

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, July 26, 2023 at 5:00 p.m. Chair Nancy Filsinger called the meeting to order at 5:01 p.m. The Village Clerk-Treasurer took roll call. Those present included:

Nancy Filsinger, Chair
Mark Grady, Board Member
Thomas Dunst, Board Member
Julianna Javor, Board Member Alternate 3

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 May 24, 2023 Meeting and the Findings of Fact, Decision and Order

Motion by Member Mark Grady, Seconded by Member Thomas Dunst, and carried unanimously by roll call vote, 5-0, to approve the May 24, 2023 Meeting Minutes and the Findings of Fact, Decision and Order of the last meeting.

Case 2023-06: 6811 N Barnett Lane

The applicant is requesting a variance pertaining to Section 745-16 B. (2), concerning the B Residence District with regard to the required setback of 85 feet off of Lake Drive from the centerline of the right-of-way. The applicant is proposing to install a small shed within the Lake Drive setback, on the northwest side of the parcel.

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 Deputy Clerk-Treasurer.

Building Inspector Michael Rakow stated the applicant would like to install a shed on his property. Since there is an 85-foot setback from Lake Drive, the shed would be in the setback. Therefore, he has requested a variance.

Member Thomas Dunst inquired how far the proposed shed is from the road.

Building Inspector Michael Rakow stated he doesn't know the exact location, but it is probably 60 plus feet, from the centerline of the right-of-way. He does not know the dimension from the property line to the shed.

Member Mark Grady asked to clarify what was just said. The house itself is within the 85-foot setback now.

Building Inspector Michael Rakow stated he has not ever measured it or scaled

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

it, but he believes it is.

Member Julianna Javor inquired whether any trees would need to be cut down.

Member Mark Grady inquired whether there is a location on the property where the shed could be installed and still comply with the 85-foot setback.

Building Inspector Michael Rakow technically he would say yes. He is not sure where the driveway is. Without seeing the applicant's driveway with a colored photo, it is difficult to determine. It may be able to be installed down by the "U". But again, it is difficult to determine for certain.

Member Mark Grady inquired if it is also an 85-foot setback on Barnett Lane as well.

Building Inspector Michael Rakow stated it is not; it is a 65-foot setback.

Member Julianna Javor inquired if the trees would be cut down.

Building Inspector Michael Rakow stated he did not know about any of the trees or vegetation.

Applicant/Appellant Adam Karnes

Applicant Adam Karnes of 6811 N Barnett Lane stated his name and was sworn in to provide testimony by the Village Clerk-Treasurer.

Chair Nancy Filsinger asked applicant Adam Karnes to give background regarding Case 2023-06.

Applicant Adam Karnes described his proposed installation of a shed on the northwest corner of his property.

Applicant Adam Karnes stated in regard to the question of the vegetation, he stated they are arborvitae trees.

Applicant Adam Karnes stated you would not be able to see the shed from the road. There is probably a small section of the property that is in accordance to the Barnett Lane setbacks where the shed could be placed. If not for the fact that there are a couple of trees there and the ground slopes pretty intensely in that area.

Applicant Adam Karnes stated in respect to where it is in relation to the setbacks from his best estimate, it would start from the road about 65 feet and end somewhere in the 72 to 73-foot range from the right-of-way. It is well within the property line, but obviously not compliant with the setback on Lake Drive. His intention is to install an 8 foot by 10 foot shed. The longer side of the shed would not be further into the setback. With the approximate location there, he was attempting to tuck it as close to the house as possible, without having to disturb any trees. That area is one of the only flat areas in

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

his yard; therefore, he felt that was a good location for the shed placement. He would not be disturbing anything or doing any digging. He would be placing a Menards shed, making it look a little nicer, in that area. This is not a major structure.

Applicant Adam Karnes commented in regard to consideration of placing the shed anywhere else, this area would be out of sight from the road and any of the 3-4 neighbors' properties directly around him. That was one of his considerations when looking at where to install the shed.

Applicant Adam Karnes stated the front of his house on Barnett Lane so if he would put it in the U-Shaped area, it may be within the setback. Due to his respect for his neighbors, it would be an eyesore if it were not hidden behind the trees.

