

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Thursday, December 9, 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 of August 4, 2021 Meeting and the Findings of Fact, Decision and Order

On the motion by Member Mark Grady, seconded by Member Thomas Dunst, and carried unanimously by roll call vote (5-0), the Board of Appeals approved the minutes and the Findings of Fact, Decision and Order of the last meeting.

Case 2021-07: 7272 N Bridge Ln

The applicant is requesting a special exception from the fence ordinance to erect a six-foot high double-swing ornamental gate at the entrance to the driveway between two existing lannon stone columns forward of the front line of the home. 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.

Chair Ostoic asked if there was a copy of the Email letter regarding the postponement of Case 2021-07 for the special exception. The Board indicated they had received a copy of the Email letter. Chair Ostoic shared with those present that the applicant has proposed postponement of Case 2021-07 hearing until the first week in January.

Representative Leslie Bucholtz noted she was here to represent Thomas Scannell in regard to Case 2021-07 for the Special Exception. She also stated unless there are any objections to it, she is here to represent Thomas Scannell, if there are no objections to her representation for Thomas Scannell Case 2021-07 can be heard today. If there are objections from the Board, then Thomas Scannell would like to come back before the Board, as proposed.

Steve Fulton also stated he is also here at the Board of Appeals meeting on behalf of Thomas Scannell regarding Case 2021-07 for the Special Exception. He also commented that if the Board wishes to move forward, they can.

Chair Ostoic inquired of Village Attorney Eric Larson, if the Board can move forward with Case 2021-07 for a Special Exception.

Village Attorney Eric Larson stated the Board of Appeals can proceed without the applicant with the representatives. He noted that is not to say it would be granted. One of the comments was if

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

the Board is going to grant the Special Exception, he does not have to be here. If the Board is not going to grant it, Mr. Scannell want to be heard. Village Attorney Eric Larson again noted there are no guarantees.

Member Mark Grady noted because he does not have any idea what the other Board members think about this, as it is not discussed in advance of the meeting, he has no idea whether the members of the Board will object or not object to the Special Exception. He noted he does not even have his mind made up until the Board comes here and hears the case. Member Mark Grady noted that if Ms. Bucholtz really wants Thomas Scannell to be here in the event there are objections, a better course of action would be to adjourn Case 2021-07 to a mutually convenient time as soon as reasonably possible. He can not guarantee it the first week in January because he does not know what every one else's schedule is.

Representative Leslie Bucholtz stated that he did send a letter to Village Clerk Treasurer Kelly Meyer stated Leslie would be attending as his representative.

Member Mark Grady inquired if Village Clerk Treasurer Kelly Meyer had the Emailed letter available from Thomas Scannell that states Leslie Bucholtz would be attending as his representative.

Member Mark Grady inquired if Representative Leslie Bucholtz was also a property owner at 7272 N. Bridge Lane. Leslie Bucholtz stated she was not an owner of said property.

Member Mark Grady stated he was uncomfortable with hearing the case unless there was a Power of Attorney stated she could act on his behalf. There was a brief discussion regarding the Board's consensus.

Motion by Member Mark Grady to adjourn it to a mutually convenient time in January if that is possible or February if that is not possible. Seconded by Scott Ratke.

Village Attorney Eric Larson stated the rules allow us to adjourn to a date and time certain.

Steven Fulton stated he works for Thomas Scannell when he is on the property and when he is off the property. Right now, he is out of town and he has been out of town for about two weeks now. About two weeks ago, he stated he came in to speak with Village Clerk Treasurer Kelly Meyer about the fact that Thomas Scannell was going to be unable to make the meeting. At that time, Village Clerk Treasurer Kelly Meyer was not sure if he could be rescheduled to another time. Therefore, Leslie Bucholtz and he are here to represent Thomas Scannell. Mr. Fulton stated that both Leslie Bucholtz and he would prefer if Case 2021-07 move forward and proceed if the Board is willing to do that. If the Board is not willing to do that, then we do not have a choice.

Leslie Bucholtz stated she is also pretty sure that Thomas Scannell is pretty thorough. I cannot imagine that the Special Exception wouldn't be granted.

Chair Ostoic commented the Board has surprised people.

