

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, SEPTEMBER 28, 2022**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, September 28, 2022 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Nancy Filsinger, Chairman
Thomas Dunst
Mark Grady
Scott Ratke
Adam Bazelon

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 board and the village website.

Approval of Minutes of July 27, 2022 Meeting and the Findings of Fact, Decision and Order

Motion by Member Mark Grady, Seconded by Member Thomas Dunst, and carried by roll call vote (5-0), to approve the July 27, 2022 minutes and the Findings of Fact, Decision and Order of the last meeting, as presented.

Case 2022-09, 7834 N Beach Drive

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 requirement of not less than 20 feet. 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 up to the property line.

Village of Fox Point Building Inspector Michael Rakow

Building Inspector 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 2022-09, stating the applicant is requesting a generator on the north side of the property. They would like it on the property line so this would be a zero setback.

Member Mark Grady noted the applicant says the next-door neighbor, presumably to the north has a generator that is less than 20 feet from the property line. He inquired of the building inspector if it was a variance granted by this Board at a prior time or was it something else?

Building Inspector Michael Rakow stated to his knowledge it was not approved by this Board. He recalls that he did approve it based on the 20' setback. It looked to be approximately 20 feet from the property line.

Owner Betsy Horsfield

The Owner Betsy Horsfield stated her name and was sworn in to provide testimony by the Village Clerk Treasurer.

Chair Filsinger asked the Property owner to give her testimony.

Owner Betsy Horsfield stated that the proposed area for the generator is along the lot line. It is the best place because it is away from windows, it is where the gas line comes in and it is near the electrical panel in the basement. Ms. Horsfield stated she measured and it is less than 20 feet. There is

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a fence there that clearly denotes the property line. The want to place it in the most efficient place. She does have pictures showing the location. The Board asked that the photos be passed around. It is approximately a 4-foot by 2-foot generator.

Member Scott Ratke inquired how far from the house it would be. Betsy stated it would be about 20 feet from the home.

Member Mark Grady asked for clarity on why the generator was not placed on the south side of the home.

Owner Ms. Horsfield stated on the south side of the home, the gas would have to be run under the driveway for installation of the generator. The gas runs along the north side of the home.

Member Mark Grady stated that essentially the hardship is that the cost of project is essentially the gas line through the cement of the driveway.

Chairperson Nancy Filsinger stated Owner Betsy Horsfield is concerned about the sump pumps. She asked if the owner looked at any other alternatives like a battery.

Owner Ms. Horsfield stated she really wants the most effective and efficient way to power the home because they have sump pumps and they have a well. If the electricity goes out, the well does not work either. She added drain tiles and another sump pump for a total of two sump pumps. The owner states she has had up to six inches of flooding in the past.

Member Scott Ratke inquired why the generator cannot be placed closer to the home on the north side instead of so far away from the home to meet the setback.

Owner Ms. Horsfield stated that the generator cannot be by any doors or windows and the garage has windows. She stated even if it were placed closer to the home, it would still be less than 20 feet and would require a variance.

Chairperson Nancy Filsinger asked Michael Rakow if someone from the electric company spoke to him. Michael Rakow stated someone from the electric company may have spoken to him. He recalls nothing in particular.

Member Mark Grady commented that one of the standards in the State Statutes is when you are showing unnecessary hardship complying with the ordinance for the setbacks, it states the applicant must show the unnecessary hardship is based on conditions unique to your property rather than something personal to you as the owner. What do you think it is about your property that is unique and not something just personal to you as the owner about the need for this variance.

Owner Ms. Horsfield stated it might be that the home is so close to the lot line on the north side where the logical place to place the generator would be. Therefore, it is hard to make the generator fit in there and be in compliance.

Member Mark Grady stated if he is hearing the owner correctly, the uniqueness is that the garage is essentially on the setback line right now.

Owner Ms. Horsfield stated that is correct.

Member Mark Grady inquired, other than the expense of burrowing under the driveway to extend the gas line on the south side of the garage, is there something about that area that would

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prevent the generator from going there.

Owner Ms. Horsfield commented it would be right in the middle of the front yard, which is a garden. It would be set so far back; she isn't sure she would bear the expense to have the generator so far back.

