

**NOTICE OF MEETING
VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING**

SCHWEMER HALL - MUNICIPAL BLDG.
7200 N. SANTA MONICA BLVD.
FOX POINT, WISCONSIN

WEDNESDAY
AUGUST 4, 2021
5:00 P.M.

AGENDA

- 1. Roll Call**
- 2. Approval of the Minutes and Determinations – June 23, 2021 Meeting**
- 3. Case 2021-05: 7736 N Beach Drive.** *Consider the written decision based upon decision of June 23, 2021 re: the applicant's request for a special exception from the fence ordinance to erect a five-foot high wrought iron fencing along the side yards extending forward of the front line of the home and to install a six-foot high decorative iron driveway gate with supporting pillars approximately six- and one-half feet high. The special exception request is made pursuant to 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Code; the gate with supporting pillars was granted and the wrought iron fencing along the side yards extending forward of the front line of the home was denied. *The only issue at this meeting is considering the written findings and conclusions, formalizing the written decision.**
- 4. Case 2021-06: 7310 N Longacre Rd.** The applicant is requesting a variance pertaining to Section 745-4(C)(2) and Section 745-17(B)(3) of the Fox Point Village Code in the C-District, concerning side yard setbacks. A side yard of not less than 10 feet shall be provided for every building. The applicant is requesting a variance for a new garage to be located 3 feet from the side lot line.
- 5. Adjourn**

PLEASE NOTE: Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request these services, contact the Village Clerk at (414) 351-8900. It is possible that members of, and possibly a quorum of members of, other governmental bodies of the municipality may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice.

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, June 23, 2021 at 5:00 p.m. The Village Clerk took roll call. Those present included:

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

Approval of Minutes – May 20, 2021 Meeting

On the motion by Member Thomas Dunst, seconded by Member Mark Grady, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the May 20, 2021 meeting, as presented.

Case 2021-05: 7736 N Beach Drive

The applicant is requesting a special exception from the fence ordinance to erect five-foot high wrought iron fencing along the side yards extending forward of the front line of the home and to install a six-foot high decorative iron driveway gate with supporting pillars approximately six and one-half feet high. The special exception request is made pursuant to 745-7(B)(3)(h)[2] and 745-7(B)(3)(j) of the Fox Point Village Code.

Village of Fox Point Building Inspector Michael Rakow

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

Building Inspector Michael Rakow gave background on Case 2021-05, a request of a special exception from the fence ordinance to erect five-foot high wrought iron fencing along the side yards extending forward of the front line of the home and also a request for a special exception to install a six-foot high decorative iron driveway gate with supporting pillars approximately six and one-half feet high. Building Inspector Michael Rakow noted according to the Village Code, any time a fence is forward of the frontline of the home or any time a request for a gate comes to the Village for a permit, the request must come before the Board of Appeals for approval.

There were no questions for Building Inspector Michael Rakow.

Appellant Tan Lo, 7736 North Beach Drive, Fox Point

Appellant Tan Lo stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

48 vonBriesen and Roper, S.C., Attorney Andrea Roschke and Representative for Appellant Tan
49 Lo's

50 vonBriesen and Roper, S.C., Attorney Andrea Roschke was present but did not give testimony.

51
52 Village Attorney Eric Larson stated Attorney Roschke could decide how she wants to present
53 her case. He noted typically the appellant will give a statement, but if you would prefer to ask
54 questions, she could certainly do that.

55
56 vonBriesen and Roper, S.C., Attorney Andrea Roschke stated if it is ok with everyone because
57 there was a letter submitted with the special points made, she was just going to ask Mr. Lo to
58 elaborate on the points. This would include all the background in the letter. She further noted
59 that, as the building inspector noted, there are two elements in the case. One element is the
60 side yard lot lines between neighbors. The second element is the gate across the driveway
61 and the supporting pillars. In this application there is no other fencing parallel to the street line.
62 The letter does explain their position. She would like it if Mr. Lo would be able to explain his
63 history in Fox Point in 30 seconds.

64
65 Appellant Tan Lo gave background on his history in the Village of Fox Point, for his ten years at 8800
66 Beach Drive and then his history beginning in 2015 at 7736 Beach Drive. He and his family were
67 given an opportunity to purchase 7736 Beach Drive. The home was still under an insurance claim
68 lawsuit in 2015. The only way he was permitted to purchase this property was if he agreed to raze the
69 home and begin a new build. Following his purchase in 2015, he and his family began taking out
70 permits to rebuild.

71
72 Prior to he and his family's purchase, the home sat vacant from 2009 through 2015. The home was
73 an issue and an eyesore for the whole street at the time. Kids were hanging out on the property,
74 climbing in and out of it, using it for prom pictures, beer cans found there often on the property, and
75 pretty much anyone and everyone was using the property as they wanted. Trespassing was an
76 immediate issue.

77
78 ***[Appellant Mr. Tan Lo submitted 7 pages of photos, with an 8th page having a***
79 ***series of photos on the page]***

80
81 Appellant Tan Lo stated he collects cars and he also built a 7-car garage to house his cars inside,
82 due to concerns of safety and theft on the property. For insurance purposes, a fence or gate would
83 really help on this property.

84
85 vonBriesen and Roper, S.C., Attorney Andrea Roschke asked Appellant Mr. Tan Lo to explain further
86 his family circumstances.

87
88 Appellant Tan Lo then explained further his family circumstances. He stated he has two young active
89 boys, 11 years and 8 years, who play baseball and hockey. He stated Beach Drive is like a tourist
90 attraction. Many people drive through and enjoy the view.

91
92 vonBriesen and Roper, S.C., Attorney Andrea Roschke asked Mr. Tan Lo to explain his dog further.

Appellant Tan Lo stated he also has an American bully. Neighbors are intimidated by the dog's looks and size. His bark is also scary to those who do not know him. Many people have left and reported Appellant Tan Lo's dog to the Police Department. Police officers are constantly coming to the house to check on the dog because of reports from people stating there is a dangerous dog. Once the officers meet the dog, they know the Lo's dog is fine. The fence and gate would probably help the situation quite a bit.

Chairman Kurt Ostoic asked if people have driven up since the home was finished.

Appellant Tan Lo noted it happens quite often. Sometimes they pull in and back out, sometimes they pull in, up the driveway, and turn around. The neighbors have actually called Mr. Lo late at night to let the Lo's know there is an odd car in their driveway.

Chairman Kurt Ostoic inquired about the wrought iron fence Mr. Lo is requesting for the side yards and extending past the front lines of the home. He asked if the fence would be going all the way around the front of the home also or if it is just along the sides of the home.

Appellant Mr. Lo stated the fence would just be along the sides of the property.

vonBriesen and Roper, S.C., Attorney Andrea Roschke stated on that topic, there are two legal things she wanted to touch on which does not qualify as giving testimony. She stated if the purpose of the ordinance is to have somewhat of an open feel, a compromise to not having everything fenced in along the road, the need would be to at least have the front gate across the driveway, which will somewhat inhibit people from coming onto the property and the children from riding a bicycle out into the street. The owners would then do something with landscaping. In that sense we feel that the application is respectful to the code. The final point is the application submission also included some photos of properties on his street of other driveway gates to show that the neighborhood has some driveway gates and it doesn't seem to be problematic. Those photos also included fences, not just gates. No neighbors seemed to have concerns about this proposal. They do not feel it is a negative impact on the neighborhood.

Member Mark Grady commented he wanted to follow the comments up. Member Grady stated he does see them as two separate questions – the gate versus the side fences. He asked what the plan is with respect to the front along the roadway, assuming there is no fence there. Will there be landscaping or nothing?

Appellant Mr. Lo stated there would be trees and plantings.

Member Mark Grady inquired how does Mr. Lo feel that the side fences help with security whether it is the home or security of your sons or anything else. It seems like side yard fences do not add much to the security. He stated he is having a hard time trying to figure out what the security reason is for the side yard fences.

Appellant Mr. Lo stated the south side property just had a neighbor who purchased it two years ago. There will soon be a construction site coming up at that property. The home will be razed. Through the construction period at least, there will be construction workers and people they don't know coming and going. The newsletter stated work trucks are being broken into during the construction times due

to workers being in the house and robberies taking place while they are inside working. He stated he did not really want to be part of that operation with the side yards being wide open. He stated that would be protection for his family as they are unsure how long the construction will last – 1 year or 2 years.

Member Mark Grady inquired if Appellant Tan Lo's home is still under construction or what the status is.

Appellant Tan Lo stated they are now doing the final grading.

Chairman Kurt Ostoic stated his issue is that without a complete enclosure, kids, dogs, neighbors, passersby, or anyone could still access the property. He stated he is very concerned that they are putting up fences that aren't really going to keep out things that you're looking to keep out.

Appellant Tan Lo stated their intent was to enclose the whole yard before, but it wasn't successful. Therefore, they have to find some kind of a compromise and still try to protect the home. The original plan was the ideal plan for he and his family, but it was denied.

Chairman Kurt Ostoic stated he recalled there was a two-foot fence which doesn't keep anyone out of the property. He explained that the Board has to follow the codes and statutes for what we are trying to accomplish for the Village of Fox Point. Sometimes it doesn't always work for individuals. So, he stated that is why we have to understand exactly how this is going to help protect your property.

Appellant Tan Lo inquired if a five-foot fence in the front of your property be okay with the Board.

Chairman Kurt Ostoic clarified he did not say that, he is just saying you have to convince us that the security is absolutely necessary.

vonBriesen and Roper, S.C., Attorney Andrea Roschke corrected, saying "reasonably necessary." She stated also not a factual statement but common sense tells me if some nefarious person is coming to your property, it is possible they will run across your landscaping and your arborvitae, but it is also more possible that they would drive up with a car. Having that driveway blocked is getting a lot of protection with less fencing. While not 100 percent, you can still do things with landscaping.

Member Mark Grady stated he wanted to follow up on the driveway gate a little bit. He asked Appellant Mr. Lo if he felt the driveway gate, with or without the side yard fence, would be the primary thing to prevent people from threatening you and your family or do you think something else is more important than the drive way gate?

Appellant Mr. Lo stated yes, to him and his family, having the whole property fenced would be the most effective, but if a compromise is necessary, having the gate across the driveway is better than just leaving the driveway open. The gate would definitely help.

Chairman Kurt Ostoic pointed out that the Board, Appellant and Building Inspector all received copies of the two letters, one letter dated June 13, 2021 and one letter dated June 16, 2021 from the Village of Fox Point Police Department for review.

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190 *On motion of Member Mark Grady, seconded by Chairman Kurt Ostoic, and carried*
191 *unanimously, the Board closed the testimony at 5:25 p.m.*
192

193 Village Attorney Eric Larson wanted to clarify what is currently in the Board's record. The letters just
194 referenced from Police Chief Chris Freedy dated June 13, 2017 and June 16, 2021. There is also a
195 letter dated April 27, 2021 from Alan Marcuvitz, which includes the Board of Appeals application. The
196 application itself has attachments with photographs of the site plan. Today the Board received photos:
197 7 photos with an 8th page which provides 16 small photos. That is the complete record.
198

199 Village Attorney Eric Larson walked the Board through the standard that applies to Case 2021-05 to
200 refresh their recollection. The general provision Section 745-7(B)(3)(h), regarding location and height
201 restrictions and Section 745-7(B)(3)(h)[2], provides that the Board of Appeals may grant a special
202 exception under this subsection only if it finds that the fence, wall, architectural screening device,
203 arbor or driveway gate is reasonably necessary to protect the safety of people residing on the
204 property, in addition to the additional findings and conditions required by Subsection B(3)(j) below.
205 Every special exception granted by the Board of Appeals for a driveway gate shall be conditioned
206 upon the applicant filing with the Village Clerk/Treasurer the written approval of the Village Police
207 Chief in consultation with the Fire Chief for the specific driveway gate and gate location that is
208 proposed; and if such approval is denied, the special exception is thereby denied, and Section 745-
209 7(B)(3)(j) provides the Board of Appeals may grant the request for a special exception upon finding
210 that the property owner has shown clear and convincing evidence to believe that the applicant has a
211 legitimate need for the special exception and that granting the special exception will not adversely
212 affect the health, safety or welfare of the community or the immediate area where located and will not
213 impede the purpose, spirit and intent of this section, in addition to such other specific findings as may
214 be required by other subsections of this section. These are the relevant sections of the Code. Those
215 are the same sections that were cited by Appellant Tan Lo's attorney.
216

217 Village Attorney Eric Larson did comment on something that came up in the testimony. It is not that
218 the fence is absolutely necessary to protect the safety of people residing on the property; the
219 standard is **reasonably** necessary to protect the safety of people residing on the property.
220

221 Member Mark Grady opened the discussion with the Board. From his earlier comments, he sees
222 these two requests differently. The side yard fence with this presentation being so different from the
223 presentation we saw earlier. Frankly, it is not any different from any other normal fence request that
224 the Board receives. The only time the Board has approved a special exception, since he has been
225 here, was when someone was located on a very busy property, such as, on Lake Drive, then the
226 Board felt it was necessary. Otherwise, the rationale included in Mr. Marcuvitz's letter related to
227 children in the yard and dogs in the yard has not been accepted by the Board in the past. I don't see
228 any reason now for this property being significantly different. It is a more expensive property and a
229 more expensive home, but other than that, he doesn't see it any differently than most residential
230 properties in the village. He is not convinced that they have shown that the side yard fence is
231 reasonably necessary to distinguish it from any other property regarding safety. He does however feel
232 and is convinced differently with respect to the driveway gate. What convinced him that the gate is
233 reasonably necessary to protect the safety of the people on the property is the car collection and the
234 nature of the property. The enticement of potential theft which can lead to potential violence on the
235 property does create a need for the driveway gate. It is consistent with other driveway gates. Not

every house down there has a driveway gate, but there are other homes that do have driveway gates. The access up and down the driveway is clearly the access that could be used by anyone committing substantial theft to the property. That is the most likely way to commit theft. Therefore, Member Mark Grady would be inclined to grant the special exception for the six-foot high decorative iron driveway gate with supporting pillars and deny the special exception for the side yard.

Member Thomas Dunst stated that he was leaning the very same way as Member Mark Grady was regarding the special exceptions. He stated the gate does add some added protection to the property which is reasonably necessary.

Member Nancy Filsinger noted due to concerns with the construction at the neighboring property, there is something in the Village Code, Section 745-7(B)(c) regarding temporary fencing during construction.

Village Attorney Eric Larson commented this has not come up in the past, but there is a Code Section regarding temporary fences. He noted it does state that the temporary fence may be put in place for a period not to exceed 120 days, unless extended by the Village Manager. This is for the purpose of safety, protection from the elements or protection from deer. Temporary construction fences are allowed at the discretion of the Village Building Inspector. He noted he does not see where temporary fences are allowed to be located; he is not sure offhand if the location restrictions are different for a temporary fence opposed to a permanent fence. He stated it is ultimately up to the Village Manager and the Village Building Inspector to decide. It is not up to the Board to decide today, but it may be an option for the property owners to explore.

Village Attorney Eric Larson stated his recommendation is that the motion include the delegation to staff to put the decision whatever it may be into a formal form and brought back at the next meeting for the final adoption of the findings. The nature of this matter warrants a formal decision.

Member Mark Grady moved to deny the request for the special exception for the side yard fencing and grant the special exception request for the driveway gate and direct staff to bring back formalized findings of fact, conclusions of law and decision for the Board's review and approval, seconded by Thomas Dunst.

<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).

Adjourn

On the motion by Member Mark Grady, seconded by Member Nancy Filsinger, and carried the Board adjourned at 5:33 p.m.

Respectfully Submitted,

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

**FINDINGS OF FACT, DECISION AND ORDER OF THE ZONING BOARD OF APPEALS FOR
THE VILLAGE OF FOX POINT
MILWAUKEE COUNTY, WISCONSIN
CASE NO. 2021-05**

The above entitled matter came before the Village of Fox Point Zoning Board of Appeals (hereinafter "Board") for appeal on June 23, 2021 to request a special exception filed by Attorney Alan H. Marcuvitz of von Briesen & Roper, S.C., Agent for the Property Owner on behalf of Tan Lo (the "Appellant") dated April 27, 2021. These Findings, Conclusions and Order were then considered and acted upon by the Board on August 4, 2021. The Applicant appeared in person and provided testimony at the June 23, 2021 hearing in support of the special exception request.

FINDINGS OF FACT¹

Having heard the testimony and considered the evidence presented, the Board of Appeals finds the following facts:

1. The Appellant is: Tan Lo
Mailing address: 7736 N. Beach Drive
Fox Point, WI 53217

Address of Property: 7736 N. Beach Drive
Fox Point, WI
2. The Appellant is the owner of the property located at 7736 N. Beach Drive.
4. The Appellant requests a special exception to the Village of Fox Point Zoning Code Section 745-7(B)(3)(h)[2].
5. The Village of Fox Point Zoning Code Section 745-7(B)(3)(h)[2] states: "No new fence, wall architectural screening device, driveway gate or arbor shall be located beyond the front line of the principal building" without the Board of Appeals approval by special exception and pursuant to 745-7(B)(3)(j) of the Fox Point Code.
6. The request for a special exception seeks to allow a five-foot-high driveway gate at the front entrance to the home, which is newly constructed. Pillars on either side of the driveway gate would be approximately six and one-half feet high. The request also seeks a special exception for a five-foot-high wrought-iron fence on the sides of the yard extending past the frontline of the home.
7. At the June 23, 2021 Board Hearing, the Appellant gave a background on his history in the Village of Fox Point and his acquisition of the property located at 7736 N. Beach Drive and the history of the property. The Appellant stated that the property previously had issues with trespassers while it sat vacant prior to Appellant's purchase and that trespassing was an immediate concern. The Appellant stated that he is a collector of cars and expressed concern over being a target of theft due to his collection, creating the need for the driveway gate and side fencing for safety and insurance purposes. Safety concerns were also expressed for the Appellant's two children as many people travel on Beach Drive due to its proximity to Lake Michigan. Additionally, the owner has a dog for security purposes and stated the fence and driveway gate would be used to ensure the dog was contained in the yard. It was stated that the police had been called to the house in the past because of the dog's intimidating look and that the gate and fence would help reduce the calls to the police. The Appellant also reported that vehicles would enter the property from Beach Drive and use the driveway as a turn-around, sometimes late at night, which concerned the Appellant for the safety of his children.

¹ To the extent that any Finding of Fact herein involves issues of law, it is intended in that respect to be a Conclusion of Law, and to the extent that a Conclusion of Law herein involves factual issues, it is intended in that respect to be a Finding of Fact. The heading under which the statement is made shall not be controlling.

8. Member Mark Grady inquired how the Appellant felt that the side fences would help with security when there will not be a fence on the frontline of the property. The Appellant expressed concern over construction projects beginning on the south side property that would involve unknown people coming onto the property at all hours. The Appellant also cited recent thefts and break-ins that occurred at construction sites. The side fences would provide additional protection and safety during the construction from the amount of people coming and going.
9. The Appellant stated that it was the original intention to have the entire property enclosed but those plans were not approved, which is why the Appellant compromised and proposed only the side fence and driveway gate. Member Mark Grady asked if the Appellant felt that the driveway gate with or without the side yard fence would be the primary thing to prevent people from threatening him or his family. The Appellant stated that complete enclosure would be preferred, but if compromise was necessary having the driveway gate would be better than leaving the driveway open.
10. Chairman Kurt Ostoic pointed out that the Board of Appeals, the Appellant and the Building Inspector all received two letters, one dated June 13, 2017 and one letter dated June 16, 2021 from the Village of Fox Point Police Department regarding the safety of the property and proposed plans. The letters note approval of the driveway gate and gate location in consultation with the Fire Chief.
11. Section 745-7B(3)(h) of the Village Code provides:

[A] fence, wall, architectural screening device, driveway gate or arbor may be permitted up to the lot line in the side and rear yard of any property in Fox Point. A fence, wall, driveway gate or architectural screening device located in a rear or side yard shall not exceed a height of six feet from the finished lot grade and shall not project forward of the front line of the principal building.
12. Section 745-7B(3)(h)(2) of the Village Code provides:

No new fence, wall, architectural screening device, driveway gate or arbor shall be located beyond the front line of the principal building unless permitted by the Board of Appeals by special exception after a hearing, pursuant to the procedures described in Subsection B(3)(j) below. 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 additional findings and conditions required by Subsection B(3)(j) below. Every special exception granted by the Board of Appeals for a driveway gate shall be conditioned upon the Applicant filing with the Village Clerk/Treasurer the written approval of the Village Police Chief in consultation with the Fire Chief for the specific driveway gate and gate location that is proposed; and if such approval is denied, the special exception is thereby denied.
13. Section 745-7B(3)(j) of the Village Code provides that the Board of Appeals may grant a special exception:

to the height, size, material, design, setback or other physical standards set forth in this subsection or to allow a driveway gate . . . [the Board] may grant the request for a special exception upon finding that 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 this section, in addition to such other specific findings as may be required by other subsections of this section.
14. Regarding the matters identified in Section 745-7 of the Village Zoning Ordinance, the Board finds as follows:
 - a. The Appellant has shown through clear and convincing evidence that the special exception is reasonably necessary to protect the safety of the people residing on the property with regard to the driveway gate. The Appellant's collection of cars creates a greater risk of theft and

potential safety concerns that make the proposed driveway gate reasonably necessary. The access point for theft of those collected cars would be through the driveway, which the gate serves to prevent access. Safety is a concern in any potential theft. While not all properties on Beach Drive have driveway gates, some do, and the proposed driveway gate is consistent with the other driveway gates on Beach Drive.

- b. The Appellant has not shown through clear and convincing evidence that the special exception is reasonably necessary to protect the safety of the people residing on the property with regard to the side yard fencing. Because the fence would not enclose the complete property, the side yard fence does not provide any substantial protection or safety benefits. Any risks posed by the construction on the property to the property on the south side of the Appellant's property are minor and other temporary options are available. No significant risks related to the children were identified, as to mental or physical capacity concerns, the children's age, or other risks requiring containment from risks of flight from the sides of the property. The Appellant also referred to containing the family dog, which is not an appropriate consideration under the ordinance, which refers to safety "of people" residing on the property. The Board has no sufficient basis to find that the side yard fence is reasonably necessary to protect the safety of people residing on the property.

CONCLUSIONS OF LAW²

Based upon the foregoing Findings of Fact, the Zoning Board of Appeals makes the following Conclusions of Law:

1. The Zoning Board of Appeals is empowered to authorize upon appeal in specific cases a special exception from the prohibition of fences and/or driveway gates that extend past the front line of the principal building. In order to grant such an exception, the Board must find that the exception is reasonably necessary to protect the safety of people residing on the property, as further described in Section 745-7B(3)(h)(2) of the Village Code.
2. In considering requests for special exceptions to the physical standards that apply to fences and driveway gates, the Board must consider both whether the owner has shown a legitimate need for the exception, and whether the special exception will impede the purpose, spirit and intent of the fence ordinance, as described in Section 745-7B(3)(j) of the Village Code. This purpose of the ordinance is described in Section 745B(3)(intro) as being "... to ensure that the Village of Fox Point retains the openness and semirural character of its landscape."
3. The Appellant has successfully demonstrated clear and convincing evidence that the property owner needs the driveway gate to extend past the front line of the house in order to protect the safety of the people living on the property and that granting the special exception would not impede the purpose of the ordinance. Granting of the requested variance to allow construction of the driveway gate extending past the front line of the house would not be contrary of the purpose and intent of the Zoning Ordinance described in Section 745B(3)(intro), including Section 745-7(B)(3)(h) and 745-7(B)(3)(j), because the openness and semirural character remains along the front of the lot.
4. The Appellant has failed to demonstrate clear and convincing evidence that the property owner needs the side yard fencing to extend past the front line of the house in order to protect the safety of people living on the property or that granting the special exception would not impede the purpose of the ordinance. To grant the requested variance to allow construction of the side yard fencing extending past the front line of the house would be directly contrary to the purpose and intent of the Zoning Ordinance described in Section 745B(3)(intro), including Sections §745-7(B)(3)(h) and 745-7(B)(3)(j).