Applicant Adam Karnes elaborated on the reason for the variance proposal is the garage is very tight for the snowblower, wheelbarrow, tools, and lawnmower. There is no space for both he and his wife to park in the garage if they store anything. Currently they park only one vehicle in the garage and that is even problematic. He took some measurements. To the west of his car when it is parked, there is about 14 inches of clearance. If both cars are parked in the garage, there is 22 inches of clearance. If he is able to install a shed, he can put the extra yard equipment and tools in there. It would not be intrusive or an obstruction.

Member Thomas Dunst inquired where the entrance would be.

Applicant Adam Karnes stated it would be facing south.

Member Thomas Dunst inquired if he could move it closer to that side.

Applicant Adam Karnes said he probably could; this was just a rough estimate of where the shed would be located. He will work to tuck it in as close as he can, without obstructing trees and avoiding the HVAC unit. It cannot be placed right up against that side but there are trees and vegetation. It looks further back on the drawing than where it actually would be located. It would be at least 7-8 feet inside the property line. It would be as close to the house as it can be. It would be 10-11 feet away from the house.

Member Mark Grady inquired for clarification from the applicant, if it was placed next to the garage, it would still be within the setback.

Applicant Adam Karnes stated that is correct. After research, his understanding is the garage is precisely on the 85-foot setback.

Building Inspector Michael Rakow added another comment as well. The north property line the setback is 10 feet from there. His house is currently in the setback there, too. Again, he is not sure how far south the applicant would want to place the shed, it might be encroaching in that setback as well. If you are placing it as far north as you can, that would be best.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

Applicant Adam Karnes stated it would be outside of that 10-foot setback for certain. He stated that shouldn't be an issue.

Chair Nancy Filsinger stated it looks like the front corner on the north side is 12.9 feet.

Building Inspector Michael Rakow stated that is correct. That would be the northeast corner of the shed. The northwest corner is 2.85 feet. You can use that as a reference.

Applicant Adam Karnes stated he doesn't know the exact measurements, but he can be sure that side going north would definitely be outside the potential setback. They will start it as far as 20 feet and tuck it in as well as they can.

Village Attorney Eric Larson stated it needs to be very clear on what is being proposed tonight. The Board will either approve or not approve what is proposed. It seems to be a little bit unclear on what is proposed. The applicant said as close as he can, but we need to know exactly where that is proposed to be.

Village Attorney Eric Larson inquired of Building Inspector Michael Rakow, many of his clients have a separation distance between principal structures and accessory structures. Ten feet is common. Does Fox Point have a separation requirement between the buildings?

Building Inspector Michael Rakow stated if the building are ten feet, it is fine. He believes the closest structures can be is five feet, but then you have to create a fire separation with drywall or on the wall of your garage or shed. Ten feet or more, you do not have to concern yourself with a fire separation.

Applicant Adam Karnes stated that is a good question; it will be ten feet from the house. He is willing to cut trees down but he was really hoping he wouldn't have to do that.

Village Attorney Eric Larson stated to the applicant, what you are proposing is an 8-foot by 9-foot dimensions for the shed.

Applicant Adam Karnes stated he was proposing 8-foot by 10-foot.

Village Attorney Eric Larson stated that the proposal says 9-foot.

Applicant Adam Karnes stated he didn't buy the shed yet.

Village Attorney Eric Larson stated the Board needs to know what you are proposing.

Applicant Adam Karnes stated 8-foot by 9-foot.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

Village Attorney Eric Larson stated you are saying you will be as close to the house as possible so he assumes he means 10 feet from the house. Where will it be located north to south? If we look at the map, we have identified where it will be east to west. The Board does not know where it will be north to south.

Applicant Adam Karnes stated he proposes to install it 11 feet to the south of the setbacks.

Member Julianna Javor asked if the trees were scattered in that area.

Applicant Adam Karnes stated they are in a row in front of where the shed would be towards the house and then there is a row behind it, behind where the fence was built.

Chair Nancy Filsinger inquired if they talked to the neighbors.

Applicant Adam Karnes stated he had. Everyone seem to be fine with it and a couple of people complimented him on preserving the trees. His immediate neighbors said it was not a problem at all and probably would appreciate the shed not being in view.

Member Mark Grady stated to the applicant, you talked theoretically about the possibility of placing the shed in compliance with all the setbacks somewhere in the southeastern portion of your property. You mentioned it was sloped there. If you were able to place the shed there, would you be able to put it there if you were to level off a 9-foot section of ground ignoring what it would look like from the neighbors' perspective?

Applicant Adam Karnes stated he could but the only other problem he may run into is an underground irrigation system. With the amount of pitch in his yard if he was to level, it out from where he would envision it might go, there is a 9-inch to 10-inch pitch sloping west to east. The yard is definitely very uneven. If that were the case, he would probably have to abandon the installation of the shed because it would be a bigger project to undertake. His father-in-law is a landscape architect and he had asked him a question about the sprinkler head prior and he stated the lines would be 10-12 inches underground. He would not want to risk hitting the irrigation system lines and having a problem. Therefore, he would have to scrap the idea if he had to go that route.

Member Julianna Javor inquired about the fence.

Applicant Adam Karnes commented the fence goes around pretty much the entire western portion of the property. It follows the contour of the horseshoe starting at the most northwestern point and continuing to the southeast portion of the property. It is a split-rail fence.

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023

Closing of Testimony: Case 2023-06

Without objection and by unanimous consent, Chair Nancy Filsinger closed testimony for Case 2023-06 at 5:23 p.m.

Village Attorney Eric Larson reminded the Board of the variance standards.

The WI State Statute [62.23(e) 7. (b) (d)], empowers the Board to authorize upon appeal for specific cases to grant such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

Member Mark Grady commented he thinks the variance should be denied for the reason that will follow. It is partially due to a misunderstanding on the part of an average citizen of what a variance is and what the Board is required to find in order to grant a variance.

1. The first test is the public interest. The first reason for the 85-foot setback is for example here next to Lake Drive is that someday down the road, Fox Point and or the County of Milwaukee, as a county highway, may want to widen the road and they may want to use that land. Another reason for a setback is for sightlines if there are trees there. The sightlines in this particular case is not really an issue. The ordinance has this policy of setbacks to create openness in the village so it doesn't look like a densely packed village. The more variances that are granted to put sheds, bigger garages, or etcetera, defeats that purpose village-wide. The Board really has to look upon variance requests very closely. Any variance request defeats the public interest. It is in the zoning code for this openness and setbacks for safety, among other reasons in the village.
2. The second test is hardship. When you look at a variance, it is to be looked at based on the uniqueness of the property – the physical land of the property. It should have nothing to do in the Boards consideration of the applicant's individual needs. Because the variance lasts forever. Therefore, the variance is not just for this property owner, it is for every property owner down the line whose needs may be different. They may not have the need for a shed. The needs for a property owner for their personal use really are not relevant to the Board in a variance request. This may seem contrary to what you think, but it is the law. The Board really needs to look at the physical property that prevents them from using it because of a steep ravine slope or an accumulation of water ponding in

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

an area of the land or something that tells the Board they cannot use the property unless the Board grants a variance. In Member Mark Grady's mind, there is not any of that here in this case. I recall this property from the split-rail fence that we approved previously. He has seen it driving by it. Even with the slope discussion, there is not a severe enough slope like there are on some properties. There is not something unique about this property. The primary reason that has been given to the Board, with the primary burden of proof on the property owner, is basically that there is not enough space in the garage. While he understands the property owner's concerns, it is not enough for a variance.

Therefore, it does not meet the hardship test and it does not meet the public interest test.

If the applicant doesn't want to build it in the southeast corner because it will cost too much money or it will create problems with the sprinkler system or it will look bad to the neighbors or themselves, he understands all of those reasons. It just may mean that you are not entitled to install a shed on this piece of property because you don't have a good place to put it.

Motion: Case 2023-06

Motion by Member Mark Grady, for the reasons mentioned above, to deny the variance to install a small shed within the Lake Drive setback, on the northwest side of the parcel. Seconded by Chair Nancy Filsinger.

A brief discussion took place by the Board.

Member Thomas Dunst noted he was thinking about the difficulty of setting the shed and having to dig out the land. It seems to be kind of an unnecessary burden to be placed on the property owner. It is a unique physical property. It is not really a ravine, but we would be asking him to level off a part of his property a change the nature of the property. The purpose of the shed is to store items he cannot fit in the garage. He is not sure that it is being caused by the individual property owner. That's a choice that a lot of people make; it is not unusual.

Member Mark Grady responded his agreement to that people do have sheds. The issue is where do you put the shed without a variance. It almost always ends up needing to go somewhere that is unsightly on many people's properties. The problem he has is that yes, it is a uniquely shaped property, the house and garage are already in the setbacks. That may pre-date the ordinance or it may have been through a variance. He has a hard time distinguishing this from a rectangular lot. If you grant this variance, the Board would be granting every variance. Then we would not be satisfying the legal test.

Chair Nancy Filsinger stated she agrees. It would be there and would be hidden by trees, but it could physically become an issue further on. She also thinks that many

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

people in Fox Point have the same kind of garage and it is what it is.

Member Julia Javor stated she also has a really small, tight garage and struggles to use it.

Member Mark Grady stated, fundamentally, the lots are the lots. If you buy in the village, you buy into that lot. If it doesn't fit your needs and you cannot fit your things in your home, your garage, or you want a pool, you may have to move. Member Mark Grady clarified he is not asking people to move out of Fox Point, but that is just the way it works. You take the lot as it is.

Village Attorney Eric Larson stated the ordinance could be different. If you have all said you are facing a similar situation, that is actually relevant to our standards. It is something that applies and has to be unique to this situation. If it is not unique, then that is a concern under the standards that you are asked to enforce.

Member Julianna Javor stated we all have small garages and could use a shed.

Member Mark Grady stated an analogy that they have had in the past, is generators. People want generators in the most hidden spot that they can. The Board has granted a couple, but generally, it is hard to prove the need for a variance. It is not hard to prove the need for a generator. The Village Board could amend the ordinance to say they will allow generators within setbacks under certain conditions. The Village Board so far has not amended the ordinance. The same here with this case, if this is not a unique condition and the Board feels a lot of people need sheds, then the Board really needs to amend the ordinance without us granting a bunch of variances.

Chair Nancy Filsinger called the question.

Roll call vote:

Nancy Filsinger, Chair	Aye
Mark Grady, Board Member	Aye
Thomas Dunst, Board Member	Aye
Julianna Javor, Board Member Alternate 3	Aye

Motion carried unanimously by roll call vote, 4-0.

Case 2023-07: 7425 N Longacre Rd.

The applicant is requesting a variance pertaining to Section 745-17 B (3), concerning the C Residence District with regard to the required setback of 10 feet which should be provided for every building. The applicant is proposing to install a detached garage on the property line of two parcels owned by the applicant.

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 Deputy Clerk-Treasurer.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

Building Inspector Michael Rakow this applicant currently has a garage, which is currently on the property line. There are two parcels within his property. The zoning code requires a 10-foot setback from the property line. He is proposing to move a new garage closer to the north property line, but it needs to meet the 10-foot setback requirement. It is right on the property line. He cannot approve it; therefore, he is asking for a variance.

Member Julianna Javor inquired if there is a change from what the current garage is. Is it moving?

Building Inspector Michael Rakow stated he is moving it a little bit farther north and the size is a little bit bigger by 100 square feet. Again, it is right on the property line.

Member Mark Grady commented your understanding of the proposed location would comply with the 10-foot setbacks to the north, even with the new location. It is only the setback to the west that the Board is concerned with, correct?

Building Inspector Michael Rakow stated no that is not correct. The property line bi-sects the garage. There are two parcels. From that parcel line, it would have to be a ten-foot setback east or west.

Member Mark Grady stated he understands that. But you are talking about him moving it further north, correct?

Building Inspector Michael Rakow stated yes.

Member Mark Grady commented that new location to the north is still in compliance with the ten-foot setback to the north property line, correct?

Building Inspector Michael Rakow stated yes, that is correct.

Member Mark Grady inquired if it is his assumption that the garage was built prior to the ten-foot setback requirement went into effect. Do you know why it was allowed to be where it is today?

Building Inspector Michael Rakow, he believes that years ago, this is considered one big parcel. If you look on GIS software, it shows you the outline of the whole parcel, not the property line that bi-sects the two parcels. Back in the day when things were being built, a property owner could build that way. But now, and Village Attorney Eric Larson could probably expand on this, it currently cannot be done.

Village Attorney Eric Larson stated he would be happy to speak about this but this may not be the appropriate time.

Member Mark Grady inquired if he had any discussion with the applicant about rebuilding the garage in the exact same location and exact dimensions?

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

Building Inspector Michael Rakow stated he believes that they did. He noted he also discussed that the combination of the two parcels would solve the issue.

