

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

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

WEDNESDAY
MAY 24, 2023
5:00 P.M.

AGENDA

- 1. Roll Call**
- 2. Approval of the Minutes and Determinations – March 22, 2023 Meeting**
- 3. Case 2022-05 7250 N Beach Drive.** The applicant is requesting a special exception to install a new four-foot, six-inch-high, powder coated, aluminum driveway gate and fieldstone pillars forward of the frontline of the home. The special exception request is made pursuant to 745-7 B.(3)(h)[2] and 745-7 B.(3)(j) of the Fox Point Code.
- 4. 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
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A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, March 22, 2023 at 5:00 p.m. Chair Nancy Filsinger called the meeting to order at 5:00 p.m. The Village Clerk took roll call. Those present included:

Nancy Filsinger, Chair
Mark Grady, Board Member
Thomas Dunst, Board Member
Scott Ratke, Board Member
Adam Bazelon, Board Member

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 November 23, 2022 Meeting and the Findings of Fact, Decision and Order

Member Adam Bazelon arrived at 5:01 p.m.

Motion by Member Mark Grady, Seconded by Member Thomas Dunst, and carried by roll call vote (4-0-1, Member Bazelon Abstained), to approve the November 23, 2022 Meeting Minutes and the Findings of Fact, Decision and Order of the last meeting, as revised.

Case 2023-01: 7363 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 20 feet. The applicant is proposing to build a new garage 6 feet wider and 13 feet from the property line to replace the current garage in the same location.

Chair Nancy Filsinger stated she used to work with Mr. Daley, but feels she can be fair-minded in Case 2023-01. Therefore, she will not be recusing herself from the case.

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.

Chair Nancy Filsinger inquired Michael Rakow to give background to Case 2023-01.

Building Inspector Michael Rakow stated the applicant wishes to build a garage and according the Village Code, the owner would need a rear setback of 20 feet and he believes currently this is a legal nonconforming lot. He believes it is less than 20 feet currently. They would like to make it wider so it would be 13 feet. There is also another

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issue with the north property line and the garage on the building permit application. They had 10 feet but according to the dimension, it is 9.69 feet. This would be a little bit more than 9 and ½ feet. He believes they are not moving the garage on that side and it will remain at the current 9.69 feet. Therefore, the Board would also need to approve that because the north property line should be 10 feet based on the Village Code. Technically this would be a little less than 10 feet.

Chair Nancy Filsinger inquired if it is currently 9.69 feet on the north property line.

Building Inspector Michael Rakow stated that is correct. It is 9.69 feet. On the plan that was submitted with the building permit application, it shows 10 feet. He has consulted with the owner and the owner believes the north side of the garage would not change, it would remain at the current 9.69 feet. This is below the 10 feet required by the Village Code. So, the Board should probably also review the north side for a variance as well.

Member Mark Grady asked to clarify the first comment. He will call it the side setback on the west side or rear setback is approximately 19 feet.

Building Inspector Michael Rakow stated that it is not dimensioned on the survey so he cannot guarantee it is or is not 19 feet.

Chair Nancy Filsinger inquired if there were any further questions for Building Inspector Michael Rakow.

Applicant/Appellant Geoffrey J. and Gwen Daley

Geoffrey J. Daley and Gwen Daley of 7363 N Navajo Road stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Chair Nancy Filsinger asked applicant Mr. Daley and Mrs. Daley to give background regarding Case 2023-01.

Member Mark Grady asked the applicants to confirm what Building Inspector Michael Rakow stated if the back/north side of the garage is currently slightly under 10 feet and if the owners intend to build it in the exact location, slightly under 10 feet. On the other side you are slightly inside of 20 feet, approximately 19 feet or somewhere in that ball park and you want to go another 6 feet closer to the side so you will be 13 feet from the side lot.

Applicants Geoffrey and Gwen Daley stated that is correct.

Member Mark Grady further asked what is the reason that they cannot build in the same footprint.

Applicant Geoffrey Daley stated they needed the room. Right now, they both have SUV's and they are very tight in the current garage. They wanted to place a workbench in the garage and have slightly more room for other items.

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Applicant Gwen Daley stated they are currently at 22 feet by 22 feet. The builder suggested giving us some more space with the 22 feet by 28 feet. He said the footprint would be the same, but just a little wider by 6 feet.

Village Attorney Eric Larson reminded the Board and the applicant the standards that apply for the variance as a matter of state law. State law says that the Board's powers include:

to authorize upon appeal in specific cases such a variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions as, 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. A property owner bears the burden of proving "unnecessary hardship," 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 instances, 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 no created by the property owner.

Member Mark Grady had two questions for the applicants. The first question inquired if there was any consideration in not requesting a variance and taking away 6 feet of the breezeway.

Applicant Gwen Daley stated they enjoy the breezeway, adding it is extra living space for them.

Member Mark Grady posed his second question. This won't necessarily solve the SUV issue, but it might solve the workbench issue. He inquired if they could shorten their driveway. In other words, if they built towards the south, you could get a workbench at the back of the garage and still not have a variance issue. It might shorten your turning radius into the driveway.

Applicant Gwen Daley stated that would be difficult because their driveway runs together with the neighbor's driveway. It is a double wide driveway. This would make it difficult to move their cars in and out of the garage.

Applicant Geoffrey Daley stated the neighbor parks in the driveway and doesn't necessarily put cars away. He is switching cars all the time; he is a detailer and he details his truck and car every week-end. The neighbors constantly switch the cars around and park in the driveway. Whereas, they always put their cars away. It would be difficult if they did not have the space to move.

Member Mark Grady asked that the Appellants clarify where the driveway is. He cannot tell by the diagram. Does it run along the house?

Applicant Geoffrey Daley stated it runs along the house on the south portion and

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144 it is actually a double-wide driveway. They have a little bit more room than the neighbor.

145
146 Member Mark Grady inquired if there is another house to the south.

147
148 Applicant Gwen Daley stated yes there is another house to the south.

149
150 Chair Nancy Filsinger inquired if there is also another driveway right next to their
151 driveway as well.

152
153 Applicant Geoffrey Daley stated that is correct; it is one full double driveway.

154
155 Member Mark Grady stated he wasn't sure if this would help, but noted one of
156 the things that Attorney Larson summarized about the standards that the Board has to
157 apply from the State Statutes is that there are special conditions to your property that
158 are sort of unusual that means you need a variance as opposed to any other property
159 where someone wants to have more room on their house. He inquired if the appellants
160 have something unique that would require a variance.

161
162 Applicant Gwen Daley stated no there is not, but the neighbor who does not
163 share the driveway but is in that same area in 2018 had a three-car garage built and it
164 looks like to her they are only about 4 feet from the lot line. Their garages face each
165 other. So that is concerning about the variances. A neighbor behind her who she thinks
166 dropped off a note saying he had no objections; his garage may also be about 4 feet
167 from the lot line. Theirs is currently 19 feet from the lot line. Therefore, they didn't think
168 going 6 feet over and still leaving 13 feet would be an issue. This is just looking at the
169 neighbor behind them and right across the driveway. They are less than 13 feet. As far
170 as the difference, they are 9.69 feet and the builder for the garage put 10 feet. That is
171 incorrect. It will be right where it is at the 9.69 feet; that is what he told the Applicants.
172 The only thing that would change would be the extra 6 feet. No one has objected to the
173 building plans.

174
175 Member Mark Grady stated one of the neighbors built a three-car garage, which
176 neighbor is that?

177
178 Applicants Geoffrey and Gwen Daley answered it is the neighbor just south of us
179 - 7353 N Navajo Road.

180
181 Member Mark Grady inquired if the appellant's are saying that garage is closer
182 than 20 feet and it is a three-car garage?

183
184 Applicants Geoffrey and Gwen Daley stated absolutely.

185
186 Member Mark Grady inquired if there is a wooden fence along the back or side of
187 the property?

188
189 Applicant Gwen Daley stated there is a neighbors fence facing south and then
190 they have a fence running east and west.

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191
192 Member Mark Grady inquired if there is a fence between their property and
193 7371?

194
195 Applicant Geoffrey Daley stated yes. 7371 has a fence right on the lot line.

196
197 Member Mark Grady inquired if there is a fence on the west end between your
198 property and 7360.

199
200 Applicants Geoffrey and Gwen Daley replied yes, a 4-foot fence.

201
202 Member Adam Bazelon inquired if the driveway apron is expanding or is it
203 staying in the same footprint?

204
205 Applicant Geoffrey Daley stated the apron itself is expanding.

206
207 Applicant Gwen Daley stated it is coming forward because the current garage is
208 sinking. They would raise it so the apron would move; this would be like the neighbor to
209 the south as that garage is built a little higher also.

210
211 Member Adam Bazelon inquired if the actual garage door would expand and
212 become wider.

213
214 Applicant Gwen Daley stated it would not be wider. The garage door will be the
215 same as they currently have.

216
217 Member Adam Bazelon inquired how will expanding the garage help with the
218 SUV's?

219
220 Applicants Geoffrey and Gwen stated so they have more storage.

221
222 Member Adam Bazelon stated then the parking space for the car will not change
223 either?

224
225 Applicant Gwen stated that is correct. They would have things in front of the cars,
226 which would make it easier when they are pulling the cars in.

227
228 Building Inspector Michael Rakow stated for verification for B and C resident
229 districts, if an owner has a detached garage, you can move closer to the lot line
230 depending on the width. If the garages you were referring to early are both detached,
231 that would be the reason why they are permitted to be closer to the lot line. He stated if
232 the garage is attached to the home, then the setback lines are different for compliance.

233
234 Member Mark Grady confirmed from the Appellants that the neighbors' garages
235 earlier referred to are detached and the appellants answered that is correct.

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238 Chair Nancy Filsinger inquired of Village Attorney Eric Larson whether the Board
239 is making a decision on two variances.

240
241 Village Attorney Eric Larson stated yes this would be for two variances. He stated
242 the Board should decide on both of those. It all relates to the one structure. But if
243 allowed, two variances would be needed.

244
245 **Closing of Testimony, Case 2023-01**

246 *Without objection and by unanimous consent, Chair Nancy Filsinger closed*
247 *testimony for Case 2023-01 at 5:24 p.m.*

248
249 Village Attorney Eric Larson again reiterated the variance standards.

250
251 Member Mark Grady stated the 9.69 feet personally does not bother him. If the
252 owners have a prior nonconforming existing structure, they can rebuild it on the exact
253 same dimensions without a variance. If you rebuilt the garage in the exact same
254 footprint, a variance is not necessary. The six feet on the other side is a more difficult
255 issue for him because according to WI State Stats, the law says in order to get a
256 variance, it has to be something unique and not something personal to the owner. It
257 would have to be something about the land or something about the rise and fall of the
258 land, the shape of the land, or the drainage of the land that may require you to have a
259 variance. While he doesn't disagree with the owner's intent or desire for more room, it is
260 nothing that is particularly unique to the property. Probably every property owner in Fox
261 Point could use a bigger garage or a bigger house and could use more room than what
262 the setbacks give them. He is not hearing something that is unique to their property that
263 is forcing them to build in this fashion. He understands they cannot use the garage
264 space in the way they would like. The way he understands the law of variances, the
265 Board has almost no choice about this. In other words, the variance is needed or we
266 cannot use this property anymore. It impairs our ability to use the property and makes it
267 unduly burdensome to use the property. He is not hearing that in this case. That is his
268 initial reaction. He is struggling to see the uniqueness of this situation that would require
269 a variance.

270
271 Member Thomas Dunst stated he is having the same struggle. There is no
272 justification to have the extra room to store things. It is not unique to the property.

273
274 Member Scott Ratke stated there is nothing unique. There might not be a lot of
275 harm to the neighbor. But there is nothing unique to the property and that is part of the
276 WI State Stats.

277
278 Member Mark Grady stated the problem is that it is supposed to be extremely
279 unusual to grant a variance. From his point of view, it probably would not harm Fox
280 Point if you had a 6 foot wider garage, but that is not the standard. As a Board member,
281 he is supposed enforce the 20-foot setback and only provide an exception if there is
282 something really unique that creates undue hardship for the property owners and the
283 next property owners and all those around the property as this last forever. He feels his
284 hands are tied by the law. With this evidence, the Board cannot grant it.

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Member Scott Ratke agreed there is nothing unique about the property that would require a larger garage, with what was presented.

Member Mark Grady stated he understands times have changed and cars get bigger. Unfortunately, the owners may have to make a choice between their breezeway and their garage. If the owners want 6 more feet of garage, they would have to give up 6 feet of breezeway. That is the only option or another option is to build it out further and have a smaller driveway.

Member Adam Bazelon agrees with everything that has been said. He does not see an unnecessary hardship. It sounds like it is for extra storage, which he understands the need for modern living, bigger cars, and more things. He would not be surprised if he finds himself in their seat one day, but it doesn't mean it should be granted today.

Motion: Case 2023-01

Motion by Member Mark Grady, to deny the 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 20 feet for the reasons discussed. Seconded by Member Scott Ratke.

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

Motion carried by roll call vote, 5-0.

Case 2023-02: Case 2023-02, 7607 N Lake Drive

The applicant is requesting a special exception to install a new three-and-a-half-foot high ornamental aluminum fence forward of the frontline of the home. The special exception request is made pursuant to 745-7 B.(3)(h) and 745-7 B.(3)(j) of the Fox Point Code.

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 testimony regarding Case 2023-02. Mr. Rakow stated there is an ornamental fence in the front yard. Ornamental fences can be 20 feet from the property line anywhere on the property. The applicants also would like to place a gate across the property. If the fence was placed 20 feet from all lot lines, they would not have to be before the Board of Appeals regarding the fence. The applicants still are proposing a gate in

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the driveway so technically, the applicants would still have to come before Board of Appeals.

Applicant/Appellant Taylor Houston, 7607 N Lake Drive

Applicant Taylor Houston was sworn in to provide testimony by the Village Clerk Treasurer.

Representative, President of Suburban Fence Joe Olla, 5111 N Lydell Avenue

Representative and President of Suburban Fence Joe Olla was sworn in to provide testimony by the Village Clerk Treasurer.

Applicant Taylor Houston gave testimony in regard to Case 2023-02.

Member Mark Grady requested the applicant inform the Board why a fence is needed.

Applicant Taylor Houston noted that it is necessary for safety due to her partner playing for the Milwaukee Bucks. Before games, after games and at airports, there are fans who crowd the entrance to the airport or to the player garage. Individuals have figured out which car is Mr. Carter's car and they follow him home. Therefore, they have two separate cars, specifically they have figured out the cars. He has been following home from the airport and the Fiserv Arena. It is difficult for Ms. Houston because they know his schedule – when he is in town and when he is out of town. Some fans have tried to come to the house before. They have followed him from the arena coming home and they had to circle the block a few times so no one knows where they stay. The biggest issue is security for them.

Member Mark Grady stated he understands why a gate might provide security, but if security is the main reason, you are making a decision for a fence why a 3.5-foot fence instead of an 8-foot fence.

Applicant Taylor Houston stated they wanted to be sure it would be approved. Therefore, that is the reason they chose a 3.5-foot fence for the property.

Applicant representative and President of Suburban Fence Joe Olla stated their main concern is people pulling into the driveway and pulling all the way up to the turn-around in the front yard. Mr. Olla stated he suggested going lower hoping that is would ease the request for approval. He further stated that the village code stated you are allowed a 3.5-foot fence and 20 feet off the property. They were proposing 3.5 foot on the side and front yard, which is 12 feet off the bike path. The fence is sitting behind all the foliage. The fence is not seen from Lake Drive. They also want to put their dog outside and utilize the front yard as well.

Member Adam Bazelon inquired if they could build the fence within the setbacks and still be provided the same amount of safety.

Representative Joe Olla stated, twenty feet would take the fence south of the driveway, in the middle of the driveway on that side.

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379
380 Applicant Taylor Houston stated they have letters from both of the neighbors on
381 both side of them as well, stating they have no objections to it.

382
383 Member Scott Ratke inquired if they have had individuals that have come onto
384 the property.

385
386 Applicant Taylor Houston stated that they have on the very first day that they
387 moved in. The individual saw the car, the moving truck, and came up to the door. Since
388 the season started, they have had people on their property two to three times.

389
390 Village Attorney Eric Larson noted the standards for the special exception. He
391 read Sections 745-7(B)(3)(h-j).

392
393 The Board of Appeals may grant a special exception only if it finds that the fence wall,
394 architectural screening device, arbor, or driveway gate is reasonably necessary to protect the
395 safety of people residing on the property; every special exception granted by the Board of
396 Appeals for a driveway gate shall be conditioned upon the applicant filing with the Village
397 Clerk/Treasurer the written approval of the Village Police Chief in consultation with the Fire Chief
398 for the specific driveway gate and gate location. The Board of Appeals may grant the request for
399 a special exception upon finding that the property owner has shown clear and convincing
400 evidence to believe that the applicant has a legitimate need for the special exception and that
401 granting the special exception will not adversely affect the health, safety or welfare of the
402 community or the immediate area where located and will not impede the purpose, spirit and intent
403 of this section. Every special exception granted by the Board of Appeals shall be conditioned
404 upon the applicant submitting the visual rendering to the Village Building Board and receiving the
405 Building Board's approval of the architectural appearance, design, and construction materials.

406
407
408 Member Adam Bazelon inquired if the fence would go right up to the bike path
409 essentially.

410
411 Applicant Representative and President of Suburban Fence Joe Olla commented
412 it would not. It would be 12 feet from the bike path. The fence would be right behind the
413 big trees on the property.

414
415 Member Mark Grady asked if the applicants understood they would need Police
416 Chief and Fire Chief approval for emergency access reasons and whatever else they
417 consider and Building Board approval of the architectural appearance, design and
418 construction materials. He asked if the applicant wanted to submit the neighbor's letters
419 to Board of Appeals and for record.

420
421 Applicant Taylor Houston stated she would like to submit the neighbor's letters.

422
423 Photos, Exhibit A and neighbor's letters, Exhibit B were submitted to the Board of
424 Appeals for record.

425
426 Member Scott Ratke inquired if there is any other reason, they want the fence
427 other than for security reasons that the Board should consider.

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Applicant Taylor Houston stated the main reason is for their security on the property.

Member Adam Bazelon inquired if there were any other security options they had looked into.

Applicant Taylor Houston stated they already installed cameras and ADT Security.

Without objection and by unanimous consent, Chair Nancy Filsinger closed testimony at 5:50 p.m.

Closing of Testimony, Case 2023-02

Without objection and by unanimous consent, Chair Nancy Filsinger closed testimony for Case 2023-02 at 5:50 p.m.

Member Scott Ratke stated it seems like the applicants have a safety issue here in regard to the fence application and that should be considered.

Member Adam Bazelon inquired if it is possible to grant approval based on a restriction that the fence be removed if the owner were to move out of the home.

Village Attorney Eric Larson noted a restriction can certainly be placed on the granting of a special exception; similar restrictions have been placed on other special exceptions in the past. A deed restriction would be recorded that requires removal upon the sale of the property.

Member Adam Bazelon stated he is in favor of granting approval with a restriction such as that. He further stated he is on that path every day and there are really no fences on the west side. It breaks up the nature of it. But there is a legitimate security issue here. Therefore, he would be in favor of doing something with a deed restriction on the property in regard to the fence. The fence would be extremely obstructive to passersby and very noticeable.

Member Mark Grady asked for two clarifications. There are a couple of fences on the west side, but they may pre-date the ordinance. The owners have a reason. So perhaps the fence can be torn out after the owner moves or a new owner would have to ask for a special exception. He would agree to approve it under those conditions if there were reasonable conditions for the Board to make.

Village Attorney Eric Larson stated it is a reasonable condition. The Board certainly can require that. The evidence the Board heard is unique to this property owner and it is burdensome because they are incurring costs to the improvement of the property that adds value that the owners would not be able to recover when they sell the property. But if the Board believe the standards of the Village Code are such that the Board really cannot see granting the special exception without that, then it is fair to impose it. The Board needs to think about how that is going to happen and may want to

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just delegate that authority rather than it coming back to the Board once the condition is drafted, the Board could authorize the Village Attorney to write it up and present to the property owners. They would have to record it and show that the owners have recorded it before they get their permit. The Board could also say it would come back to the Board for their review to ensure that it satisfies the Board's requirements.

Member Adam Bazelon stated they would not have to see it again, but the Board could have certain conditions in the restriction. Perhaps that the fence would have to be removed prior to conveyance. He suggested daily penalties for each day past the date of sale, if the fence was not uninstalled.

Member Scott Ratke stated he is a little leery of restrictions asking the owners to remove a permanent fence upon sale of their property. He noted he is concerned with setting a precedence and asking for restrictions on one property and not another property. He said the owners do have a security reason for the fence on the property, which seems like a justification for the fence on a busy road there. They have had three incidents in the last year according to the applicant. He is only leery of the owners having to remove the fence, although he realizes each situation is different.

Member Mark Grady stated he agrees with Member Scott Ratke that the owners have shown justification for the special exception.

Member Scott Ratke stated he feels they should be somewhat consistent if the Board is asking the owners to remove the fence.

Member Thomas Dunst stated it is a little bit different. In this case, there is a famous individual who owns and lives on the property. He compared cases where there were children on the property with traffic moving quickly. That risk wouldn't go away. The case for the special exception tonight may be one of the following: a career ending or a possible trade of a player. It is not necessarily inappropriate to ask for the removal of the fence if the applicants sell/move from the property.

Member Mark Grady stated the security risk in this case is due to the individual living on the property. In another case, children would be part of a continuum. Therefore, you can make an argument that this is a different case to put a restriction on the special exception; this is so unique to this property. Having children is not a unique condition to properties of other permitted special exceptions; it is common.

Motion: Case 2023-02

Motion by Member Mark Grady, that the special exception be granted for the fence and the driveway gate subject to the conditions of the other Boards and Government bodies that have to approve the driveway gate. The applicants/property owners have shown a security need for gate, in particular, and the fence. The Board directs Village Attorney Eric Larson to draft a special condition for granting the approval of this special exception that the fence and the gate be removed upon sale of the property prior to

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transfer date or closing of the property. Member Scott Rake seconded the motion.

A brief Board discussion took place.

Roll call vote:

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

Motion carried by roll call vote, 5-0.

Case 2023-03: 130 W Bradley 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 20 feet. The applicant is proposing to build a new 2-car garage that is smaller than the current garage footprint, 15 feet from the rear property line, and approximately 40 feet from the 60-foot setback on Navajo Road. This variance request is to replace the current garage, in the same location.

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.

Chair Nancy Filsinger asked Michael Rakow to give background to Case 2023-03.

Building Inspector Michael Rakow gave testimony in Case 2023-03. The applicants are proposing to replace the existing garage. He noted he is using the submitted survey. The garage that is proposed to be built is technically smaller according to Mr. Rakow's math, by 2.8 feet. Looking at the survey, the original garage is 14.2 feet. The addition is approximately 15 feet. That gives him a total of 29.3 feet. Their garage is 26.5 feet. That is how he calculates the garage being 2.8 feet smaller. The lot is a legal non-conforming structure. The setback on Navajo and the rear setback is typically less than the preferred village code. They are making the garage smaller.

Member Mark Grady commented Michael Rakow used the word legal non-conforming structure. The structure pre-exists the set-back requirements as non-conforming with the new current setback requirements. Building Inspector Michael Rakow stated he does not know what the old setbacks were so Member Mark Grady is correct.

Member Mark Grady asked Village Attorney Eric Larson to look into this prior to the Board of Appeals meeting tonight. If he is understanding this correctly, if a pre-existing non-conforming structure is rebuilt in the same or smaller footprint, a variance is not required.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 22, 2023**

Village Attorney Eric Larson stated that is not correct. What the ordinance says is that the structure may be totally rebuilt if such reconstruction is identical in size and shape and used to the original structure. Therefore, being smaller means, it is not identical. It is certainly relevant to whether the variance should be granted.

Member Mark Grady restated his question to Village Attorney Eric Larson. If the applicants were building the garage on the exact footprint and size, they would not need a variance.

Village Attorney Eric Larson stated that is correct. Legal non-conforming structures are structures that are allowed to remain by grace, even though they don't comply with the code. The code was changed and they are given this permission to stay. The intent is that they will eventually come into compliance. Eventually that structure will become obsolete. They will rebuild if they want to in a conforming location. The intent of legal non-conforming grace rights are that eventually they go away. The Board's intent with the code was that if the property owner keeps it identical, it can remain. If the property owner is going to change it, change it in a way that is current with the code. If it is smaller and otherwise, within the same footprint, that may be very relevant to whether the variance should be granted.

Applicant/Appellant Alexander J. Godfrey, 130 W Bradley Road

Applicant/Appellant Alexander J. Godfrey was sworn in to provide testimony by the Village Clerk Treasurer.

Chair Nancy Filsinger asked applicant Alexander J. Godfrey to give background regarding Case 2023-03 and include the reason Mr. Godfrey is not building the garage in the same footprint.

Applicant Alexander Godfrey stated he made it clear to the contractor he was working with to keep it on the same footprint, specifically for this reason. Just through the design, the structure's northern most wall is actually about 2.25" smaller, making the total garage 2.8 feet smaller than the original structure. He wanted to try to keep the structure as close to the other footprint as possible, due to the structure's closeness to other properties.

Chair Nancy Filsinger inquired what the reason is for the replacement.

Applicant Alexander Godfrey noted there are quite a few problems with the interior of the garage. The current structure leaks and there is no service door or window on the current structure. Mold is growing on the roof. The concrete slab on which the car sits pitches forward so if there is water or snow on the car, it falls to the floor of the garage and pools there. It does freeze when it is cold and he has slipped on the ice. There is also rotting wood. The infrastructure of the garage appears to have been a one car garage, which was made into a two-car garage as the plot survey points out. It appears the infrastructure of the first garage was not torn down. It was just built over the old structure, which may be a code violation as well. There are no lights on the garage which poses a safety issue. The interior is in dire need of being replaced.

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 22, 2023

Member Mark Grady stated if reading your survey correctly, the house is approximately six feet from the back lot line or the house to the east. The front of the house is approximately ten and a half feet using rounded numbers. The proposed garage is about 11 feet set back from the front lot line and just under fifteen feet from the back property line.

Applicant Alexander Godfrey stated it is currently at 15 feet, but with the proposed structure, it is under 15' 2.25" feet and to the north as well. The east is approximately 19 to 20 feet to the property line.

Member Mark Grady asked the applicant if he had to bring the garage into compliance with a 20-foot setback on all three sides, could you build a garage?

Applicant Alexander Godfrey commented it does not appear that he would be able to build a garage.

Member Mark Grady inquired if he could fit a single car garage on the lot.

Applicant Alexander Godfrey stated he doesn't believe he could.

Closing of Testimony, Case 2023-03

Without objection and by unanimous consent, Chair Nancy Filsinger closed testimony for Case 2023-03 at 6:21 p.m.

Village Attorney Eric Larson reminded everyone this is a variance and so the Board is back to the same standards that the Board had in the first case.

Member Mark Grady stated the reason for his questions is he believes the answers to his questions form the basis for the approval of the variance. He thought the case was just a rebuild of a pre-existing, non-conforming structure. It has been clarified that that is not quite the case and therefore, a variance is required. This rebuild is going to increase the setbacks at some locations from what they currently are. If the Board tries to do what the spirit of the ordinance is, that is have the new construction come into compliance with the code, the property owner cannot have a garage. The lot clearly was not designed to house a home and a garage with 20-foot setbacks. The house is six feet on the back and ten feet on the front. Nobody envisioned a house and a garage on this lot. With the setbacks, it couldn't be built or it would be an extremely skinny home. The conditions of this particular parcel of land does present unique conditions with a special situation where in order for the property owner not to be unduly burdened with the use of his property, the Board has to grant the variance. Otherwise, the property owner cannot reasonably use his property.

Member Scott Ratke stated that is a perfect analysis. There is no way to use the property and have a garage. It is a unique property.

Member Mark Grady stated the homeowner is trying to comply with the ordinance as much as possible by at least increasing the setbacks.

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 22, 2023

Motion: Case 2023-03

Motion by Member Mark Grady, to grant the variance for the reasons he just stated. Seconded by Member Thomas Dunst.

Roll call vote was called.

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

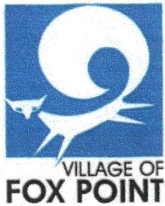
Motion carried by roll call vote, 5-0. The variance was granted.

Adjourn

Motion by Member Adam Bazelon, seconded by Member Scott Ratke, to adjourn the Board of Appeals meeting at 6:25 p.m. Motion carried.

Respectfully Submitted,

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



VILLAGE OF FOX POINT
BOARD OF APPEALS

NOTICE OF APPEAL & APPLICATION FOR REVIEW

1. Name of Appellant Renee & Matt Kirchner
Address of Appellant 7250 N Beach Dr
Phone Number _____
Home _____ Work _____ Cell 414-364-6292
E-mail Address Renee@Labmidwest.com
2. Address of Property 7250 N Beach Dr
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
The interpretation of Village Zoning Code and reversal of order, requirement, decision or determination of an administrative official in regard to Village Zoning Code 745-4 C. (1-3) and 756-9.
Disposition of Previous Appeal A CSM was required however as argued by the homeowner no permit was required for the relocation of the building.
Date of Decision in Previous Case February 10, 2022
4. Date of Decision or Order of Administrative Official from which Appeal is Taken Village Engineer and Village Inspector directed to go directly to Board of Appeals.
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: Matt & Renee Kirchner

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.

Renee S. Kirchner
Signature of Appellant

04/24/2023
Date

For Office Use Only:

Date Application Received 4/25/2023 Receipt Number for \$200 Filing Fee 1.05 8824
Case Number CASE 2023-05 Hearing Date 05/24/2023
Disposition _____

Renee & Matt Kirchner

7250 N Beach Drive

Fox Point, WI

Miscellaneous Notes:

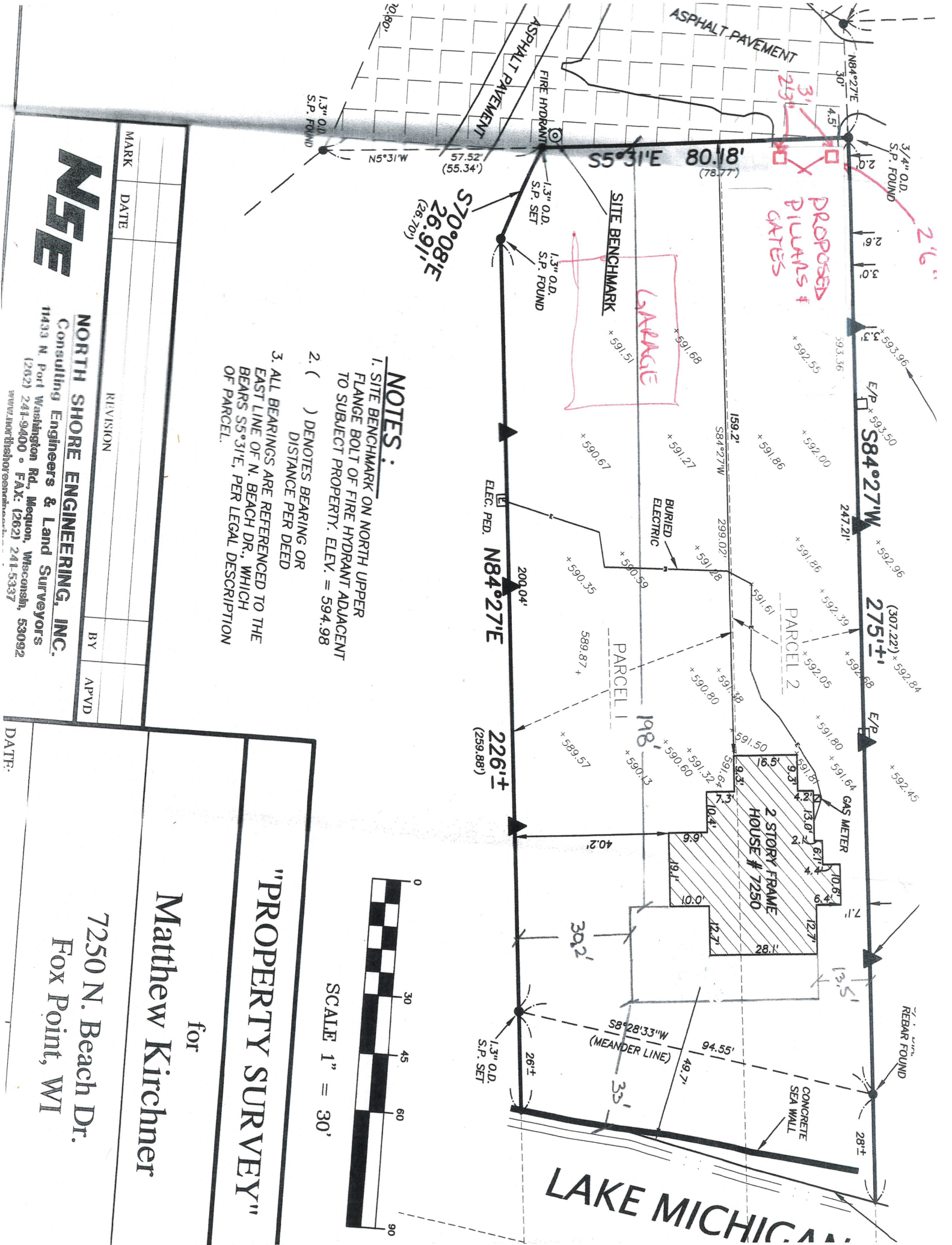
Entry pillars and gates are new, not replacements.

The Pillars will be approx. 5'2" high and the gates will be 4'6" high.

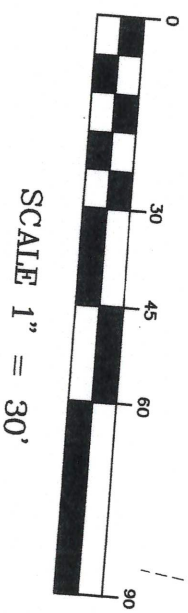
The gates are constructed of powder-coated aluminum and will be black in color.

The pillars are constructed using masonry CMUs as the core, Bedford stone plinths and caps, and granite fieldstone veneer with gray mortar.

The pillars will be located in the NW corner of the property flanking the driveway 2'0" from the north property line (side yard) and 2'6" from the west property line (front yard).



- NOTES:**
1. SITE BENCHMARK ON NORTH UPPER FLANGE BOLT OF FIRE HYDRANT ADJACENT TO SUBJECT PROPERTY. ELEV. = 594.98
 2. () DENOTES BEARING OR DISTANCE PER DEED
 3. ALL BEARINGS ARE REFERENCED TO THE EAST LINE OF N. BEACH DR., WHICH BEARS S5°31'E, PER LEGAL DESCRIPTION OF PARCEL.



"PROPERTY SURVEY"

for

Matthew Kirchner

7250 N. Beach Dr.
Fox Point, WI

MARK	DATE	REVISION	BY	APVD

NSE

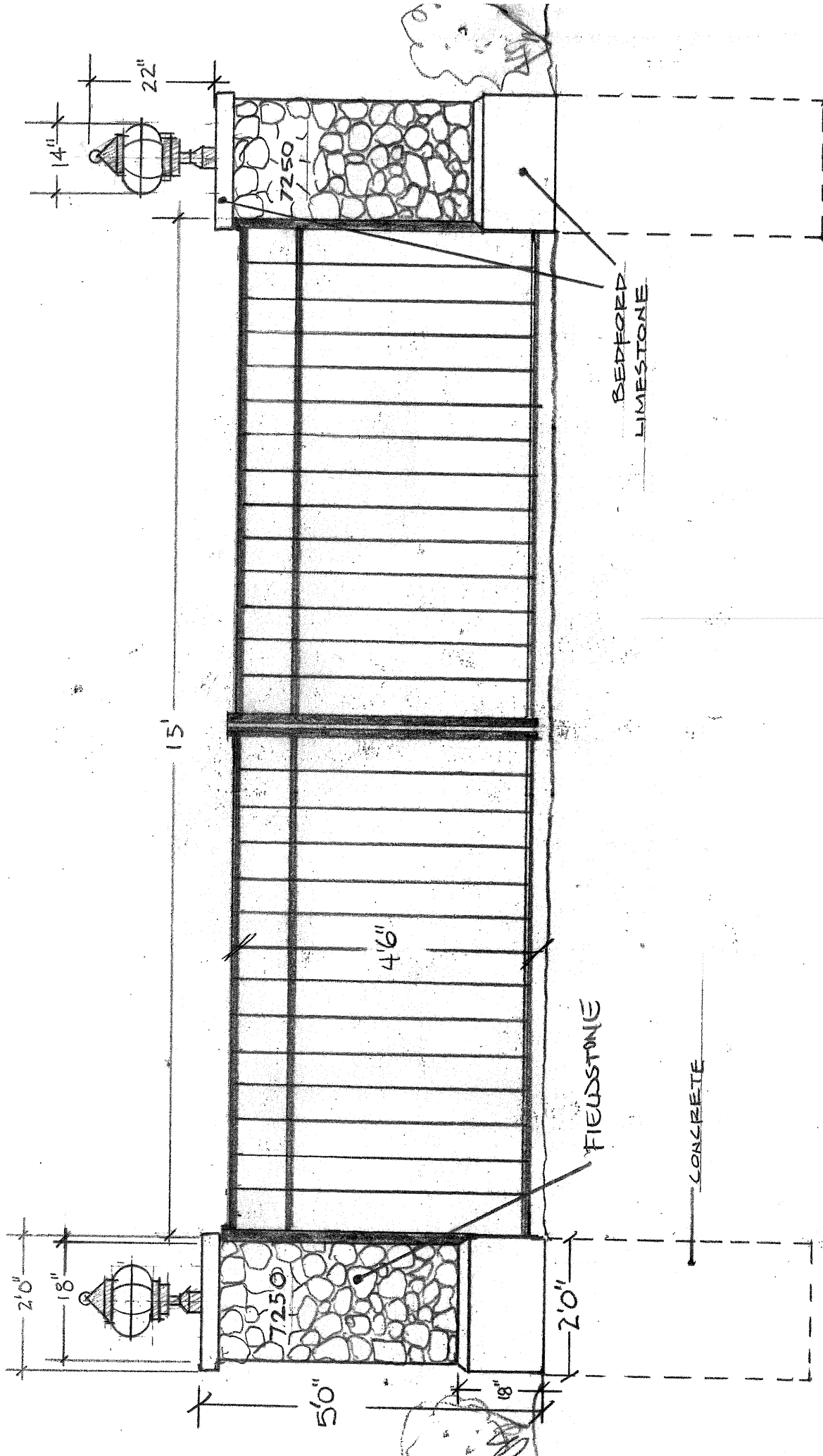
NORTH SHORE ENGINEERING, INC.

Consulting Engineers & Land Surveyors

11433 N. Port Washington Rd., Mequon, Wisconsin, 53092

(262) 241-9400 • FAX: (262) 241-5337

DATE:



$$\frac{1}{2} = 1'0"$$



Powder coated aluminum fencing

NOT a replacement



Entry area looking west



Entry area looking east



United States (USD \$) ▾



HOME

SHOP

HELLONEONSIGN

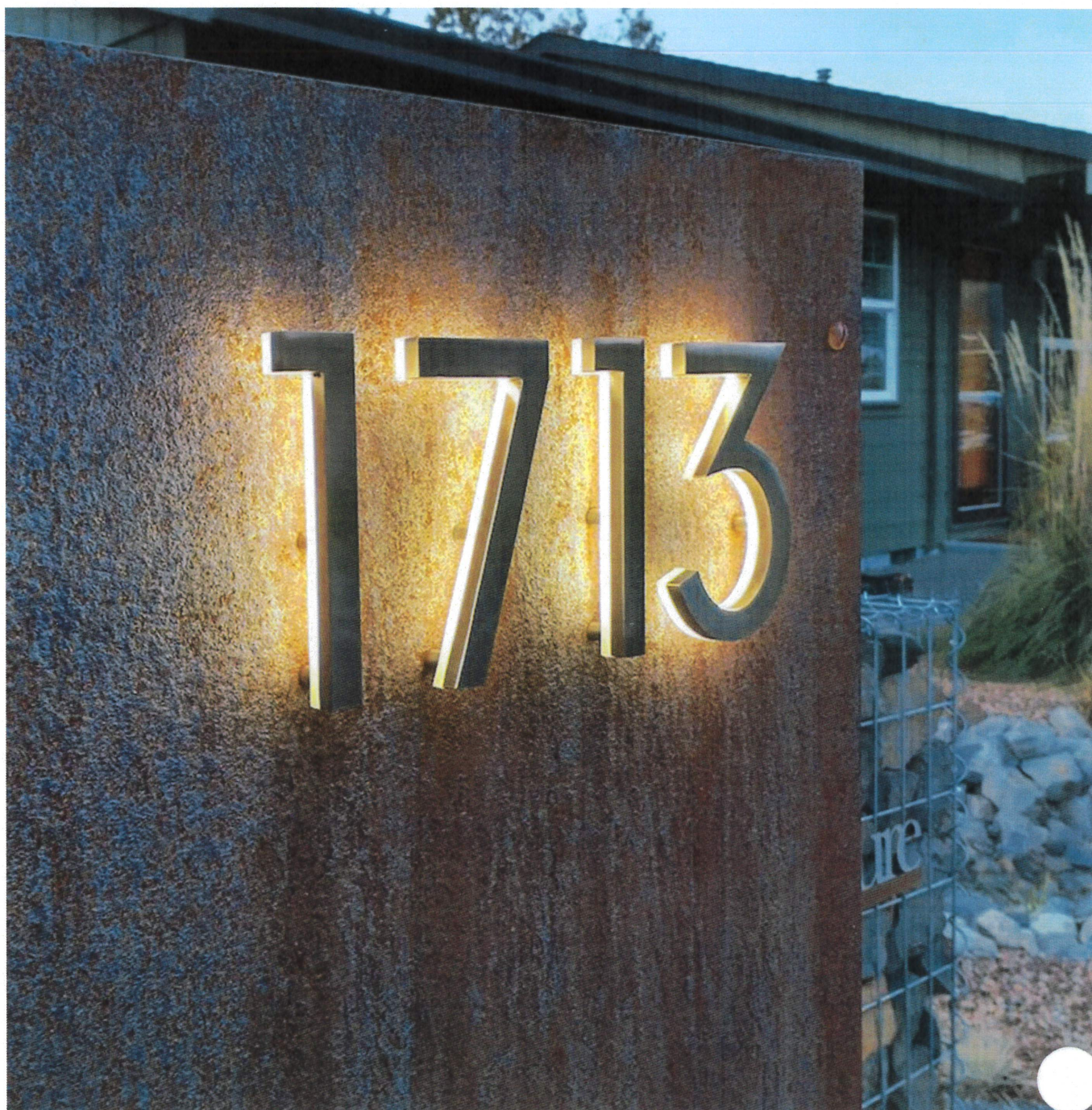
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CONTACT



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Chat with us

LAMPS PLUS®

The Nation's Largest Lighting Retailer

Home / Outdoor Lighting / Post Light / 21 - 25 in. high / Bronze / Style # H5343



Portsmouth 22" High Outdoor Post Lantern

7 Reviews

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In Stock - [Ships in 1 to 2 Days](#)

1

ADD TO CART

♡ SAVE



DESIGN CHAT

Product Details

The Portsmouth Collection offers rustic marine lighting designs for your great outdoors.

Additional Info:

Inspired by early lighting designs from port towns, this charming outdoor post lantern features aluminum construction in an Oiled Rubbed Bronze finish. Clear seeded glass provides a gentle diffusion. Accent your outer decor with this beautiful lantern from the Portsmouth Collection.



[Shop all Maxim](#)

Check size & position before you buy! [Printable Life-Size Image](#)

- 22" high x 14" wide. Weighs 3.91 lbs.
- Uses three maximum 60 watt candelabra base light bulbs (not included). Shown with clear glass Edison filament bulbs.
- Portsmouth post lantern by Maxim. Based on rustic industrial and farmhouse barn light fixtures.
- Post light only. Fits on a 3" diameter pole (not included). May also be pier mounted with an adapter which is sold separately.
- Oiled Rubbed Bronze finish. Aluminum construction. Clear seeded glass allows the bulbs to be seen. Wet location rated for outdoor use.

Product Documents

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

414-351-8900

Receipt No: 1.058824

Apr 25, 2023

7250 N Beach Drive

Previous Balance:	.00
LICENSES & PERMITS - OTHER PERMIT	200.00
10-44540 OTHER PERMIT	
Total:	200.00
CHECK	200.00
Check No: 17353	
Payor: The Secret Garden	
Total Applied:	200.00
Change Tendered:	.00

04/25/2023 9:38 AM

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 SPECIAL EXCEPTION**

PLEASE TAKE NOTICE that the Fox Point Board of Appeals will meet in Schwemer Hall, 7200 N. Santa Monica Blvd, Fox Point, WI, on Wednesday, May 24, 2023 at 5:00 p.m. to hear the following appeal for a special exception:

- 1. Case 2022-05 7250 N Beach Drive.** The applicant is requesting a special exception to install a new four-foot, six-inch-high, powder coated, aluminum driveway gate and fieldstone pillars forward of the frontline of the home. The special exception request is made pursuant to 745-7 B.(3)(h)[2] and 745-7 B.(3)(j) of the Fox Point Code.

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/CMTW
Village Clerk Treasurer

Notice Sent: [May 2, 2023]

Posted: [May 2, 2023]



Village of Fox Point GIS
Case 2023-05 7250 N. Beach Drive

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: 04/25/2023

§ 745-7. Accessory uses and structures.

A. General.

- (1) Any accessory use or structure shall conform to the applicable regulations of the district in which it is located except as is specifically otherwise provided.
- (2) No accessory use or structure shall be permitted that by reason of noise, dust, odor, appearance, or other objectionable factor creates a nuisance or a substantial adverse effect upon the property value or reasonable enjoyment of the surrounding property.
- (3) Any of the requirements hereinafter established in this section relating to accessory uses and structures, except for permanent buildings in excess of 100 square feet in ground area, may be modified in their specific application to a given situation with the approval of the Village Manager or his/her designee, where in the Village Manager's or designee's opinion the strict application of the requirement would be unnecessarily burdensome or would not in fact achieve the actual intent of the requirement, or where modification would more effectively achieve such intent, provided in all cases such modification is consistent with the basic spirit and intent of this chapter. Appeal from the determination of the Village Manager or his/her designee may be made to the Building Board, provided such appeal is filed with the Village Manager within 30 days from the date of the Village Manager's or designee's action.

B. Permanent structures.

- (1) Any permanent roofed structure serving an accessory use if attached to the principal building shall be considered a part of such principal building for all regulatory purposes. If such structure is a building and is not attached to the principal building, no roofed or enclosed portion shall be closer than 10 feet to any roofed or enclosed part of the principal building, and such structure shall conform to the open area, height, and front, side and rear setback requirements of the district in which such building is located except as permitted by § 756-36 of this Code.¹
- (2) Walks, drives, paved terraces and purely decorative garden accessories such as pools, fountains, statuary, flag poles, etc., where subject to "permanent structure" classification, shall not be permitted closer than three feet to an abutting property line other than a street line.
- (3) Fences, walls, architectural screening devices, driveway gates and arbors. The following regulations are established to ensure that the Village of Fox Point retains the openness and semirural character of its landscape.
 - (a) Permit required. No person shall erect or construct any fence, wall, driveway gate, architectural screening device or arbor, unless specifically exempted by the provisions of this subsection, on any property within the Village of Fox Point without having first obtained a permit from the Building Inspector and having paid the fee prescribed by ordinance. Retaining walls regulated by § 285-4 of this Code are exempt from the requirements of this subsection. A survey by a licensed surveyor shall be submitted with each application for a fence, wall, architectural screening device, driveway gate or arbor 10 feet or less from the lot line of the property. The determination of the Building Inspector as to proximity shall be final. When required, the survey shall show the location of the proposed fence, wall, architectural screening device, driveway gate or arbor in relation to the property line but need not depict any other aspect of the subject property. The Building

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

Inspector shall deny a permit if the proposed fence, wall, architectural screening device, driveway gate or arbor is in the right-of-way or if its proposed location will impede visibility of vehicular traffic.

- (b) Replacement or reconstruction. If an existing fence, wall, architectural screening device, driveway gate or arbor is substantially or completely destroyed or becomes deteriorated to a material degree, it may be replaced or reconstructed in the same location, height and materials by first obtaining a permit, provided that it must be replaced or reconstructed within 12 months of being removed. All other replacement or reconstruction of existing fences, walls, architectural screening devices, driveway gates or arbors must fully comply with the terms of this section.
- (c) Temporary fences. Temporary safety, snow or deer fences of any type may be allowed in the discretion of the Village Manager for the purpose of safety, protection from the elements or protection from deer, for a period not to exceed 120 days, unless extended by the Village Manager. Temporary construction fences may be allowed in the discretion of the Village Building Inspector for the time that a building permit is in effect on the property.
- (d) Lake, bluffs and ravines. Where property abuts Lake Michigan, or is located on a bluff or a ravine in such a locale that construction of a fence, wall, architectural screening device, driveway gate or arbor would materially obstruct the aesthetic views of adjoining and surrounding property owners, the Building Inspector may deny a permit based upon his determination that there is a substantial negative impact upon the aesthetic enjoyment of surrounding properties. Any affected party may appeal the Building Inspector's determination to the Board of Appeals within 30 days of the Building Inspector's determination. No fence, wall, architectural screening device, driveway gate or arbor shall be constructed on the side of a ravine or bluff in violation of § 285-3 of this Code.
- (e) Construction in right-of-way prohibited. Any fence, wall, architectural screening device, driveway gate or arbor that is erected in a street right-of-way or impedes traffic visibility may be removed by the Village of Fox Point at any time.
- (f) Definitions. For purposes of this subsection, the following terms shall have the following meanings; the terms "front yard," "rear yard" and "side yard" shall be defined as set forth in § 745-2 of this chapter:

ARBOR — Any structure intended to provide a support system for plantings or to designate an aesthetically pleasing outdoor seating or walk area.

ARCHITECTURAL SCREENING DEVICE — Any self-standing fence or wall type of structure employed for gardening, screening, ornamental, decorative, signage or landmark purposes.

DRIVEWAY GATE — A fence that opens and closes across a driveway.

FENCE — A structure which creates an enclosure, barrier or boundary, having a set or permanent location in the ground, or which is attached to something having a permanent location on the ground. A fence is considered to be a structure.

FINISHED LOT GRADE — Does not include berms, artificial hills and mounds.

HEIGHT — Does not include two inches of clearance at the bottom of the fence, nor does it include two inches in excess of the height limitation of the fence posts, nor a lighting

device on the top of a wall.

OPEN FENCE — A structure of rails, planks, stakes, strung wire or similar material erected as an enclosure, barrier or boundary. Open fences are those with more than 50% of their surface area open for free passage of light and air. Examples of such fences include chain link, picket, rail and cyclone fences, which are not merely ornamental.

ORNAMENTAL FENCE — A structure whose primary purpose is to decorate, accent or frame a feature of the landscape or premises.

SOLID FENCE — A structure of rails, planks, stakes, strung wire or similar material erected as an enclosure, barrier or boundary. Solid fences are those with 50% or less of their surface open for free passage of light and air and designed to conceal from view the activities conducted behind them. Examples of such fences are stockade, board-on-board, board and batten, basket weave and louvered fences.

WALL — Substantially a solid masonry, wood, or composite structure which shall be self-supporting, but is not incorporated into an enclosed structure, and shall include any nonenclosed structure having as its purpose the denomination or accent of driveways or entryways. Any structure that satisfies the foregoing definition but which also fully complies with the requirements of one or more of the following, as determined by the Village Building Inspector, is excluded from this definition of "wall":

- [1] Signs. This exclusion applies if the wall is primarily intended to be a sign as regulated by Chapter 540 of this Code.
 - [2] Lights. This exclusion applies if the wall is intended primarily as a pediment to support a light fixture.
 - [3] Small size. This exclusion applies if the wall is smaller than three feet wide, and smaller than three feet deep, and smaller than five feet high.
 - [4] Retaining wall. This exclusion applies if the wall is intended primarily as a landscape feature for retaining soil and the top of one side of the wall is approximately at grade.
- (g) Construction standards. Fences, walls, architectural screening devices, driveway gates and arbors shall be constructed in such a manner that the "finished" side shall face the neighboring property. Fence posts shall be on the side of the fence facing the permit applicant's property. Fences shall be constructed of wood or other wood-simulated natural-appearing materials, wrought iron or other metal materials generally employed to obtain an aesthetically pleasing appearance. Open fences may be permitted; however, barbed wire, electric wire, chicken wire, or double- or triple-strand wire shall not be used in the construction of a fence, except as allowed by the Building Board.
- (h) Location and height restrictions. Subject to the following exceptions, a fence, wall, architectural screening device, driveway gate or arbor may be permitted up to the lot line in the side and rear yard of any property in Fox Point. A fence, wall, driveway gate or architectural screening device located in a rear or side yard shall not exceed a height of six feet from the finished lot grade and shall not project forward of the front line of the principal building. An arbor shall not exceed a height of eight feet seven inches from the finished lot grade and shall not project forward of the front line of the principal building.
- [1] In the event a building is irregularly configured, such as an L- or V-shaped structure, or the building is located upon a corner lot, irregularly shaped lot, or lot which abuts

upon more than one public or private road, such that there are or appear to be multiple front, side, or rear sides of the structure, the determination of the front, rear or side areas, as well as the determination of the location of any fencing, shall be referred by the Building Inspector to the Board of Appeals, which shall then review the matter without requirement of any appeal fee. The Board of Appeals shall treat the application as a request for a special exception, which shall specifically not be subject to the requirements applicable to zoning variances, and shall proceed in accordance with Subsection B(3)(j) herein. The Board of Appeals shall consider the least obtrusive alternative, and any other criteria as set forth in the provisions of this chapter which serve to balance the interests of the applicant with the interests of the surrounding property owners.

- [2] No new fence, wall, architectural screening device, driveway gate or arbor shall be located beyond the front line of the principal building unless permitted by the Board of Appeals by special exception after a hearing, pursuant to the procedures described in Subsection B(3)(j) below. The Board of Appeals may grant a special exception under this subsection only if it finds that the fence, wall, architectural screening device, arbor or driveway gate is reasonably necessary to protect the safety of people residing on the property, in addition to the additional findings and conditions required by Subsection B(3)(j) below. Every special exception granted by the Board of Appeals for a driveway gate shall be conditioned upon the applicant filing with the Village Clerk/Treasurer the written approval of the Village Police Chief in consultation with the Fire Chief for the specific driveway gate and gate location that is proposed; and if such approval is denied, the special exception is thereby denied.
[Amended 6-11-2013 by Ord. No. 2013-04]
- [3] If the rear of the applicant's lot abuts a neighbor's side yard, any proposed fence shall be an "open fence," unless the neighbor consents to an alternate type fence in writing.
- [4] An ornamental fence or architectural screening device may be allowed anywhere on the property without a permit, provided the fence or screening device does not exceed 3 1/2 feet in height and is set back in its entirety 20 feet or more from all boundaries of the property.
- [5] For purposes of this section, the side yard of any corner lot that abuts a road shall be treated as a front yard; however, if a building footprint is other than square or rectangular in configuration, the provisions of Subsection B(3)(h)[1] generally shall control over the provisions of this subsection.
- [6] The provisions of this section, the limitations set forth herein, and the requirement for a permit shall not apply to: **[Amended 4-1-2012 by Ord. No. 2012-05; 11-10-2020 by Ord. No. 2020-06]**
 - [a] Lands owned by the state, school district, county, Village or any other publicly held land, where fencing is employed for sport or recreational purposes such as baseball diamonds, backstops, swimming pools, playgrounds or any other public recreational or safety purpose;
 - [b] Private athletic or country clubs, or cemeteries, employing such fencing for similar uses as stated herein;
 - [c] Chicken enclosures for permitted keeping of chickens pursuant to § 579-17.5 of

this Code;

- [d] Beehives for permitted beekeeping pursuant to § 579-17.6 of this Code;
- [e] Dog kennels or runs less than 120 square feet, provided such fencing is located no closer to any lot line of the property than is allowed for a principal structure on the property;
- [f] Private residential swimming pool fencing; or
- [g] Tennis court fencing, provided such fencing is located no closer to any lot line of the property than is allowed for a principal structure on the property unless modified pursuant to § 745-10G(3).

[7] Notwithstanding the otherwise applicable height limitations stated elsewhere in this section, a fence may be constructed to a height of 11 feet from the finished lot grade on property in the D Business District or the adjacent single-family residential use district along a lot line which separates a large business use from such single-family residential use. For purposes of this exception, a large business use is defined as a use conducted in the D Business District for which 150 or more off-street parking spaces are available to the business. Such a fence may be constructed on the top of a berm, provided the berm is constructed in compliance with the requirements of this Code and all applicable laws, and further provided that the height of the fence shall be measured from the finished lot grade as defined in this section. This exception is intended to allow a fence to be constructed which will screen the large business use from the abutting single-family residential use.

- (i) Maintenance. The owner, occupant or their agent shall keep all fences, architectural screening devices, walls, driveway gates and arbors structurally sound and maintained in a neat and attractive manner. The maintenance standards established in this section shall be enforced as provided in §§ 681-7 and 681-8 of the Village of Fox Point Code.
- (j) Special exceptions. A special exception to the height, size, material, design, setback or other physical standards set forth in this subsection or to allow a driveway gate may, upon filing a written application, be considered by the Board of Appeals after a hearing. The application must include an accurate visual rendering of the proposed wall, architectural screening device, driveway gate or arbor, along with a written statement outlining the applicant's need for the same. Notice of hearing shall be given to all property owners within a radius of 500 feet of the property upon which the fence, wall, architectural screening device, driveway gate or arbor is proposed to be constructed and the notice shall include the visual rendering submitted by the applicant. The Board of Appeals may grant the request for a special exception upon finding that the property owner has shown clear and convincing evidence to believe that the applicant has a legitimate need for the special exception and that granting the special exception will not adversely affect the health, safety or welfare of the community or the immediate area where located and will not impede the purpose, spirit and intent of this section, in addition to such other specific findings as may be required by other subsections of this section. Every special exception granted by the Board of Appeals shall be conditioned upon the applicant submitting the visual rendering to the Village Building Board and receiving the Building Board's approval of the architectural appearance, design and construction materials for the proposed fence, wall, architectural screening device, arbor or driveway gate, taking into consideration the existing development on the lot and in the surrounding neighborhood, and if the Building

Board denies the application, the special exception is thereby denied.

C. Garages. Garages in a residence district or on a lot where the principal use is single- or two-family residences shall conform to the following:

- (1) Not more than one detached private garage structure shall be permitted on a lot. A detached garage is allowed without regard to whether or not there is also one or more attached garages on the premises. In the event there exists or is built a detached garage, only one other accessory detached structure shall be permitted, which structure shall be limited in size to 170 square feet. Notwithstanding the foregoing, as to lots in excess of 25,000 square feet, one additional detached garage or accessory structure shall be allowed for each additional 25,000 total square feet of lot size. All setback requirements and requirements of Chapter 756, Building Construction, must be satisfied in addition to any requirements of this provision.
- (2) The floor area of garages shall be subject to all regulations of Chapter 756, Building Construction, as from time to time adopted.
- (3) The side and rear yard provisions for a detached private garage on a lot less than the required minimum width of 80 feet in B and C Residence Districts may be reduced by three inches for every foot less than 80 feet of lot width but to not less than five feet.
- (4) No detached private garage shall be located closer than 20 feet to the principal residence building on an adjoining lot.
- (5) Subject to such other provisions of the Fox Point Code as may regulate the construction of structures, there is no limit on the number of attached garages for the private use of the resident.

D. Temporary structures.

- (1) Any temporary structure over 500 cubic feet in bulk shall require a building permit, except as follows: **[Amended 6-11-2013 by Ord. No. 2013-04]**
 - (a) No building permit is required for the placement of a trash receptacle for purposes of disposing demolition materials from a building or structure on the property in conjunction with a project for which a building permit has been issued, subject to the following. Such trash receptacle shall not be placed prior to the issuance of a building permit, or prior to one week before commencement of demolition work, whichever is later. Such trash receptacle shall be removed within one week of completion of the demolition work, or when the work is suspended for more than seven days, or when the building permit expires or is terminated, whichever occurs first. Notwithstanding the foregoing, the Village Building Inspector may impose more restrictive requirements regarding trash receptacles as a condition of the building permit, which must be stated on the building permit when it is issued, or may be added by the Building Inspector after the permit is issued if the use of a trash receptacle was not shown in the plans submitted with the building permit application.
- (2) Every temporary structure shall comply with the front, side and rear yard requirements of the district in which it is located, except that such structure may be permitted anywhere on the lot with the approval of the Village Manager where in his opinion such structure where proposed to be located would not be detrimental to general community aesthetic values or enjoyment of use of adjoining properties.
- (3) Appeal from the decision of the Village Manager may be taken to the Board of Appeals.

- (4) No person shall build, place, or maintain any portable outhouse, privy vault, surface privy, dry closet, septic tank, or other moveable method of sewage disposal or cause the same to be built, located, placed, or constructed on any lot or premises within the Village limits except as follows: **[Added 3-13-2012 by Ord. No. 2012-03]**
- (a) The Village Building Inspector may grant permission in conjunction with the issuance of a building permit. Such permission shall be expressly set forth on the face of the building permit and shall terminate upon the Building Inspector's determination that the project for which the building permit was issued has been substantially completed, or the expiration, suspension, or revocation of the building permit by the Village, whichever occurs first.
 - (b) The Building Inspector or Village Manager may grant a permit to allow such temporary structure for a special event or other limited use, based upon a determination by the Building Inspector or Village Manager that restroom facilities are not otherwise available or that restroom facilities are available but are not reasonably adequate for the size of the expected assemblage. Application for a permit under this subsection shall be made on the application form provided by the Village and shall be accompanied by the fee as established by the Village Board from time to time. For purposes of this subsection, the Building Inspector and Village Manager shall consider the proximity of existing restroom facilities without regard to whether such facilities are subject to payment of a fee for their use.
- (5) Enclosures for keeping of chickens that have been approved pursuant to § 579-17.5 of this Code and beehives that have been approved pursuant to § 579-17.6 of this Code, during such time that such permit has been approved and is in effect, shall not be subject to the requirements of this Chapter 745 except as expressly stated otherwise, and except as follows. The structure in its totality, including any fencing, covered enclosure, chicken coop, hive or any other structure or structural elements, shall be completely removed from the property within 15 days of the lapse, revocation or expiration of the permit. Violation of this section shall be subject to the penalties and remedies described in §§ 745-33 and 745-34 of this chapter in the event the requirements of this Chapter 745 differ from § 579-17.5 regarding any matter regulated therein, or differ from § 579-17.6 regarding any matter regulated therein, the most restrictive provision shall apply as determined by the Village Manager. **[Added 11-10-2020 by Ord. No. 2020-06]**

E. Unenclosed storage.

- (1) No camp, boat, house or other trailer, bus, boat, recreational vehicle, camp trailer on a truck, or truck over three-quarter-ton capacity may be stored or parked regularly on a lot in a residence district except within a garage or other enclosed storage structure except as hereinafter set forth:
- (a) For the period extending from April 15 to October 31 of each year, the following type of vehicle may be parked unenclosed on the driveway of a lot in a residential district, provided it is in actual use during such period and is not merely being stored, and that when parked it is sufficiently far in from the street as to not interfere with the view of operators of vehicles on the street, or on an adjacent intersecting street:
 - [1] A camp trailer or boat on a trailer, in either case not exceeding 35 feet in length, and designed to be hauled by a passenger automobile.
 - [2] A recreational vehicle not exceeding 35 feet in length.
 - [3] A camp trailer on a pickup truck not exceeding three-quarter-ton capacity.