² See Footnote #1.

DETERMINATION AND ORDER

Based upon the foregoing, the Appellant's request for a special exception is granted in part for the driveway gate, and denied in part for the side yard fencing.

These findings have been approved by the Board.

Review of this Decision may be obtained by filing a Petition for Writ of Certiorari in any court of record of this County with 30 days after the date of filing of this written decision shown below.

Dated: _____, 2021, *nunc pro tunc* June 23, 2021.

Village of Fox Point
ZONING BOARD OF APPEALS

Kurt Ostic, Board Chair

ATTEST:

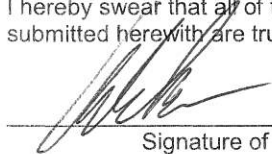
Kelly Meyer, Village Clerk Treasurer

VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT WI 53217-3505
414-351-8900
FAX 414-351-8909



3. Why the variance requested is not contrary to the public interest and will not endanger public safety and welfare.
4. Why the variance requested will be in accord with the spirit of the Zoning Code.
5. How the variance, if granted, will cause substantial justice to be done.
- ☐ C. Request for a special exception from the Fence Ordinance. Please obtain a copy of the Fence Ordinance to determine specific requirements. Attach a separate sheet or related materials explaining the following:
 1. Height of the proposed fence.
 2. Exact location of the proposed fence.
 3. Indicate whether the fence is replacement fence.
 4. Type of fence and materials.
- ☒ D. Other: Relative to 745-4C(2), relief from requirement of 10 feet shall be provided for on each side of every building as required by 745-17C(3).
State relief requested and attach separate sheet, listing reasons why appellant is entitled to such relief.
6. Each appeal or application must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties, and improvements thereon, and the requested change or addition. A \$200 filing fee must also accompany this application.
7. All applications for variances or special exceptions must include an area plat map, survey, pictures or other documentation depicting the location of the structural improvements on adjacent properties. These materials must be reasonably accurate in the judgment of the Board of Appeals.

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.



Signature of Appellant

6/22/21

Date

For Office Use Only:Date Application Received 6/28/21 Receipt Number for \$200 Filing Fee 1056342Case Number 2021-06 Hearing Date _____

Disposition _____

Adam and Jill Scheuer
7310 N. Longacre Rd.
Fox Point, WI 53217
6/28/21

Village of Fox Point – Board of Appeals
7200 N. Santa Monica Blvd
Fox Point, WI 53217

RE: Request for Variance for New Garage Proposal at 7310 N. Longacre Rd.

Dear Village of Fox Point – Board of Appeals:

My wife and I are respectively requesting a variance be approved for the new garage that we have proposed to be built on our property. Supporting documents for this variance request are enclosed with this letter and described below:

Exhibit A: Plat of Survey for 7310 N. Longacre Rd with Current Garage Location and Proposed Garage Dimension and Location

Exhibit B: Pictures Showing Current and Proposed Location of Garage at 7310 N. Longacre Rd. Relative to Existing Structures at 7310 N. Longacre Rd. and 7320 N. Longacre Rd.

Exhibit C: 7310 N. Longacre Rd Periodic Flooding in Back Yard

Per the “Board of Appeals, Notice of Appeal and Application for Review” application, below is the additional information providing further detail behind this variance request.

1. Variance Requested

On June 21, 2021, Michael Rakow (Village of Fox Point Building Inspector) informed myself (Adam Scheuer) that the building application was passed by the Village of Fox Point Building Board but still needs to meet the village codes for zoning code, specifically citing Chapters 745-7C, 745-4C, and 745-17 of the Village of Fox Point code. In my review of these ordinances, the proposed garage will meet all with the exception of **Part VI: Land Usage, Chapter 745 Zoning, §745-17 C Residence District, B(3)** which reads as follows:

← Village of Fox Point, WI / Part VI: Land Usage Chapter 745 Zoning →

☐ § 745-17 C Residence District.

[1] Editor's Note: Inserted at time of adoption of Code (see title 1, General Provisions, Article II).

B. Areas and yards. In a C Residence District, no building may be erected, enlarged or altered except in conformity with the following:

- (1) The open area of a lot upon which a dwelling is erected, or proposed to be erected, shall not be reduced to less than 10,500 square feet for each family. No building not erected for a dwelling shall occupy more than 15% of the gross area of the lot or exceed a height of 25 feet above the proposed grade of the ground.
- (2) A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for a corner lot from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; 15 feet when width of lot is 70 feet or less; provided, however, that no setbacks will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
- (3) A side yard of not less than 10 feet shall be provided for on each side of every building.
- (4) A rear yard of not less than 20 feet shall be provided for every building, except one of not less than 10 feet shall be provided for a building used for or classified as an accessory use.
- (5) Every lot on which a building is erected shall have an average minimum width of 80 feet.
- (6) The height limitations of single-family residence structures shall be governed by § 745-13B(6).

Source: Village of Fox Point Code: <https://ecode360.com/14576429>

While the newly proposed garage will maintain the same 3 foot setback that the current garage has from the property line, it will not have a 10 foot side yard as required by **Part VI: Land Usage, Chapter 745 Zoning, §745-17 C Residence District, B(3)**.

We are requesting that a variance be approved for the side yard to be less than the 10 foot requirement in Part VI: Land Usage, Chapter 745 Zoning, §745-17 C Residence District, B(3).

2. What special conditions exist which will cause unnecessary hardship if the variance requested is not granted.

As defined in Exhibit A, the size of the current property has the following limitations that will only allow for the garage to be built in this location:

Limitation #1: It is not feasible to locate the garage further back on our property because the backyard has periodic flooding that occurs because the backyard is the lowest point in the neighborhood, with the water having nowhere to go other than be absorbed in the ground. Furthermore, the Village of Fox Point capped the sanitary sewers in the neighborhood many years ago which further exacerbated this issue.

Limitation #2: The width of our property relative to the location of our house and our neighbor's house (Bob and Nancy Fetherson, 7320 N. Longacre Rd.) limits the potential new location for the

proposed garage. There is no scenario in which the proposed garage can be built near its current location and meet the 10 foot side yard requirement.

If we are unable to gain approval for the requested variance, the hardship we would encounter is as follows:

Hardship #1: Continue to use a garage that is substandard in size and is in severe need of maintenance.

Hardship #2: We have recently resided our house and roof with the garage no longer matching the house. It does not make sense for us to renovate the current garage to match the house because of the severe need for maintenance. Tearing down and building a new garage is the most cost effective and timely way to have a garage that matches the house.

Hardship #3: Additional cost and time to build a non-standard sized garage. The proposed garage is a standard sized garage (22' x 24') for JD Griffiths which results in lower costs and reduced installation time.

3. Why the variance requested is not contrary to the public interest and will not endanger public safety and welfare.

The current garage has a 3 foot setback from the property line and does not have a 10 foot side yard around the garage. In addition, it is in dire need of repair or replacement, with the latter option being preferred due to reasons described elsewhere in this letter. The proposed new garage will improve my property, increase the aesthetic appeal for my neighbors and the Village of Fox Point, and remove a building that will in time become "unsafe" because of age and disrepair. The location of the proposed garage will continue to maintain the same 3 foot set back from the property line and side yard that the current garage has while meeting the other aspects of the village code (see Exhibit B).

4. Why the variance requested will be in accord with the spirit of the Zoning Code.

It is our belief that the spirit of the building code is to set forth ordinances that ensure that all changes to property are completed in a fashion that first ensures the safety of the residents. In addition, the needs of the property owner should be considered in conjunction with the interests of the neighborhood and the Village of Fox Point. For this variance, the proposed garage will result in a new, safer garage that will be an aesthetic improvement for my neighbors to the north (Bob and Nancy Featherston, 7320 N. Longacre Rd.) and provide Jill and me a garage that is more conducive with our needs without substantial changes to the garage and setbacks that exist today.

5. How the variance, if granted, will cause substantial justice to be done.

6/28/21

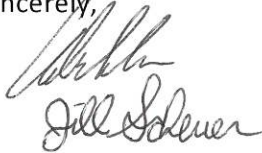
Page 4

If the variance is granted, Jill and I will be able to replace an old, dilapidated garage with a new, larger garage that will meet our needs and provide a benefit to the neighborhood and greater village.

