

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, NOVEMBER 27, 2023**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, November 27, 2023 at 5:00 p.m. Deputy Clerk-Treasurer Nathan Schafer called the meeting to order at 5:00 p.m. The Deputy Clerk-Treasurer took roll call. Those present included:

Mark Grady, Board Member
Scott Ratke, Board Member
Lucille Sells, Board Member Alternate 1
Julianna Javor, Board Member Alternate 2
Alan Polan, Board Member Alternate 3

Staff members also present were Attorney Luke Martell, Building Inspector Michael Rakow, and Deputy Clerk-Treasurer Nathan Schafer.

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.

Selection of Acting Chair

Deputy Clerk Treasurer Nathan Schafer asked for nominations for Office of Chairperson.

Scott Radtke nominated Mark Grady as Acting Chairperson. Lucille Sells seconded the nomination. Hearing no other nominations, nominations were closed.

Without objection and by unanimous consent Mark Grady was nominated to Acting Chair and carried by roll call vote (5-0).

Approval of Minutes of July 26, 2023 Meeting and the Findings of Fact, Decision and Order

Roll call vote:

Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye
Lucille Sells (Alt. 1)	Aye
Julianna Javor (Alt. 2)	Aye
Alan Polan (Alt. 3)	Aye

Motion carried by roll call vote, 5-0.

CASE 2023-08: 8330 N REGENT ROAD.

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 and Section 756-34 B., concerning the air conditioning unit setback requirements. The applicant is proposing to install an air conditioner on the north side of the

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home within the side yard setback.

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.

Applicant/Appellant Paul Horvatin

Applicant/Appellant Paul Horvatin stated his name and was sworn in to provide testimony by the Village Deputy Clerk-Treasurer.

Acting Chair Mark Grady asked Building Inspector Mike Rakow for a brief background of the case. The applicant is requesting to move the air conditioner into the setback; whereas, the older air conditioner was in the setback as well.

Acting Chair Mark Grady asked if the previous unit was there due to a variance. The building inspector commented he had no knowledge regarding the previous unit.

Acting Chair Mark Grady asked the building inspector had anything else to add. The building inspector replied that he had nothing else to add other than it is not allowed.

Acting Chair Mark Grady asked Paul Horvatin to give a brief summary of why he is here. Applicant Paul Horvatin replied that they are in the process of remodeling their basement. During that process they had to remove and replace both the furnace and air conditioner due to age. They would like to move the air conditioner 13 feet west, on the side of their house. The current air conditioner is a tripping hazard, is loud, and is in the way.

Acting Chair Mark Grady inquired how far the current location is from the lot line. Applicant Paul Horvatin replied, basically the same or seven feet. Acting Chair Mark Grady inquired if he had explored other locations from the current location. Applicant Paul Horvatin noted they had. It could be placed right by the driveway, but not in any spots where it would stick out.

Acting Chair Mark Grady asked how the current unit arrived in its location. Paul Horvatin stated that he has only lived there five years and the current unit was installed around 1994. Applicant Paul Horvatin stated that the patio has French doors so it could not be placed there. The driveway juts in; therefore, we could put it right by the driveway but it would be almost on the driveway. There is not a deep enough spot so it would be right next to the French doors about a foot and a half away.

Acting Chair Mark Grady asked if it could it be placed next to the patio. Applicant Paul Horvatin stated that the gate would be tightened to 18 inches or so.

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Acting Chair Mark Grady asked if the air conditioner is the same dimensions as the old one? Applicant Paul Horvatin stated that it is the same dimensions. He further stated that the photo of unit is included. The air conditioner unit is just sitting there now.

Board Member Lucille Sells asked if there is a further portion of wood fence on the North side of the property. Applicant Paul Horvatin stated, no there are just bushes there. Board Member Lucille Sells further inquired if we know the opinion of the neighbor. Applicant Paul Horvatin stated that he has the signature from neighbors, Matt and Sarah at the bottom. Applicant Paul Horvatin stated that they have five kids and he has two kids. Where it used to be, it was always in the way with kids tripping on the unit.