- (b) Open storage of any such vehicle may be permitted at any time with the approval of the Chief of Police or designee if such vehicle is effectively shielded from normal observation from the street or adjoining properties by landscaping, walls or fencing, and provided such storage is not between any portion of the building and an abutting street. No such permitted storage shall by reason of the permissive grant have any future claim to legal nonconforming use rights and such permissive grant may be rescinded at any time for due cause.²
 - (c) Parking a vehicle as permitted above or storage as permitted above does not authorize the use of any such trailer, boat or truck for the housing (sleeping and/or eating) therein of any person, and such housing is a violation of this chapter.
- (2) Materials, equipment, supplies or waste. **[Amended 9-11-2012 by Ord. No. 2012-11]**
- (a) Definition. For purposes of this subsection, "materials, equipment, supplies or waste" shall mean the following: worn out or discarded material of little or no value, including but not limited to household appliances or parts thereof; machinery and equipment or parts thereof; vehicles or parts thereof; tools; iron, chain, brass, copper, tin, lead and other base metals; trailers, farm machinery and equipment or any parts thereof to be junked or demolished, taken apart or destroyed for salvage materials; lumber or building materials; rubbish, ashes, paper, dirt, stones, bricks, tin cans, boxes, barrels or other substances whatsoever; oil, kerosene, benzene, or other similar oil or oily substance or liquid; wood, brush, and any form of discarded vegetation; yard trimmings, grass clippings, foundry sand and industrial waste of any kind or description; sewage material removed from septic tanks and dry wells used in connection with sewage disposal systems; or any similar materials which constitute health, fire or safety hazards or which contribute to a blighting influence upon the immediate or surrounding area or other unsightly debris.
 - (b) Prohibition; exceptions. No unenclosed storage of materials, equipment, supplies, or waste shall be permitted where such storage may be viewed from a public street or another property, except as follows:
 - [1] Firewood. Firewood may be stored for use on the property as follows. Firewood must be neatly stacked and may be stacked not closer than two feet to any lot line and not higher than six feet from grade, except adjacent to a fence where firewood can be stacked against the fence as high as the fence. "Fence" as used in this subsection shall not include hedges or other vegetation. Notwithstanding the foregoing, wood piles that contain diseased wood that is capable of transmitting disease to healthy trees and woodpiles that harbor or are infested or inhabited by rats or other vermin are public nuisances and may be abated pursuant to the provisions of this Code.
 - [2] Lawn and garden items. Lawn and garden items that are in regular seasonal use may be stored outdoors provided they are neatly arranged on the property. Such items may include but not be limited to outdoor furniture, planters, flowerpots, and grills.
 - (c) Public nuisance. Violation of this Subsection E(2) is hereby declared to be a public nuisance.
 - (d) Nonexclusive authority. This subsection may be enforced by the Village Building Inspector, which shall be in addition to, and not to the exclusion or prejudice of, the

matters enforced by the Village Building Inspector pursuant to Chapter 681, Property Maintenance, of this Code.

- (3) In the case of such storage related to the construction, remodeling, or repairing of a building on the property, this regulation shall apply to items placed on the property and allowed to remain thereon more than one week prior to the commencement of such operation or more than one week after its completion.

F. Home occupations.

- (1) Restrictions. A home occupation may be permitted in residential zoning districts in the Village, in single-family or multifamily dwellings, together with accessory uses incidental thereto, subject to the restrictions described in this subsection "Home occupation" is defined as an accessory use of a dwelling carried on by one or more members of the immediate family residing in the premises, which is incidental and secondary to the use of the dwelling for residential purposes and does not change the character of the residence so as to adversely affect the residential character of the neighborhood. Home occupations shall be limited to professional and nonmanual labor, or nonindustrial type uses, and shall not involve the use of machinery or equipment not generally found or maintained on residential premises. A home occupation shall be conducted with minimal disturbance, or it shall be minimally apparent from the exterior of the building that any type of business activity is taking place on the premises, and without materially increasing traffic, noise or pedestrian activity on the premises or the surrounding neighborhood. No sign relating to the home occupation shall be visible from the exterior of the building.
- (2) Home occupation permit required. A home occupation shall be deemed a special use and shall require that an application for a home occupation permit be filed with the Building Inspector. A home occupation permit for a home occupation may be granted by the Building Inspector if he/she determines that such use shall not have an adverse impact on the residential aesthetics and residential character of the surrounding area. In making his/her determination, the Building Inspector shall consider, without limitation, the effects on the surrounding area of noise, pedestrian and motor vehicle traffic which may be generated by such use. A home occupation permit for a home occupation shall be subject to review every five years, or sooner if the Village receives a complaint concerning the use of residential property for home occupation purposes. A home occupation permit may be revoked upon a determination that the home occupation has adversely impacted the residential character of the surrounding neighborhood. Violation(s) of any portion of the Fox Point Code pertaining to noise, odors, hazardous materials and emissions generated as the result of a home occupation being conducted on a residential premises may serve as the basis for the immediate revocation or nonrenewal of a home occupation home occupation permit, as it is expressly intended that the impact of a home occupation on surrounding neighbors in any of the foregoing respects be of a far more minimal nature than is prohibited by the general regulations of the Village Code as to each of the foregoing matters. **[Amended 11-11-2014 by Ord. No. 2014-08]**
- (3) Permit exception. Home occupations shall expressly be prohibited without permit, except home occupation activities conducted solely by a resident of the household via telephone or employing only computer, facsimile and copy-type services, and which have no employees, clients or visitors to the premises.
- (4) Permit fee. A permit fee shall be paid at the time of filing the application for a home occupation permit, the amount of which shall be set by the Village Board from time to time.

- (5) Appeals. The Building Inspector's determination to deny the application for or the renewal or revocation of a home occupation permit may, upon written application, be reviewed by the Plan Commission. Any denial of an application or nonrenewal or revocation of a home occupation permit to be heard by the Plan Commission shall not be heard until 14 days have elapsed from the date notice has been served, by first class mailing, to any and all surrounding residences or structures within 500 feet of the applicant's premises. The applicant shall bear the burden of identifying the property owners to whom notice shall be served and mailing the notice required hereunder. In making its determination whether to affirm or reverse the Building Inspector's determination, the Plan Commission shall take into consideration the same factors considered by the Building Inspector, including evidence or testimony of surrounding property owners. The determination of the Plan Commission shall be final. **[Amended 11-11-2014 by Ord. No. 2014-08]**

G. Solar energy systems. **[Added 3-10-2020 by Ord. No. 2020-02]**

- (1) Where permitted. Subject to the provisions of this Subsection G, solar energy systems are a permitted use in any district in the Village of Fox Point.
- (2) Approval procedure. No solar energy system shall be installed unless all applicable Building Code and Electrical Code requirements are met, including the issuance all necessary permits. Such permits cannot be issued until an application has been submitted and reviewed by the Building Board. In addition to the powers of the Building Board described in Chapter 19, Article II of this Code, the Building Board shall have the powers described in this Section 745-7G.
- (3) Conditions under which permitted.
- (a) General. Unless modified by the applicable conditions described below or by the Building Board, solar energy systems are subject to all accessory structure provisions of this Code.
- (b) Structure-mounted solar energy systems.
- [1] Structure-mounted solar energy systems may be mounted on principal and accessory structures.
- [2] Only structure-integrated and/or flush-mounted solar energy systems may be installed on street-facing structure elevations.
- [3] In residential zoning districts, solar energy systems shall not extend more than three feet above the applicable maximum structure height limit for the subject structure type or more than five feet above the highest point of the roof line, whichever is less. In nonresidential zoning districts, solar energy systems shall not extend more than eight feet above the applicable maximum structure height limit.
- (c) Ground-mounted solar energy systems.
- [1] Ground-mounted solar energy systems are only permitted as an accessory use to an existing principal use of the lot where located, and only as an accessory structure.
- [2] In residential zoning districts, ground-mounted solar energy systems shall not be located between the principal structure and an abutting street.
- (d) Building Board modifications. The Building Board is directed to modify the requirements of this Code when an applicant shows that such standards significantly increase the cost of

the system or significantly decrease its efficiency. In that event, the Building Board shall either approve the application as presented or conditionally approve the application subject to specified modifications that meet the intent of the Code as closely as reasonably possible while allowing construction of a solar energy system of comparable cost and efficiency. In every case, the Building Board shall not approve an application or a modification to this Code that jeopardizes the public health or safety. In the event of a conflict between this subsection and from the authority described in Wisconsin Statutes § 66.0401(1m), now or in the future, the Building Board is directed to apply the statutory standard to its consideration of solar energy system applications.