

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
SEPTEMBER 26, 2019

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Thursday, September 26, 2019 at 5:30 p.m. Chair Don Zien noted a quorum is present. Roll call was taken. Those present included:

Don Zien, Chairman
Sara Bowen
Catie Anderson (Alternate 1)
Carlie Aizenberg (Alternate 2)
Robert Cory (Alternate 4)

Staff members 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 – August 7, 2019 Meeting

On the motion by Sara Bowen, seconded by Carlie Aizenberg, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the August 7, 2019 meeting, as presented.

Case 2019-05: 315 E Daphne Road

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 Deputy Clerk Treasurer.

Building Inspector Michael Rakow stated that the applicant submitted a fence application requesting a replacement fence with using new material of aluminum to replace the current wood. This lot is a corner lot between Apple Tree and Daphne Roads. Due to being on an irregular shaped lot and the lot is located along two streets, pursuant to Fox Point Code Section 745-7(B)(3)(h)[1], the front, side, and rear areas should be determined by the Board of Appeals. Building Inspector Michael Rakow noted a determination needs to be made as to the front of the home pursuant to Fox Point Code Section, 745-7(B)(3)(h)[2]. Mr. Rakow noted the application also pertains to 745-7(B)(3)(j), requesting the special exception.

Catie Anderson inquired whether the sections of the code would be considered together or separately.

Building Inspector Michael noted that the ordinance considerations are all technically separate. Determination should be made regarding the front of the home, Mr. Rakow noted it potentially could be Daphne because that appears to be the applicants address, as 315 E Daphne Road. Following, would be the consideration of the fence potentially being forward of the frontline of the home. The final consideration would be the special exception.

It was clarified the fence would be the same footprint for replacement as the current wood fence.

Applicant/Appellant Ron Timm, 315 E Daphne Road

Applicant Ron Timm stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

Mr. Timm explained he wants to replace the old rotted cedar fence with an architecturally appealing aluminum fence. The applicant was reminded of the standards that the Board of Appeals must follow regarding the necessity to protect the safety of the people residing on the property. Mr. Timm clarified that the fence would

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keep the dogs restrained from those outside the fence.

Village Attorney Eric Larson asked to explore the issue of safety. Mr. Timm stated he does have a twelve year old who resides in the home, but doesn't feel it is necessary to protect his twelve year old.

Sara Bowen inquired if any neighbors had come into the village office to review the plans. Village Clerk Treasurer stated there had been one couple who came into the office, reviewed the plans, and felt the renderings were acceptable, commenting that the Timm family always does very nice and aesthetically pleasing work on their property.

Village Attorney Eric Larson clarified the three standards that have to be met, to permit the special exception. Village code section 745-7(B)(3)(h)[2], pertains to a fence forward of the front line of the home. In the middle of the paragraph, it states, "The Board of Appeals may grant a special exception under this subsection only if it finds that the fence, wall, architectural screening device, arbor or driveway gate is reasonably necessary to protect the safety of people residing on the property, in addition to the other findings and conditions required by Subsection 745-7(B)(3)(j) below". This would apply to the front yard.

Code section 745-7(B)(3)(b), was referenced in regard to replacement with like materials. Village Attorney Eric Larson read the excerpt pertaining to fences with the same height, same location and same materials being permitted by applying for a permit. This fence should be treated as a new fence, applying all sections of the code, as prior addressed.

Applicant Mr. Timm noted arguably, the location of the front of the home should be considered whether it is the front or side lot. Mr. Timm asked the Board in likeness to consider the fence at Yates Road and Green Tree with the lot on a corner lot; the fence on that property is all the way around the house. That particular fence was approved and it is also a new fence. Mr. Timm noted the current fence is not forward of the frontline of the home.

The applicant stated walking around the yard, the majority of the yard is on another side. The applicant noted they did consider using the same materials but they felt that the aluminum looked nicer, adds to the architecture of the home and would be easier to maintain.

Sara Bowen inquired on the safety of those residing. The applicant stated the fence would assist with protecting those residing on the property from the fast-moving traffic.

Chairman Don Zien closed the testimony at 5:49 p.m. for the Board of Appeals to make a determination.