Member Scott Ratke inquired where the electrical box was located.

Owner Ms. Horsfield commented that the electrical box is inside the home on the north side.

Member Mark Grady inquired if the owner knew if it was possible to run the gas line through the basement rather than through the driveway.

Owner Ms. Horsfield stated it is not something that was discussed with the contractor.

Driveway placement/position was discussed briefly by the Board and property owner. Homeowner Ms. Horsfield described why she would not want the generator on the south side of the home by the driveway, including the noise.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 5:21 p.m.

Village Attorney Eric Larson marked the two photo submittals as Exhibit 1 and Exhibit 2. The plat map in the packet will be marked as Exhibit 3.

Village Attorney Eric Larsen reminded the Board of the legal standard and established rules for what can be done on the property. One of the rules is that they do not allow construction within 20 feet of a lot line. That is a law that applies to everyone in the village. The Board has authority from state law and village ordinances to grant a variance in limited circumstances. What the statutes says is "the Board has the power 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 literal enforcement of the provisions of the ordinance will results in practical difficulty or unnecessary hardship so the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. State law continues stating the property owner bears to burden of proving unnecessary hardship as the term is used in the statute for an area variance by demonstrating that strict compliance with a zoning ordinance would unnecessarily 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, the 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.

Member Scott Ratke stated he isn't sure why the generator could be placed closer to the home and be less intrusive.

Member Thomas Dunst stated he has the same concern.

Member Mark Grady stated he would agree with that same concern. The first questions is whether to grant the variance at all. If the Board is going to grant it, he would agree with that concern. It should be the least intrusive and as far from the side line as possible. The question is whether it should be granted at all in the first place. He has gone back to the standards and statutes that apply to a

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variance. Each set of facts is unique. There were different reasons for the ones that have been granted in the past. He stated he is having a hard time when he looks seriously at the statutory standard, the conditions unique to this property. He is not seeing conditions unique to this property that are any different to any other property anywhere else. Most of the properties have building that are pretty close to the setback line. Everybody can come to the Board and say they are already on the setback. There are possibly other locations; he is not sure what the expense would be for them to run gas line to another part of the house. There are other areas potentially on the lot, where the generator could be located. At some point it is a cost benefit for the homeowner for the expense of the generator and the installation versus the expenses the homeowners would have from not running their sump pumps. Therefore, he is having a tough time finding standards to allow for the variance.

Village Attorney Eric Larson stated that triggers another Board established standard that he wanted the Board to be aware of, which is that the courts have said that financial hardship is not sufficient. The fact that it will cost more money to comply is not something that this body can find to be an adequate basis for permitting a variance.

Chairperson Nancy Filsinger stated she agrees this does not meet the standards for a variance.

Mark Grady wanted to comment on the neighbor's generator, stating that this case is based on the facts of this case. If every house around them is in violation of the state statutes and standards, that is not for the Board to consider in this case.

Member Scott Ratke stated he does not see enough evidence that this is the best spot. There was not enough information presented.

MOTION: CASE 2022-09

Motion by Member Mark Grady, seconded by Member Scott Ratke to deny the variance for the reasons expressed earlier.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>

The variance was denied by roll call vote, 5-0.

Case 2022-10 8339 N Lake Drive

The applicant is requesting a **variance** pertaining to Section 745-16 B. (2) of the Fox Point Village Code in the B Residence District, concerning a 70-foot setback from the centerline on Dean Road. The applicant is proposing a new addition to the home to be approximately 10.33 feet into the 70-foot Dean Road centerline setback.

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 2022-10. The applicant is planning to put an addition onto his house. The setback from Dean Road is 70 feet. The proposed addition is approximately 10 feet into the setback.

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Member Thomas Dunst inquired if the whole addition intrudes onto the setback.

Building Inspector Michael Rakow stated that may be best for the applicant to answer. Michael Rakow stated in reviewing the GIS picture, there is a 71.6-foot setback. If you subtract a foot and a half, so he agrees that part of the bump out is in the setback.

Member Thomas Dunst stated it appears that part of the current home is in the setback.

Building Inspector Michael Rakow stated that is correct.