Board Member Lucille Sells asked if the gate could still be used. Applicant Paul Horvatin stated yes.

Acting Chair Mark Grady asked Attorney Luke Martell to state the standards that apply. Attorney Luke Martell stated that for variances, state statutes state that variances are for an unnecessary hardship due to conditions unique to the property, not the property owner and it will cause no harm to the public interest. Also note that the unnecessary hardship cannot be self-created. Acting chair Mark Grady stated that due to state statute and Supreme Court precedent, variances are rarely to be granted and they are very unusual. The reason we have setback requirements is to make things uniform in the village.

Acting Chair Mark Grady asked the applicant what makes your physical property unique from other homeowners. Applicant Paul Horvatin stated that due to the angle of the home, it makes it hard to put anything in that area. The patio, the French doors and on the second floor were all areas that were discussed, but the vibrations would make it difficult. It's really about finding the best spot.

Board Member Alan Polan asked the applicant if there are other options in your backyard to locate the unit. Applicant Paul Horvatin stated that we could possibly fit it to the left of the French doors. It would jut into the backyard and inhibit the door.

Board Member Alan Polan asked the applicant if it were set up next to the doors would it protrude outside. Applicant Paul Horvatin stated that it would occupy a portion of the driveway. If it next to the driveway, it wouldn't hang over but it would be two feet from the driveway.

Board member Lucille Sells asked where the mechanical space is located in your basement. Applicant Paul Horvatin stated that it is in a crawl space under the French doors, where the air conditioner currently is or eight feet inside. The furnace is basically where the air conditioner is shown in the picture, approximately eight feet back.

Board Member Scott Radtke asked if it could be hooked up where the grill is located or could the HVAC people run the utilities over there. Applicant Paul Horvatin stated that it would block the patio; the downspout would have to be moved.

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Board Member Alan Polan asked Village Attorney Luke Martell about the spirit of the code, inquiring why there is a ten-foot setback. Attorney Luke Martell stated, that is a great question. Generally, setbacks are to provide a specific amount of space between the properties and uniformity, but I don't know why that specific setback was selected.

Acting Chair Mark Grady stated that the code is in the packet and it states that any air conditioner, refrigerator system, or backup generator outside of the structure has to be within the setback limits. So thought was put into it by the drafters. Which is why the applicant is here for a variance.

Board Member Alan Polan asked if they were talking about the addition to a house or if there was a difference with an air conditioner? Acting Chair Mark Grady replied that the code says that air conditioners have to be treated like an accessory structure.

Board Member Juliana Javor asked how the hardship is articulated. Appellant Paul Horvatin stated it's the air conditioner unit has floated out there and has always been a tripping hazard. We couldn't find a suitable spot in the backyard, beside the chimney and where no one would walk.

Acting Chair Mark Grady asked Village Attorney Luke Martell if it could be placed in the same spot. Attorney Martell stated that it can be placed in the same space if it is the same size; he wants to move it so he's here for a variance.

Closing of Testimony: Case 2023-08

Without objection and by unanimous consent, Acting Chair Mark Grady closed testimony for Case 2023-08 at 5:20 p.m.

Board Member Lucille Sells commented the hardship is the children tripping over the air conditioner. It blocks the gate. The downspout location doesn't make it a suitable location and the driveway location potentially may be hit by a car. Board Member Lucille Sells commended she looks at it as overcoming physical hardships of the property.

Board Member Scott Radtke noted he doesn't think you're going to create a bigger problem by moving it.

Board Member Alan Polan stated that he thought the ordinance should be changed.

Acting Chair Mark Grady stated, I agree but that is for another day.

Board Member Alan Polan stated, when I was younger, everyone had a window air conditioner but now central air conditioners are the norm; he feels a review of the code would be a good idea.

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Motion by Board Member Lucille Sells to approve the variance requested to install an air conditioning unit on the north side of the home within the side yard setback, seconded by Board Member Juliana Javor.

Acting Chair Mark Grady called the question.

Roll call vote:

Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye
Lucille Sells (Alt. 1)	Aye
Julianna Javor (Alt. 2)	Aye
Alan Polan (Alt. 3)	Aye

Motion carried by roll call vote, 5-0.