Attorney Larson noted that Village Code Section, 745-7(b)(3)(h)[1] should be considered first with the irregular shaped lot in regard to the front, side, and back of the property.

The Board of Appeals determined by unanimous consent, the area rendered for fence replacement is considered a side lot, thereby permitting the fence in the location per section 745-7(B)(3)(h)[2].

The Board of Appeals considered Village Code Section, 745-7(B)(3)(j), regarding the special exception.

On the motion of Sara Bowen, seconded by Carlie Aizenberg, and carried unanimously by roll call vote, the Board of Appeals granted the special exception, as the applicant has 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).

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Case 2019-06: 480 E. MacArthur Road

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 Deputy Clerk Treasurer.

Building Inspector Michael Rakow stated that this case is similar to the last case. This lot is a corner lot so Board of Appeals should determine where the front, rear or side areas of the home are located, pursuant to Village Code Section 745-7(B)(3)(h)[1]. Following the determination of the front, side and rear of the home, pursuant to Village Code Section 745-7(B)(3)(j), the special exception according to the standards should be determined.

Catie Anderson asked for clarification of the location of the panels. Building Inspector Michael Rakow Clarified it would be a couple of fence panels on the side area of the home off of Regent Road.

Applicant/Appellant Elizabeth Mark, 480 E MacArthur Road

Applicant Elizabeth Mark stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

Ms. Mark noted the intention of the panels is to add a little more privacy in the back yard. The owners have taken down some of the trees leaving their yard more exposed with less coverage. Regent Road is very busy. This would be for the safety of their children and for privacy reasons.

Robert Cory noted he needed some clarification on the definition of fence. According to the dictionary, a fence is a continuous run to keep people or animals in or out. In his opinion, this is not a fence. Mr. Cory stated this appears to be an elaborate lawn decoration. Fox Point has always been a traditional community.

Building Inspector Michael Rakow read pursuant to village code, the fence definition is a structure which creates an enclosure, a barrier, or a boundary having a set permanent location in the ground or which is attached to something having a permanent location on the ground. A fence is considered to be a structure. Mr. Rakow stated in his opinion, it meets one of the defined criteria, according to the village code definition.

Village Attorney Eric Larson stated the definition is not from Webster, but taken from the village code, as defined and read prior.

Chair Zien stated, after reviewing the rendering, the location of the fence panels appears not to be forward of the frontline of the home.

Applicant Ms. Mark clarified further that there was prior screening until the dead trees were taken down. Therefore, now there is much less screening and privacy.

Sara Bowen inquired about the placement of the fence panels. Ms. Mark stated the staggering of the panels is for their children's accessibility to friends' yards. There is an openness to the panels. Ms. Mark also stated Regent Road is extremely busy with traffic. The fence panels would help with noise reduction, privacy and the safety of our children.

Sara Bowen inquired if there were any neighbors who reviewed or commented on Case 2019-06, fence special exception application and renderings at the Village Office. Village Clerk Treasurer Kelly Meyer stated there were not.

Chairman Don Zien closed the testimony at 6:11 p.m. for the Board of Appeals to make a determination.

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Village Attorney Eric Larson had a few comments. Attorney Larson noted with this case we have the same standards except we don't have the front yard issue. Nobody is contesting this is in the front yard. The Board of Appeals should look at whether this is in the rear or side yard, although this will probably not matter much for this case. This issue of whether this is a fence or not a fence is not the Board of Appeals issue. The Boards standard is to look at the special exception portion of the village's code and decide whether to grant the special exception. If this is not a fence, it is most likely a wall and walls are treated the same under the special exception. Walls are a broader area and walls do include wooden structures. This will clearly be regulated by the Village Code one way or another, as included under the code in 745-7(B)(3)(j).

On the motion of Sara Bowen, seconded by Catie Anderson, by roll call vote, the Board of Appeals determined that the front of the property is on MacArthur Road and grants the special exception having found the property owner has shown clear and convincing evidence to believe there is a legitimate need for the special exception and 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).

Motion passed 4-1, (Opposed-Robert Cory)

Adjourn

On the motion by Sara Bowen, seconded by Carlie Aizenberg, and carried unanimously, the Board adjourned at 6:12 p.m.

Respectfully Submitted,

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer