

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
OCTOBER 15, 2020

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Thursday, October 15, 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 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.

Board of Appeals Continuing Education

Village Attorney Eric Larson presented to the members of Board of Appeals, continuing education from 5:00 p.m. until 5:30 p.m., including questions from members, differences between special exceptions and variances, the variance standards and the meeting process and meeting intent regarding COVID-19.

Approval of Minutes – August 18, 2020 Meeting

On the motion by Member Tom Dunst, seconded by Member Nancy Filsinger, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the August 18, 2020 meeting, as presented.

Case 2020-04: 7736 N Beach Drive

Board of appeals considered the written decision based upon the decision of August 18, 2020 re: the applicant's request for a special exception from the fence ordinance to erect a proposed frontage walls forward of the frontline of the home, pillars and driveway gates forward of the frontline of the home. The special exception request was made pursuant to 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code, and was denied on August 18, 2020. The Board of Appeals is considering the written findings and conclusions, formalizing the written decision.

On the motion of Member Mark Grady, seconded by Member Tom Dunst, and carried unanimously by roll call vote (5-0), the Board of Appeals approves the findings and fact for case 2020-04.

Case 2020-06: 6811 N Barnett Ln.

The applicant is requesting a special exception from the fence ordinance to erect a 4-foot-high, stacked-rail fence forward of the frontline of the home. The special exception request is made pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code.

A letter was submitted by Marion and Matthew Gailey of 6811 N Barnett Lane to the Village Clerk and distributed to the Board of Appeals members, regarding the Gailey's inability to attend and

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their request to hold Case 2020-06: 6811 N Barnett Ln over to the next meeting due to their hardship situation. The letter is being considered by the Board of Appeals.

Attorney Eric Larson explained the options for the process/rules of this case without the appellant/applicant present.

On the motion of Member Mark Grady, seconded by Member Nancy Filsinger, and carried unanimously by roll call vote (5-0), the Board of Appeals will hold the request for a special exception from the fence ordinance made pursuant to 745-7(B)(3)(h)[1], 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code to erect a 4-foot-high, stacked-rail fence forward of the frontline of the home until the next scheduled Board of Appeals meeting.

Case 2020-07: 6821 N Barnett Ln

The applicant is requesting a variance pertaining to Section 756-34(B), 745-6 B., and 745-16 of the Fox Point Village Code in the B Residence District. A side yard of not less than 10 feet shall be provided for an air conditioner. The applicant is proposing to install two new air conditioner units near the North side of their home, closer than 10 feet from the abutting property.

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.

Building Inspector Michael Rakow's Testimony

Building Inspector Michael Rakow stated that the applicant is requesting a variance pertaining to Section 756-34(B), 745-6 B., and 745-16 of the Fox Point Village Code in the B Residence District. A side yard of not less than 10 feet shall be provided for an air conditioner. The applicant is proposing to install two new air conditioner units near the North side of their home, closer than 10 feet from the abutting property. Building Inspector Michael Rakow stated, according to the Village Code in a B-Zone District the property owner has to be 10 feet from the property line. The way the property is situated, it is difficult to meet this standard.

Member Catie Anderson inquired how much within the 10-foot set-back is the variance request. Building Inspector Michael Rakow stated he did not have that information.

Chairman Kurt Ostoic inquired if the home is currently set back 10 feet. Building Inspector Michael Rakow stated he did not have a true survey available.

Building Inspector Michael Rakow offered to go and try to pull a survey up of the property. He left the room for a short time to try to obtain a survey from the property file.

Applicant/Appellants Carolyn Karl

Applicants/Appellants stated their names and were sworn to provide testimony by the Village Clerk Treasurer.

Applicant/Appellants Carolyn & Steve Karl

Chairman Kurt Ostoic asked although the HVAC contractors wanted to place the air

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conditioner unit in this particular area, have other areas been considered for placement of the new air conditioner. Appellant Carolyn Karl stated there are other areas, but the Karl's would have to tear out a porch and a part of the landscaping on the lake side of the home to place the air conditioner in that location.

Mark Grady asked some layout questions for clarification.

Appellant, Carolyn Karl stated that the other area of consideration would be on the lake side of the home. This would require contractors to tear out part of the porch and landscaping to install the air conditioner there. The first and best location of the air conditioner installment is where the variance would be needed. both units being installed are 3 feet according to the installer and the units would sit right next to the home.

According to Appellant, Carolyn Karl, the Grals' are the neighbors (to the north) who stated they would place the air conditioner units where the installers recommended and apply for a variance from Board of Appeals.

Building Inspector Michael Rakow returned with an older survey. One side shows 13.5 feet on one side of the house and on the other side of the home, it shows less than 10.7 feet. Board of Appeals member, Mark Grady inquired how close the units would be to the home.

Building Inspector Michael Rakow noted you usually need some clearance around each unit, which is typically a foot. There is 13 and ½ feet between the home and the lot line. The air conditioner units would not invade the setbacks much more than an approximate foot of room. Member Mark Grady stated they may not be invading the setbacks where the units are being placed.

Chairman Kurt Ostoic stated with the rendering provided in the packet, the distance may be undetermined. Building Inspector Michael Rakow stated the provided document from his records is from the GIS System and may not be 100% accurate. He also noted a survey would be the best option.

Appellant Carolyn Karl said she called and they said that she would have to submit a request for variance. She said they stated she did not need a survey to accompany the application.

Chairman Kurt Ostoic stated he did not feel they had everything they needed to make a good decision in this case without a good survey.

Appellant Carolyn Karl stated the side they are asking for the variance, is the side the HVAC Contractors stated would be best for the installation hook-up of the air conditioners.

Board of Appeals Member Mark Grady stated if the homeowners had an actual survey, they may determine that they can place everything within the permissible distance from the side yard. The homeowners may not need a variance. You may consider withdrawing your application without prejudice. Perhaps you can ask the Board of Appeals to adjourn until you can fully research whether you need a variance at all. He stated he agrees with Chairman Ostoic that the Board of Appeals is not even sure if you need a variance because the Board of Appeals does not know where the lot line is or the exact dimensions of your units.

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Chairman Ostoic stated it would be very helpful to have a letter from your neighbors stating their preferences.

Village Attorney Eric Larson stated there are options. One option is to make sure that the board has heard everything that the appellant wants to say and then the Board can close the hearing to make a decision, or the second option, the Board could keep the hearing open and let the appellant do more work and bring more information back. In the meantime, she may decide she doesn't need the variance and may decide to withdraw. There are some legal issues here in granting this variance. As we talked about financial hardship is not sufficient typically for granting a variance.

Board of Appeals member Mark Grady stated perhaps there is another option that works from a plumbing and zoning standpoint. All he has heard as to why it doesn't work in another location on the property is aesthetics and money.

Board of Appeals Chairman Kurt Ostoic stated it may be in the appellants best interest to withdraw their application now, as the appellant may not even need the variance.

Village Attorney Eric Larson stated part of it is up to the applicant. Does the appellant want a decision today or does the appellant want to go and obtain more information, such as a survey and possibly evidence from the neighbors. Typically, the Board has received letters from neighbors in the past, which is not as good as being here in person. If you get a decision today, he cannot promise the appellant what it will be.

Appellant Carolyn Karl stated when they started this process, they wanted the air conditioners installed now. At this point, there is no rush so Ms. Karl stated she is fine looking further into this to provide more information.

It was determined that a surveyor would be required to determine the definite lots lines of the property.

On the motion of Member Catie Anderson, seconded by Member Mark Grady, and carried unanimously by roll call vote (5-0), the Board of Appeals adjourned the appeal for a variance pertaining to Section 756-34(B), 745-6 B., and 745-16 of the Fox Point Village Code in the B Residence District to another subsequent date to be determined.

By consensus and without objection, Board of Appeals returned to the first agenda item regarding continuing education, specifically on the topic of COVID-19.

Adjourn

On the motion by Chairman Kurt Ostoic, seconded Member Mark Grady, and carried unanimously by roll call vote (5-0), the Board adjourned at 6:16 p.m.

Respectfully Submitted,

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