

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATIONS
DECEMBER 2, 2015

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on December 2, 2015 at 5:05 p.m. Chair Margolies informed those present of cases 2015-07 and 2015-08 being heard tonight; roll call was taken. Those present included:

Jon Margolies, Chair
Robert Schley
Kurt Ostoic
Jeffrey Davis, Alternate
Donald Zien, Alternate

Also present were Village Clerk Kelly A. Meyer, Inspector Scott Miller, and Village Attorney Eric Larson.

Notice of the meeting was provided to the North Shore Now, to all others as required by State open meetings laws, and posted on the official bulletin boards.

Approval of Minutes – October 12, 2015 Meeting

On the motion of Mr. Schley, seconded by Mr. Ostoic, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the October 12, 2015 meeting.

Case 2015-07: 7126 N Lake Drive.

The applicant is requesting an after-the-fact, special exception from the ordinance pertaining to fences, walls, arbors, architectural screening devices, driveway gates and arbors – section 745-7 (B)(3) of the Fox Point Village Code. The applicant is proposing to erect a 4' aluminum fence with 3 ¾ spacing between the posts both in back and forward of the front line of the principal building improvement. The after-the-fact special exception is requested pursuant to 745-27.

Building Inspector Scott Miller was sworn in to provide testimony.

Mr. Miller noted the denial was due to a request to a special exception for a recently erected fence on the property of 7126 North Lake Drive without a permit, which is a violation of section 745-7(B)(3)(a) of the Village of Fox Point code. The applicant is here today to obtain an after-the-fact special exception for the fence. The application shows the fence encompasses the property and it extends past the frontline of the home.

Mr. Miller read the first section 745-7(B)(3)(h)(2) of the village code in regard to the extension past the frontline of the home. The application does not show if a driveway gate will be installed. If so, the ordinance requires every special exception granted by the Board of Appeals for a driveway gate to be conditioned upon applicant filing with the Village Clerk/Treasurer the written approvals of both the Police Chief and Fire Chief.

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Mr. Miller also noted per section 745-7(3)(j) of the village code every special exception granted by the Board of Appeals shall be conditioned upon the applicant obtaining Building Board approval of the architectural appearance design and construction of the fence.

Mr. Davis entered and was present at 5:10 p.m., just prior to the Building Inspector speaking.

Chair Margolies inquired whether there will be a gate and Building Inspector Miller clarified the Board of Appeals application does not note there will be a gate at this point.

Adham Awadalla, 7126 N Lake Drive was sworn in to provide testimony.

Applicant Mr. Awadalla noted he and his wife have two young children. One of the couple's daughters fell in the ravine and almost lost her life. They made the decision to protect their children from harm and more risks; in addition, they also play in the front area near the driveway most often. Mr. Awadalla noticed the neighbors also had a fence. Therefore, Mr. Awadalla contacted the contractor; he noted the contractor claimed he called the village for permitting and staff stated no permits were needed, thereby, erecting the fence.

Mr. Awadalla commented Building Inspector Miller did send him a letter after the fence was erected, prior to putting in the gate. Mr. Miller told him he needed a permit through the village. Therefore, he asked the contractor to stop work immediately and discontinued the gate until further inquiry and necessary procedures followed.

Chair Margolies confirmed with Building Inspector Scott Miller that the only concern today is the fence in the front.

Chair Margolies noted in regard to the Board of Appeals to grant a special exception for the fence, the Board would have to find the following, that the applicant has shown a clear and convincing evidence to believe the applicant has a legitimate need for this exception and granting the special exception will not adversely affect the health, safety or welfare of the community. The applicant would also have to show it is reasonably necessary to protect the safety of people residing on the property and for a driveway/gate fence, you additionally are going to need to file an application with the Village Clerk/Treasurer with the written approval of the Police Chief and Fire Chief.

Village Attorney Eric Larson added the Board of Review application did not include the driveway gate. Attorney Larson's concern with that is the village has to give notice to certain parties and the parties would not have received notice pertaining to a driveway gate. If the applicant would like to request a driveway gate, this could be done at a separate proceeding or this case could be held over, re-noticed and the Board of Appeals could come back to deal with the driveway gate, but noted the first issue is the fence in front. Without the fence in front the gate cannot be installed anyway.

Chair Margolies noted, based on Village Attorney Larson's advice, the Board of Appeals is only allowed to consider the fence at this time. Mr. Awadalla agreed with this and noted he

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would start another procedure for the gate.

Chairman Margolies commented another individual would like to speak in regard to this case and should be sworn in as well.

Gary Hollander, 6807 N Lake Drive was sworn in to provide testimony.

Mr. Hollander noted as Mr. Miller stated earlier, a building permit is required to do this type of work, as well as the assistance of a surveyor. He also noted that no new architectural screening device, driveway gate, fence or arbor, should be located beyond the frontline of the principal building and both of these have been violated. He noted there may be a similar violation in codes that has not been addressed by the Board in regard to the amount of land covered by constructed improvements by the current owner's expansive driveway. Mr. Hollander's concerns were the following:

1) Granting the appeal may suggest to other property owners that would be exempt from provisions of the village code by building without a permit, and it may also suggest to others that their previously denied special exception would be open for reconsideration. Mr. Hollander noted he attempted to do the same thing to his home and it was not granted.

2) As the code mentions in the case of exception, this structure gives the impression that the safety and welfare of Fox Point residents is in question.

Mr. Hollander noted the fence or wall is unsightly and differs greatly from the aesthetics of its neighbors. He asked that if this were to be approved, mature plants be required of the resident, to better screen the fence from view.

Chairman Margolies asked Mr. Hollander what the nature of the fence was that he sought to have approval of. Mr. Hollander described the fence as a 6 foot wooden fence to extend 4 feet past the frontline of his residence home. He noted it did come before the Board of Appeals a long time ago.

Chair Margolies inquired if there was any way to keep the fence in the back of the house for the children. He stated the front of the home has more property than the back and it is utilized the most by the children and family. There is a very limited space in the back yard.

Attorney Larson confirmed the board could impose reasonable conditions on the approval as well. If this were granted, additional conditions could be required. That is implied in your power to approve or deny as the power to approve conditionally.

Mr. Hollander's prior fence exception and the timeline was discussed briefly.

It was noted by Attorney Larson noted the ability to approve fences based on special exceptions is fairly new, most likely is estimated to be within the last 5 to 8 years or so. Prior to that time, it would have required a variance, which would have been a much different situation. There was a desire to be a little more lenient with fences and front yards, which what gave rise to special exception portion of the code.

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On the motion of Mr. Zien, seconded by Mr. Ostoic to grant Case 2015-07, finds that the fence is reasonably necessary to protect the safety of the people residing on the property and the property owner has shown clear and convincing evidence to believe that the applicant has a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety, or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of section, subject to being referred to the Building Board pursuant to the ordinance. With all members voting aye, the motion carried.

Chairman Margolies noted Mr. Adham Awadalla can work with the Clerk to obtain the proper applications and paperwork for the Building Board.

Case 2015-08: 201 W Indian Creek Court

The applicant is requesting a special exception pertaining to fences, walls, arbors, architectural screening devices, driveway gates and arbors – section 745-7(B)(3) of the Fox Point Village Code. The applicant is proposing to erect a new 28" garden wall of multicolored granite fieldstone ranging in size forward of the front line of the principal building improvement. The special exception is requested pursuant to 745-7(B)(3)(a), 745-7(B)(d)(h)(2), and 745-7(B)(3)(j) of the Fox Point Code.

Building Inspector Scott Miller was sworn in to provide testimony.

Mr. Miller noted this is a request for special exception. The applicant is here today to obtain a special exception for a stone garden wall they proposed to build on their property. The application showed that the garden wall is 28 inches tall and the site plan was submitted to the Building Board shows that the garden wall is 3 feet 6 inches away from the front or north property line. Mr. Miller read section 745-7(B)(3)(h)(2) of the code, noting the garden wall is forward of the front line of the home, which therefore needs a special exception which may be granted by the Board of Appeals. He noted Building Board approved the stone wall at its November 16, 2015 meeting.

Chairman Margolies noted there are some materials that Village Clerk/Treasurer Kelly Meyer placed before him. It was confirmed by Clerk/Treasurer Kelly Meyer there was a set of larger plans for review within the folder. He noted they were now available for the Board of Appeals to take a closer look at the plans.

Jane Frank, Landscape Designer with David J Frank Landscape Contracting, Inc., N120 W21350 Freistadt Road, Germantown was sworn in to provide testimony.

Mr. Wolf has lived in the home since the early 1990's and has always envisioned a small garden wall at the front of the property. Back in the early 1990's, there wasn't really any reason for the wall. Now Mr. Wolf has aged and so have his friends. Their cars pull through between the two

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large trees, now requiring a post lamp for safety. Indian Creek Drive is very dark at night. The wall would marry and add the post light at night when driving for safety and the aesthetically pleasing look. This is one of the original homes on Indian Creek Drive. It has a very nice country look, very homey looking, and it would be a wonderful addition to the street.

It was noted a number of people have fallen in the culvert over the years as well.

Marc Wolf, 201 W Indian Creek Ct, Fox Point, WI 53217 was sworn in and provided testimony.

Mr. Wolf noted in the 23 years he has owned the home, at least 8 people have hit the tree on the west side coming into the drive. That is not difficult, especially if you are trying to back down the driveway. The driveway is only 10 feet wide. The post light would add light and visibility to the trees near the driveway.

On the motion of Mr. Zien, seconded by Mr. Davis to grant Case 2015-08, finds that the wall is reasonably necessary to protect the safety of the people residing on the property, the property owner has shown clear and convincing evidence to believe that they have 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, intent or spirit of the code. With all members voting aye, the motion carried.

Adjourn

On the motion of Chair Margolies, seconded by Mr. Ostoic, and carried unanimously, the Board adjourned at 5:46 p.m. Motion carried.

Respectfully Submitted,
Kelly A. Meyer, WCMC



Village Clerk/Treasurer