Member Mark Grady stated subsequently those options were discussed. He noted the Board will talk to the applicant in a minute.

Member Julianne Javor inquired if it would be a bigger garage.

Building Inspector Michael Rakow stated it would be about 100 square feet bigger according to the survey rendering.

Member Thomas Dunst inquired if he has any reason why that small lot was created in the first place.

Building Inspector Michael Rakow, it was before his time and he does not know. This happens a lot. There are a lot of parcels in Fox Point that are similar. Some people will combine the lots.

Applicant/Appellant Craig Harper

Applicant Craig Harper of 7425 N Longacre Road stated his name and was sworn in to provide testimony by the Village Clerk-Treasurer.

Chair Nancy Filsinger asked applicant Craig Harper to give a brief synopsis regarding Case 2023-07.

Applicant Craig Harper noted the current garage is really in deficient condition. The garage is only 20 feet from the house. Because of that, previous owners have run into the house. A minimum of 27 feet is recommended between the house and a detached garage. When the contractors came out, they suggested pushing the garage back so the property owners would not have trouble coming and going. It would be a lot safer. There is plenty of room in the back of the property. He asked to move it back 10 feet, but really moving it back 7 feet would be fine. Since they are building a new garage, he figured it would be a good time to move the garage back. If you look at this property, it seems like the setbacks from the property line would not apply since the parcels are owned by one person. If you look at the house itself, it was actually built 6-7 feet off the property line. Setbacks are still the same. Moving the garage and replacing it would be a great thing to do. The garage is really the same as the old one except the addition that comes out of the garage in the photos would not be on the new garage. The new garage would be 22' x 28'.

Member Mark Grady asked to clarify the two parcels. Your address is given as 7425 North Longacre Road. You have two parcels that comprise the same address or do you also own 7423?

Applicant Craig Harper stated it is two parcels with the same address, according to the records when he bought the house two years ago.

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

Member Mark Grady stated he is looking at the diagram that was submitted with the yellow highlighting on it.

Building Inspector Michael Rakow stated it is one address with two parcels.

Applicant Craig Harper stated the old garage is sitting on the property line and the new garage would be sitting on the property line.

Member Mark Grady inquired Lot 8, as shown on the diagram, is that 7423 or is that still part of your property?

Applicant Craig Harper stated that is his neighbor.

Member Mark Grady inquired if the lot they own is just a sliver of land that is 10 feet wide at the widest maybe?

Applicant Craig Harper stated yes, but in the front the second lot is about 25 feet.

Member Mark Grady noted that piece of land is not saleable by itself anyway.

Applicant Craig Harper stated he wouldn't think so.

Member Mark Grady stated you couldn't build anything on it and you couldn't put anything on it.

Village Attorney Eric Larson noted there is a legal question here. At some point I will need to tell you. I don't know if you want it now or later. Prior to 2017 Wisconsin Act 67, the Village of Fox Point along with municipalities throughout the State of Wisconsin took a position that if you own two substandard lots together, under many circumstances a title to those lots' merges. It really becomes one lot. Municipal Law and Litigation litigated this all the way to the U.S. Supreme Court and won. That's what happens, the title merges. It is a merger of title. You bought them together, intending to use them together. We treat them as though they are bound together. You cannot sell them separately; you cannot build on them separately. That is not a taking. That is common sense and the title is merged. The reaction from the Wisconsin State Legislature was "no" we don't like that result. They enacted WI State Stats, Section 66.10015 (4), Merging, "No political subdivisions may enact or enforce an ordinance or take any other action that requires one or more lots to be merged with another lot for any purpose without consent of the owners of the lots that are to be merged." We cannot rely on merger of title. He can sell or build on that lot. As a result, we have to treat those as different lots. That is the problem. He is proposing to build on that lot line. If he was proposing to replace what is already there, based on another set of rules, this is legal nonconforming. He can replace it exactly the same as it is today, as a new structure. It would be the same size, same height, same footprint, same everything. We wouldn't be regulating that building. We do allow continuance replacement of a nonconforming structure. But that is not what he is proposing. He is proposing slightly

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

different, a little bit bigger and moving it a little bit. It is on a lot line; it is a lot line. It should be treated as a lot line. Without a variance or combining the lots, he cannot do that. It is not hard to combine lots. A document is filed with the register of deeds and the Village Board has to approve it. It is rather simple to do. We have done that in the past with some places where the lot owner had the ability to solve the issue by combining the lots and they did combine the lots.

Applicant Craig Harper stated the reason chose to request a variance is because he manages a non-profit and works very hard. The cost would be \$3,000, plus it would take eight weeks. He owns both sides of this and owns the lot line. Why would he have to go through all of that. The garage likely couldn't be done this year. Moving the garage back seven feet still stays way clear of the property lines.

Member Julianna Javor inquired about building the same size building.

Applicant Craig Harper stated it is basically the same width and depth, but to invest \$50,000 and keep it that close to the house would be a nuisance because it is so hard to get in and out of the garage.

Closing of Testimony, Case 2023-07

Without objection and by unanimous consent, Chair Nancy Filsinger closed testimony for Case 2023-07 at 5:55 p.m.

Member Julianna Javor stated the options are to keep the garage the same size, combine the two lots or approve the variance.

Member Mark Grady noted the owner has either rebuild the garage on the same footprint, because our ordinance allows a legally non-conforming structure to be rehabilitated or rebuilt on the same footprint without the Board's permission. The building inspector can approve that. Although he understands why the homeowner may not want to spend the money to build the same garage, same size, same proximity to the house. That is something he can do without coming to the Board for a variance. The second option is the discussion about combining the lots. We have had this discussion before with Village Attorney Eric Larson on prior cases. I don't understand why the state legislature did what it did, it doesn't make any sense to him, but there are probably some good reasons that he is unaware of. Because of what the state legislature did, the Board has to treat this property line that the garage is currently sitting on, the same as if it was the neighbor's property line. The Board has to enforce the ten-foot setback, unless grounds for a variance can be found. For the same reasons he gave in the last case, he doesn't think the Board can allow people to build garages on lot lines, on neighbor's lot lines unless there is something really unique about their property, which there isn't here in this case. The hardship is financial, which we are also told by the Wisconsin Supreme Court is not a consideration for the Board. It is certainly a consideration for the homeowner. The Board doesn't get to say, we don't want you to have to spend that kind of money. It has to be something very unique about the property. To him, as he understands, there is a cost involved. The obvious solution, as it

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, JULY 26, 2023**

has been for some other property owners who are in this situation, is to combine the lots. While legally that little sliver lot can be sold, practically speaking, it probably has no market value. He is unsure who would buy it other than a neighbor. In his opinion, the only solution for the owner in this case is to combine the two lots. Then he can build the garage right where he wants to build it without a problem. For those reasons, he doesn't feel a variance can be granted.

Member Thomas Dunst stated he agreed 100 percent.

Member Julianna Javor stated she understands.

Motion: Case 2023-07

Motion by Member Mark Grady, to deny the variance, for the reasons given earlier, to install a detached garage on the property line of two parcels owned by the applicant within the ten-foot setbacks.

Member Mark Grady stated he understands why this is kind of baffling and kind of a mystery, but variances are a highly legalized concept in the zoning law and the Board is bound by the legal standards that the Wisconsin Supreme Court and the Wisconsin State Legislature has given us. We are only to grant variances under a very unique set of circumstances that are very unique to the individual property.

Member Julianna Javor seconded the motion.

Roll call vote:

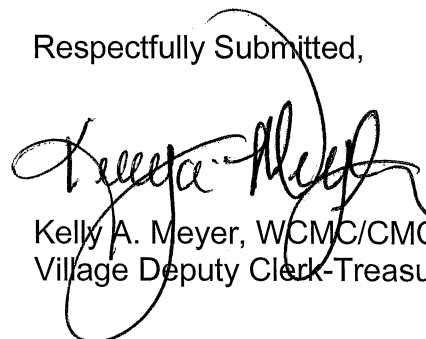
Nancy Filsinger, Chair	Aye
Mark Grady, Board Member	Aye
Thomas Dunst, Board Member	Aye
Julianna Javor, Board Member Alternate 3	Aye

Motion carried by roll call vote, 4-0. The variance is denied.

Adjourn

***Motion by Member Mark Grady, seconded by Chair Nancy Filsinger, and by roll call vote, the Board of Appeals adjourned the meeting at 6:00 p.m.
Motion carried unanimously.***

Respectfully Submitted,


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