Member Mark Grady stated the gate is not going to get constructed in the next month or so anyway. He feels that the Board sets themselves up for an issue if the case is heard without the

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

property owner. Mark offered that he is available to hear the case on Thursday, January 6, 2021 although he is not sure what the rest of the Board has available. If the rest of the Board members are available, he would still prefer to move to adjourn to the date and time certain of Thursday, January 6, 2021.

Motion amended by Member Mark Grady to adjourn to a date certain of Thursday, January 6, 2021.

Steven Fulton inquired what are the steps that a person has to go through whether Thomas Scannell is here or not here.

Chair Ostoic stated the steps would be the same whether he is here or not here. The determination is going to be the same he believes whether Mr. Scannell is here or not. Information is information. Unless Mr. Scannell has information that he did not reveal to the Board and that he feels is more important than what was submitted, there is information provided for the Board to discuss. Thorough does not necessarily grant a special exception.

Chair Kurt Ostoic inquired of Village Attorney Eric Larson if he felt comfortable enough if the Board moved forward to hear Case 2021-07 tonight.

Village Attorney Eric Larson asked Village Clerk Treasurer Kelly Meyer to produce the Emailed letter regarding representation for Mr. Scannell's Case 2021-07 Special Exception.

Village Clerk Treasurer Kelly Meyer left the meeting to print a copy of the Emailed letter regarding representation for Case 2021-07.

Village Attorney Eric Larson read from the rules and procedures of the Board of Appeals. Section 3(b) states the appeal shall be heard at the time set in the notice. In the event of the appellant not appearing personally or by attorney or by other authorized representative, the Board may dismiss the appeal or make a decision thereon in on the records before them. Subsection (h) states the time set for the hearing for the appeal may be adjourned to a day certain as the Board may order, which shall be considered a continuance of the hearing and no further notice regarding the adjournment may be given other than the announcement at the time of the hearing, subject to new laws. There are a few options here. The first option is the case can be dismissed due to him not being present for the hearing. The second option is that the Board can hear the case and the representatives can participate assuming that confirmation is produced. Lastly, the Board can adjourn it to a date certain.

Village Clerk Treasurer Kelly Meyer returned to the meeting with a copy of the Emailed letter regarding Thomas Scannell's representation for Case 2021-07; the letter was presented to the Board for review.

Village Attorney Eric Larson stated there is a motion on the floor; there was another motion but it was not seconded.

Member Mark Grady requested the withdrawal of his motion, if his seconder concurs. The seconder, Member Scott Ratke concurred.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

Village Attorney Eric Larson stated the Board is back to the three options given prior. The Board needs to decide which option they want to utilize.

Chair Kurt Ostoic stated he thinks the Board should proceed; they have received the Emailed letter with the Thomas Scannell's authorized representative.

Village Attorney Eric Larson stated to be specific, the Emailed letter named Leslie Bucholtz as his representative.

Chair Kurt Ostoic asked Village Clerk Treasurer Kelly Meyer to swear in Building Inspector Michael Rakow.

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 2021-07, stating anytime a driveway gate is in front of the principal building, the requirements are to go before the Board of Appeals. This special exception is a request for a driveway gate.

Michael Rakow stated to his knowledge no work has begun on the requested gate.

Appellant/Applicant Representative Leslie Bucholtz, 7272 N. Bridge Lane, Fox Point

Applicant Representative Leslie Bucholtz stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.

Representative Leslie Bucholtz stated Thomas Scannell would like to put the gate up now because it is a thoroughfare for a lot of people and a lot of cars. Cars pull into the driveway continuously and Mr. Scannell is hoping to stop the cars from pulling into the driveway the driveway. She stated there is a lot of foot traffic now also, much more than there used to be. Mainly cars are the issue; there are a lot of people coming into the driveway and the cars use the driveway as a turn-around.

Chairman Kurt Ostoic inquired if they have any signage that states it is personal property.

Representative Leslie Bucholtz stated she and Thomas Scannell feel the gate would negate cars from pulling into the driveway. Mainly the cars pull into the driveway and stop when they realize it is not a parking area. They are always turning around in the driveway. It is a very busy spot, so Thomas Scannell would like to put up a gate.

Chairman Kurt Ostoic inquired if there were any instances that they had to call the police to the property.

Representative Leslie Bucholtz stated no they have not had to call the police, but there are people who will walk around there. The cars pull in with the lights on and sit there and look

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

around. Once they realize there is no where else to go, they turn around.

Member Nancy Filsinger inquired when Ms. Bucholtz states they pull into the driveway, she inquired if they pull all the way up to the home.

Representative Leslie Bucholtz stated there are two large pillars and the cars will pull up and look around and realize this is someone's place.

Member Mark Grady inquired if this is just a request for the driveway gate.

Representative Leslie Bucholtz stated Thomas Scannell sent all the information in with the application.

Member Scott Ratke inquired how often the cars/people trespass.

Representative Leslie Bucholtz stated it happens at least twice a day; she is at the residence all the time.

Caretaker/Witness Steven Fulton, 7737 N Bell Rd, Fox Point

Caretaker Steven Fulton stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Steven Fulton, stated 7272 N Bridge Lane has been in Thomas Scannell's family for 95 years. He just recently spent money to put a brand-new driveway in. The brand-new driveway is kind of an invitation feature which allows people to drive in, sometimes all the way to the house where there is a large parking area and a place to turn around. There have been several instances where people have driven in up to the house and then discover it is private property and turned around to drive back out. There was another instance this summer when Thomas Scannell was away from the house in the morning; he came back later on and there was an entire family with young kids playing in the yard as if it was a park. Thomas Scannell approached the people nicely and asked them what they were doing. The people responded that they thought it was a public area. He informed them it was private property and asked them to leave. He is trying to stop that situation. Thomas Scannell also has three dogs, two of which are very large. They are very well trained. He also would like to keep his dogs contained. Another purpose of the gate is for security reasons when he is not at home. The number one reason he wants the gate is for security, especially when he is out of town.

Village Attorney Eric Larson noted the application did include a letter dated October 11, 2021 along with numerous attachments to the letter. The Board had the chance to review the application and attachments. Those documents should be included in the record for this case.

Attorney Larson read the standard that the Board is obligated to provide, prior to closing the testimony in the event that any standard should give rise to additional testimony. The two applicable paragraphs of the code that allow for a special exception - Section 745-7(b)(3)(h)(2) and Section 745-7(B)(3)(j) were read. 745-7 (B)(3)(h)[2]. He further noted in the code, every special exception granted by the Board of Appeals for a driveway gate shall be conditioned

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

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 is denied, the special exception is thereby denied.

Mark Grady asked if the representative/witness have anything they want to add with respect to how the gate is necessary to protect those residing on the property.

Representative Leslie Bucholtz stated it would be a good thing to stop people who drive in and turn around.

Caretaker/Witness Steven Fulton stated when Thomas Scannell spent the money and had a brand-new driveway put in, it became a very appealing driveway for people to turn around in and as he stated, to drive completely down to the house, make a loop and drive back out. When people see a nice big convenient driveway, it is always a great spot to turn around.

Member Mark Grady inquired if either Representative Leslie Bucholtz or Caretaker/Witness Steven Fulton know how much land is with the property.

Representative Leslie Bucholtz stated it is approximately 5 acres.

Member Mark Grady inquired if the house sits towards the back of the property.

Representative Leslie Bucholtz stated it is towards the back of the property.

Member Mark Grady inquired how long the house is from the road.

Caretaker/Witness Steven Fulton stated approximately 100 yards.

Member Mark Grady inquired if there was any lighting along the driveway.

Representative Leslie Bucholtz stated there is no permanent lighting along the driveway.

Member Mark Grady inquired if there were heavy trees in the front yard area.

Caretaker/Witness Steven Fulton stated there are not thick trees in the front yard.

Member Mark Grady inquired if a car was to drive down the driveway at night, would someone be able to see that car parked near the house?

Caretaker/Witness Steven Fulton stated yes and no. At certain points they might see the car, but in certain areas of the driveway, the vehicle could blend in with the landscape and may not be seen. At nighttime or when the owner is out of town, then it becomes a security issue.

Member Scott Ratke inquired if it is disturbing at night to have cars coming in with their lights on.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

Both Caretaker/Witness Steven Fulton and Representative Leslie Bucholtz stated yes, it is disturbing and it happens all the time, every day, all day long and at night. They close the blinds in the front because they come down and sit there trying to figure out how they can get out of there during the night. Then they turn around.

Chairman Kurt Ostoic inquired if there has been any property damage with the cars coming down the driveway.

Representative Leslie Bucholtz stated there has not been, but it happens constantly.

Representative Leslie Bucholtz stated that the gate would make it very secure, especially when he is out of town. The gate would prevent people from pulling in further to the property.

Motion by Member Mark Grady, seconded by Member Kurt Ostoic, and carried unanimously to close testimony at 5:35 p.m.

Member Mark Grady stated what he hearing them say is that in the context of the village code. They feel that the location of the home near the dead end and the size of the property, the physical acreage of the property, the driveway leading into the property off of Daisy Lane and Bridge Lane, are sort of rendering the house and property as an attractive nuisance, as referenced to the "witches house" or the Nohl House. The question for the Board is does that rise sufficiently as a risk to the safety of those persons residing on the property. Member Mark Grady stated he is not personally to concerned with the second standard in the paragraph. The first question of safety is a close call. His gut reaction is leaning in favor of granting the special exception.

Member Scott Ratke stated it is a close call but he agrees at this point. It is an attractive place for people to turn around and having people dropping into your driveway at night and having the lights come in, there is some risk; Member Scott Ratke is in favor of it.

Member Thomas Dunst stated it is an attractive nuisance and that makes it lean to the side of approval. It is a close call.

Chairman Kurt Ostoic stated he would personally feel better if there were signs up that said "private property, do not enter". Just simple things like that instead of going to something that needs a special exception.

Member Mark Grady stated that because of the way the property is laid out with the house being so far back into the property, he does think there is a risk there. They clearly had examples of people driving all the way up to the house. They heard nothing about breaking into the house or threatening, but clearly with the long driveway and the acreage it is a little bit of a risk to having people drive back there, especially at night. It is far enough back on the property; he is not sure how easy it would be to spot a strange car in front of their house. He is 51/49 in favor.

Member Nancy Filsinger stated she also agrees. It is just over the edge of a safety

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

issue, especially if you are saying it is more than once a day or once a week. It is multiple times per day. It creates a potential safety risk.

Motion by Member Mark Grady, to grant the special exception for the reasons that they have discussed and subject to the conditions of the ordinance with the necessary approval of the Building Board, the Fire Department, and Police Chief. Seconded by Scott Rake.

<u>Scott Ratke</u>	<u>Aye</u>
<u>Thomas Dunst</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>
<u>Kurt Ostoic</u>	<u>Nay</u>

Passed by roll call vote, 4-1.

Case 2021-08: 8300 N Gray Log Ln

The applicant is requesting a special exception to install a new 6-foot-high brick fence wall on the west side of the property. The special exception request is made pursuant to 745-7(B)(3)(h) [1-2, 5] and 745-7(B)(3)(j) of the Fox Point 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 2021-08. In this case, there is a wall that was installed. If the wall is forward of the front line of the home, it should come before the Board of Appeals to be considered for the special exception.

Chairman Kurt Ostoic stated the wall does not appear to be forward of the frontline of the home.

Building Inspector Michael Rakow stated it is on a corner lot. It is on the Lake Drive side.

Chairman Kurt Ostoic inquired if the Board of Appeals, then needs to determine the front of the home.

Building Inspector stated the Board does have to determine the front of the home.

Member Mark Grady asked Building Inspector Michael Rakow to finish his thought on why he sent this case to Board of Appeals.

Building Inspector Michael Rakow noted if you look at the survey, it is a corner lot so the front of the home must be determined. According to the survey, it is on Lake Drive.

Chairman Kurt Ostoic asked for clarification regarding the location of the installed wall.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

Building Inspector Michael Rakow stated technically the Board has to determine the frontline of the home (whether it is on N. Lake Drive or N. Gray Log Ln).

Chair Kurt Ostoic asked if a brick wall permitted in the Village Code.

Michael Rakow stated in the same ordinance, a wall, fence, and driveway gate, should all be treated the same.

Member Mark Grady stated if it was not on an irregularly shaped corner lot, if this was a square or rectangle and the door is where it is now, this wall or fence would have been something you could have approved.

Michael Rakow stated he would have approved it. Mark Grady stated the only reason it is here is that it is on an irregular lot.

Mark Grady stated that he would defer to the attorney on the distinction between a fence, wall, or other list of special exception. He does not see any distinction between a wall and a fence. Subsection h on location and height descriptions, the subsection states a fence, a wall, a screening device, or a driveway gate. In the definition of a wall, it is described as a solid masonry, wood, or composite structure. It is his understanding the walls be treated the same, as long as it is not forward of the frontline of a home, proper height, and proper set-backs. To be honest, the only reason he can see why it is in front of us is because the lot is irregularly shaped. The Board just has to determine where the front of the home is located.

Member Thomas Dunst stated in the village code 747-7 B.(h)[5], the side yard of any corner lot that abuts a road shall be treated as a front yard: if a building footprint is other than square or rectangular in configuration, the provisions of Subsection B(3)(h)[1] generally shall control over the provisions of this subsection.

Village Attorney Eric Larson stated there are two provisions, sub [1] and sub [5] that need to be analyzed in regard to this lot. The fact that is a wall rather than a fence for the Boards purposes, they have applied for a special exception and the Board is really only dealing with the special exception and it does treat a wall and a fence exactly the same.

Chairman Kurt Ostoic asked if the Board wants to ask Building Inspector Michael Rakow if the building is a square, rectangle, or another shape.

Building Inspector Michael Rakow stated it is kind of a rectangle.

Member Mark Grady inquired of Village Attorney Eric Larson, if the Board were to find that the building footprint is either square or rectangular, then the Board must treat the side yard as though it is a front yard.

Village Attorney Eric Larson answered yes.

Member Mark Grady stated then the Board would move to Subsection (h)[2], and in order to grant the wall, the Board has to find a special exception is reasonably necessary to

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

protect the safety of people residing on the property, in addition to the other sections. Subsection B(3)(j). It is basically the same conditions as the Board had in the prior case. What he said earlier is not true. This is a front yard for purposes of the ordinance; the fact that it happens to be that the Board is treating it as a front yard fence. Someone is asking to put a wall in their front yard. That is how it is reading; is that correct?

Village Attorney Eric Larson stated that is correct.

Member Mark Grady stated his whole premise was on the fact that it is a rectangle.

Village Attorney Eric Larson stated to continue the thought, if the Board determines it is not a rectangle, then Subsection [1] would be followed and the Board would have to go to Subsection B(3)(j), finding 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. This section would apply if it is not a rectangle.

Village Attorney Eric Larson stated one other thought on that, the Board has to decide if it is a rectangle or a square does that really mean geometrically, as in math. That is the question. It clearly is not mathematically a rectangle or a square.

Member Mark Grady stated he would like to hear from the applicant.

Appellant/Applicant Ellen Irion, 8300 N Gray Log Ln, Fox Point

Applicant Ellen Irion stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.

Applicant Ellen Irion stated the wall is already installed. The idea of the wall came when she was sitting on her patio which has a short wall around it. People walking down and cycling down Lake Drive seemed like the sound of zipping was five feet away from me.

There is a short wall around it. People walking down and cycling down Lake Drive sounded as if they were only 5 feet away from her on her property. It provided some security for her while she is out in the yard. It creates a garden and a micro-garden which helps the plants to grow. Literally there were 30-40 people talking close to the patio. The wall provides some security for her when she sits outside. There are three walls for all intensive purposes. The fourth wall was going to be a green wall with plants. This creates a micro-garden. This allows plants that are not very hardy to grow. Those are the main reasons.

Chairman Kurt Ostoic inquired if Applicant Ellen Irion considers her structure/home to be rectangular.

Applicant Ellen Irion stated the lot of course is not rectangular; she stated the structure/home has all sorts of protruding structures so she doesn't know if would be considered a rectangle.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

Village Attorney Eric Larson confirmed it is the building footprint.

Chairman Kurt Ostoic inquired how far the wall was going to be from Lake Drive.

Applicant Ellen Irion commented she has not measured it, but would guess it to be approximately 30 to 40 feet. At least 30 feet. The driveway can park three cars across the driveway, a small bit of lawn, the windbreak, the storm sewer ditch and then Lake Drive. It is a bit of a distance from Lake Drive. It is possibly 40-50 feet from Lake Drive.

Member Mark Grady inquired how long Applicant Ellen Irion has lived in her home. Applicant Ellen Irion stated she has lived there since May of 2021.

Chairman Kurt Ostoic asked if there were any other questions for the Applicant.

Chairman Kurt Ostoic without objection and hearing no other questions, closed Applicant Ellen Irion's testimony.

Witness/ Neighbor Ann Marie Finley, 8320 N Lake Drive, Fox Point

Witness/Neighbor Ann Marie Finley stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.

Witness/Neighbor Ann Marie Finley stated she is the neighbor to the north of 8300 N Gray Log Lane. She stated her address is 8320 N Lake Drive. She stated she does believe the above forementioned lot is a rectangular lot.

Village Attorney Eric Larson stated his mis-spoke earlier. The lot is not the issue, it is the building footprint.

Witness/Neighbor Ann Marie Finley stated from what she can see it looks like a rectangle to her. If this were just simply a matter of someone wanting privacy, she would not be here. She is concerned about the much more extensive project than just putting up a wall. There was extensive excavation on that site. That site abuts a heavily wooded area. It ran between our properties. She stated she did pay for a survey to be done. Her patio is nine and a half feet from the property line or as it was when she acquired the property. There was extensive extension of the area towards her property and built up as well. In addition, there were at least two drains, if not three water drains that are shooting water underneath. They are covered up now, but she has photographs, towards that property line. That property line takes a lot of run-off water. To look at the topography, the Board is welcome to come look at her back yard. All of the surrounding properties are higher than her property. There is tremendous destruction of trees. The few trees planted along the patio have not offset that. She stated she is a Master Gardener. This is very distressing; she could not see the house most of the time, except maybe in the dead of winter. These are tall evergreens approximately four stores high. They had to be at least 50 years old. In the photograph there are at least three of them facing north towards her property that were destroyed, one of which was on her property. She can see right into her patio, as a result of all the construction. She has planted a few arborvitaes from what she can see right along the property line, but it will not offset the damage that has been done. In addition to the patio, she doesn't feel any awards would be won for beauty. She

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

also stated she has not noticed any huge issues when people are walking down Lake Drive. All of this has been excavated. She noted she has been in touch with Village Hall multiple times about this project. She is very concerned about flooding in her yard. The problem is that this is not just a six-foot fence. She built up that area. It is much higher property wise. She invited the Board to come look at her side yard anytime they want. Her understanding is the fence was built without a permit or maybe it was denied and she went ahead and built it anyway. She is not sure what the Board has to say about that.

Chairman Kurt Ostoic asked Michael Rakow if there was a permit denied earlier.

Building Inspector Michael Rakow stated there was not. It was constructed without any permits or without Building Inspector Michael Rakow's knowledge.

Village Attorney Eric Larson inquired if Witness/Neighbor Ann Marie Finley wanted the photographs she held up to be submitted for record.

Witness/Neighbor Ann Maire Finley stated these are photographs that were in the Board packet.

Chairman Kurt Ostoic stated as far as the water run-offs, that can be investigated by Department of Public Works. Building Inspector Michael Rakow stated he does not handle drainage issues.

Witness/Neighbor Ann Maire Finley stated she has been in arduous conversations with the Village and noted she has not been able to get a satisfactory response on the issue. She is quite surprised because that is such a serious water issue.

Member Mark Grady stated he is sorry and understands there are a lot of emotions here, but the Board is not here to talk about water. He stated everything Witness/Neighbor Ann Maire Finley is saying could be 100 percent correct, but stated the Board has no authority over water. He stated he really would like if she could to have anything you want to say specifically regarding the wall in this location, not the patio, not the drainage, and not the trees. Just comment on the wall.

Witness/Neighbor Ann Marie Finley noted the wall here to extend beyond the patio. The patio is only 9 and a half feet from the lot line.

Chairman Kurt Ostoic thanked Witness/Neighbor Ann Marie Finley for her testimony.

Chairman Kurt Ostoic inquired if anyone else was here to talk about the case.

Witness/Neighbor Barbara Paulini, 8224 N Lake Drive, Fox Point

Witness/Neighbor Barbara Paulini stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

Witness/Neighbor Barbara Paulini stated she lives directly to the south. There has been extensive, extensive changes to the property. She was a little bemused to find the wall was already in existence. Tonight, she thought there was going to be a big wall lining Lake Drive. She has not even noticed the wall. However, she has to say that obviously this new neighbor extensive things to make this her home her home. She is a huge supporter of that. One of the best things she has done so far is with the driveway. She has gone back to less yellow-colored lights instead of harsh LED lighting. As far as exceptions or rules, it is always amusing. The reason she came tonight is she wants to learn. Eighteen years ago, when she moved into her home, she was unable to put a fence up anywhere except where it was in the site-line of her home. She finds it interesting that there is some flexibility happening. She wants to learn when that happens. It is important to live in a Village that respects the aesthetics here. However, she stated she does have empathy for the neighbor who has lost so many trees because of the extensive changes. She also completely understand how someone wants to build their own nest and have privacy. She commented she is in support of both people. In truth, we need to support both people so that we can all live in the Village together and find ways to compromise.

Chairman Kurt Ostoic stated as a note, the Board did receive one other letter regarding the wall. He asked for any comments.

Village Attorney Eric Larson stated for the record, it is a letter, an Email, dated December 9, 2021, Email address of Howard Zeft, signed by Jane Zeft. The Zeft's are not in favor of the wall. The applicant should be given a copy of the letter and speak in response to the letter and to ask any questions.

Applicant Ellen Irion was given a copy of the letter from the Zeft's.

Chairman Kurt Ostoic asked for a response from Applicant Ellen Irion.

Applicant Ellen Irion responded to the letter stating she did not understand the letter. The driveway is the driveway so a car will pull out regardless and there is no other place to place the driveway. The wall cannot even be seen from Lake Drive; it is completely covered by vegetation and arborvitae trees that are 30-40 feet tall.

Member Scott Ratke stated he speculates that perhaps they do not realize the wall is up and think it will be built along Lake Drive.

Motion by Chairman Kurt Ostoic, Seconded by Member Thomas Dunst, and carried 5-0 to close testimony at 6:15 p.m.

Village Attorney Eric Larson noted as the Board has already identified the first issue determined is what standards apply. That will depend on how the Board interprets the Village Code. Specifically, 745-7 B. (h)[5] should be the starting point to determine whether that applies. He read the section.

Chairman Kurt Ostoic asked whether the Board members felt the building was

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

rectangular, square, or neither.

Member Mark Grady stated when the Village adopted this ordinance, what were they trying to exclude. What isn't square or rectangular? It would have to be a triangular house, an L-shaped house, a round house or something other than rectangular or square. Why would they make that distinction? He is having a hard time grasping what difference it would make with a square, rectangular or odd-shaped home.

Village Attorney Eric Larson was asked for clarification regarding Member Mark Grady's thoughts. Attorney Larson clarified with a hypothetical regarding the difference between the two and the possibilities.

The discussion was the shape of the home. In order to grant the special exception, there should be a safety reason for the wall.

Motion by Chairman Kurt Ostoic, that Subsection 745-7 B (h) [5] is the applicable provision because the Board concludes it is rectangular. Seconded by Member Scott Ratke. Roll call vote, as follows:

<u>Thomas Dunst</u>	<u>Nay</u>
<u>Nancy Filsinger</u>	<u>Nay</u>
<u>Mark Grady</u>	<u>Nay</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Kurt Ostoic</u>	<u>Aye</u>

Motion failed by roll call vote, 3-2.

Motion by Member Mark Grady, for purposes of Subsection 745-7 B (h) [5] of the ordinance, the Board consider the building footprint in this location to be other than a square or rectangle. Member Thomas Dunst seconded. Roll call vote, as follows:

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Nay</u>
<u>Kurt Ostoic</u>	<u>Nay</u>

Motion passed by roll call vote, 3-2.

Attorney Larson read Subsection 745-7 B. (h)[1].

Motion by Member Mark Grady, seconded by Chairman Kurt Ostoic, and carried unanimously, for the purposes of Subsection 745-7 B (h) [1], that the Board finds for this particular structure there appear to be multiple front sides of the structure, given that there is front door on Gray Log and a garage facing opening on Lake Drive and determine that the front of the house is the side that faces Gray Log Lane.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

Village Attorney Eric Larson stated the ordinance refers the Board to B(3)(j).

Member Mark Grady with respect to the standards set forth in Subsection B (3)(j), which Village Attorney Eric Larson referenced, as we heard Building Inspector Michael Rakow say, if this were a rectangular lot and the front was Gray Log Lane, the wall would satisfy the ordinance in all other respects. By definition, once the Board has established the front of this lot to be Gray Log Lane, it would be hard for the Board to find that this wall in this location would adversely affect the health, safety or welfare of the community given that it is in compliance with the ordinance in all other respects now that the Board found the front yard to be Gray Log Lane on the lot. It is clearly consistent with that. It does not impede the purpose, spirit and intent of this section again because it is consistent with the ordinance and the code once the Board has made the findings the Board has made.

Member Mark Grady spoke briefly with regard to the objection. The Board is not dealing with the drainage of the lot. The issues he heard the neighbor concerned about had to do more with the patio, grading, and trees. None of that is what the Board is here for today. We are only here for the section of wall that is on the west side of the property. We are not here for the patio, the walls around the patio. That is not before the Board. All that is here before the Board tonight is the wall. Whether the other items are in violation of the code or not, the other items are not in front of the Board. DPW or the Building Inspector may be able to take a look at that.

Motion by Member Mark Grady, seconded by Member Thomas Dunst, the Board finds the standards have been met within Subsection B(3)(j) and has shown clear and convincing evidence to believe that the applicant has a legitimate need for the special exception; thereby granting the special exception.

Village Attorney Eric Larson commented there is a requirement within this section when you grant the special exception it is conditioned upon the applicant's submission to the Village Building Board.

Roll call was taken regarding the motion:

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Kurt Ostoic</u>	<u>Nay</u>

Motion passed by roll call vote, 4-1.

Case 2021-09: 6755 N Lake Dr.

The applicant is requesting a variance pertaining to Section 745-15 of the Fox Point Village Code in the C Residence District, concerning front and side yard requirements. A side yard of not less than 10 feet and a front yard from the centerline of Lake Drive not less than 85 feet shall be provided for every building in the C Residence District. The applicant is proposing to install a new 7-foot by 7-foot shed ten feet from the neighboring property and 70 feet from the centerline of Lake Drive.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

The Applicant was not present.

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 2021-09. In this particular case, the applicant is on a corner lot on Lake Drive. Therefore, the applicant needs to meet the setbacks of Lake Drive and Holly Court. The setback for Lake Drive is 85 feet from center line and Holly Court is 60 feet from center line. The applicant originally wanted to put the shed on the back corner of his lot. The side yard setback is ten feet. The applicant has a really hard time placing it at that location. The applicant has a fence and if he installs it in the fence area, the applicant will have a hard time because the fence is in the way. The Applicant really does not have much of a spot to place his shed.

Chairman Kurt Ostoic inquired if he has no physical way to get out of the fenced in area with his lawn mower.

Building Inspector Michael Rakow stated he has yet to see the fence or the property and it is unclear if the fence is for animals or for some other reason. He is just going by what was discussed over the phone with the Applicant.

Member Mark Grady stated he is struggling with this because one of the documents he sent in Drawing 1, shows 2 different locations that would have complied with the setback requirements; the first one puts it in the middle of his driveway and it really doesn't work there. The second one puts it in the back yard inside the fenced in area and the Applicant says on the drawing, this location is inside our fence and would prevent us from getting the riding lawn mower out of the fenced-in area. On that same drawing on the north side of the fence, it says gate. He is baffled why the Applicant cannot put it there and drive out the gate. He does not understand why that location wouldn't work and without the Applicant here, it is pretty hard to figure that out.

Member Mark Grady inquired if Village Clerk Kelly Meyer heard from the Applicant regarding his absence. Village Clerk Kelly Meyer stated for record, the Applicant did not contact her regarding his absence. She did send him an Email with the time and date of the Board of Appeals meeting, in addition to the Notice that was mailed out.

Chairman Kurt Ostoic inquired what the options are for Board of Appeal without the Applicant here.

Village Attorney Eric Larson stated the rules say in the event of the Appellant not appearing personally, by Attorney or other authorized representative, the Board may dismiss the appeal or make a decision therein on the records before them. The subsequent section says the time for hearing an appeal may be adjourned to a day certain. You can dismiss it without considering the merits at all. You can take it up and decide the case on the merits. Or the Board could pick a date certain.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, DECEMBER 9, 2021**

Motion by Chairman Kurt Ostoic, seconded by Member Nancy Filsinger, to dismiss Case 2021-09 for failure to appear before the Board of Appeals.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Nancy Filsinger</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

Without objection and by unanimous consent the Board adjourned at 6:46 p.m.

Respectfully Submitted,

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer