

VILLAGE OF FOX POINT  
BOARD OF APPEALS MEETING  
MINUTES AND DETERMINATION  
AUGUST 18, 2020

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Tuesday, August 18, 2020 at 5:00 p.m. The Village Clerk took roll call. Those present included:

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

Staff members also present were Village Attorney Remzy Bitar, 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 – June 3, 2020 Meeting**

*On the motion by Member Mark Grady, seconded by Member Thomas Dunst, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the June 3, 2020 meeting, as presented.*

**CASE 2020-03: 8107 N LAKE DRIVE**

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/Applicant/Appellant Jill Gershan

*Property Owners, Jill Gershan stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.*

**Building Inspector Michael Rakow's Testimony**

Building Inspector Michael Rakow stated that the applicant/appellants is proposing a fence which is on a corner lot. Pursuant to our Village Code, 745-7(b)(3)(h)[1] and 745-7(b)(3)(j), Board of Appeals has to determine what is the front side of the home. Building Inspector Michael Rakow stated his opinion is that since the address is on Lake Drive, that is where he feels the front of the home is located. requesting a special exception to from the fence ordinance to erect a new wooden fence, six feet in height.

Member Mark Grady made an inquiry to Village Attorney Remzy Bitar to clarify the Village Code that should be applied to this case.

Village Attorney Remzy Bitar stated there are two application before you tonight. Both of them are in regard to Section 745-7(B)(3)(h)[1]. One of the cases will fall under Subsection 745-7(B)(3)(h)[1] and one of them will fall under 745-7(B)(3)(h)[2].

The first appeal case is under Village Code Section 745-7(B)(3)(h)[1] on page 5 of the Village Code of Section 745-7. Village Attorney Remzy Bitar read excerpt Section 745-7(B)(3)(h)[1]. In the

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circumstance that a building is irregularly configured, such as an L- or V-shaped structure, or the building is located upon a corner lot, irregularly shaped lot, or lot which abuts upon more than one public or private road, etc., then you will proceed to Subsection B(3)(j). Before referring to Subsection B(3)(j), this section also states the Board will consider the least obtrusive alternative, and any other criteria as set forth in the provisions of this chapter which serve to balance the interests of the applicant with the interests of the surrounding property owners. Before referring to B(3)(j), Village Attorney Remzy Bitar pointed out that Chapter 745-7, governs your accessory use of structure and when it references other sections, that would include Section A, which are the general requirements. Section (A)(1) states that any accessory use or structure shall conform to the applicable regulations of the district. Subsection (A)(2) say no accessory use or structure shall be permitted that by reason of noise, dust, odor, appearance, or other objectionable factor creates a nuisance or substantial adverse effect upon the property value or reasonable enjoyment of the surrounding property. Subsection 745-7(B)(3)(h)[1], governs this application in terms of it is going to elude you or take you to another Subsection, but it also says you can apply other Sections, so your general Section is 745-7(A)(1) and 745-7(A)(2). He asked the Board to drop back down to 745-7(B)(3)(h)[1], for this kind of structure, you will refer to Subsection 745-7(B)(3)(j), called Special Exceptions. The Board of Appeals may grant the request for a special exception upon finding that the property owner has shown clear and convincing evidence. So as with any special exception or variance, the burden is entirely on the property owner. They have to show clear and convincing evidence of the following: (1) the applicant has a legitimate need for the special exception, (2) granting the special exception will not adversely affect the health, safety or welfare of the community or immediate area where located, and (3) will not impede the purpose, spirit and intent of this section, in addition to such other specific finding as may be required by other subsections of this section. The applicant must satisfy this section in 745-7(B)(3)(j).

Mark Grady stated the question in regard to the front yard versus the side yard, 745-7(B)(3)(h)[1], the determination of the front, rear and side area and consequently the fencing is supposed to be referred the Building Inspector to the Board of Appeals. It is up to the Board of Appeals to determine the front, rear and side areas of the home in order to apply the fencing ordinance.

Village Attorney Remzy Bitar stated that is a good point. That would be a threshold issue.

Mark Grady stated the important question here is what is the front yard and what is the side yard. If the Board makes that determination, then that will assist in the determination of the Special Exception.

Village Attorney Remzy Bitar stated those initial determinations are to be referred to the Building Inspector for determination and then they can be forwarded on to the Board of Appeals. The Board will stay have to make the required findings in Subsection 745-7(B)(3)(j). It also indicates beyond considering (B)(3)(j), the Board shall consider the least obtrusive alternative, and any other criteria as set forth in the provisions of this chapter which serve to balance the interest of the applicant with the interests of the surrounding property owners.

Building Inspector Michael Rakow stated after inquiry from the Board that if a new home was built on the property, he would consider Lake Drive the front of the home. He stated that is the Board's decision.

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Mark Grady noted he is trying to envision the fence on the side yard. It does not appear to run all the way back to the lot line.

**Applicant/Appellant Jill Gershan's Testimony**

Applicant/Appellant Ms. Jill Gershan distributed three photos for record.

Applicant/Appellant Ms. Jill Gershan stated that is correct. She stated she has another picture for record that has the road showing. The front of the home is on Lake Drive and there is a clump of mature trees in the middle of the side of the home. These are mature evergreen trees. She wants to install a fence in between the mature evergreen trees. I wanted to extend the fence just a little bit – 25 feet around that section of mature trees. The reason she would like to do this is because there is a deck that is behind those trees and she would like to reduce the noise from Lake Drive. She stated she doesn't feel this fence would even be noticed. There is just a small section that would wrap around the trees facing East Fox Lane. The portion that comes out between the house structure towards East Fox Lane will be completely imbedded in between this large clump of mature trees.

Mark Grady asked the applicant/appellant Ms. Gershan, in the second photo that was passed around, is the fence on going to be on the Fox Lane side or in between the trees?

Applicant/Appellant Ms. Gershan noted that she doesn't think she can install the fence in between the trees because of the density of the trees in that area. She noted the diagram coming around, the front of the trees which would face Fox Lane, that is about 30 feet from the shoulder of the road. The fence would be installed far from the road, right up against the trees. She did consider imbedding the fence completely between the trees and it is a possibility, but she indicated that it would be easier to install just a bit beyond the trees and then go around the large clump of trees about 20-25 feet. It would wrap around those trees. She noted she wants to use it as a noise barrier from the traffic on Lake Drive.

Mark Grady inquired if the fence was primary for privacy and a noise barrier.

Applicant/Appellant Ms. Gershan stated it would primary be for noise, not so much for privacy.

Catie Anderson inquired if it is kind of a backwards L-shaped fence.

Applicant/Appellant Ms. Jill Gershan yes it would be and it would follow the trees on the inside of the clump of large trees, and then wrap a little bit on the outside, which gives her a little bit of an "L" on that corner where the cars are coming – mostly to the north. This should eliminate some of the noise on the deck.

Catie Anderson inquired what other alternatives Applicant/Appellant has considered.

Applicant/Appellant stated she does have the trees but they still get a lot of noise. The trees are there to help serve that purpose. But it is still noisy on the deck.

Village Attorney Remzy Bitar asked the applicant if the photos that she passed around were contained in the appeal packet.

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Applicant/Appellant Ms. Gershan stated they are similar to what she submitted for the Board of Appeals packet. The three photos show where the bike path is in relation to her property. The fence is at least 30 feet from the bike path. The fence is coming out from the side of the house. It is not really in the front of the house at all. The trees are on the side of the house and the fence would be imbedded in those trees.

Village Attorney Remzy Bitar stated the reason he asked is that if we are introducing new documents to the Board, that we have those separately marked as Exhibit 1, Exhibit 2, and Exhibit 3 for the purposes of creating a file or record as to what has gone on tonight. He asked if those are documents that can be kept.

Ms. Gershan stated they were documents that could be kept. She felt these pictures illustrated more clarity in terms of the streets, where the bike path is and where the fence would be situated about 30 feet from both the street and the bike path.

Village Attorney Remzy Bitar stated the record will show the three photos as Exhibit 1, Exhibit 2, and Exhibit 3.

Mr. Grady inquired if the noise issue was primarily due to Lake Drive.

Applicant/Appellant Ms. Gershan stated that was correct. There is a lot of traffic, especially during rush hour. Placing an unobtrusive fence in that location would cut down on the noise on their deck.