If the variance is not granted, we would need to either repair the existing garage or replace with a new garage that exactly matches the current garage. For either of these options, we would still have a sub-standard sized garage and anticipate that we would pay higher costs than if we were able to proceed with installing the proposed garage. In addition, the timing to complete these options would take substantially longer than installing the proposed garage.

In closing, we implore you to approve this variance based on the information communicated above. The proposed garage will meet all other aspects of the Village of Fox Point code while maintaining the 3 foot distance to the property line and current side yard dimension that the current garage has. In approving this variance, the proposed garage will be an asset and improvement not only to our property but also to the Village of Fox Point.

Sincerely,

A handwritten signature in cursive script, appearing to read "Adam and Jill Scheuer".

Adam and Jill Scheuer

REGIONAL CONSULTING ENGINEERS, INC.

4842 NO. 88TH ST.

MILWAUKEE, WISCONSIN

PHONE 464-4638

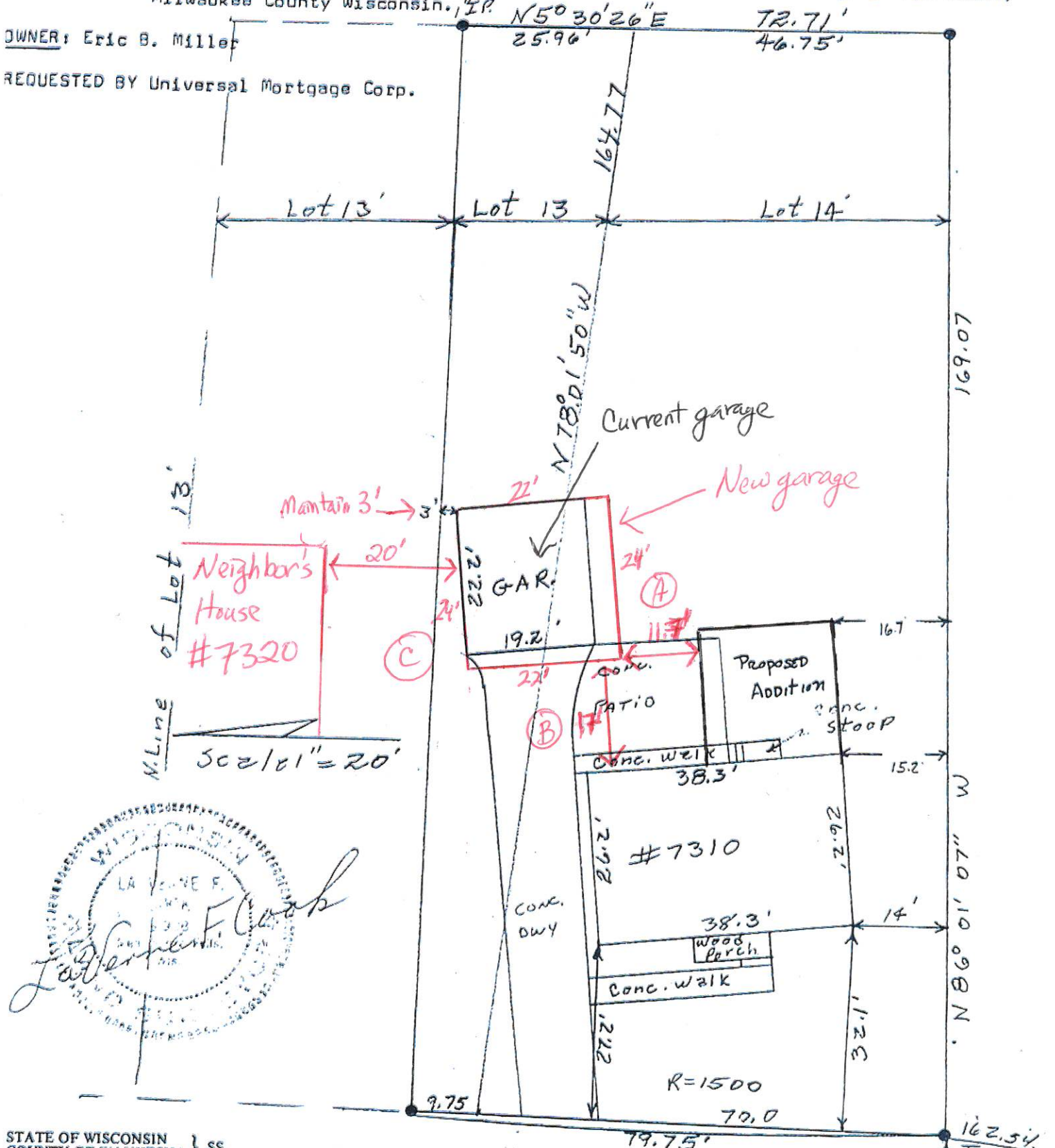
RECERTIFICATION

PLAT OF SURVEY

DESCRIPTION: All Lot 14 and that part of Lot 13 described as follows, commencing at the Southwesterly corner of said Lot 13 running thence Northerly along the Westerly lot line of said Lot 13 9.75 feet to a point, thence East to a point in the Easterly lot line of said Lot 13 said point being 25.96 ft. Northerly from the South East corner of said Lot 13 running thence Southerly along the Easterly lot line of said Lot 13, to the South East corner of said Lot 13, thence along the southerly lot line of said Lot 13 to the place of beginning in Block 1 of Bruss Fox Point Estates being a part of the SW 1/4 of Section 16, Town 8 North Range 22 East in the Village of Fox Point, Milwaukee County Wisconsin.

OWNER: Eric B. Miller

REQUESTED BY Universal Mortgage Corp.



STATE OF WISCONSIN }
COUNTY OF WAUKESHA } ss.

I HAVE SURVEYED THE ABOVE-DESCRIBED PROPERTY AND THE ABOVE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXTERIOR BOUNDARIES, THE LOCATION AND DIMENSIONS OF ALL VISIBLE STRUCTURES THEREON, FENCES, APPARENT EASEMENTS AND ROADWAYS AND VISIBLE ENCROACHMENTS, IF ANY.

THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO THOSE WHO PURCHASE, MORTGAGE, OR GUARANTEE THE TITLE THERETO WITHIN ONE (1) YEAR FROM DATE HEREOF; AND AS TO THEM I WARRANT THE ACCURACY OF SAID SURVEY AND MAP.

DATED THIS 5th DAY OF October 19 83 Laverne F. Cook
Recert. 13th February 1986 J.F.C.
Recert 28th April 1986 JFC SURVEYOR
JOB NO 83913
862.83

Exhibit B: Pictures Showing Current and Proposed Location of Garage at 7310 N. Longacre Rd.

Location "A" on Listed in Exhibit A



Current distance between garage and house: 14.5 feet

Proposed distance between garage and house: 11.7 feet

Will meet code Part VII: Building Codes / Building Construction, Article XI Garages and Accessory Buildings, 756-36 General Requirements, B (1). "Location shall be located not less than 10 feet from residence"

Location "B" on Listed in Exhibit A



Current distance between garage and house: 18.8 feet

Proposed distance between garage and house: 17 feet

Will meet code Part VII: Building Codes / Building Construction, Article XI Garages and Accessory Buildings, 756-36 General Requirements, B (1). "Location shall be located not less than 10 feet from residence"

Location "C" on Listed in Exhibit A



Current distance between garage and house: 20 feet

Proposed distance between garage and house: 20 feet

North side of garage will be in the same location as the current garage

Will meet code Part VI: Land Usage, Chapter 745 Zoning, 745-7 Accessory uses and structures, C (20 ft from neighbor's house)

Current distance between garage and property line: 3 feet

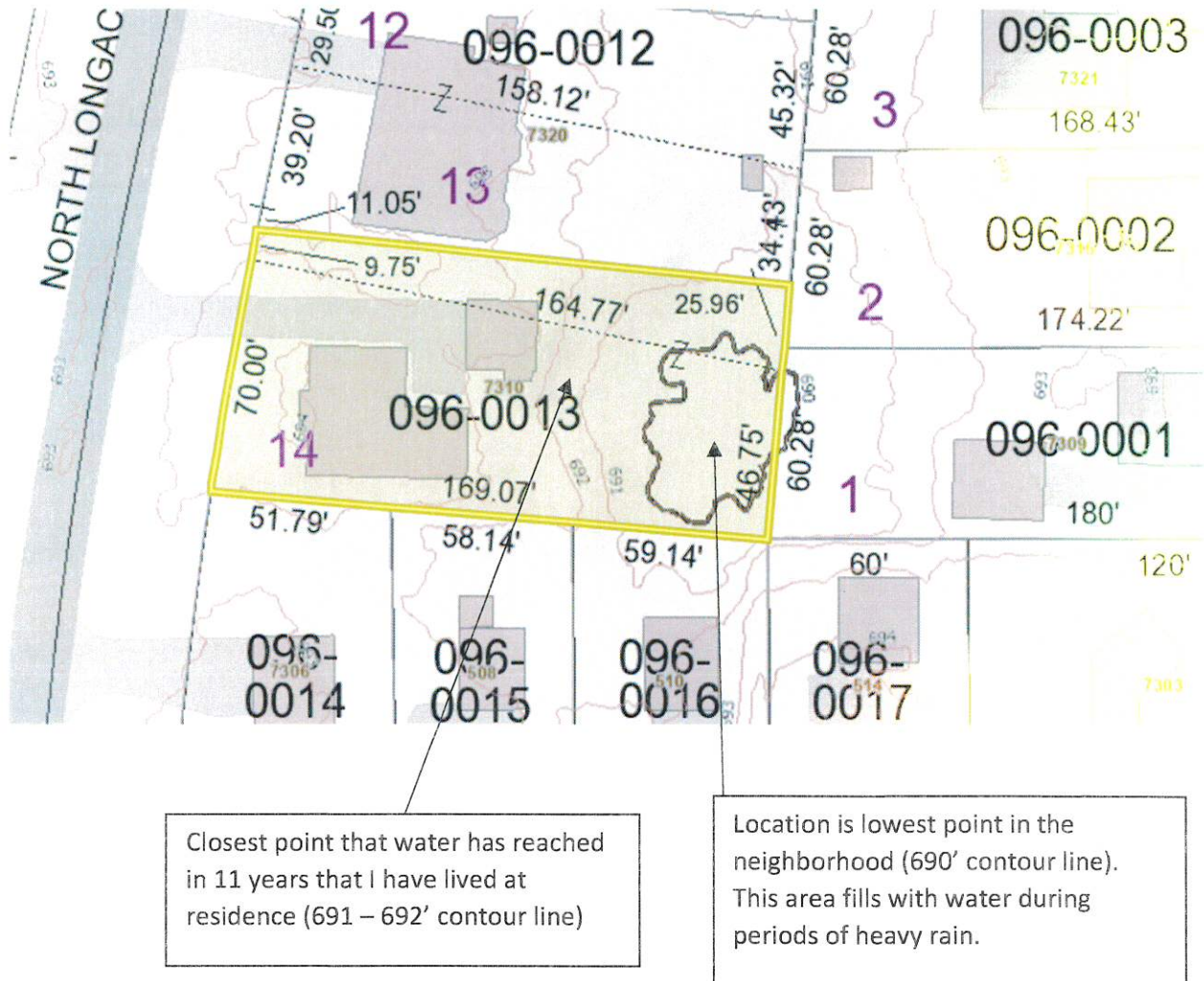
Proposed distance between garage and property line: 3 feet

Will not meet code Part VI: Land Usage, Chapter 745 Zoning, 745-17 C Residence District, B(3) (Side yard will be stay the same at 3 feet off property line)

Exhibit C: 7310 N. Longacre Rd Periodic Flooding in Back Yard

Contour map of 7310 N. Longacre Road

(source: <https://lio.milwaukeecountywi.gov/Html5Viewer/index.html?viewer=MCLIO-Map&TaxKey=0960013000>)





VILLAGE OF FOX POINT
7200 N. SANTA MONICA BLVD
FOX POINT WI 53217

414-351-8900

Receipt No: 1.056342

Jun 28, 2021

BD of Appeals Adam & Jill Scheuer Garage

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	200.00
10-44540 OTHER PERMIT	

Total:	200.00
--------	--------

CHECK	Check No: 2076	200.00
-------	----------------	--------

Payor: Adam & Jill Scheuer Garage 7310 N Longa

Total Applied:	200.00
----------------	--------

Change Tendered:	.00
------------------	-----

06/28/2021 3:44 PM

VILLAGE OF FOX POINT

MILWAUKEE COUNTY

WISCONSIN



VILLAGE HALL
7200 N. SANTA MONICA BLVD.
FOX POINT WI 53217-3505
414-351-8900
FAX 414-351-8909

**VILLAGE OF FOX POINT
NOTICE OF BOARD OF APPEALS MEETING
REQUEST FOR VARIANCE**

PLEASE TAKE NOTICE that the Fox Point Board of Appeals will meet in Schwemer Hall, 7200 N. Santa Monica Blvd, Fox Point, WI, on Wednesday, August 4, 2021 at 5:00 p.m. to hear the following appeal:

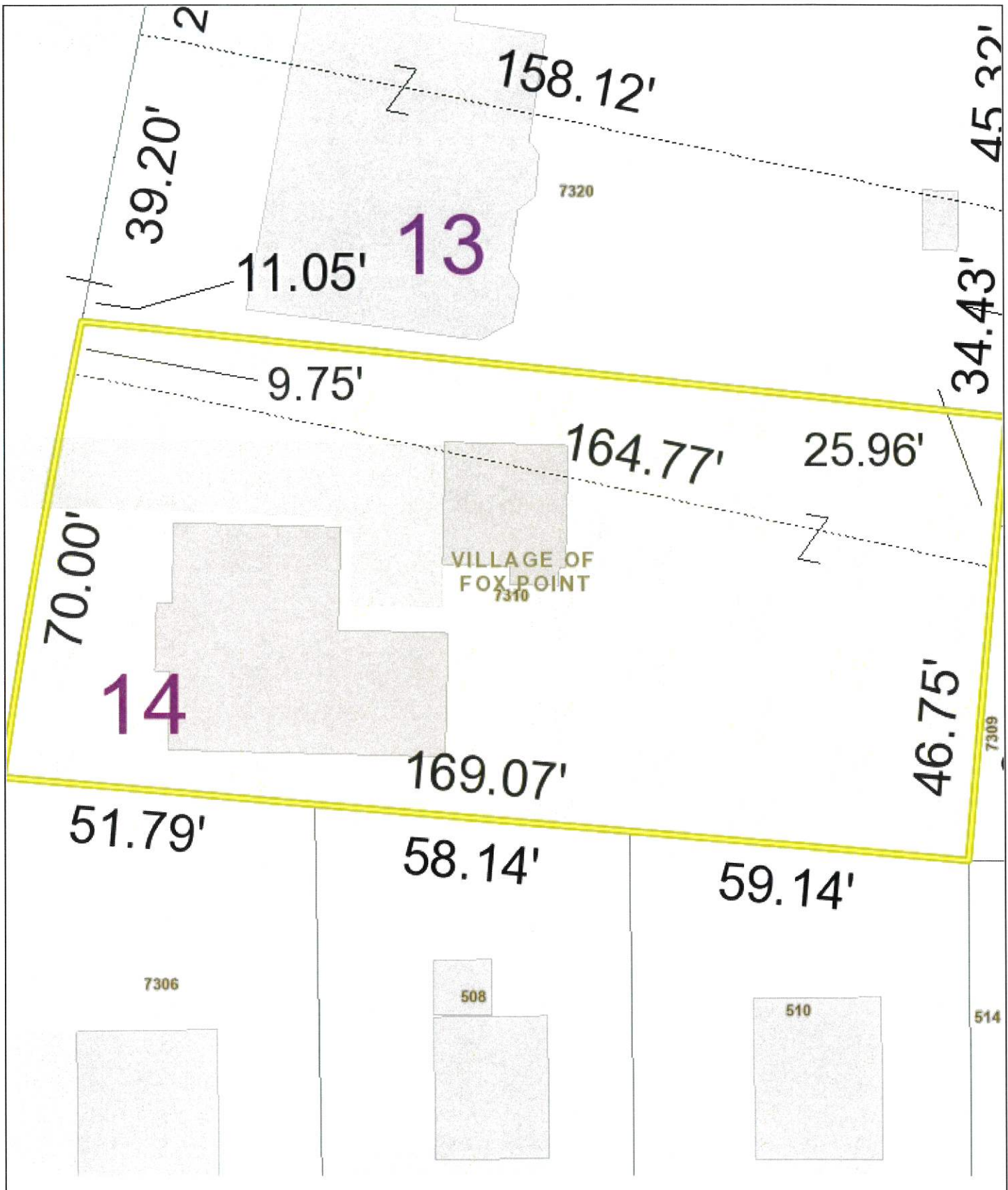
- 1. Case 2021-06: 7310 N Longacre Rd.** The applicant is requesting a variance pertaining to Section 745-4(C)(2) and Section 745-17(B)(3) of the Fox Point Village Code in the C-District, concerning side yard setbacks. A side yard of not less than 10 feet shall be provided for every building. The applicant is requesting a variance for a new garage 22'x24', relative to the current garage 19.2'x22.2' to remain in the 3' foot side yard setback of the property.

Any interested party may attend this meeting and be heard concerning this case.

The applications, drawings, and related materials are available for viewing in the office of the Village Clerk/Treasurer, Monday through Thursday from 8:00 a.m. - 4:00 p.m. and on Friday from 8:00 a.m. to 12:00 noon.

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer

Notice Sent: 07/07/21
Posted: 07/07/21



Village of Fox Point GIS

7310 N Longacre Rd, Fox Point, WI

DISCLAIMER: The Village of Fox Point Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.

SCALE: 1" =



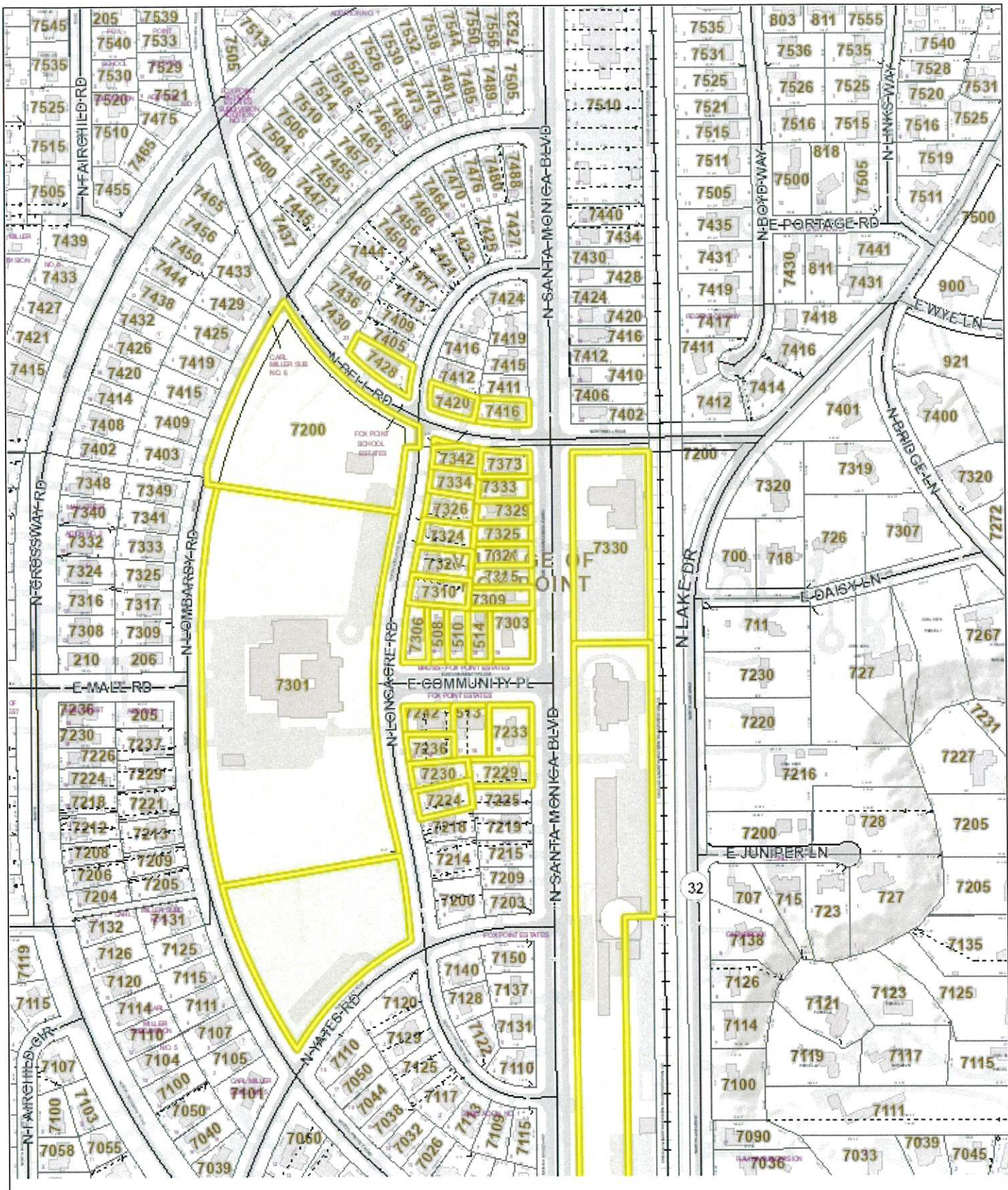
VILLAGE OF FOX POINT

7200 North Santa Monica Blvd
Fox Point, WI 53217
(414) 351-8900

Print Date: 6/29/2021

Board of Appeals Packet 08/04/2021

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Village of Fox Point GIS

7310 N Longacre Road, Fox Point, WI

DISCLAIMER: The Village of Fox Point Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.

SCALE: 1" = 376'



VILLAGE OF FOX POINT

7200 North Santa Monica Blvd
Fox Point, WI 53217
(414) 351-8900

Print Date: 6/29/2021

Board of Appeals Packet 08/04/2021

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FOX POINT SCHOOL DIST
7301 N LONGACRE RD
FOX POINT WI 53217

ERIC L WEINER
MARGERY DEUTSCH
7303 N SANTA MONICA BLVD
FOX POINT WI 53217

KEVIN LAVERN PETERSON
KARIN ELISE PETERSON
7242 N LONGACRE RD
FOX POINT WI 53217

LEONARD ANTHONY JACKSON
513 E COMMUNITY PL
FOX POINT WI 53217

STEVE F LLOYD
ANITA L LLOYD
7233 N SANTA MONICA BLVD
FOX POINT WI 53217

DUSTIN P METZLER
508 EAST COMMUNITY PLACE
FOX POINT WI 53217

KAREN M IVERSON
510 E COMMUNITY PL
FOX POINT WI 53217

CLARKE C GREENE
ELIZABETH A GREENE
514 E COMMUNITY PL
FOX POINT WI 53217

THOMAS M BECKER
DONNA BECKER
7236 N LONGACRE RD
FOX POINT WI 53217

MICHAEL EPSHTEYN
7315 N SANTA MONICA BLVD
FOX POINT WI 53217

BRUCE J LODER
ELIZABETH R LODER
7325 N SANTA MONICA BLVD
FOX POINT WI 53217

JEFFREY P WIBERG
MICHELE A WIBERG
7326 N LONGACRE RD
FOX POINT WI 53217

KELLY J KUEHN
7321 N SANTA MONICA BLVD
FOX POINT WI 53217

SANDRA A HURLEY
7334 N LONGACRE RD
FOX POINT WI 53217

THOMAS H TANNER III
7309 N SANTA MONICA BLVD
FOX POINT WI 53217

MICHAEL NOVAK
LYNN NOVAK
7324 N LONGACRE RD
FOX POINT WI 53217

ANDREA C BRUNNER
DAVID J BRUNNER
7306 N LONGACRE RD
FOX POINT WI 53217

JUDITH Z TOLKAN
7329 N SANTA MONICA BLVD
FOX POINT WI 53217

ANDREW E SMITH
SARAH A SMITH
7333 N SANTA MONICA BLVD
FOX POINT WI 53217

ROBERT F FETHERSTON JR
FETHERSTON LIVING TRUST
NANCY J FETHERSTON JR
7320 N LONGACRE RD
FOX POINT WI 53217

ADAM D SCHEUER
JILL W SCHEUER
7310 N LONGACRE RD
FOX POINT WI 53217

DAVID H PETERING
LOUISE P PETERING
7229 N SANTA MONICA BLVD
FOX POINT WI 53217

MARI S KATZ
7230 N LONGACRE RD
FOX POINT WI 53217

JENNIFER M MADSEN
7224 N LONGACRE RD
FOX POINT WI 53217

WILLIAM MACPHERSON STALLE
7342 N LONGACRE RD
FOX POINT WI 53217

PARKER R SHRIVER TRUSTEE
7416 N BELL RD
FOX POINT WI 53217

WILLIAM A KALMER
JANET M KALMER
7428 N BELL RD
FOX POINT WI 53217

CHRISTOPHER J BURKE
K BURKE
7420 N BELL RD
FOX POINT WI 53217

NORTH SHORE CONG CHURCH
7330 N SANTA MONICA BLVD
FOX POINT WI 53217

WILLIAM MACPHERSON STALLE
7342 N LONGACRE RD
FOX POINT WI 53217

ZELJKO POZDER
7373 N SANTA MONICA BLVD
FOX POINT WI 53217

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 745-4 Existing nonconforming uses, structures and lots.

- A. Existing nonconforming uses. The lawful nonconforming use of land without structures, or the lawful nonconforming use of water, or a lawful nonconforming use in a conforming structure, or a lawful nonconforming use in a nonconforming structure, or a lawful nonconforming use on a conforming lot, or a lawful nonconforming use on a nonconforming lot, or a lawful nonconforming use of land with conforming structures, or a lawful nonconforming use of land with nonconforming structures which existed at the time of the adoption or amendment of this chapter may be continued although the use does not conform to the provisions of this chapter; however:
- (1) Only that use in actual existence at the time of the adoption or amendment of this chapter may be so continued as a legal nonconforming use and said use may not in any way be extended, enlarged, substituted, moved, added to or changed.
 - (2) No structure on lands containing a legal nonconforming use may be extended, enlarged, totally rebuilt, substituted, moved, remodeled, modified, or added to except when required to do so by law or until the legal nonconforming use has been made to conform to this chapter. This subsection does not apply, however, to structural repairs or alterations that are made in strict compliance with § 62.23(7)(h), Wis. Stats., including such amendments as may be made thereto from time to time.
 - (3) No lot or lands containing a legal nonconforming use may be reduced in size, modified, increased in size or changed in any manner except when required to do so by law or until the legal nonconforming use has been made to conform to this chapter.
 - (4) If a legal nonconforming use is discontinued or terminated for a period of 12 months, any future use of the structure, land or water must conform to the provisions of this chapter.
- B. Existing nonconforming lots containing conforming uses and/or conforming structures. A building may be erected on a lot of record on April 22, 1958, which lot does not comply with the requirements of this chapter, provided as follows:
- (1) In the case of such substandard lot which adjoins, along a side lot line, property held in the same ownership, as defined in Chapter **738**, Subdivision of Land, of this Code, no building permit shall be issued until a determination has been made by the Plan Commission in the manner provided by § **738-6**.
 - (2) No building permit shall be issued where in the opinion of the Building Inspector the erection of a building on such substandard lot would impair or jeopardize the health, safety and general welfare of the surrounding neighborhood or of the Village.
 - (3) No dwelling erected pursuant to the provisions of this section shall occupy an area of a lot which exceeds:
 - (a) A Residence District: 15% of the gross area of the lot together with the area of abutting land reserved for highway purposes, whether public or private, to the center line thereof;
 - (b) B Residence District: 30% of the gross area of a lot; or

- (c) C Residence District: 45% of the gross area of a lot.
- (4) Where the proposed erection of a building on such substandard lot would require a variance from requirements in addition to the lot area and width, such variance must be sought in the normal manner in such case from the Board of Appeals.
- (5) The application of this section in respect to any area annexed to the Village shall apply to parcels of land and lots as they are owned when annexed.
- C. Existing legal nonconforming structures on a conforming lot or nonconforming lot with legal conforming uses.
 - (1) The legal conforming use of a nonconforming structure existing at the time of the adoption or amendment of this chapter whether on a conforming lot or nonconforming lot may be continued, even though the structure's size or location does not conform to the established building setback line along streets, or the open space, yard, height, parking, loading and/or access provisions of this chapter.
 - (2) The aforementioned structure may be extended, enlarged, substituted, moved, remodeled, modified or added to as long as any such change which alters the footprint of the structure must conform to the established building setback lines along streets and the yard, height, parking, loading, and access provisions of this chapter. In addition, such structure may be totally rebuilt if such reconstruction is identical in size and shape and use to the original structure.
 - (3) Legal nonconforming structures existing at the time of the adoption or amendment of this chapter with a legal conforming use whether on a conforming or nonconforming lot may be moved and if moved must conform to the established building setback lines along streets and the open space, yard, height, parking, loading, and access provisions of this chapter.
 - (4) Any applicable restriction in this section which prohibits restoration of a damaged or destroyed nonconforming structure shall not apply to the extent that 2005 Wisconsin Act 112 applies to such restoration, including such amendments and renumbering of the applicable statutes referred to therein as may be made from time to time.
- D. Burden of proof. The property owner has the burden of showing that a use, structure or lot is legal nonconforming. The determination shall be made by the Building Inspector upon proof presented by the property owner that the use, structure and/or lot is in fact legal nonconforming. Appeals from the decision of the Building Inspector concerning the determination of legal nonconformity may be made by any person aggrieved to the Village Board of Appeals. Such appeal shall be filed with the Village Clerk/Treasurer within 30 days after the determination of the Building Inspector.
- E. Reversion. Once a legal nonconforming use, legal nonconforming structure or legal nonconforming lot has been changed to conform, it shall not revert back to legal nonconforming status.
- F. Conditional use status.
 - (1) Conditional use status may be granted to existing legal nonconforming uses, legal nonconforming structures, and legal nonconforming lots, upon petition of the owner, where such use, structure or lot is

determined to not be any of the following:

(a) Adverse to any of the following:

[1] Public health;

[2] Safety; or

[3] Welfare.

(b) Would not conflict with the spirit or intent of this chapter; or

(c) Would not be otherwise detrimental to the community and particularly the surrounding neighborhood.

(2) Such conditional use status may be granted by the Village Board only after the Village Board conducts a public hearing in the matter, and following receipt of a recommendation from the Village Plan Commission.

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 745-17 C Residence District.

- A. Uses. In a C Residence District, no building or premises, unless otherwise provided in this chapter, shall be erected or used except for dwelling, together with accessory uses incident to the permitted use, provided always the accessory use does not constitute or become a public or private nuisance.
- B. Areas and yards. In a C Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot upon which a dwelling is erected, or proposed to be erected, shall not be reduced to less than 10,500 square feet for each family. No building not erected for a dwelling shall occupy more than 15% of the gross area of the lot or exceed a height of 25 feet above the proposed grade of the ground.
 - (2) A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for a corner lot from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; 15 feet when width of lot is 70 feet or less; provided, however, that no setbacks will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
 - (3) A side yard of not less than 10 feet shall be provided for on each side of every building.
 - (4) A rear yard of not less than 20 feet shall be provided for every building, except one of not less than 10 feet shall be provided for a building used for or classified as an accessory use.
 - (5) Every lot on which a building is erected shall have an average minimum width of 80 feet.
 - (6) The height limitations of single-family residence structures shall be governed by § 745-13B(6).

62.23(7)(e)7.

7.

- a. In this subdivision, “area variance” means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, “use variance” means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
- b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; 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.
- c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
- d. A property owner bears the burden of proving “unnecessary hardship,” as that term is used in this subdivision, for an area variance, 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 or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. 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, and that the unnecessary hardship was not created by the property owner.
- e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
- f. A variance granted under this subdivision runs with the land.