Owner Representative Architect Thomas Stachowiak of Stack Design Group

Representative Thomas Stachowiak of Stack Design Group was sworn in to provide testimony by the Village Clerk Treasurer.

Owner Representative Thomas Stachowiak stated that they are proposing an addition that does jog in and out of the setback. The garage is closer than the existing house. Recessing from there a secondary entry. The front of the home faces Lake Drive. This addition is going no closer than the existing home. If you look at the aerial view, this property is very unique as the centerline down Dean Road is one continuous line until it hits this property. Because of the borderline of Bayside and Fox Point across the street, this property's centerline jogs closer to the owner's property. On the aerial view, there is a line drawn that looks like it is going through the roof; the aerial view is showing the eaves of the house which is actually the building line even though it looks like the building line is beyond the roof. That line is to the built space. If you look down Dean Road, some of those do extend further. Overall, it is pretty continuous line down the road. They would be continuing that the same way it is now.

Member Mark Grady inquired if the red line that is going through the home on the aerial view, if he is reading this right, is 59 feet 8 inches from the centerline – the north side of the house.

Owner Representative Thomas Stachowiak stated that is correct from the centerline of this property. You can see the centerline where it jogs right by the property.

Member Mark Grady stated he understands. The dashed lines that you are referring to is the centerline between the two pieces of property. The solid line is the centerline of the street that is recorded, which is closer to the owner's home because of the Bayside/Fox Point border. As it sits right now, the north side of the existing house is essentially ten feet and four inches within the setback. The proposal is that the closet part of the addition be the same as the existing house.

Owner Representative Thomas Stachowiak stated it would actually be two inches closer.

Member Mark Grady stated the application talks about this, but if you could expand on one of the issues with respect to moving the addition into compliance with the 70-foot setback from the centerline.

Owner Representative Thomas Stachowiak commented being a corner lot, if you move the garage into the back yard, there is no back yard. The floor plan shows the patio doors going to the space behind it. Moving it back would eliminate that space. You would also end up with a back door that is flush with the garage space and it would look pretty flat. Design wise, it would not look very good.

Member Mark Grady asked if Owner Representative Thomas Stachowiak would direct him to

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where this is on the renderings. He inquired how wide the living room addition is.

Owner Representative Thomas Stachowiak stated it is 18 feet.

Member Mark Grady commented if you moved the garage 10 feet south, it would essentially be even with the prospect of the middle of the living room and the doors you are referring to.

Owner Representative Thomas Stachowiak stated it would be an 8-foot living room.

Village Attorney Eric Larson read to the Board, the State Law (nonconforming structures) and followed up with the Village Ordinance. State law allows restoration or replacement. A second provision states an ordinance may not prohibit or limit based on cost the repair, maintenance, renovation, or remodeling of a nonconforming structure. The case of additions goes beyond the non-conforming structures. When it comes to additions, you are expected to build that into a conforming location. The Village Code also addresses this. Village Attorney Eric Larson reviewed the Village Code with the Board regarding this issue and requires the addition to be built in a conforming manner.

Member Adam Bazelon stated to be clear, the standard is the same here with unnecessary hardship due to conditions unique to the property and no harm to the public.

Village Attorney Eric Larson stated it goes on from there but yes that is correct.

Member Adam Bazelon stated the first element, the question would be is there an unnecessary hardship caused by this 70-foot setback as it relates to the addition.

Village Attorney Eric Larson stated yes.

Member Adam Bazelon inquired of the Owner Representative Thomas Stachowiak whether they were applying for the variance based on a hardship.

Owner Representative Thomas Stachowiak stated they are applying based on the belief that as shown it is the spirit and intent of the Village Code. If you look at the street itself, the location of every property down the street, they are not unusual in what they are proposing. They are behind the garage and the neighbor's house. If we were to jump back to meet the setback, it would be substantially different than every house on the street. This property from all the way back is different than every other property. Given that the centerline of the street does jog just for this property, which makes this a unique circumstance to this property in particular. He further stated the dotted line is the centerline of the street.

Building Inspector Michael Rakow stated Mr. Stachowiak is correct regarding the centerline.

Member Adam Bazelon inquired if they considered other designs that would be compliant to the setback.

