue.

Member Scott Ratke stated he understands the property owner cannot go east towards the railroad tracks due to a water issue, but he asked why the property owner couldn't place the shed to the south. It looks like there is enough room there even if you put an addition on the home. Perhaps placing the shed towards the middle of the yard. Property Owner Eric Davidson stated aesthetically it would not look right and it would not be useful given that it would also fall into the home expansion footprint. Member Scott Ratke stated from the picture it is difficult to see that. Property Owner Eric Davidson stated the southern face of that shed is almost inline with the northern end of the home. Bringing it southernly, it would fall into the footprint.

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

Chairman Kurt Ostoic inquired if Property Owner Eric Davidson actually applied for a permit.

Representative Ideal Property Management Rick Dassow stated they expanded the driveway out front and talked to the Village Office and submitted the prints. They applied for the building permit and the concrete expansion and it was never a question.

Member Mark Grady inquired if they submitted a building permit for the shed.

Representative Ideal Property Management Rick Dassow stated there were more questions regarding the driveway apron towards the road then the shed.

Member Scott Ratke inquired if they knew how close the shed was to the home right now.

Representative Ideal Property Management Rick Dassow stated it is about 20 feet from the home. Property Owner Eric Davidson stated frankly they put it there so that they wanted to be further from the northerly neighbor's home.

Village Attorney Eric Larson inquired of Property Owner Eric Davidson if there is any reason that this future construction that he is referencing couldn't include some storage for the purposes for which you are using this shed. Couldn't you include that storage and space in the structure that you contemplate.

Property Owner Eric Davidson stated of course they could, but as you probably know that is a couple of years down the road, due to the expansion, lumber and labor costs. The goal was having a shed to make room for his wife's car. He was happy he was able to accomplish that.

Chairman Kurt Ostoic inquired if the permit for the shed was issued and if there was a copy of that permit.

Building Inspector Michael Rakow stated there is a copy online but not at the Board meeting. He would print a copy out if the Board prefers.

Chairman Kurt Ostoic stated the Board would like to see the permit copy.

Building Inspector Michael Rakow left the room at 5:52 to print off the building permit in regard to the shed. No discussion or action took place during this time.

At 5:59 pm Building Inspector Michael Rakow returned to the Board room with the building permit. The Board reviewed the Permit.

Property Owner Eric Davidson inquired if there were any complaints from neighbors. Village Clerk Kelly Meyer answered there were no complaints, verbal or written made to the Village.

Member Thomas Dunst inquired how the Building Inspector Michael Rakow became aware of this.

Building Inspector Michael Rakow heard about the non-compliant shed. Building Inspector Michael Rakow stated according to his recollection, it was through a neighbor complaint; the neighbor stated there was a shed being built to close to the property line.

Representative Ideal Property Management Rick Dassow stated since 2012 if his company is anywhere near that particular neighbor's property, including any noise such as a leaf blower or chain saw, she is difficult. The police have been called out a half a dozen times. He stated it is a bit of a sad situation there. Her adult children have noticed and are working on getting her into a home. The police have said if she keeps interfering

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

with work, Ideal Property Management should call and let them know this. The neighbor is older.

*Without objection and by unanimous consent, Board of Appeals Chairman Kurt Ostoic closed testimony at 6:04 p.m.*

Village Attorney Eric Larson took a few moments to remind the Board of the standards that apply to the variance. He stated this is an area variance and he stated the standards according to the Village Code. The Village Code allows for ten feet and the shed is significantly closer than that. The standards are the following: Wis. State Stats 62.23 (7)(e)(7)(b) and 623.23 (7)(e)(7)(d).

Chairman Kurt Ostoic stated he would deny the variance based on the warning when the permit was issued about the ten-foot setback and the regulations were ignored.

Member Mark Grady stated his biggest issue with this variance request is if Mr. Davidson had come to the Board of Appeals before building the shed and asked to build it within four feet of the lot line, next to this fence within this area with the reasons of expansion and clarified, the Board may have considered it. When Member Mark Grady looks at the statute, none of the reasons given would fit, such as things that are unique to the land. Unique to the land, not to the property owner to be put in a certain place not due to the property owner. The statute states the property owner has to prove that the "unnecessary hardship" is based on conditions unique to the property rather than considerations personal to the property owner. What he has heard is "I need to make space in my yard", "I don't want it in the middle of my yard". These are all things unique to the property owner, not to the unique to the land. The only thing that was heard that may be considered is the back third of the lot is wet. That would be an argument for not putting in that location. That doesn't really have much to do with the side setback on either the north or south side. The statute also says "the unnecessary hardship was not created by the property owner". What the Board is faced with is an unnecessary hardship created because it was not built in compliance with the ordinance. That is the unnecessary hardship, not that there is not another place to put it. There are clearly other places the shed could have been placed on the property had it come to the Board prior to being built. He has thought about this case a lot since he heard about it. He feels for property owners doing a lot to improve their property. He is concerned that if the Board approves this, it would set a precedence and others would follow, building first and asking later. Just because it was built in violation doesn't give him enough reason to grant the variance.

*On the motion of Member Mark Grady, seconded by Member Thomas Dunst, to deny the variance based on the Board of Appeals foregoing discussion.*

Property Owner Eric Davidson spoke up.

Village Attorney Eric Larson reminded the Board there is a motion on the floor to deny and it has been seconded. He asked if the Board had any further discussion.

<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 to deny the variance, by roll call vote (5-0).*

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
THURSDAY, MAY 20, 2021

**Adjourn**

*On the motion by Member Mark Grady, seconded by Member Thomas Dunst, and carried unanimously by roll call vote (5-0), the Board adjourned at 6:13 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