

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

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

THURSDAY
MAY 19, 2022
5:00 P.M.

AGENDA

- 1. Roll Call**
- 2. Board of Appeals Continuing Education.** The Village Attorney will present an update on current laws that affect the Board of Appeals.
- 3. Approval of the Minutes and Determinations – March 2, 2022 Meeting**
- 4. Case 2022-04: 940 E Wye Lane.** The applicant is requesting a variance pertaining to Section 745-13 B. (3) of the Fox Point Village Code in the A1 Residence District, concerning side yard setback requirements. A side yard setback of not less than 20 feet from the side yard setback shall be provided for each side of every building. The request also pertains to Section 756-34 B., Exterior Structures regarding the installation of a generator. The applicant is proposing to install a generator approximately 17 feet from the property line.
- 5. Case 2022-05: 6936 N Barnett Ln.** The applicant is requesting a variance pertaining to Section 756-34 of the Fox Point Village Code in the A-1 Residence District, concerning side yard setback requirements. Section 745-13, A-1 Residence District states a side-yard of not less than 20 feet shall be provided for on each side of every building, which applies to this generator per Section 756-34 B. of the Village code. The applicant is proposing to install a generator located approximately +/- 4 feet into the setback area.
- 6. Consideration of Board Rules Concerning Meetings.** Section 2(b) of the Rules of Procedure of the Fox Point Board of Appeals says that meetings are held at the call of the Chair or at the call of any two members. Village staff have asked the Board of Appeals to consider amending the rule, to establish a regular monthly or bi-monthly meeting schedule for Board of Appeals meetings. The Board of Appeals will consider and may act to adopt such an amendment to their Rules of Procedure.
- 7. 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.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 2, 2022**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, March 2, 2022 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Kurt Ostoic, Chairman
Thomas Dunst
Nancy Filsinger
Scott Ratke
Adam Bazelon (Alternate 2)

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 February 10, 2022 Meeting and the Findings of Fact, Decision and Order

Without objection and by unanimous consent, Chairman Kurt Ostoic and Board of Appeals approved the February 10, 2022 minutes and the Findings of Fact, Decision and Order of the last meeting.

Case 2022-02: 8303 N Greenvale Rd.

The applicant is requesting a variance pertaining to Section 745-16 of the Fox Point Village Code in the B Residence District, concerning front yard setback requirements. A front yard setback 60 feet from the centerline of Greenvale shall be provided for the building. The applicant is proposing to install an improved garage approximately 8 feet into the setback area.

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 2022-02. the applicant would like to build a garage. If you look at the drawings, page 1 of 4, you will notice that the garage is in the setback area by approximately 8 feet. That is the reason for the denial.

Chairman Kurt Ostoic inquired if the encroachment in the setbacks is the only reason for the denial.

Building Inspector Michael Rakow stated that is correct.

Owner's Representative Rory Palubiski with Fein Design

The Owner's Representative Rory Palubiski stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

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Chairman Kurt Ostoic asked Representative Rory Palubiski to offer comments on he placed the garage where he did in his design.

Representative Rory Palubiski of Fein Design gave background to Case 2022-02. Representative Rory Palubiski testified the existing home has a one-car garage. It is not deep enough to fit todays vehicles in it. The structure underneath the concrete floor is all failing. They have a rodent issue. The thought is that instead of fixing that up, lets make the garage a nice two-car garage so they can have a vehicle that can park in there. They have an SUV and a truck so they wanted to design it so that it could fit the vehicles. There would also be a little room for some bikes, garbage cans, among other miscellaneous items. They wanted to keep the charm of the pristine home with the two-car garage doors without one big garage door. This would be more of a carriage-style look. Although this Board is not interested in the overall look, we would match the architectural aspects, while trying to keep this design copacetic with the rest of the home. All the details would match with what is going on with the overall appearance. The question of whether they could go further towards the back of the yard, the way the home is designed, there is a door that is the entrance to the home from the outside that they would encroach upon and that allows natural light into their mudroom, the hallway and into the kitchen. That would all be lost and they don't want to lose that aspect of the home. In working with this driveway as well, the curve street may not be applicable to the setback scenario but because of that, their approach to turn into the garage makes it very challenging of a home just the way it is. The further he would go back into the property; he would be dealing with a setback there anyway. It is going to make it that much tighter and complicated for a car to pull into the driveway. That is one of the other reasons they are a little closer to the street than we would like to be but again in order to design a garage to fit the vehicles in todays standards, this is the minimum footprint that we came up with. The clients have already invested some money here to be sure that this will look nice and would fit.

Chairman Kurt Ostoic inquired of Representative Rory Palubiski if it appears that they would be encroaching on any other neighbor or anything like that.

Representative Rory Palubiski stated no it would not it is simply encroachment upon the side setback by the road.

Adam Bazelon inquired if the trees are still there in between the garage and the street so it is blocking the street view.

Representative Rory Palubiski stated they would not be messing with any of the trees in that area.

Appellant/Owner Lynn Carini

Appellant/Owner stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.

Appellant/Owner Lynn Carini commented, the large trees to the street would stay, as well as the ones on the other side of the garage.

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Village Attorney Eric Larson stated if there are no more questions, the Board should close the testimony.

Closing of Testimony

Motion by Chairman Kurt Ostoic, seconded by Member Thomas Dunst, and carried unanimously to close testimony at 5:09 p.m.

Village Attorney Eric Larson stated this is a variance. Sometimes the Board is dealing with special exceptions which has a different set of standards. A variance is standards set by state law. Therefore, we will review what those standards are. WI State Stat. 62.23 (e) (7) (b), Board of Appeals shall have the following powers to authorize upon appeal, specific cases such variance from the terms of the ordinance 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. That statement used the phrase unnecessary hardship.

Village Attorney Eric Larson stated there is a subsequent WI State Stat. 62.23 (e) (7) (d), that defines what unnecessary hardship is. 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. 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. So those statements are the standards tonight.

Member Nancy Filsinger stated that she believes the circumstances are unique to the property.

Chairman Kurt Ostoic stated he believe that is true because obviously the lot is not rectangular and it has a bearing on this. In order to fit the house on the lot, they had to place the home on there on an angle to begin with.

Member Nancy Filsinger stated it is not encroaching on the neighbor.

Member Thomas Dunst stated there does appear to be some case law that a need for a larger garage does not qualify. His understand in this case is a different circumstance that is causing this, as opposed to just a need for the garage.

Village Attorney Eric Larson asked Member Thomas Dunst to articulate why he sees it as a different circumstance.

Member Thomas Dunst stated it is due to the shape of the lot and the positioning of the home.

Chairman Kurt Ostoic stated the current owners did not build the home this way.

Member Thomas Dunst noted it is possible that they only had a one-car garage because of the

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144 homes position and lot shape. But there is no way of knowing that.

145 Member Scott Ratke stated he doesn't feel that this would create a public safety issue with a larger
146 garage from what he can see.

147
148 Chairman Kurt Ostoic commented, if anything it would give them space to park the cars inside,
149 which would actually be better.

150
151 Member Adam Bazelon inquired if there were any similar cases where requests were made
152 that were taken up in the last couple of years?

153
154 Village Attorney Eric Larson stated it is all based on fact and circumstances presented. That
155 being said, Attorney Larson does not remember a case with this similar issue coming up in the past.
156 He further stated, Member Adam Bazelon raises a good question. The one-car versus the two-car
157 garage. Is it really necessary to have a two-car garage in Fox Point? He does understand the way the
158 Board is analyzing that and feels the Board is on pretty solid ground. He noted he is not sure if the
159 Board wants to set a precedence from a one-car to a two-car garage because from time to time, you
160 will receive other applications.

161
162 Chairman Kurt Ostoic stated they way he is looking at this is it doesn't have to do with a one-
163 car or two-car garage. It is because of the shape of the lot and the road; they really don't have a lot of
164 options to expand and make better use of the land.

165
166 Village Attorney Eric Larson stated that a question was asked earlier and he wants to be sure
167 the Board really thinks about it as well. It looks like this encroachment is toward the road and not
168 toward a neighbor. It also appears to be quite a distance from the actual pavement. This is a road not
169 likely to be expanded and a neighborhood street. Those are all relevant and raised by your questions.

170
171 Member Scott Ratke stated he doesn't feel they have an alternative here because of the shape
172 of the lot, as was mentioned already and it is in the publics best interest that the car is in a garage
173 and not on the road.

174
175 Member Thomas Dunst inquired if the right-of-way would affect the Board's decision.

176
177 Village Attorney Eric Larson if they are encroaching on the right-of-way, they are going to have
178 to get a separate approval. I assume that they are not, but he isn't sure.

179
180 Building Inspector Michael Rakow stated he doesn't think they are encroaching on the right-of-
181 way, but he would have to take a better look.

182
183 Village Attorney Eric Larson stated if they are encroaching on the right-of-way, they will need
184 the approval of the Village Board.

185
186
187 Board of appeals discussed the uniqueness of the property. Thomas Dunst stated the shape of
188 the lot and position of the home makes this a unique property and therefore circumstances make it
189 difficult.

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Building Inspector Michael Rakow stated he will verify if the garage would encroach upon the village right-of-way.

Motion by Member Adam Bazelon, to grant the variance based on the points made in the Board's discussion and subject to the village right-of-way encroachment; if encroaching on the village right-of-way, the variance is subject to further review and approval by the Village Board.

Seconded by Member Nancy Filsinger.

<u>Scott Ratke</u>	<u>Aye</u>
<u>Thomas Dunst</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>
<u>Kurt Ostoic</u>	<u>Aye</u>

Granted by roll call vote, 5-0.

Adjourn

Without objection and by unanimous consent the Board adjourned at 5:21 p.m.

Respectfully Submitted,

Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer

1. Name of Appellant Kristie Kosoubcki
Address of Appellant 940 E Wye Lane
Phone Number _____ 262-302-0413
Home Work Cell
E-mail Address Kristie@holtonbrothers.com
2. Address of Property 940 E Wye Lane
Present Use of Property Residential
Proposed Use of Property Residential
Owner's Name and Address if Different than Above _____
3. Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?
Yes () **No** () If Yes, State the Nature of Previous Appeal or Application

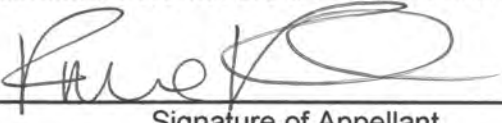
Disposition of Previous Appeal _____
Date of Decision in Previous Case _____
4. Date of Decision or Order of Administrative Official from which Appeal is Taken _____
Date of Notice of Such Decision Received by Appellant _____
5. Purpose of Grounds of Appeal or Application. Check Below the Relief Requested by This Appeal or Application:
- ☐ A. Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official. Attach separate sheet listing reasons why you claim this order, requirement, decision or determination is erroneous.
- ☒ B. Request for variance. Attach separate sheet explaining the following:
1. Variance requested.
2. What special conditions exist which will cause unnecessary hardship if the variance requested is not granted.

Appellant Name: Kristie Kosobucki

Village of Fox Point - Board of Appeals
Notice of Appeal and Application for Review

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: _____
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

3/21/22

Date

For Office Use Only:

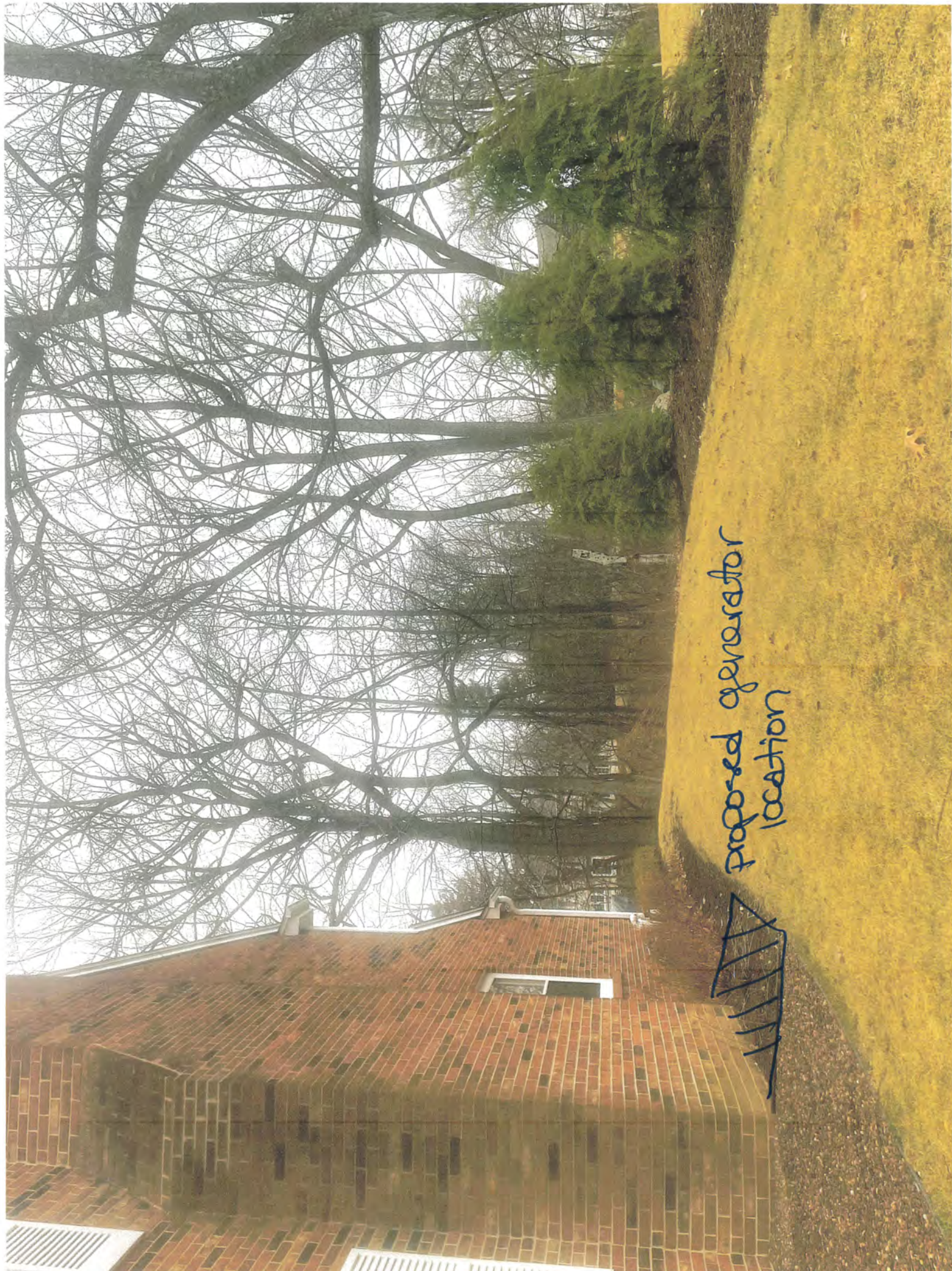
Date Application Received 03/23/2022 Receipt Number for \$200 Filing Fee 1.057329
Case Number Case 2022-04 Hearing Date _____
Disposition _____

Fox Point Variance Request – Kosobucki – 940 E Wye Lane

1. We are requesting a variance on the Generator Setback from side yards.
2. The way the code was currently written, there is no place in the side yard we could place a generator that met the current requirements. If we are not granted a variance we would be unable to install an automatic generator to protect our home against power outages. These power outages have been a normal occurrence in our area, and it is important to have consistent power to our property for specific medical reasons.
3. The variance requested places the generator in an area that is as far from the property lines that is feasible. Where we propose to place it is approximately 17 feet from the property line and 30 feet from our neighbor's house as well. That neighbor also has a generator in place at their residence that is between the 2 houses.
4. I believe the code is in place to make sure the generator is in a safe and unobtrusive area. Our placement does that to the best extent possible at this location.
5. Not approving this variance will inhibit this resident of your community from having piece of mind and maintaining our quality of life when the power goes out.



proposed
location for
generator



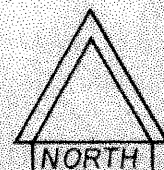
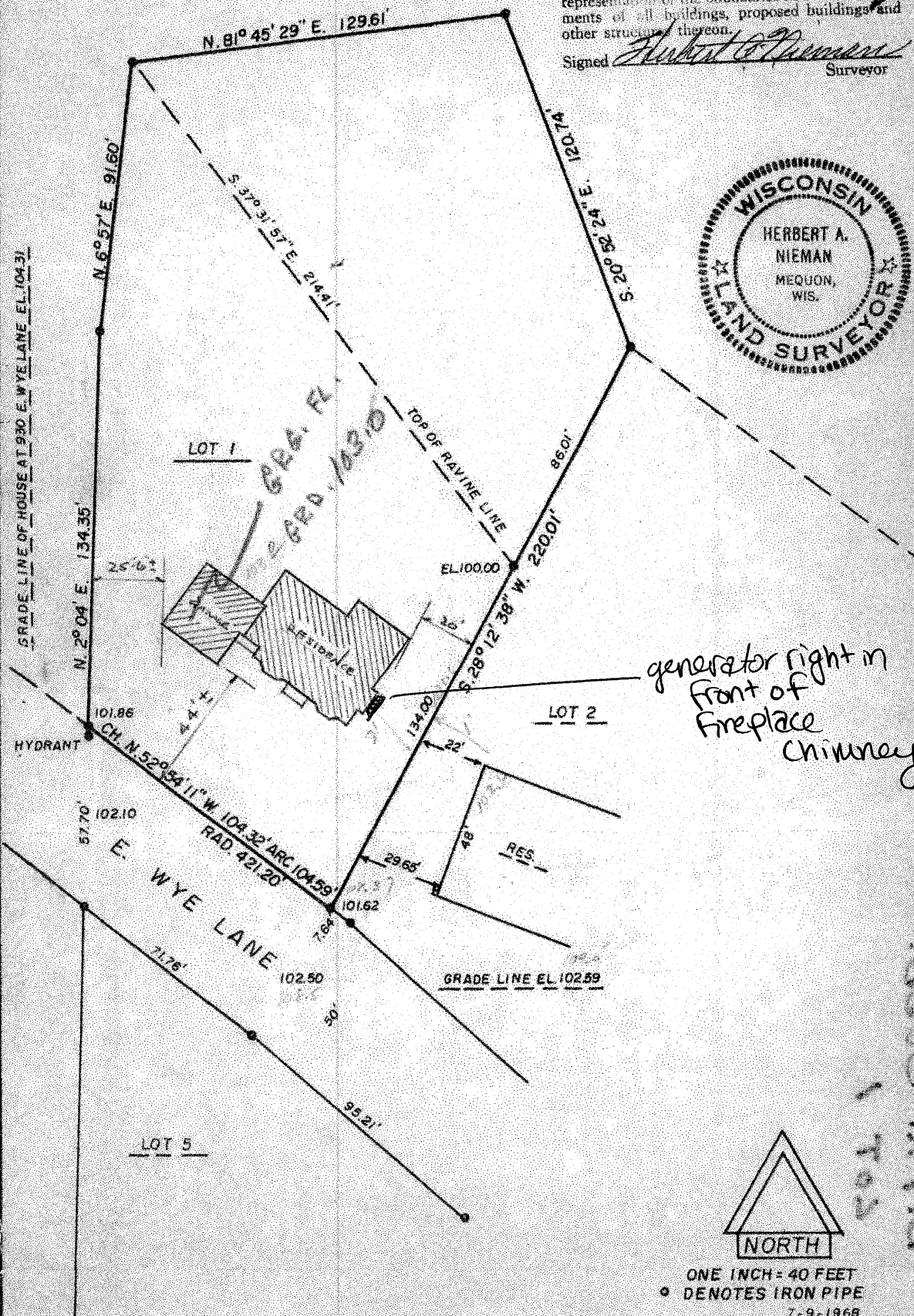
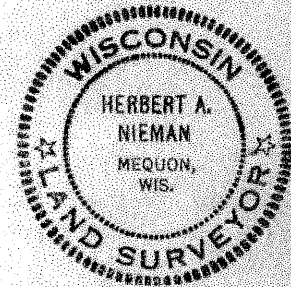
proposed generator
location

SURVEY PLAT of LOT 1 in B. & K. SUBDIVISION, being a subdivision of a part of the N E. 1/4 and S E. 1/4 of the S W. 1/4 of Section 16, and also part of the N W. 1/4 and S W. 1/4 of the S E. 1/4 of Section 16, T. 8 N., R. 22 E. in the Village of Fox Point, Milwaukee County, Wisconsin.

Prepared for WM. F. THALMAN

I hereby certify that on the 9th day of July, 1968, I have surveyed the above described property according to the official records and that the above plat is a correct representation of the boundaries and the measurements of all buildings, proposed buildings and other structures thereon.

Signed Herbert A. Nieman Surveyor



ONE INCH = 40 FEET
• DENOTES IRON PIPE

7-9-1968

GENERAC®

GUARDIAN® SERIES Residential Standby Generators Air-Cooled Gas Engine

20/22/24 kW

1 of

20/22/24 kW

INCLUDES:

- True Power™ Electrical Technology
- Two-line multilingual digital LCD Evolution™ controller (English/Spanish/French/Portuguese)
- 200 amp service rated transfer switch available
- Electronic governor
- Standard Wi-Fi® connectivity
- System status & maintenance interval LED indicators
- Sound attenuated enclosure
- Flexible fuel line connector
- Natural gas or LP gas operation
- 5 Year limited warranty
- Listed and labeled by the Southwest Research Institute allowing installation as close as 18 in (457 mm) to a structure.*
**Must be located away from doors, windows, and fresh air intakes and in accordance with local codes.*

https://assets.swri.org/library/DirectoryOfListedProducts/ConstructionIndustry/973_DoC_204_13204-01-01_Rev9.pdf

Standby Power Rating

G007038-1, G007039-1, G007038-3, G007039-3 (Aluminum - Bisque) - 20 kW 60 Hz
G007042-2, G007043-2, G007042-3, G007043-3 (Aluminum - Bisque) - 22 kW 60 Hz
G007209-0, G007210-0 (Aluminum - Bisque) - 24 kW 60 Hz



QUIET-TEST™



Note: ETL or CUL certification only applies to unbundled units and units packaged with limited circuit switches. Units packaged with the Smart Switch are ETL or UL certified in the USA only.

FEATURES

- **INNOVATIVE ENGINE DESIGN & RIGOROUS TESTING** are at the heart of Generac's success in providing the most reliable generators possible. Generac's G-Force engine lineup offers added peace of mind and reliability for when it's needed the most. The G-Force series engines are purpose built and designed to handle the rigors of extended run times in high temperatures and extreme operating conditions.
- **TRUE POWER™ ELECTRICAL TECHNOLOGY:** Superior harmonics and sine wave form produce less than 5% Total Harmonic Distortion for utility quality power. This allows confident operation of sensitive electronic equipment and micro-chip based appliances, such as variable speed HVAC systems.
- **TEST CRITERIA:**
 - ✓ **PROTOTYPE TESTED**
 - ✓ **SYSTEM TORSIONAL TESTED**
 - ✓ **NEMA MG1-22 EVALUATION**
 - ✓ **MOTOR STARTING ABILITY**
- **MOBILE LINK® CONNECTIVITY:** FREE with select Guardian Series Home standby generators, Mobile Link Wi-Fi allows users to monitor generator status from anywhere in the world using a smartphone, tablet, or PC. Easily access information such as the current operating status and maintenance alerts. Users can connect an account to an authorized service dealer for fast, friendly, and proactive service. With Mobile Link, users are taken care of before the next power outage.
- **SOLID-STATE, FREQUENCY COMPENSATED VOLTAGE REGULATION:** This state-of-the-art power maximizing regulation system is standard on all Generac models. It provides optimized FAST RESPONSE to changing load conditions and MAXIMUM MOTOR STARTING CAPABILITY by electronically torque-matching the surge loads to the engine. Digital voltage regulation at $\pm 1\%$.
- **SINGLE SOURCE SERVICE RESPONSE** from Generac's extensive dealer network provides parts and service know-how for the entire unit, from the engine to the smallest electronic component.
- **GENERAC TRANSFER SWITCHES:** Long life and reliability are synonymous with GENERAC POWER SYSTEMS. One reason for this confidence is that the GENERAC product line is offered with its own transfer systems and controls for total system compatibility.
- **PWRVIEW™ TRANSFER SWITCH:** The Generac PWRview Automatic Transfer Switch integrates the PWRview energy monitor to provide real-time energy consumption data that can help lower a home's electricity bill. Using a convenient mobile app, homeowners can access energy usage and alert information while under utility power or generator power. The PWRview energy monitor is a simple to use and low cost tool which helps save money over the life of the generator. Included with model G007210-0.

THE GENERAC
PROMISE



GENERAC®

PWRVIEW

* Assembled in the USA using domestic and foreign parts.

20/22/24 kW

Specifications

Generator

Model	G007038-1 G007039-1 (20 kW)	G007042-2 G007043-2 (22 kW)	G007038-3 G007039-3 (20 kW)	G007042-3 G007043-3 (22 kW)	G007209-0 G007210-0 (24 kW)
Rated maximum continuous power capacity (LP)	20,000 Watts*	22,000 Watts*	20,000 Watts*	22,000 Watts*	24,000 Watts*
Rated maximum continuous power capacity (NG)	18,000 Watts*	19,500 Watts*	18,000 Watts*	19,500 Watts*	21,000 Watts*
Rated voltage	240				
Rated maximum continuous load current – 240 volts (LP/NG)	83.3 / 75.0	91.7 / 81.3	83.3 / 75.0	91.7 / 81.3	100 / 87.5
Total Harmonic Distortion	Less than 5%				
Main line circuit breaker	90 amp	100 amp	90 amp	100 amp	100 amp
Phase	1				
Number of rotor poles	2				
Rated AC frequency	60 Hz				
Power factor	1.0				
Battery requirement (not included)	12 Volts, Group 26R 540 CCA minimum or Group 35AGM 650 CCA minimum				
Unit weight (lb / kg)	448 / 203	466 / 211	436 / 198	445 / 202	455 / 206
Dimensions (L x W x H) in / cm	48 x 25 x 29 / 121.9 x 63.5 x 73.7				
Sound output in dB(A) at 23 ft (7 m) with generator operating at normal load**	67	67	67	67	67
Sound output in dB(A) at 23 ft (7 m) with generator in Quiet-Test™ low-speed exercise mode**	55	57	55	57	57
Exercise duration	5 min				

Engine

Engine type	GENERAC G-Force 1000 Series				
Number of cylinders	2				
Displacement	999 cc				
Cylinder block	Aluminum w/ cast iron sleeve				
Valve arrangement	Overhead valve				
Ignition system	Solid-state w/ magneto				
Governor system	Electronic				
Compression ratio	9.5:1				
Starter	12 VDC				
Oil capacity including filter	Approx. 1.9 qt / 1.8 L				
Operating rpm	3,600				
Fuel consumption					
Natural gas	ft ³ /hr (m ³ /hr)				
1/2 Load	204 (5.78)	228 (6.46)	164 (4.64)	203 (5.75)	
Full Load	301 (8.52)	327 (9.26)	287 (8.13)	306 (8.66)	
Liquid propane	ft ³ /hr (gal/hr) [L/hr]				
1/2 Load	87 (2.37) [8.99]	92 (2.53) [9.57]	86 (2.36) [8.95]	92 (2.53) [9.57]	
Full Load	130 (3.56) [13.48]	142 (3.90) [14.77]	136 (3.74) [14.15]	142 (3.90) [14.77]	

Note: **Fuel pipe must be sized for full load.** Required fuel pressure to generator fuel inlet at all load ranges - 3.5–7 in water column (0.87–1.74 kPa) for NG, 10–12 in water column (2.49–2.99 kPa) for LP gas. For BTU content, multiply ft³/hr x 2500 (LP) or ft³/hr x 1000 (NG). For Megajoule content, multiply m³/hr x 93.15 (LP) or m³/hr x 37.26 (NG).

Controls

Two-line plain text multilingual LCD	Simple user interface for ease of operation.
Mode buttons: AUTO	Automatic start on utility failure. Weekly, Bi-weekly, or Monthly selectable exerciser.
MANUAL	Start with starter control, unit stays on. If utility fails, transfer to load takes place.
OFF	Stops unit. Power is removed. Control and charger still operate.
Ready to Run/Maintenance messages	Standard
Engine run hours indication	Standard
Programmable start delay between 2–1500 seconds	Standard (programmable by dealer only)
Utility Voltage Loss/Return to Utility adjustable (brownout setting)	From 140–171 V / 190–216 V
Future Set Capable Exerciser/Exercise Set Error warning	Standard
Run/Alarm/Maintenance logs	50 events each
Engine start sequence	Cyclic cranking: 16 sec on, 7 rest (90 sec maximum duration).
Starter lock-out	Starter cannot re-engage until 5 sec after engine has stopped.
Smart Battery Charger	Standard
Charger Fault/Missing AC warning	Standard
Low Battery/Battery Problem Protection and Battery Condition indication	Standard
Automatic Voltage Regulation with Over and Under Voltage Protection	Standard
Under-Frequency/Overload/Stepper Overcurrent Protection	Standard
Safety Fused/Fuse Problem Protection	Standard
Automatic Low Oil Pressure/High Oil Temperature Shutdown	Standard
Overcrank/Overspeed (@ 72 Hz)/rpm Sense Loss Shutdown	Standard
High Engine Temperature Shutdown	Standard
Internal Fault/Incorrect Wiring protection	Standard
Common external fault capability	Standard
Field upgradable firmware	Standard

**Sound levels are taken from the front of the generator. Sound levels taken from other sides of the generator may be higher depending on installation parameters. Rating definitions - Standby: Applicable for supplying emergency power for the duration of the utility power outage. No overload capability is available for this rating. (All ratings in accordance with BS5514, ISO3046 and DIN6271). * Maximum kilovolt amps and current are subject to and limited by such factors as fuel BTU/megajoule content, ambient temperature, altitude, engine power and condition, etc. Maximum power decreases approximately 3.5% for each 1,000 ft (304.8 m) above sea level; and also will decrease approximately 1% for each 10 °F (6 °C) above 60 °F (16 °C).

20/22/24 kW

Service Rated Automatic Transfer Switch Features

- Intelligently manages up to four air conditioner loads with no additional hardware.
- Up to eight additional large (240 VAC) loads can be managed when used in conjunction with Smart Management Modules (SMMs).
- Electrically operated, mechanically-held contacts for fast, clean connections.
- Rated for all classes of load, 100% equipment rated, both inductive and resistive.
- 2-pole, 250 VAC contactors.
- Service equipment rated, dual coil design.
- Rated for both aluminum and copper conductors.
- Main contacts are silver plated or silver alloy to resist welding and sticking.
- NEMA/UL 3R aluminum outdoor enclosure allows for indoor or outdoor mounting flexibility.

Dimensions

200 Amps 120/240, 1Ø Open Transition Service Rated					
	Height		Width		Depth
	H1	H2	W1	W2	
in	26.8	30.1	10.5	13.5	6.9
cm	67.95	76.43	26.67	34.18	17.5

Wire Ranges		
Conductor Lug	Neutral Lug	Ground Lug
250 MCM - #6	350 MCM - #6	2/0 - #14

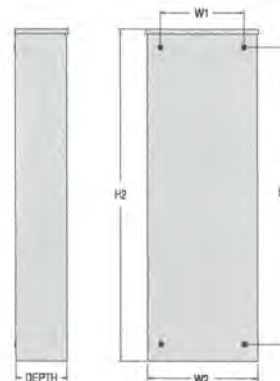
Model

G007039-1, G007039-3 (20 kW)
G007043-2, G007043-3 (22 kW)

No. of poles	2
Current rating (amps)	200
Voltage rating (VAC)	120/240, 1Ø
Utility voltage monitor (fixed)*	
-Pick-up	80%
-Dropout	65%
Return to Utility*	Approx. 13 sec
Exercises bi-weekly for 5 minutes*	Standard
ETL or UL listed	Standard
Enclosure type	NEMA/UL 3R
Circuit breaker protected	22,000
Lug range	250 MCM - #6

*Function of Evolution controller

Exercise can be set to weekly, bi-weekly, or monthly



PWRview Automatic Transfer Switch Features

- Integrated PWRview monitor provides real-time energy usage data through PWRview app.
- Intelligently manages up to four air conditioner loads with no additional hardware.
- Up to eight additional large (240 VAC) loads can be managed when used in conjunction with Smart Management Modules (SMMs).
- Electrically operated, mechanically-held contacts for fast, clean connections.
- Rated for all classes of load, 100% equipment rated, both inductive and resistive.
- 2-pole, 250 VAC contactors.
- Service equipment rated, dual coil design.
- Rated for both aluminum and copper conductors.
- Main contacts are silver plated or silver alloy to resist welding and sticking.
- NEMA 3R aluminum outdoor enclosure allows for indoor or outdoor mounting flexibility.
- Heavy duty Generac Contactor is an ETL recognized device.

Dimensions

200 Amps 120/240, 1Ø Open Transition Service Rated					
	Height		Width		Depth
	H1	H2	W1	W2	
in	26.8	30.1	10.5	13.5	6.9
cm	67.95	76.43	26.67	34.18	17.5

Wire Ranges		
Conductor Lug	Neutral Lug	Ground Lug
250 MCM - #6	350 MCM - #6	2/0 - #14

Model

G007210-0 (24 kW)

No. of poles	2
Current rating (amps)	200
Voltage rating (VAC)	120/240, 1Ø
Utility voltage monitor (fixed)*	
-Pick-up	80%
-Dropout	65%
Return to Utility*	Approx. 13 sec
Exercises bi-weekly for 5 minutes*	Standard
ETL or UL listed	Standard
Enclosure type	NEMA 3R
Circuit breaker protected	22,000
Lug range	250 MCM - #6

*Function of Evolution controller

Exercise can be set to weekly, bi-weekly, or monthly



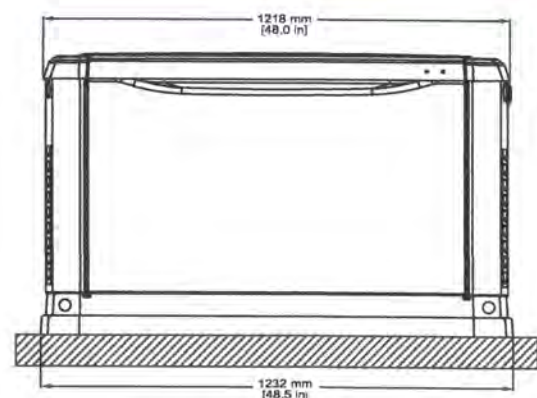
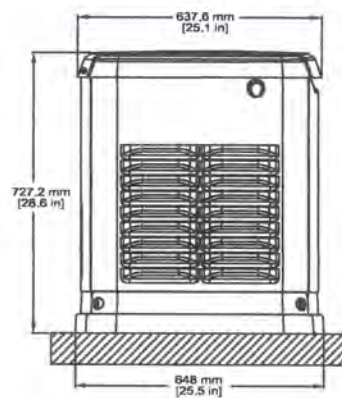
20/22/24 kW

Available Accessories

Model #	Product	Description
G005819-0	26R Wet Cell Battery	Every standby generator requires a battery to start the system. Generac offers the recommended 26R wet cell battery for use with all air-cooled standby product (excluding PowerPact®).
G007101-0	Battery Pad Warmer	Pad warmer rests under the battery. Recommended for use if temperature regularly falls below 0 °F (-18 °C). (Not necessary for use with AGM-style batteries).
G007102-0	Oil Warmer	Oil warmer slips directly over the oil filter. Recommended for use if temperature regularly falls below 0 °F (-18 °C).
G007103-1	Breather Warmer	Breather warmer is for use in extreme cold weather applications. For use with Evolution controllers only in climates where heavy icing occurs.
G005621-0	Auxiliary Transfer Switch Contact Kit	The auxiliary transfer switch contact kit allows the transfer switch to lock out a single large electrical load that may not be needed. Not compatible with 50 amp pre-wired switches.
G007027-0 - Bisque	Fascia Base Wrap Kit (Standard on 22/24 kW)	The fascia base wrap snaps together around the bottom of the new air-cooled generators. This offers a sleek, contoured appearance as well as offering protection from rodents and insects by covering the lifting holes located in the base.
G005703-0 - Bisque	Touch-Up Paint Kit	If the generator enclosure is scratched or damaged, it is important to touch up the paint to protect from future corrosion. The touch-up paint kit includes the necessary paint to correctly maintain or touch up a generator enclosure.
G006485-0	Scheduled Maintenance Kit	Generac's scheduled maintenance kit provides all the items necessary to perform complete routine maintenance on a Generac automatic standby generator (oil not included).
G007005-0	Wi-Fi LP Tank Fuel Level Monitor	The Wi-Fi enabled LP tank fuel level monitor provides constant monitoring of the connected LP fuel tank. Monitoring the LP tank's fuel level is an important step in verifying the generator is ready to run during an unexpected power failure. Status alerts are available through a free application to notify users when the LP tank is in need of a refill.
G007000-0 (50 amp) G007006-0 (100 amp)	Smart Management Module	Smart Management Modules (SMM) are used to optimize the performance of a standby generator. It manages large electrical loads upon startup and sheds them to aid in recovery when overloaded. In many cases, using SMM's can reduce the overall size and cost of the system.
G007169-0 - 4G LTE G007170-0 - Wi-Fi/ Ethernet	Mobile Link® Cellular Accessories	The Mobile Link family of Cellular Accessories allow users to monitor generator status from anywhere in the world, using a smart phone, tablet, or PC. Easily access information such as the current operating status and maintenance alerts. Users can connect an account with an authorized service dealer for fast, friendly, and proactive service. With Mobile Link, users are taken care of before the next power outage.
G007220-0 - Bisque	Base Plug Kit	Base plugs snap into the lifting holes on the base of air-cooled home standby generators. This offers a sleek, contoured appearance, as well as offers protection from rodents and insects by covering the lifting holes located in the base. Kit contains four plugs, sufficient for use on a single air-cooled home standby generator.

Dimensions & UPCs

Model	UPC
G007038-1	696471074185
G007038-3	696471074185
G007039-1	696471074192
G007039-3	696471074192
G007042-2	696471074208
G007042-3	696471074208
G007043-2	696471074215
G007043-3	696471074215
G007209-0	696471071511
G007210-0	696471078220



Dimensions shown are approximate. See installation manual for exact dimensions. DO NOT USE THESE DIMENSIONS FOR INSTALLATION PURPOSES.

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

414-351-8900

Receipt No: 1.057329

Mar 23, 2022

Kosoubcki-BOA App

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

Total:	200.00
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CHECK	Check No: 180	200.00
Payor: Kosoubcki-BOA App		

Total Applied:	200.00
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Change Tendered:	.00
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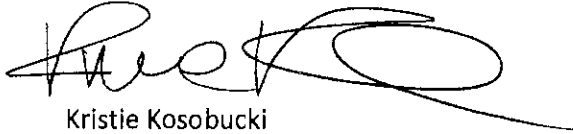
Duplicate Copy

03/23/2022 8:12 AM

To whom it may concern,

I will be unavailable to attend the variance meeting scheduled for May 19th at 5pm in regard to 940 E Wye Lane. I give permission to Michael (MJ) Thalman to represent my interests regarding the variance request for this property.

Thanks,

A handwritten signature in black ink, appearing to read 'Kristie', with a large, stylized flourish extending to the right.

Kristie Kosobucki

Owner of 940 E Wye Lane



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 Thursday, May 19, 2022, at 5:00 p.m. to hear the following appeal:

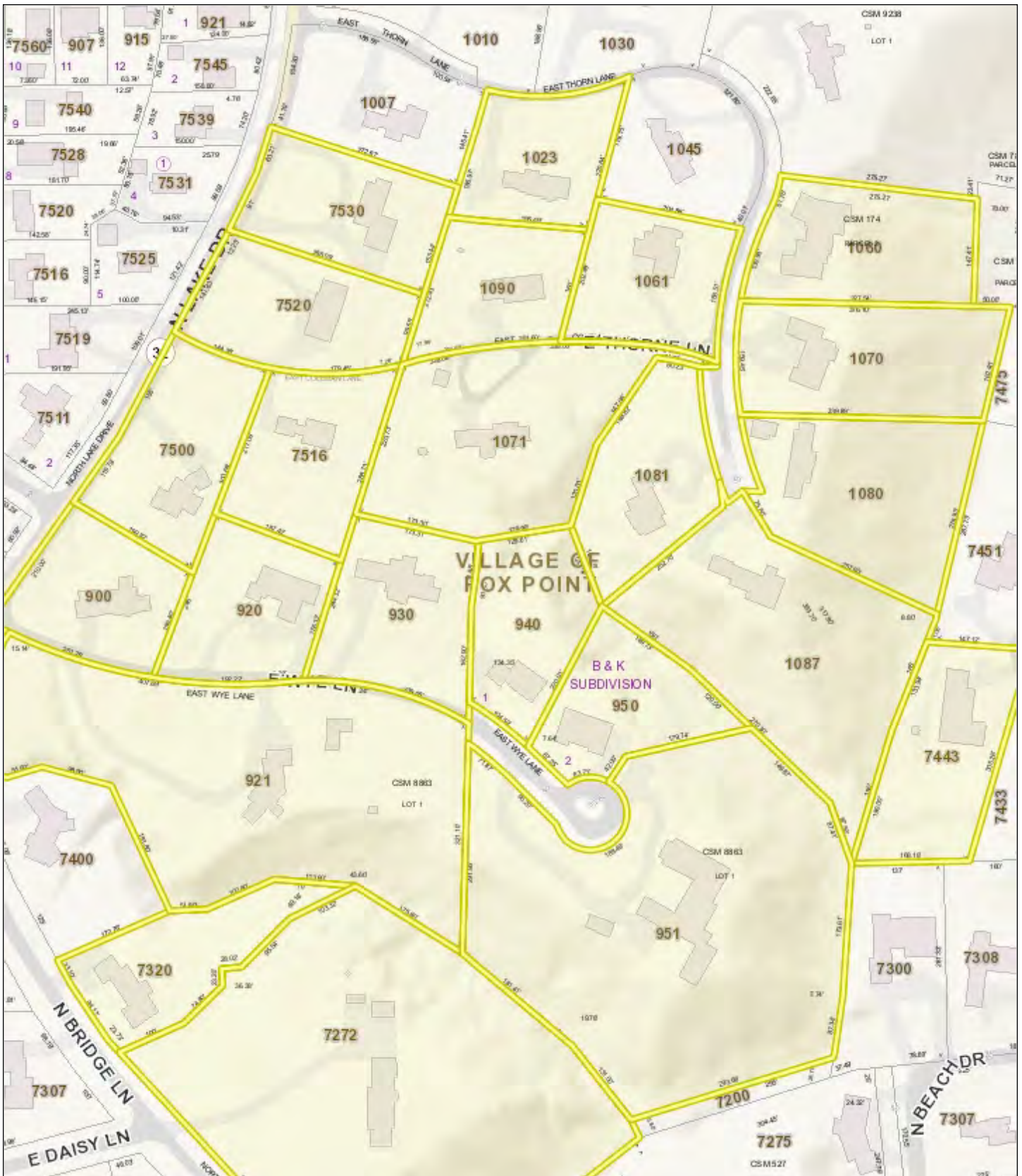
1. **Case 2022-03: 940 E Wye Lane.** The applicant is requesting a variance pertaining to Section 745-13 B. (3) of the Fox Point Village Code in the A1 Residence District, concerning side yard setback requirements. A side yard setback of not less than 20 feet from the side yard setback shall be provided for each side of every building. The request also pertains to Section 756-34 B., Exterior Structures regarding the installation of a generator. The applicant is proposing to install a generator approximately 17 feet from the property line.

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: [April 25, 2022]
Posted: [April 25, 2022]



Village of Fox Point GIS 940 E Wye Lane



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

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" = 188'

Print Date: 3/30/2022

§ 745-13. A-1 Residence District.

- A. Uses. In an A-1 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 accessory use does not constitute or become a public or private nuisance.
- B. Areas and yards. In an A-1 Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot on which a dwelling is erected or proposed to be erected, together with the area of abutting land reserved for highway purposes, whether private or public, to the center line thereof, shall not be reduced to less than 40,000 square feet for each family. No building not erected for a dwelling shall occupy more than 10% of the gross area of the lot or exceed a height of 25 feet.
 - (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 corner lots 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; and 15 feet when the width of lot is 70 feet or less; provided, however, that no setback will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
[Amended 9-11-2012 by Ord. No. 2012-11]
 - (3) A side yard of not less than 20 feet shall be provided for on each side of every building, except that in the case of lots existing as of May 6, 1958, and less than 100 feet in width measured at the narrowest place adjacent to the location of the dwelling, the side yard may be reduced by 1/4 of the difference between said width and 100 feet; provided, however, that the side yard shall in no event be less than 15 feet.
 - (4) A rear yard of not less than 20 feet shall be provided for every building.
 - (5) Every lot on which a building is erected shall have a minimum width of 120 feet.
 - (6) No single-family residence built or existing in this district shall have a height greater than 40 feet from the grade abutting the structure on the front side of the structure, with the exception in that, upon application to the Board of Appeals, the Board of Appeals may grant a special exception on a lot of not less than 80,000 square feet in total area upon the following criteria:
[Amended 2-9-2021 by Ord. No. 2021-01]
 - (a) Special exceptions to the height limitations as hereinbefore set forth may

be granted by the Board of Appeals upon consideration of the following:

- [1] Reasonable compatibility with the character of the immediate neighborhood.
 - [2] Whether there will be unreasonable interference with the aesthetics and scenic views of residences in the surrounding area.
 - [3] Compatibility of the overall size of the structure in relation to the size of the lot.
- (b) For any special exception granted, an additional two feet of setback on all sides of the structure is required for each foot of additional height allowed.
 - (c) In no event shall the Board of Appeals grant a special exception allowing a height greater than 55 feet.
 - (d) For purposes of this subsection, the height of the building shall include the highest roof point of any interior portion of the structure which can be occupied, including but not limited to attic and storage structures and observatories which accommodate entry or occupancy by a person, but shall not include roof attachments such as chimneys, antennas or decorative cupolas.¹
 - (e) The special exceptions herein are not deemed to be variances from this chapter, but an allowed height upon satisfactory compliance with the foregoing conditions.
 - (f) The Clerk/Treasurer shall provide notice of Board of Appeals proceedings under this subsection to owners or occupants of properties the boundaries of which are within 500 feet of any boundary of the subject property.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

§ 756-34. Air conditioning and refrigeration systems and backup generator installations.

A. Permit requirements.

- (1) Permit required. Except as hereinafter provided, before proceeding with the construction, erection or installation of any air-cooled, water-cooled or mechanically cooled air-conditioning or refrigeration system or unit or backup generator installations, in or to serve any building, a permit shall first be obtained from the Building Inspector.
- (2) Permits shall not be required for the installation of any air-conditioning or refrigeration system or unit that does not use water for cooling and where the source of operating power is obtained by plugging in an electrical cord connection to an electrical outlet. This subsection shall be applicable to portable units.
- (3) Application for a permit shall be made by the installing contractor upon a form provided by the Building Inspector, shall be filled out completely and shall provide the following information:
 - (a) Name and address of contractor.
 - (b) Location of premises where installation is proposed.
 - (c) Name and address of owner.
 - (d) Location of unit on premises, including distance to lot lines for exterior apparatus.
 - (e) Manufacturer's identification, classification and size of unit.
 - (f) Nature of coolant, if applicable.
 - (g) If water cooled, source of water and method of discharging wastewater. (Refer to Department of Building Inspection.)¹
 - (h) Where water conservation devices are required, manufacturer's name, identification, classification and size of equipment.
 - (i) Such additional information as shall be required by the Building Inspector.

- B. Exterior structures.** Where any unit of an air-conditioning or refrigeration system or backup generator installation is located outside of the structure, said unit shall comply with setback requirements for accessory structures as set forth in the Chapter 745, Zoning, and said location shall be subject to approval of the Building Inspector. Said location shall not, by noise or sight, be detrimental to adjoining property. As an exception to the requirements of this subsection, however, the

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

Village Manager may authorize a temporary backup generator installation to be located anywhere on a lot if the Village Manager finds that the generator serves a public purpose and will be removed no later than 12 months from the date of the approval, subject to the temporary structure approval procedure described in § 745-7D of this Code. **[Amended 2-12-2010 by Ord. No. 2010-02]**

(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.
4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
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.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.
15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

SECTION 18. 62.23 (7) (e) 7. a. of the statutes is created to read:

62.23 (7) (e) 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.

SECTION 19. 62.23 (7) (e) 7. d. of the statutes is created to read:

62.23 (7) (e) 7. 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

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

BOARD OF APPEALS

NOTICE OF APPEAL AND APPLICATION FOR REVIEW

1. Name of Appellant Alan & Betsy Kimmel

Address of Appellant 6936 N. Barnett Lane

Phone Number _____
Home Work 414-699-3494

E-mail Address betsy119@hotmail.com

2. Address of Property 6936 N. Barnett Lane

Present Use of Property Residential

Proposed Use of Property Residential

Owner's Name and Address if Different than Above

3. Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?
Yes () No (X) If Yes, State the Nature of Previous Appeal or Application

Disposition of Previous Appeal

Date of Decision in Previous Case

4. Date of Decision or Order of Administrative Official from which Appeal is Taken 1-28-22

Date of Notice of Such Decision Received by Appellant 1-28-22

5. Purpose of Grounds of Appeal or Application. Check Below the Relief Requested by This Appeal or Application:

☐ A. Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official. Attach separate sheet listing reasons why you claim this order, requirement, decision or determination is erroneous.

☒ B. Request for variance. Attach separate sheet explaining the following:

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

Appellant Name: Alan & Betsy Kimmel

Village of Fox Point - Board of Appeals
Notice of Appeal and Application for Review

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:

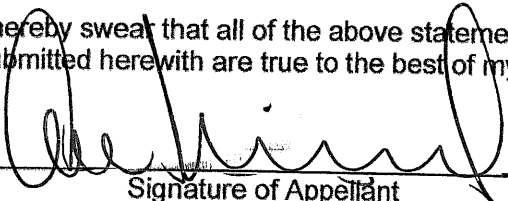
1. Height of the proposed fence.
2. Exact location of the proposed fence.
3. Indicate whether the fence is replacement fence.
4. Type of fence and materials.

☐ D. Other: _____
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

4/01/22
Date

For Office Use Only:

Date Application Received 4/12/2022 Receipt Number for \$200 Filing Fee _____

Case Number _____ Hearing Date _____

Disposition _____

April 6th 2022

Board of Appeals
c/o Kelley
Village of Fox Point
7200 N. Santa Monica BLVD

RE: Designating Agent(s) for Board of Appeals

I designate Dan Claas of Electro-Tronics, LLC and Ryan Persitza of Commercial Realty Advisors, LLC to represent our appeals for a side set back variance. Please copy Dan Claas (dan@electronicswi.com) 262-510-9479 and Ryan Persitza (ryan@cradvisorsmke.com) 414-531-4414 on any and all correspondence regarding this matter.

Thank you,

A handwritten signature in black ink, appearing to read "B. Kimmel", with a stylized flourish at the end.

Betsy Kimmel
6936 N Barnett Lane
Fox Point, WI

Village of Fox Point, WI
Thursday, February 17, 2022

Chapter 756. Building Construction

Article X. Mechanical

§ 756-34. Air conditioning and refrigeration systems and backup generator installations.

A. Permit requirements.

- (1) Permit required. Except as hereinafter provided, before proceeding with the construction, erection or installation of any air-cooled, water-cooled or mechanically cooled air-conditioning or refrigeration system or unit or backup generator installations, in or to serve any building, a permit shall first be obtained from the Building Inspector.
- (2) Permits shall not be required for the installation of any air-conditioning or refrigeration system or unit that does not use water for cooling and where the source of operating power is obtained by plugging in an electrical cord connection to an electrical outlet. This subsection shall be applicable to portable units.
- (3) Application for a permit shall be made by the installing contractor upon a form provided by the Building Inspector, shall be filled out completely and shall provide the following information:
 - (a) Name and address of contractor.
 - (b) Location of premises where installation is proposed.
 - (c) Name and address of owner.
 - (d) Location of unit on premises, including distance to lot lines for exterior apparatus.
 - (e) Manufacturer's identification, classification and size of unit.
 - (f) Nature of coolant, if applicable.
 - (g) If water cooled, source of water and method of discharging wastewater. (Refer to Department of Building Inspection.)^[1]
 - [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
 - (h) Where water conservation devices are required, manufacturer's name, identification, classification and size of equipment.
 - (i) Such additional information as shall be required by the Building Inspector.

- B. Exterior structures. Where any unit of an air-conditioning or refrigeration system or backup generator installation is located outside of the structure, said unit shall comply with setback requirements for accessory structures as set forth in the Chapter 745, Zoning, and said location shall be subject to approval of the Building Inspector. Said location shall not, by noise or sight, be detrimental to adjoining property. As an exception to the requirements of this subsection, however, the Village Manager may authorize a temporary backup generator installation to be located

anywhere on a lot if the Village Manager finds that the generator serves a public purpose and will be removed no later than 12 months from the date of the approval, subject to the temporary structure approval procedure described in § **745-7D** of this Code.
[Amended 2-12-2010 by Ord. No. 2010-02]

7.

APRIL 21, 1986

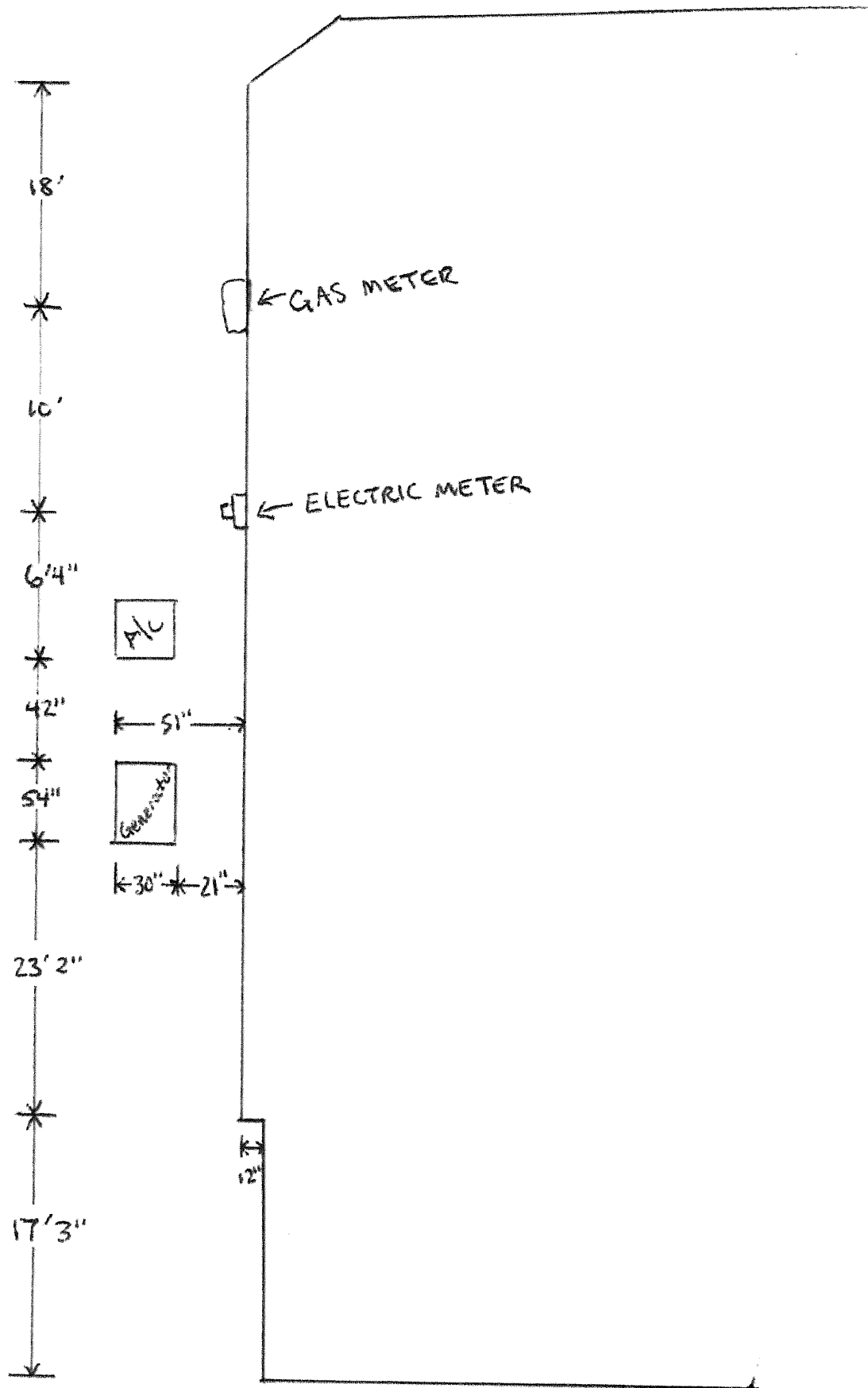
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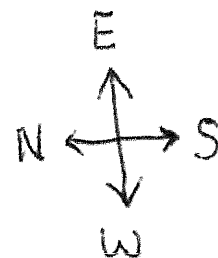
1470 North 627th Street • P.O. Box 414 • Brownfield, Wisconsin 53005 • phone 414 / 781-1000

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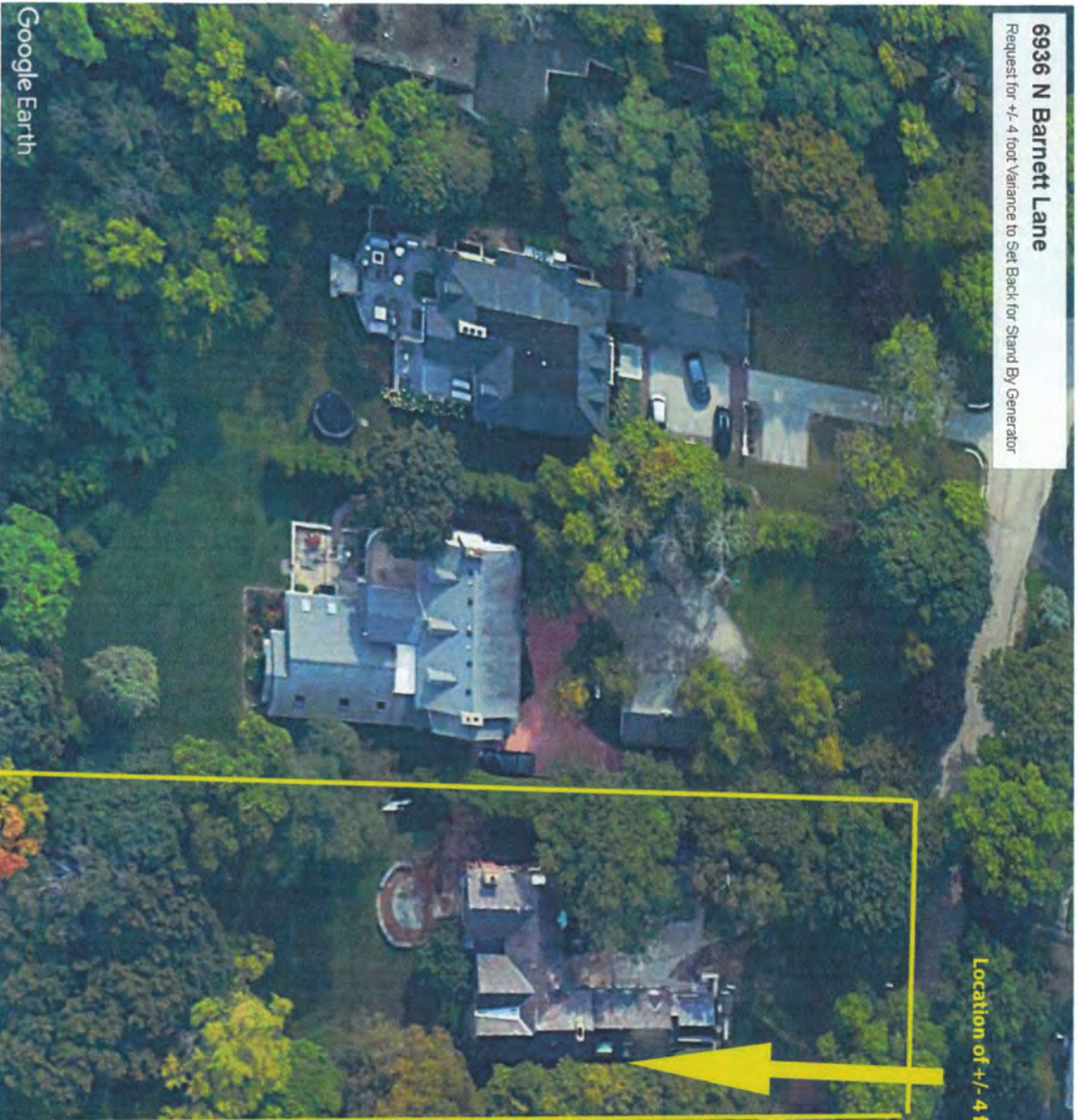


'NOT TO SCALE'



6936 N Barnett Lane

Request for +/- 4 foot Variance to Set Back for Stand By Generator



Location of +/- 4 ft Variance



NW side-East view

UTILITIES-N. SIDE



NW side-East view



UTILITIES- N. SIDE



NW side- East view



Street View - East

Date 2/23/22

Hello

My Name is Gabriel Nelson and I work with Nelsons Specialty Services.

Due to a power outage last year, throughout the past summer, we were contracted to installed a generator at your neighbors home to the south , Alan & Betsy Kimmel 3936 Barnett Rd.

We received a letter from village informing us that we are within the village limit in distance from your home to meet the village ordinance code. The code calls for 40' away from your house, we are at 36'. A difference being 4 feet.

This was a disappointment because we went to great lengths to make sure it would not be visible to you or your family or near a window we thought would bring sound into your home. . Mr Kimmel originally did have it planned to have the generator encased with bushes (similar to how you have your).

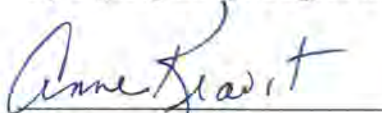
We are asking your Permission/ Support to a variance to be approved for a village meeting Feb 2nd.

Do not feel pressured by any means, and if you do not wish the generator to be where it is we will move it first thing in spring 2021. Even with our signature village may have us move it, but with it being so close to the line, we thought we would ask you for your support. Although we would graciously appreciate any understanding you could show us and if there is anything else we can do please don't hesitate to call us.

Any questions please reach out to me

Gabriel Nelson
Nelsons Specialty Services llc
Personal 414-852-4223
Office line 414-331-3494

By signing this you agree and motion to APPROVE variance for 3936 N Barnett Ln attn:Generator


Name
Anne Kravit


Address


Date

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

414-351-8900

Receipt No: 1.057416

Apr 11, 2022

Kimmel BOA Case-6936 Barnett

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	200.00
10-44540 OTHER PERMIT	
Total:	200.00
CHECK	200.00
Check No: 1005	
Payor: Kimmel BOA Case-6936 Barnett	
Total Applied:	200.00
Change Tendered:	.00

Duplicate Copy

04/11/2022 1:52 PM

Date 2/23/22

Hello

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Name

Address

Date

Kelly Meyer

From: Michael Rakow
Sent: Wednesday, April 13, 2022 9:16 AM
To: Kelly Meyer
Subject: FW: 3936 Barnett generator

Follow Up Flag: Follow up
Flag Status: Completed

Regards,

Michael Rakow
Building Inspector



VILLAGE OF
FOX POINT

7200 N Santa Monica Blvd
Fox Point, WI 53217
(414) 247 6622
www.villageoffoxpoint.com

From: Alok Maskara <amaskara@gmail.com>
Sent: Wednesday, April 13, 2022 8:43 AM
To: Michael Rakow <mrakow@villageoffoxpoint.com>
Subject: Re: 3936 Barnett generator

Yes, thanks

Alok Maskara
Email: amaskara@gmail.com
Mobile: +1 203 984 9859

On Apr 13, 2022, at 2:40 PM, Michael Rakow <mrakow@villageoffoxpoint.com> wrote:

Are you referring to 6936 N Barnett Ln? 3936 N Barnett does not exist.

Regards,

Michael Rakow

Building Inspector



**VILLAGE OF
FOX POINT**

7200 N Santa Monica Blvd

Fox Point, WI 53217

(414) 247 6622

www.villageoffoxpoint.com

From: Alok Maskara <amaskara@gmail.com>

Sent: Monday, April 4, 2022 7:05 PM

To: Michael Rakow <mrakow@villageoffoxpoint.com>; Scott Brandmeier <sbrandmeier@villageoffoxpoint.com>

Subject: 3936 Barnett generator

Mike, Scott,

You should know that we find the generator at 3936 N barnett to be very noisy and want the village to enforce the 40ft rule/code.

We are good friends with Kimmel family and have only appreciation for them as our neighbors. I believe that their contractors did a poor job and should be forced to follow the village rules.

Please DO NOT approve the variance !

Alok Maskara
Email: amaskara@gmail.com
Mobile: +1 203 984 9859

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Office line

414-331-3494

By signing this you agree and motion to APPROVE varianc

Name

Address

Alok Maskara
Email: amaskara@gmail.com
Mobile: +1 203 984 9859

May 1st, 2022

Kelly A. Meyer,

Village Clerk Treasurer

Re: Case 2022-05: 6936 N. Barnett Lane

I am unable to attend the meeting on May 19th due to my work schedule, hence I am writing this letter.

I object to any variance being considered or granted for the current location of the backup generator at 6936 Barnett lane. The current location of the backup generator creates loud unacceptable noise for the neighbor and the location is an eyesore. Village code must be followed in all cases, including this one.

To be clear, we are not objecting to our neighbors having a backup generator. We also have one that was installed three years ago, following village code. We realize that cost savings maybe possible by violating village code, but the code was designed to keep Fox Point safe and beautiful for everyone.

We love the Kimmel family, the current owners of 6936 N Barnett lane. This objection is not a reflection of our excellent relationship with the Kimmel family. I believe that their contractor made a mistake by wrongly installing the generator and must be required to properly reinstall it following village code.

I request that this letter be treated as confidential, and the name of the objecting party not be publicly disclosed.

Regards,



Alok Maskara





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 Thursday, May 19, 2022 at 5:00 p.m. to hear the following appeal:

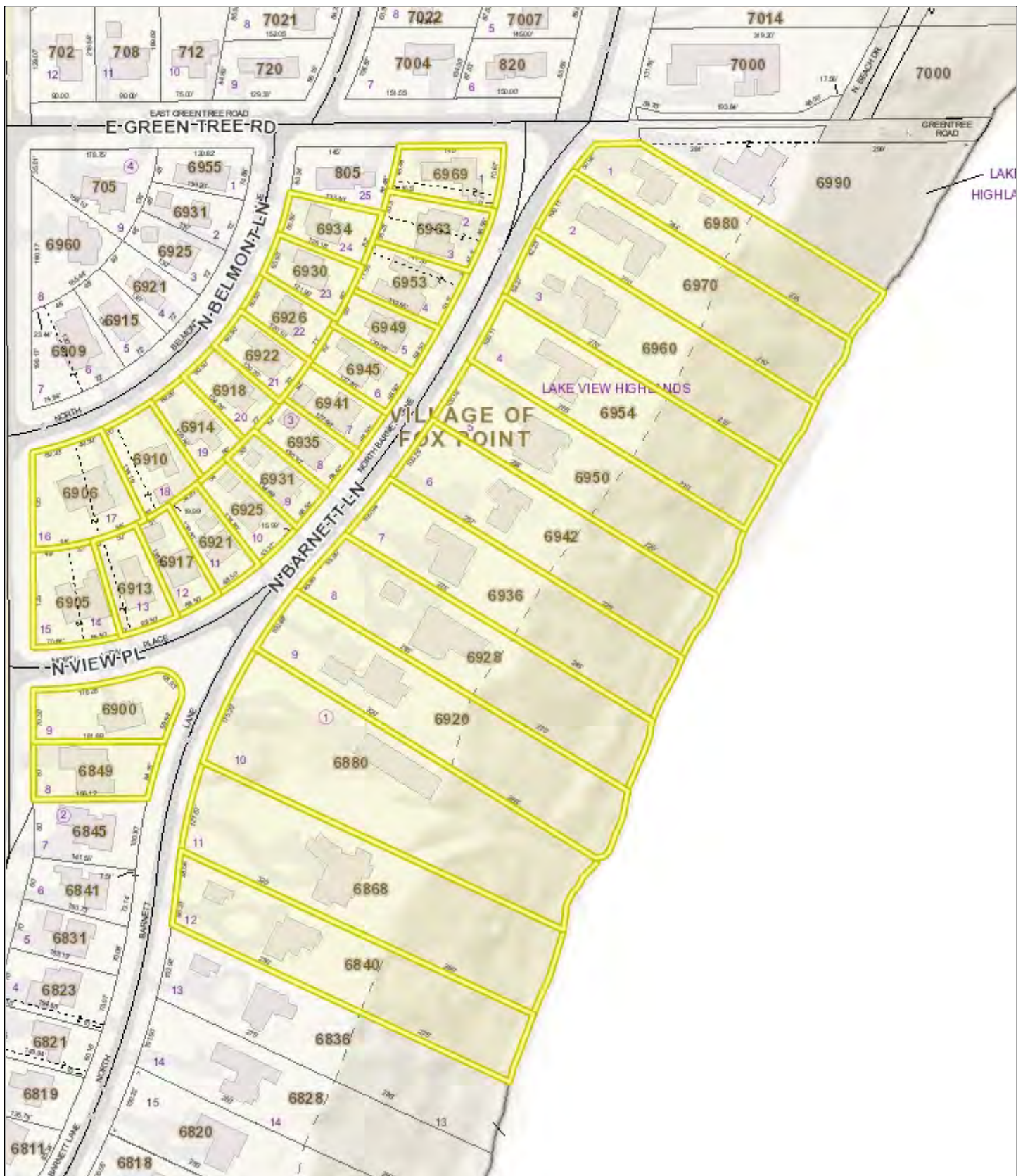
1. **Case 2022-05: 6936 N Barnett Ln.** The applicant is requesting a variance pertaining to Section 756-34 of the Fox Point Village Code in the A-1 Residence District, concerning side yard setback requirements. Section 745-13, A-1 Residence District states a side-yard of not less than 20 feet shall be provided for on each side of every building, which applies to this generator per Section 756-34 B. of the Village code. The applicant is proposing to install a generator located approximately +/- 4 feet into the setback area.

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: [April 25, 2022]
Posted: [April 25, 2022]



Village of Fox Point GIS 6936 N Barnett Ln

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" = 188'



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

Print Date: 3/4/2022

§ 745-13. A-1 Residence District.

- A. Uses. In an A-1 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 accessory use does not constitute or become a public or private nuisance.
- B. Areas and yards. In an A-1 Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot on which a dwelling is erected or proposed to be erected, together with the area of abutting land reserved for highway purposes, whether private or public, to the center line thereof, shall not be reduced to less than 40,000 square feet for each family. No building not erected for a dwelling shall occupy more than 10% of the gross area of the lot or exceed a height of 25 feet.
 - (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 corner lots 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; and 15 feet when the width of lot is 70 feet or less; provided, however, that no setback will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
[Amended 9-11-2012 by Ord. No. 2012-11]
 - (3) A side yard of not less than 20 feet shall be provided for on each side of every building, except that in the case of lots existing as of May 6, 1958, and less than 100 feet in width measured at the narrowest place adjacent to the location of the dwelling, the side yard may be reduced by 1/4 of the difference between said width and 100 feet; provided, however, that the side yard shall in no event be less than 15 feet.
 - (4) A rear yard of not less than 20 feet shall be provided for every building.
 - (5) Every lot on which a building is erected shall have a minimum width of 120 feet.
 - (6) No single-family residence built or existing in this district shall have a height greater than 40 feet from the grade abutting the structure on the front side of the structure, with the exception in that, upon application to the Board of Appeals, the Board of Appeals may grant a special exception on a lot of not less than 80,000 square feet in total area upon the following criteria:
[Amended 2-9-2021 by Ord. No. 2021-01]
 - (a) Special exceptions to the height limitations as hereinbefore set forth may

be granted by the Board of Appeals upon consideration of the following:

- [1] Reasonable compatibility with the character of the immediate neighborhood.
 - [2] Whether there will be unreasonable interference with the aesthetics and scenic views of residences in the surrounding area.
 - [3] Compatibility of the overall size of the structure in relation to the size of the lot.
- (b) For any special exception granted, an additional two feet of setback on all sides of the structure is required for each foot of additional height allowed.
 - (c) In no event shall the Board of Appeals grant a special exception allowing a height greater than 55 feet.
 - (d) For purposes of this subsection, the height of the building shall include the highest roof point of any interior portion of the structure which can be occupied, including but not limited to attic and storage structures and observatories which accommodate entry or occupancy by a person, but shall not include roof attachments such as chimneys, antennas or decorative cupolas.¹
 - (e) The special exceptions herein are not deemed to be variances from this chapter, but an allowed height upon satisfactory compliance with the foregoing conditions.
 - (f) The Clerk/Treasurer shall provide notice of Board of Appeals proceedings under this subsection to owners or occupants of properties the boundaries of which are within 500 feet of any boundary of the subject property.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

§ 756-34. Air conditioning and refrigeration systems and backup generator installations.

A. Permit requirements.

- (1) Permit required. Except as hereinafter provided, before proceeding with the construction, erection or installation of any air-cooled, water-cooled or mechanically cooled air-conditioning or refrigeration system or unit or backup generator installations, in or to serve any building, a permit shall first be obtained from the Building Inspector.
- (2) Permits shall not be required for the installation of any air-conditioning or refrigeration system or unit that does not use water for cooling and where the source of operating power is obtained by plugging in an electrical cord connection to an electrical outlet. This subsection shall be applicable to portable units.
- (3) Application for a permit shall be made by the installing contractor upon a form provided by the Building Inspector, shall be filled out completely and shall provide the following information:
 - (a) Name and address of contractor.
 - (b) Location of premises where installation is proposed.
 - (c) Name and address of owner.
 - (d) Location of unit on premises, including distance to lot lines for exterior apparatus.
 - (e) Manufacturer's identification, classification and size of unit.
 - (f) Nature of coolant, if applicable.
 - (g) If water cooled, source of water and method of discharging wastewater. (Refer to Department of Building Inspection.)¹
 - (h) Where water conservation devices are required, manufacturer's name, identification, classification and size of equipment.
 - (i) Such additional information as shall be required by the Building Inspector.

- B. Exterior structures.** Where any unit of an air-conditioning or refrigeration system or backup generator installation is located outside of the structure, said unit shall comply with setback requirements for accessory structures as set forth in the Chapter 745, Zoning, and said location shall be subject to approval of the Building Inspector. Said location shall not, by noise or sight, be detrimental to adjoining property. As an exception to the requirements of this subsection, however, the

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

Village Manager may authorize a temporary backup generator installation to be located anywhere on a lot if the Village Manager finds that the generator serves a public purpose and will be removed no later than 12 months from the date of the approval, subject to the temporary structure approval procedure described in § 745-7D of this Code. **[Amended 2-12-2010 by Ord. No. 2010-02]**

(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.
4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
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.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.
15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

SECTION 18. 62.23 (7) (e) 7. a. of the statutes is created to read:

62.23 (7) (e) 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.

SECTION 19. 62.23 (7) (e) 7. d. of the statutes is created to read:

62.23 (7) (e) 7. 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

APPROVED
3/2/2006

RULES OF PROCEDURES FOX POINT BOARD OF APPEALS

Section 1. OFFICERS.

- (a) Chair to preside. The Chair shall preside at all meeting of the Board. When the Chair is absent or otherwise unable to act, the Board members present shall appoint one member to be acting Chair.
- (b) Secretary. The Village Clerk shall serve as Secretary of the Board.
- (c) Duties of the Secretary. The Secretary shall keep minutes of each meeting of the Board and shall systematically file all papers pertaining to each appeal taken to the Board, and shall perform such other duties as provided by these rules as may be requested from time to time by the Board or the Chair.

Section 2. MEETINGS.

- (a) Place. Meetings shall be held at the Fox Point Village Hall, or any such place designated in the Village and open to the Public.
- (b) Call. Whenever an appeal has been filed with the Secretary or there is other business to come before the Board, the Secretary shall advise the Chair who shall then designate a time and location for meeting of the Board. The Chair may call a meeting at any time, or a meeting may be called by any two members of the Board.
- (c) Notice of meetings. Written notice of meetings shall be given to each member of the Board and to the alternate members and as required by open meeting laws of the State of Wisconsin. In the event an appeal is to be heard, written notice also shall be given to the appellant and to the owner of each parcel of real estate adjoining the parcel of real estate involved in the appeal, and to the building inspector along with such additional notice as may be required by applicable laws. (See Section 14.35 of the Fox Point Village Code).
- (d) Oath. When testimony under oath is required, the oath shall be administered by the Chair or the Secretary in the form and manner provided by Section 906.03 of the Wisconsin Statutes.
- (e) Open to public. All meetings shall be open to the public, except that the Board may convene into closed session when permitted to do so by the open meeting laws of the State of Wisconsin.

Section 3. APPEALS.

(a) Time. Every appeal to the Board shall be taken and filed with the Secretary of the Board within 30 days from the date of refusal to issue a permit or from the date of the making of any order, ruling, decision or determination on which an appeal is taken. If the 30th day falls on a Sunday or legal holiday, the appeal may be taken on the next succeeding business day.

(b) Form. Every appeal shall be in writing showing the names and addresses of the persons appealing, a description of the premises affected, a statement that an appeal is made to the Board of Appeals, the date of the refusal to issue a permit by the building inspector, or of any other order, ruling, decision or determination from which the appeal is taken, and a statement of the grounds for the appeal. Such written appeal shall be signed by the owner of the property affected, or by the lessee of such property if the lessee is the one interested, or by counsel for such owner or lessee. The signature of the appellant or the appellant's counsel may be in the form of an original, photocopy, facsimile or electronic signature. If the Board or the Chair believes additional information is necessary, it shall be supplied by the appellant upon request of the Chair or the Secretary of the Board. Failure or refusal on the part of the appellant to furnish such additional information shall be grounds for dismissing of the appeal.

(c) Electronic transmission. When service of documents is required by these rules, and when applicable laws do not require a different result, service may be accomplished by facsimile transmission or e-mail transmission, provided that in each case the document shall be mailed by U.S. mail the same day as the facsimile or e-mail transmission. Service shall be effective as of the time and date of the facsimile or e-mail transmission provided that the facsimile or e-mail message is received by the party to be served. The party transmitting the facsimile or e-mail is solely responsible for ensuring its timely and complete receipt.

(d) Papers by building inspector. On being advised that an appeal has been taken, the building inspector or other person or persons from whose order, ruling, decision or determination the appeal has been taken, shall file such documents as he or they may have in respect to the matter appealed from, and also a statement as to why a permit was refused, or other order, ruling, decision or determination made.

(e) When taken. An appeal shall be considered properly taken when filed with the Secretary of the Board within the time above provided, and upon receipt of the fee as established by the Village Board. The filing fee is not refundable.

(f) Who may appeal. An appeal may be taken by the owner or lessee of the property affected, and may also be taken by an aggrieved neighboring property owner or lessee seeking the revocation of any permit, order, ruling, decision or determination on which the appeal is taken, which the neighbor deems to have been improperly issued or made. Where the lessee is an appellant, a notice of hearing and of the decision shall be given to the lessee as well as to the owner.

(g) Hearing. The appeal shall be heard at the time set in the notice, and in the event of the appellant not appearing personally or by attorney or other authorized representative, the Board may dismiss the appeal or make decision therein on the records before it. The Board may determine the rules governing the conduct of hearings, including the introduction of evidence, which it deems to be appropriate for purposes of each hearing, which shall be communicated to the parties.

(h) Adjournment. The time for hearing an 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 of the adjournment need to be given other than announcement at the time of the hearing subject to open meeting laws of the State of Wisconsin.

(i) Quorum. Four members of the Board shall constitute a quorum for all matters arising before the Board, but any lesser number shall constitute a quorum for the sole purpose of adjourning to a day certain.

(j) Method of Action. Unless applicable laws require the vote of a larger number or proportion of members, the affirmative vote of a majority of the members of the Board present and voting at a meeting at which a quorum is present shall constitute an action of the Board.

(k) Rulings of the Chair. Rulings of the Board Chair on all procedural matters stand unless overturned by the Board upon motion duly made, seconded and adopted.

(l) Disposition. The disposition of any appeal shall be in the form of a motion duly adopted and entered in the minutes of the meeting, unless the motion indicates that a more formal written determination will be issued. A copy of each motion adopted by the board deciding an appeal, shall be delivered or mailed to the appellant, to the building inspector, or other person or persons for whom the appeal is taken.

Section 4. INTERPRETATION.

The Board shall have the obligation to interpret these rules. The Board's interpretation of these rule shall be final.

Section 5. ENFORCEMENT.

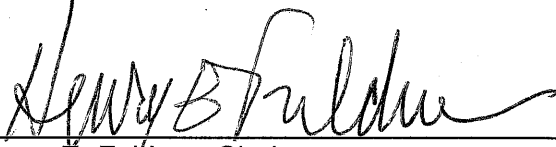
These rules are for the benefit of the Board, and are enforceable by the Board. The Board reserves the right to conduct its proceedings differently than as described herein as it deems appropriate in the circumstances. Failure of the Board to follow or enforce the requirements of these rules shall not be actionable.

Section 6. AMENDMENTS.

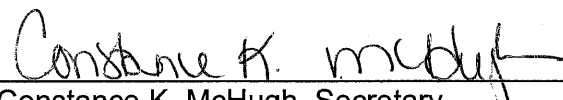
These rules may be amended at any meeting of the Board by majority vote.

Dated this 13th day of March, 2006.

VILLAGE OF FOX POINT BOARD OF APPEALS


Henry E. Fuldner, Chair

ATTEST:


Constance K. McHugh, Secretary