Owner Representative Thomas Stachowiak stated they did consider other options. He stated it would be substantially different than everybody else. To be aesthetically pleasing would most likely be the goal.

Property Owner's Neighbor Lee Arnold, 8340 N Links Way

Property Owner's Neighbor Lee Arnold was sworn in to provide testimony by the Village Clerk Treasurer.

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Property Owner's Neighbor Lee Arnold stated he received a notice in the mail so he came into the Village Hall and viewed all the drawings and the application so he would be fully aware of what would be on the other side of his fence. He sees a three-car garage, a wing annex on Dean Road looks like a triple wide unit at a public storage facility from the drawings that he has seen. It is not incorporated into the structure of the home. It looks like an addition. It does not look like any other home on Dean Road from Lake Drive to Port Washington Road. It changes the entire character of the whole neighborhood. In our case, sharing the entire length of our two back yards. It diminishes the value of our house and property. The second item, the request for variance it says the subject property is a single-family home located on a corner lot. With a corner lot it is difficult to create a private backyard because it has two public sides to the property. His house is exactly that on the other side of his fence on Links and Dean. It is exactly the same area property only he owns his own. He had no problem privatizing his back yard by fencing off the back yard. That seems to be the excuse here to build a humongous three-car-garage to hide behind it some kind of a private backyard. Item 5 of the variance request says, the variance allows the property owner the best and best use, which is obviously the best use for the Property Owner. This had a negative effect on other property owners having enjoyment on their own property. He is the other property owner and it ruins his enjoyment of his own property. This creates an unpleasant, impairs his happiness, and his view for he and his family who have lived there for 33 years. He objects to the variance.

Member Adam Bazelon inquired if it is a solid fence?

Property Owner's Neighbor Lee Arnold stated it is solid. It runs the length of the property and separates the two pieces of property. It is six feet in height.

There were no other questions.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 6:07 p.m.

Village Attorney Eric Larson reminded the Board of the standards regarding the variance and the setback that applies here.

Member Adam Bazelon stated he doesn't feel any of the elements have been met here. There is even an argument here that it complies with the spirit. There are other non-conforming homes on the street. The objection to the variance was not relevant in any way to the variance. He doesn't feel there are any hardships due to the uniqueness of the property that he can see. He is not sure how this complies with the legal standards the Board is here to apply to this case today.

Member Mark Grady inquired of Village Attorney Eric Larson, given what was said earlier about the conditions being required to conform to the area requirements, even if the existing structure doesn't. As a Board member, I cannot consider the pre-existing structure to be a unique condition to the property.

Village Attorney Eric Larson stated he cannot say a hard and fast no to that. He further stated you laid out the right questions to consider. The Board should look at the ordinance drafted by the Village Board and determine the spirit of the ordinance. The fact that the Board created as part of this ordinance, the ability to build additions, but they have to meet the setback. That is relevant to interpreting this issue. It is not only the 70-foot setback the Board is talking about; it is the fact that the village has an ordinance that says additions to non-conforming structures have to comply. Board of Appeals would be allowing constructions contrary to statements of the Board's intent.

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Member Adam Bazelon commented that the language is unique circumstances to the property.

Village Attorney Eric Larson stated that is correct.

Member Mark Grady stated he is struggling with the centerline that moves as you go to the west on Dean. If this was the Arnold's property, the owners would have 8 more feet to work with, but because the centerline moves, the next house over. It would still be in violation of the 70-foot setback. He is wondering if that is a unique condition of this property. The fact that this centerline moves, he can see an argument for granting the variance, but only using the jogged centerline and only to the minimum amount necessary to do that. That is what he is struggling with.

Member Adam Bazelon stated, yes, giving them another couple of feet.

Member Mark Grady stated in order to come into compliance, they would only have to move the garage another 2 feet or something like that, instead of 10 feet. He also wanted to echo what Member Adam Bazelon stated which is that they are not a design board. If the variance is appropriate, then what the structure looks like isn't for the Board. He understands the objections but it cannot be considered here.

Chairperson Nancy Filsinger agreed with Member Mark Grady regarding the jogged centerline and it does allow for a variance for the determined amount of feet allowed here. The design would have to be changed.

Member Mark Grady stated when he goes through the Wisconsin State Statute that Village Attorney Eric Larson read, it strikes him that the jogging centerline is a special condition. It does not jog right in the middle of their lot, but the jogging centerline is on their block. This creates a special condition. If they literally enforce the Village Ordinance to allow for the 70-foot setback from the centerline, requiring them to move the addition essentially 10 more feet south, it puts it right in the middle of the existing house. It is an unnecessary hardship for the homeowner to move it 10 feet. The condition he is referring to with the centerline is unique to this property. The properties to the west do not have this issue. Only this property has this uniqueness. He is leaning towards granting a variance that would allow for a structure to be placed using the centerline to the west to establish the 70-foot setback. They would be in compliance with the 70-foot setback but only using the centerline to the west.

A variance based on the uniqueness of the street centerline setback was discussed by the Board.

Village Attorney Eric Larson stated the concern about we don't know what we are granting a variance for is a valid concern. Typically, the Board has plans for what it is they are granting the variance for, not that they are reviewing the architectural of that structure but so that there is a clear record that this is what the Board approved. That is what they can build; they cannot build something different. That is a valid concern. Another thought is if that is not a concern of the Boards, then you can grant it that way as you described it. He would recommend that the Board have a time limit on how long that variance is in effect. They may decide not to build it. The variance should not just be hanging out there forever. There should be a reasonable time limit, providing they obtain a building permit within 18 months or something similar to that. He doesn't think there is anything in the Village Code that says they are restricted in proceeding as they propose. Typically, they do want to see what is being proposed and they act on what is being proposed. If the Board was going to follow Member Adam Bazelon's suggestion or concern and resolve that, the Board could adjourn the matter and have them bring back new plans with the understanding that the Board will want to see it measured from that extended centerline from down the street and we would consider that smaller for the variance. But first

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the Board would want to see the plans. The meetings are regularly every two months. They could come back in two months or if they needed more time to develop those plans, they can come back later.

Without objection and by unanimous consent, the testimony was reopened at 6:20 p.m.

Owner Representative Thomas Stachowiak stated there are two walls that would be offset by the amount (number of feet) that they are talking about. He pointed out the two walls that would be moved, exactly that amount. It is actually a very minimal change to the design. He further stated the Building Inspector Michael Rakow would review the plans, make sure that they were the correct distance from that centerline, and if need inches, they could take it out of the inner garage walls. House wise, nothing changes. They just go back and change the garage. With winter approaching, he ask that this be allowed to be reviewed by Building Inspector Michael Rakow so they are not delayed two months.

Chairperson Nancy Filsinger inquired if Building Inspector Michael Rakow is comfortable with reviewing the changes.

Without objection and by unanimous consent, confirmation from the Building Inspector was requested.

Building Inspector Michael Rakow stated he will verify that it meets the setback according to the conditions the Board would set upon the variance. He stated he is comfortable with that, but it may have to go back to Building Board. Building Board did see the design and approved it earlier.

Chairperson Nancy Filsinger stated the Board needs a clear record of what is the variance and the time limit for obtaining the permit.

MOTION: CASE 2022-10

Motion by Member Mark Grady, to grant a variance to allow a structure to be built in a location that is less than 70 feet from the centerline but is 70 feet from the centerline as it exists on a neighboring property that is shown in the exhibits presented and provided that they obtain a building permit for this work within 18 months and provided further that the change to the structure will be largely to move the garage back on the property so that the drawing presented to us will be substantially the same.

Member Adam Bazelon seconded the motion.

Roll call was taken.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>

Granted by roll call vote, (5-0)

Case 2022-11 8027 N Navajo Road

The applicant is requesting a variance pertaining to Section 745-17 B. (4) of the Fox Point Village Code in the C Residence District, concerning rear yard setback requirement of not less than 10 feet. The applicant is proposing to install a new garage 6.2 feet from the rear property line.

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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 2022-11. The applicant has a lot that has a current garage that is 6.2 feet off the property line; code dictates 10 feet. They are razing this garage, making it a little bigger and moving it a little south. After reviewing the plans here, questions came up. Looking at the circle on the GIS Map, it looks like there are two lots for this parcel. I looked at the submittal of the survey and it does not show a dotted line through the center. On the survey description, it says Lot 9 and Lot 10. He believes this is a two-lot parcel. A 1998 survey was also found with a dashed line and states Lot 9 and Lot 10. Without further confirmation, he believe this is a two-lot parcel. Therefore, on the submittal the garage will be on the south property line. This means if there are two lots, the second lot needs another principle building to have an accessory structure. They currently are requesting a variance for a garage 6.2 feet off the property line.

Village Attorney Eric Larson stated, assuming it is two lots and setting aside the fact that they need a principal structure before they can have an accessory structure, would the accessory structure be in a conforming location.

Building Inspector Michael Rakow stated if it is two lots, it is in a non-conforming location. It would be 6.2 feet off the property line. Therefore, it is non-conforming. A variance would be needed for that.

Village Attorney Eric Larson suggested to the Board is that we proceed and consider this variance application. If it is granted, there may be other problems. The inspector may not be able to issue the permit, unless the other problems are resolved, likely through a Certified Survey Map to combine the parcels which is something the property owner and Building Inspector could work through independent of the Board. If the Board faces that, they Board may want to note it in the motion if it is granted as something that will have to be resolved. That particular issue is not before the Board.

Member Mark Grady asked for clarification regarding the existing status because of the reduction for a narrow lot. If there were a principal residence on the southern lot, and they built it as proposed, it would be a narrow lot.

Building Inspector Michael Rakow commented.

Member Mark Grady further stated with two lots, they have to have a principal structure to have an accessory structure. If they leave it as two lots, the owners would have to build a principal structure to have this garage moved to the south. He is assuming the owners do not want to do that. If they combine the two lots, they no longer have a narrow lot requirement and the six feet no longer satisfies so the Board would have to address that in the variance. Under the assumption they would want to combine the lots, the Board still has the same question before them.

Village Attorney Eric Larson stated with that clarification, the Board should hear from the applicant as to what they want to do based on the new information. The owners would need to decide if they want to combine the two lots or if they wish to build a new principal structure.

Owners David Hanson

The Property Owners David Hanson was sworn in to provide testimony by the Village Clerk Treasurer.

Gabor Design Build, LLC Senior Sales and Design Associate Nick Burris

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Gabor Design Build, LLC Senior Sales and Design Associate Nick Burris was sworn in to provide testimony by the Village Clerk Treasurer.

Chairman Nancy Filsinger asked the owner(s) to provide testimony regarding case.

Property Owner David Hanson noted that Nick Burris is with Gabor Design Build, LLC. When they moved in there was a chain link fence where it is today. They considered it one lot for the entire 30 years that they have lived there. He said the neighbors have said they thought they had a double lot. He thought nothing more of it over the years. They were told the home was built in the 1930's. The original owner stopped in one day and said that his father built the original garage in the early 1950's. For more than 70 years, the garage has stood where it stands today. Our proposed rebuild moves it no closer to the back lot line than 70 years earlier. The garage back wall is no closer to the lot line than it was 70 years earlier. Questions about grandfathering and non-conforming structures have come up. The outset, Heidi and he were faced with the structure needing to be rebuilt due to the need for a new roof, low grade and drainage issues. The detached garage sits to the right of the house with a room off it. It is not a place that you would put a car. They are faced with do they refurbish the garage or rebuild it. It is tight and there is not much room. They could put a roof on and refurbish the structure. If they didn't change the footprint at all and kept the footprint identical. They wouldn't want to do that if they didn't want to address the malfunction of it. He did speak to every neighbor surrounding them except one homeowner who has not been home. No one stated they would have an issue with it. Neighbors store things in their backyards and it is where they back yards converge. It is a wooded, quiet, back corner. Hearing the standards from the other cases before you, if they do not fall under the non-conforming structure, he understood that it must conform to the setbacks. He understood that to mean, they must get a variance. They are seeking the 6.2 variance. The hardship they face if they were to move it out to conform is it is unnecessarily burdensome. By moving it almost four feet towards Navajo, it narrows it to a degree that is almost unworkable. They would rather move it to the south as there is room, but they want to keep it at 6.2 from the lot line. It doesn't look right. They would like to have some space in the garage to make it useful for the cars today, cars, etc. It will be useful if they are allowed to build as planned. The hardship is the structure was built in the early 1950's and is not useful today. From the topography everything does run back that way and they would like to address the drainage issues. This rebuild would assist in fixing some drainage issues with the house. The balance between the hardship to the neighbors is that they do not want to radically change the neighbors view or any other feature.

Member Mark Grady stated he is trying to figure out dimensions here. He is trying to figure out what four feet does to the layout. He stated he would appreciate it if either the property owner or the contractor could talk about the hardship of moving it four feet. Not from an aesthetic standpoint, just from a usability standpoint.

Gabor Design Build, LLC Senior Sales and Design Associate Nick Burris stated two things. As drawn, the northeast corner, the one closest to the new covered porch, that point, flush with the back like that, is acceptable and desirable to the owner. The four feet brings it substantially over to the back so when you are in the covered porch, it would be in the site line and overlap to a degree of acceptance. Meaning if they had to go that far east towards Navajo, they would be back to square one.

Village Attorney Eric Larson read the Village code regarding 745-4.

Member Mark Grady noted that it seems if you are building this structure in a different location, it doesn't matter that it was 70 years of non-compliance, it now has to come into compliance absent a variance. The fact that it might cost a little more to widen the driveway or to add some drainage for the garage if it is moved 4 feet to the east is also not a consideration for the Board. He goes back to the question he asked before, it seems to him that if you move the garage 4 feet to the east it will cost you more and may not look as nice looking out of the covered porch. It would still be usable with the expanded garage and expanded space. You would be able to get in and out of it with the driveway reconfigured. The only real issues he is seeing is expense and aesthetics issues.

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Property Owner David Hanson stated those are some of the considerations but would add that it is not just the cost, you would be eating into yard to the east. He would submit that it is laid out with respect to the neighbors to see where it has been is no burden to the neighbors. Eating into the trees to the south lot line are 80 years old spruces and they would like not to have to remove them. The arborvitaes are also there and he sees this as a waste to move the garage into this area.

Member Thomas Dunst inquired if they considered flipping the garage to eliminate a lot of the visual issue that you have. It might even be more useful land up around the front of the house. It would be parallel to the house. There appear to be no trees in that area.

Property Owner David Hanson stated that moving it so the garage doors face the existing dwelling and that was really a non-starter because it would look more like two homes or two separate structures facing each other with a tunnel of yard and driveway between them.

Member Adam Bazelon asked the owner to speak with regard to the accessibility if the garage was moved four feet to the east. Would it be possible to leave the asphalt driveway where it is in this diagram or would it literally be impossible to get into the garage at that point.

Property Owner David Hanson stated what is possible and what is desirable are two different things. there may be some issues with turn radius for cars and it is a concern.

Member Adam Bazelon stated he agrees about not removing the trees if possible.

Property Owner David Hanson stated they would be using the strip to the west that no one uses or see. It would be unnecessarily burdensome.

Member Mark Grady stated that one of the clauses in the Wisconsin State Statutes is the unnecessary hardship is based on conditions unique to the property. What he thinks he hears the owner saying is that the condition that is unique to this property is that you have had this garage in its current location for 70 years. The conditions unique to the property is that pre-existing setback. It is not something else, except perhaps the drainage and the trees on the property.

Member Mark Grady asked that they Property Owner David Hanson talk about the drainage.

Property Owner David Hanson stated as he understood it, one cannot make water turn at right angles very easily. A better path is to do that more gradually. Having more room to make it less abrupt instead of creating some sort of longer run making it more gradual to move the water away from the home.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 7:11 p.m.

Village Attorney Eric Larson reminded the Board of the standards being applied to the variance.

Member Mark Grady commented that he does think that it is clearly not contrary to public interest in allowing the garage within 6 feet of another property, as it has been in existence already for 70 years. It is a hardship to move it. He is struggling with the last provision as to whether the property owner has demonstrated that the unnecessary hardship is due to conditions unique to the property.

Member Scott Ratke stated he not seeing anything unique and is struggling with trees being unique and it seems they could work around the drainage issue.

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Chairperson Nancy Filsinger stated what she is hearing is more of an aesthetic issue not a hardship issue.

Member Thomas Dunst stated he is having the same struggle as Chairperson Nancy Filsinger.

Member Adam Bazelon asked Member Mark Grady if he sees the drainage as a hardship issue and if he does how does, he articulate it? He is not understanding how the drainage is a hardship.

Member Mark Grady stated he is not sure whether it is enough to be considered a hardship.

Member Mark Grady stated he doesn't think, since he has been on the Board, that the issue regarding trees has ever been considered before. Every tree is unique perhaps. Every property that has trees is a concern. He doesn't know if trees can be considered a unique feature of the property. Perhaps Village Attorney Eric Larson can weigh in on this.

Chair Nancy Filsinger inquired if Village Attorney Eric Larson had anything for the Board.

Village Attorney Eric Larson stated one of the Board's obligations is to apply this standard in light of the spirit of the ordinance. The Board does have the ability and the obligation to try to determine the spirit of the ordinance. Throughout other parts of the code, the Board has expressed an interest in retaining old growth trees. We are a Tree City and we have a Forestry Department. There is an interest throughout the code to retain and protect the trees, especially old growth trees.

Member Adam Bazelon if this was brought into compliance by moving it four feet to the east, what would be the hardship of that and how determinative of whether or not to build. Having that 39-foot line, does not look like a huge difference. The tree there still looks like the driveway could be moved and turned. Does the Board have an obligation to enforce the setback? I don't know if it would be determinative for me whether to build.

Without objection and by consensus, Chairperson Nancy Filsinger reopened testimony.

Property Owner David Hanson stated that according to Munson and a few other contractors the owners have worked with, the pavement (as a tool) gives the designers more to work with on the drainage issue to reroute the water away from the home in a more gradual way. The trees are massive, older trees. They are 104 feet tall now. Wachtel Tree service is trying to preserve the trees with the pine spruce beetles that have given the trees some issues. He spent a fair amount of money to try to preserve the trees.

Member Scott Ratke inquired whether he had a lot of water issues unique to Property Owner David Hanson's property.

Property Owner David Hanson stated it was not a lot of water, but there is a cistern or a manhole covered near the home. There was cistern or well near the home that was capped. There is a space in there that makes that area susceptible to water. The designers suggested this should be worked with and drained away from the home.

Member Thomas Dunst asked for clarification on any trees that would need to be taken out.

Property Owner David Hanson stated he didn't know if any of the trees would have to be taken out yet. One very large arborvitae will have to come out.

By consensus and without objection testimony was closed at 7:25 p.m.

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Member Mark Grady stated on the one hand the Board is told they are supposed to enforce the ordinances. The public interest is 10-foot setbacks. On the other hand, it clearly seems a might silly when someone has had a garage sitting there for the last 70 years. It is not his duty to question the ordinance. They have to comply with the setbacks. It strikes me that when we weigh in on the public interest and the special conditions of the property, we are trying to balance those considerations. His gut says that the variance should be granted because it just seems like the right thing to do. If I read and put my lawyer hat on, I read these words very precisely in the Statutes. I am not sure whether we have unnecessary hardship based on conditions unique to the property. Ultimately what I find myself thinking is everyone seems to be struggling with the same thing, I think.

MOTION: CASE 2022-11

Motion by Member Mark Grady to grant the variance based on the following: the variance would not be contrary to the public interest of the village, relying on the fact that this garage has been in this position for so many years; the four feet is de minimis. In making the case that special conditions exist. Moving the garage four feet to bring it into compliance that is a literal enforcement of the provisions of the ordinance is also practical difficulty in terms of the turning radius for the vehicles and results in unnecessary hardship in the sense of making the driveway and the space less usable. The unique condition of the property is the trees and preserving the rural character of the property.

Member Thomas Dunst seconded the motion.

With no further discussion, the roll was called.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Mark Grady</u>	<u>Aye</u>
<u>Adam Bazelon</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Nay</u>

Motion carries by roll call vote, (4-1, Opposed-Nancy Filsinger).

Adjourn

Motion by Chairperson Nancy Filsinger, Seconded by Member Adam Bazelon, and carried by roll call vote (5-0) or unanimously, to adjourn the meeting at 7:31 p.m.

Respectfully Submitted,



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