Member Mark Grady asked if she considered placing the fence along the north south sides without the extension.

Applicant/Appellant Ms. Gershan stated she did consider that, but she didn't think it would cut down on the noise. She felt the fence would have to wrap around those trees a little bit. If you look at this exhibit which is in your packet that shows where the deck is, you can see that if you are traveling north on Lake Drive, the property would get noise in that corner. Most of the noise comes from that corner as cars are approaching. Therefore, that is why she has the fence wrapping around the trees by the deck.

Member Catie Anderson asked for clarification on the front of the home question. The driveway is on Lake Drive, correct? The fence would be a little bit back from the frontline of the home.

Applicant/Appellant Ms. Gershan stated yes. The fence comes from the south side of the house.

Chairman Kurt Ostoic asked if there were any more questions for the Applicant/Appellant Ms. Gershan. He also inquired if the applicant had received any feedback from the neighbors.

Applicant/Appellant Jill Gershan stated the neighbor to the north, Bill Johnson asked her about the fence and she explained the fence. He told her he had not issues with that. The neighbors on Fox Lane gave no feedback to her. Ms. Gershan stated the fence is not going to be by the road at all. It

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will be in 30 feet from the road. So the fence would really be in the middle portion of the lot.

Chairman Kurt Ostoic inquired if there was any other information, she wanted to provide the Board, prior to closing the testimony.

Applicant/Appellant Ms. Jill Gershan stated she did not have anything else and had included all the information in the packet.

Chairman Kurt Ostoic asked for a motion to close the testimony.

*Motion by Member Catie Anderson, seconded by Member Mark Grady, to close testimony at 5:25 p.m. Motion carried.*

Village Attorney Remzy Bitar they can proceed with the deliberation. He reminded the Board of Appeals members that when they make their decision, it has to needs to be thought what facts you believe support the decision and in turn, what is the factual information you received tonight and what is the governing standards that are in this ordinance. To walk you through some of those again, Subsection A, pertains to the general standards. Subsection A1, whether it be accessory use or structure, it shall conform to the applicable regulations of the district. Subsection A2, prohibition of any accessory use or structure shall be permitted that by reason of noise, dust, odor, appearance, or other objectionable factor create a nuisance. Subsection B3, pertaining to fences with the opening statement, the following regulations established to ensure that the Village of Fox Point retains the openness and semirural character of its landscape. One of the goals here is to retain the openness of the landscape. Drop down to the provision we talked about earlier, Section (h)[1], regarding the irregularly shaped lot, or lot which abuts upon more than one public or private road. When you follow that section, it states you must proceed in accordance with Subsection B(3)(j) herein. You must consider the least obtrusive alternative, and any other criteria as set forth in the provisions of this chapter – the chapter Village Attorney Remzy Bitar mentioned earlier. Subsection B(3)(j), states the applicant must show clear and convincing evidence that there is 1) a legitimate need for the special exception and that granting the special exception 2) will not adversely affect the health, safety or welfare of the community or the immediate area where located and 3) will not impede the purpose, spirit and intent of this section, in addition to such other specific findings as may be required.

Catie asked the Village Attorney Remzy Bitar a question. If they do decide that Lake Drive is the front yard, does Section (h)[2] apply?

Village Attorney Remzy Bitar stated he did not think it applied because your Subsection 1 really deals with thoughts regarding the building on an irregularly shaped lot abutting upon more than one public or private road. Following the testimony, this lot abuts more than one private or public road. This Board can properly evaluate this appeal through the lens of (h)[1]. Village Attorney Remzy Bitar also stated that Subsection [2], will apply to the next application here tonight. That will address Subsection [2]. Both of them will point you back to (B)(3)(j), making those critical findings under (B)(3)(j). So, you may want to underline or jot down those requirements that (B)(3)(j) pertains to and think about the factual information you have heard. You are a judicial body. You do not necessarily advocate for one position or another. You are supposed to discuss openly amongst yourselves the facts and information that you have heard and how that ties into that criteria. You can ask one another questions; you can try to clarify between each other or have dialogue.

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Chair Ostoic asked if the need has been demonstrated, that noise is enough of a need to put up a fence.

Member Catie Anderson stated it is hard for her to say yes to that.

Mark Grady noted his biggest problem is as we know the fence ordinance was created to basically eliminate fences from being installed in yards. In this case, the side yard on Fox Lane is visible from the street. We are trying to keep fences out of sight and behind buildings. The ordinance generally permits beside and behind a building. This fence would clearly violate that, which is one of the three factors. It is contrary to the spirit and intent of this section of the ordinances. It doesn't hurt the health, safety or welfare of the community. When it comes down to the legitimate need, it is primarily a noise abatement wall. For me, it is a close question, but I am inclined to say that is not enough here to grant the special exception. It is starkly contrary to what we are supposed to be doing in preventing fences in front yards or side yards the extend beyond the frontline of the home. But he is willing to listen to others comments.

Applicant/Appellant spoke up to clarify the frontline of the home.

Member Catie Anderson spoke up and stated this isn't a front yard question, it is a side yard and corner lot and public road question.

Chairman Kurt Ostoic stated if it is not a frontline question, they refer to (B)(3)(j).

Member Catie Anderson stated in this case, the most unobtrusive alternative would be more landscaping. It may not solve the issue, but it may help.

Chairman Kurt Ostoic stated he has a fence in his backyard and it does not help with noise.

Applicant/Appellant spoke up.

Attorney Bitar reminded the applicant/appellant that at this time the testimony is closed and deliberation is now taking place by the Board of Appeals.

Mark Grady noted he understands the concept that Lake Drive is the front yard generally speaking, but what he is looking at is in the application, (h)[5], which says for purposes of this section, the side yard of any corner lot that abuts a road shall be treated as a front yard; however, if a building footprint is other than square or rectangular in configuration, the provisions of Subsection B(3)(h)[1] generally shall control over the provisions of this subsection. The side yard on Fox Lane is also to be considered a front yard. The only kind of fence that would be allowed is one that runs east and west, parallel to the south end of the building. She could fence in the backyard, but looking at the picture that would run that fence right through the middle of her deck, if she were to put a fence up there. It would be off the southwest corner of her home. He continued, his point being the side yard in this case is like a front yard. For the same reason the front yard is a front yard. The ordinance does not want to permit fences in front of building on roads, which the side yard is.

Village Attorney Remzy Bitar stated he believes they are reading that section correctly and unless someone here heard information that this exception in subsection 5 is allowable, Subsection

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[5] states the side yard of any corner lot that abuts a road shall be treated as a front yard.

Chairman Kurt Ostoic asked if there were any more questions or if the Board wanted to re-open testimony to ask the applicant/appellant any questions or asked if the Board was ready to make a decision.

Member Mark Grady stated he believes section (h)[5] applies to this appeal. This is a building on a corner lot with a side yard contingent. This takes us to Subsection (h)[2], which states that the fence must be necessary to protect the safety of people residing on the property – which he believes it does not. (B)(3)(j), there has not been a legitimate need demonstrated based on the evidence in this case, and he doesn't believe the fence is consistent with the spirit and intent of this section, therefore he moves to deny the special exception.

*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 denies the request for a special exception from the fence Village Code Section, 745-7 (B)(3)(h)[5], 745-7 (B)(3)(h)[2], and 745-7(B)(3)(j) for Case 2020-03, 8107 North Lake Drive, as the applicant has not shown clear and convincing evidence that there is 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 Section 745-7.*

**Case 2020-04: 7736 N Beach Drive**

**Building Inspector Michael Rakow was sworn in to give testimony**

*Building Inspector Mr. Michael Rakow stated his name and was sworn to provide testimony by the Village Clerk Treasurer.*

**Representative/Agent LandWorks, Inc. Chris Miracle was sworn in to give testimony**

*Representative/Agent, Chris Miracle of LandWorks, Inc. stated his name and was sworn to provide testimony by the Village Clerk Treasurer.*

**Building Inspector Michael Rakow's Testimony**

Building Inspector Michael Rakow stated that the applicant submitted a fence application requesting a special exception to erect proposed frontage walls forward of the frontline of the home, pillars and driveway gates forward of the frontline of the home. Therefore, pursuant to Village of Fox Point code, to 745-7(B)(3)(h)[2], a resident cannot have a fence or a driveway gate without the Board of Appeals approval and pursuant to 745-7(B)(3)(j) of the Fox Point Code, regarding the Special Exception requirement. According to the Village Code, if a fence is forward of the frontline of the home, it must go to the Board of Appeals. Also, according to the Village Code, driveway gates must go before Board of Appeals. That is the reason we are here today.

Board of Appeals clarified with Building Inspector Michael Rakow that here are two issues. The two issues are a driveway gate and the fence forward of the frontline of the home.

Member Catie Anderson inquired what exists today on the property.

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Building Inspector Michael clarified there is nothing on the property today. This is a brand-new home.

Representative/Agent LandWorks, Inc. Chris Miracle's Testimony

Chris stated there is a driveway gate and corresponding knee walls and fences will be right around 6 feet or a little bit less. The entry gates are a kick over 6 feet. The monuments and the driveway gates were designed by the architect who is from Atlanta. They are trying to get continuity with the architecture of the home and to have the same elements of the home. Even the wrought iron for the decorative fence panels will be replicated from the home design. Also, as a contractor, I am here partially for the side fences which I requested. The metal fences will be for containment to keep pets and children in the yard. There will be some pretty intense fresh gardens going into the property. So this request is for security, safety, animal control and architecture.

Kurt inquired of Building Inspector Michael Rakow to clarify if these plans were submitted with the brand-new home plans.

Building Inspector Michael Rakow clarified the home plans were submitted prior to his employment with the Village of Fox Point. The home was approved prior to his employment. He would have to research this himself. From what he recalls, he does not believe these plans were submitted with the new home plans. He cannot confirm that right now.

Representative/Agent Chris Miracle stated he was part of the original approval of the home, but he believes that there was some sort of permission given to come back with these plans at a later date.

Member Catie Anderson inquired if she could get some clarity on the location of the wall, as described.

Representative/Agent Chris Miracle clarified this would be on Beach Drive. They would be very low – knee height – using the same type of stone already on the site. It would be very formal. The style is a French Manor Home.

Member Catie Anderson inquired of Building Inspector Michael Rakow, if the wall also needed to be approved at this Board of Appeals meeting tonight.

Building Inspector Michael Rakow stated he thought they were considering just the wall tonight. He asked Representative/Agent Chris Miracle if there were other considerations tonight.

Representative/Agent Chris Miracle stated he is asking for some side fences that are a lot less opulent, just a little more functional but in keeping it with the general look.

Building Inspector Michael Rakow stated in any event, if the fence is forward of the frontline of the home, it still would have to come to Board of Appeals. Any fence forward of the frontline of the home, any gate, and/or wall should be considered at Board of Appeals. He also mentioned, pursuant to Village Code, six-feet high is the maximum height unless the Board approves a higher elevation.

Representative/Agent Chris Miracle stated the pillars on both sides of the gates would exceed six-feet.

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Member Mark Grady asked for confirmation from Representative/Agent Chris Miracle on the pillar height of about six and a half feet high.

Representative/Agent Chris Miracle confirmed the height.

Member Mark Grady inquired what safety aspect do you believe the fence and driveway gate serve.

Representative/Agent Chris Miracle stated the homeowner has a young family. He stated it would be hard for him to confirm, unless he made an inquiry with the owner. The owner stated his dog cannot jump very high so he did not need more than a five-foot side fence.

Member Catie Anderson inquired if the owners considered a backyard fence only.

Representative/Agent Chris Miracle stated they were going to take it back to the lake side, but the they were not going to cross over along the lake. There is kind of a rear wall that is currently along the lake side which will provide some containment. This would protect the children from the road.

Member Mark Grady inquired if the owner considered a partial fence - only in the backyard.

Representative/Agent Chris Miracle commented that this may be an option for the owner if the front is going to be denied.

Chairman Kurt Ostoic directed his question to Building Inspector Michael Rakow. You attend the Building Board meetings, so in a case like this today would should this be considered by the Building Board prior to the Board of Appeals so they can comment that this is not fencing, it is all architectural. He asked if they would approve something like that.

Building Inspector Mike Rakow stated if the Board approved this today, the application would have to go on to the Building Board to be approved. He reiterated he was not here when this project was approved. Even if it was on the plan at the time, it would have been denied anyway and it would have had to be heard by Board of Appeals.

Building Inspector Michael Rakow directed his question to Representative/Agent Chris Miracle. On the south there is an easement for the sewer. If this is approved, is there going to be a way that the section of fence there can be removed, if work would need to be done. They Village would have to get in there and would tear it apart and would not be liable to fix it.

Representative/Agent Chris Miracle noted that was a good point. There is a provision on the south corner of the lot. There is some utility in that corner. They could go back to the architect to redesign that portion of the fence, if approved.

*Motion by Member Mark Grady, seconded by Member Catie Anderson, and carried unanimously to close testimony at 5:52 p.m.*

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Member Mark Grady stated Case 2020-04, is requesting a fence and gate in the front yard. This is critical to the ordinance unless they can find that it is necessary for the health, safety and welfare of the community and that it meets the other necessary criteria. He stated it doesn't seem to meet any of them. Member Mark Grady stated he doesn't see any basis for putting the fence up contrary to the fence Village Code and the driveway gate contrary to the Village Code. The reasons the Board has been given are primarily aesthetics. That is not in the Board's purview and not something the Board has to consider. While there may be reasons to place the fence there, we must consider any sufficient evidence. He would move to deny the appeal for those reasons.

Member Catie Anderson stated she would agree. The safety argument is not convincing. The kids and dogs' argument is not a convincing safety reason.

Member Thomas Dunst stated he did not see it from the safety standpoint either.

Member Mark Grady did state the Board had discussed the safety aspect of being at a prior meeting regarding a busy street for safety reasons, but Beach Drive is clearly not a busy road and that reason does not apply here.

Village Attorney Remzy Bitar asked the Board if they could express how, by contrast, granting the special exception would affect the health, safety or welfare of the community or how it will not impede the purpose, spirit and intent of this section.

Member Catie Anderson stated it impedes the intent of the rural nature of the community.

Village Attorney Remzy Bitar read the standards for this case, pursuant to Sections 745-7(b)(d)(h)[2] and 745-7(b)(3)(j) of Village Code and pertaining to the special exception the owner must show 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.

*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 denied Applicant/Agent Chris Miracle's appeal for special exception pertaining to fences for Case 2020-04, 7736 North Beach Drive, as the applicant has not shown clear and convincing evidence to believe there is 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 Section 745-7 (B)(3)(j).*

**Case 2020-05: 118 W Bergen Drive**

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.*

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Building Inspector Michael Rakow stated that the applicant is proposing an addition which is in the set-back; therefore, pursuant to the Village Code, Section 745-15.A. of the Fox Point Village Code in the A3 Residence District, you are not permitted to build into the set-back area. Therefore, the appellant is requesting a variance for this.

Building Inspector Michael Rakow clarified the set-back is 12 feet.

Village Attorney Remzy Bitar referenced Village Code 745-15.A. states the side yard shall be 12 feet.

Appellant, Matt Amman

*Property Owners/Applicants/Appellants, Matt Amman stated his name and was sworn to provide testimony by the Village Clerk Treasurer.*

Matt stated he and his wife originally wanted to have a detached two-car garage. The way their home is situated, the lot is pie-shaped. So, it is very wide in front and narrow in the back of the lot. The neighbors to the east of the property's home was built in a very challenging direction. Their back yard, which is outside their dining room window, is directly in the appellant's backyard. The idea was a two-car detached garage. The site-line for the neighbors is a big issue. Therefore, they decided to build a three-car attached garage. An architect drew up a plan for that. The plan before you is the plan for the three-car attached garage. Currently there is an entryway for the house into the garage; there is a side door entrance. They wanted to have access into the house. The three-car garage required a variance. The other thing regarding the owners' parcel is the driveway that is there has an angle that makes it easiest for you to back out of the driveway. Without the variance the owners would be forced to really angle into the driveway, up to the house, to park in it. When backing out, his wife would have to really angle to back down and avoid backing into the ditch. Given the hardship and the safety of backing up, they wanted to try to get a variance to build the project. He drew up some schematics to show what you are looking at. The yellow lines are the existing lot line, the red is the variance requested line. On the front as drawn, I do need about five feet. The biggest issue is the side of the garage. How can we go three feet, four feet, five feet? Where does it become reasonable and unreasonable? That is why they are here today. That is the situation. He stated he did talk to his neighbors a lot. He has put a lot of work into the home. The neighbors who would be affected by this all wrote letters in support of the project. He does have a neighbor here tonight to also provide testimony in regard to the project. The project is approximately 147 SF, but they can reduce that depending on what they do to the backside. They want to try to build in a third stall.

Member Mark Grady stated he was not following the appellant. He requested clarification on the back stall.

Appellant Matt Amman stated there would be no variance on the backside, just the side variance as the project would be creeping in over the setback. If the third stall was taken away, a variance would not be needed. The neighbor to the east is in support of the project.

Kurt asked if they looked at other options so they would not have to come before the Board of Appeals.

Appellant Matt Amman stated they could not squeeze in a third stall without requesting a

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variance. The other option was to do a two-car tandem garage. Then the garage would obstruct the view of his backyard and the neighbor would be upset. With the variance, the neighbors would be supportive of pinching room out on the side, rather than going deep into the lot. They prefer the backyard be neat and clean.

Mark Grady asked the attorney to clarify the correct section they should be considering with the variance.

Village Attorney Remzy Bitar stated he would like to go over the standards for variances. This is much different than the earlier application you received. Legislature has stepped in a number of times to describe when a Board can grant a variance. Recently, they offered some serious changes to the language that you need to consider. Wisconsin Stats., 62.23 which governs city zoning and which the village code incorporates. He drew the Boards attention to 62.23 (7)(a). The applicant is looking for an area variance. An area variance under Section (7)(a) means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction. So this is clearly what we have going on here. Under 62.23 (7)(b), the board of appeals shall have the following powers. Village Attorney Remzy Bitar asked the board to drop down a couple lines and read "to authorize upon appeal in specific cases such variance from the terms of the ordinance as 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. Village Attorney Remzy Bitar stated he wanted to break this down a bit and unpackage this. Any one of your applicants can walk in to the governing body and say overall the entire zoning ordinance. Here we are looking for an ordinance. What he means by going to the governing body and overhauling the ordinance, you can modify your 12-foot setback comprehensively. But the body is not here to legislate. You are not here to grant every applicant a variance. They have to meet these criteria. Leave it to your governing body to do comprehensive legislative revisions. There are standards that need to be met tonight. Do we have, 1) Special conditions; 2) practical difficulty or unnecessary hardship; and 3) bring harmony with the board so that the public safety and welfare are secured and substantial justice done.

Village Attorney Remzy Bitar pointed out Section 62.23 (7)(d), A property owner bears the burden of proof, proving "unnecessary hardship". The property owner will show hardship by doing the following: 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. The last sentence reads, 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. So personal considerations do not cut it for a variance. And lastly, that the unnecessary hardship was not created by the property owner. Those are your standards for considering a variance.

Appellant Matt Amman referenced those property owners not in compliance with the code when referencing the hearing map that was sent out to property owners within a 500-foot buffer area.

Mark Grady stated there are some irregularities with the lot. But you could build a two-car garage and that variance would not be needed. He asked why this is a hardship.

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Appellant Matt Amman stated he has a small car collection and he stores his car off-site. They also have two children and a dog so the hardship rests with adding additional storage space.

Member Mark Grady noted that according to the renderings in A100, even with a two-car garage there is some extra space at the back of the garage for storage.

Appellant Matt Amman stated they would have to do a two-car tandem garage in order to have a car in front of the two cars.

Member Mark Grady stated if you did not have the third stall and the inside north wall was moved, there would still be room for a riding lawn mower, bicycles and storage.

Appellant Matt Amman that is correct, however, if you moved the minivan over and the minivan had to back out of the garage, that person would have to do a hard right and then a hard left to back down the driveway. You are trying to prevent the person in that stall, from driving off the edge of the driveway.

Neighbor/Witness Lawrence Cohn

*Neighbor/Witness, Lawrence Cohn stated his name and was sworn to provide testimony by the Village Clerk Treasurer.*

Neighbor/Witness Larry Cohn noted he and his wife, Bobby, live across the street and he is very familiar with the property. Matt has a driveway that is very steep and to make a turn and come out of the driveway, it would be very dangerous, especially in the winter. Neighbor/Witness Larry Cohn stated from his point of view it actually makes the property more attractive. He stated it significantly changes the safety issue. His driveway is a 15-degree to 20-degree angle. It could be very problematic backing out of his driveway. Mr. Cohn stated he has a similar driveway and he has seen people in his driveway have the same issue backing out.

Member Mark Grady inquired if the current driveway is cement and if it goes to the property line. Appellant Matt Amman stated the driveway would remain where it currently is. There would be no change in location.

Member Catie Anderson clarified with the property owner that the driveway is inside the variance line. The building would need the variance.

Appellant Matt Amman stated that is correct.

*Motion by Member Mark Grady, seconded by Thomas Dunst, and carried unanimously by roll call vote (5-0), to close testimony without objection and began deliberation at 6:30 p.m.*

Village Attorney Remzy Bitar read the standards for this case, pursuant to Sections 745-15.A. of Village Code and pertaining to the A3 Residence District. A side yard of not less than 12 feet shall be provided on each side of every building. The applicant is proposing to erect a garage that will be 5 feet from the north and west property lines to replace an existing garage. The variance is requested pursuant to 745-36 of the Fox Point Code.

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*On the motion of Member Mark Grady, seconded by Member Thomas Dunst, and failed by roll call vote, (2-3), to approve Case 2020-05, 118 West Bergen Drive, requesting a variance for a for a side yard 5-feet from the property, reducing the setback required by section 745-15.A. of the Fox Point Village Code, in this specific circumstance as based on the facts as told to the Board of Appeals, especially the special conditions of this pie-shaped, angled lot and due to the site-lines and this request for variance does meet the standards/criteria for the variance. The homeowner has demonstrated unnecessary hardship, practical difficulty, and burden of proof.*

Chairman Kurt Ostoic stated he was opposed to this, as there are several other homes in Fox Point that are on cul de sacs, that have unusual angles or site-lines that have the similar issues. In this case, the Board needs to take a broader approach that if we want to allow Fox Point to be more like a Whitefish Bay, with less set backs then the Board ought to take that up and not be appealed to the Board.

Member Catie Anderson stated her point is on the personal conditions rather than the conditions of the property. She stated she loves the drawings; she thinks it looks great, and she understands the situation, but it does seem like a personal condition to the property that they are asking for the variance to have a three-car garage. In reference to the description that Village Attorney Remzy Bitar shared with the Board, she doesn't see the reason to approve the variance.

Chairman Kurt Ostoic stated there is a standard and you stick to the standard.

Member Mark Grady stated that he understands Member Catie Anderson's response regarding personal conditions, but what the property needs is not personal to the owner. This option is better than the option of the tandem garage.

Chairman Kurt Ostoic stated the Board is not here to find the best option.

Member Mark Grady stated the reason he made the motion is the unnecessary hardship is not only in regard to the owners, but also in regard to the neighbors.

Member Catie Anderson stated the Board did hear some other alternatives today, including keeping the car where it is today. She doesn't believe it is an either/or situation.

Chairman Kurt Ostoic stated to Appellant Matt Amman, no doubt the plan is a beautiful plan, but he would come back and do the same thing again next week.

Village Attorney Remzy Bitar gave a brief clarification on the State Stats. He stated the Chair correctly noted that there is always an issue that can go before the Village Board in terms of the ordinance itself and the setbacks. What you really have to decide tonight is the criteria in 62.23. There are really three criteria. The Board really has to find based on the criteria. 1) are there special conditions; 2) is there practical difficulty or unnecessary hardship; and 3) the spirit of the ordinance has to be observed. What is this ordinance trying to achieve? There is an add-on when the legislature in Subsection d., regarding the strict compliance with the zoning ordinance that would leave the property owner with no reasonable use of the property in the absence of the variance.

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*Motion failed by roll call vote, 2-3 (Opposed-Kurt Ostoic, Catie Anderson, and Thomas Dunst)*

**Adjourn**

*On the motion by Member Mark Grady, seconded by Nancy Filsinger, and carried unanimously, the Board adjourned at 6:46 p.m.*

Respectfully Submitted,



Kelly A. Meyer, CMC/WCMC  
Village Clerk Treasurer