CASE 2023-09: 6801 N YATES ROAD.

The applicant is requesting a special exception to install gates at the North and Southeast entrances to the campus. 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.

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.

Matt Miller – Augustine Prep – Chief Operating Officer

Matt Miller stated his name and was sworn in to provide testimony by the Village Deputy Clerk-Treasurer.

Building Inspector Michael Rakow stated there are two driveway gates in the front yard of the complex. According to code, they need to go to Building Board.

Board Member Alan Polan inquired if they were new gates? Building Inspector Michael Rakow stated that they are new gates.

Acting Chair Mark Grady asked the Building Inspector Michael Rakow if he had anything else to add. Building Inspector Michael Rakow stated that per code they are not allowed to put the gates in there without village permission.

Acting Chair Mark Grady asked Applicant Chief Operating Officer Matt Miller if the gates are temporary or permanent. Applicant Mark Miller stated that they will need gates to keep cars from flying through that area. It's private property and we can't risk anyone getting hit; they are looking for something permanent.

Acting Chair Mark Grady stated that we don't have any role for temporary gates.

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One of the provisions in the code that you must prove the gate is reasonably necessary to protect people on the property.

Applicant Chief Operating Officer Matt Miller stated that he has observed cars passing through and they have cameras. They also have up to 100 cars a day passing through and their founder was almost hit. We need to find a way to keep the workers safe. People cannot drive through like it is a regular road.

Acting Chair Mark Grady asked why gates are necessary and why there is a difference from Cardinal Stritch. Applicant Mark Miller replied that there is a difference between college students vs. four-to-five-year-olds. We need to have some security.

Acting Chair Mark Grady asked if anyone will reside on the property. Applicant Matt Miller stated that the dorms are being demoed.

Acting Chair Mark Grady stated we have lots of public and private schools. None of them have gates. He then inquired why the property needs gates and public and private schools do not. Applicant Mark Miller replied that they are on the east and don't have access on both sides.

Board Member Scott Radtke inquired if there anyway the applicant could do this without gates. Applicant Mark Miller commented not without spending a fortune on security.

Board Member Lucille Sells inquired of the applicant if there are gate proposals on the Glendale or Port Washington Road side. Applicant Mark Miller stated that a variance is not needed because it set back further from the road.

Acting Chair Mark Grady asked if anything else was considered, such as speed bumps or traffic narrowing devices. Applicant Mark Miller stated that it is difficult because then it is being acknowledged as a public thoroughfare; we are not okay with that.

Board Member Alan Polan inquired about the size of the school. Applicant Mark Miller replied it will be K-1; they will start with 330 students in year one and get to 1,500 students.

Board Member Juliana Javor asked where people drop off the children. Applicant Matt Miller replied that we will go through that with the Village but we'll have multiple access points for drop off and dismissal. That process with our architects hasn't been fully defined yet.

Board Member Alan Polan inquired of the applicant if the thoroughfare could be changed where there isn't a road for someone to drive through. Matt Miller replied that neither Fox Point nor Glendale want removal of the road because it removes a place for us to get people out.

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Board Member Alan Polan asked Building Inspector Michael Rakow if Cardinal Stritch had this concern. Building Inspector Michael Rakow commented he was not aware of any; not to say there weren't complaints to the Village Manager or DPW, but there were none that he was aware of.

Board Member Scott Radtke asked, if the kids will be in that area and if this is a safety issue. Applicant Matt Miller replied that this is private property and not a public road which is what it is being used for.

Board Member Scott Radtke asked if the construction on Port Washington Road could be the reason. Applicant Matt Miller stated that most of the traffic is coming from Yates Road.

Board Member Juliana Javor asked if there would be backups on Yates during drop-off times. Applicant Matt Miller stated that the gates would open during the opening and closing of school; security would get everyone out safely.

Board Member Lucille Sells asked about the scope of remodeling. Applicant Matt Miller stated that it is not fully flushed out. Board Member Lucille Sells asked if these would be the permanent gates. Applicant Matt Miller stated, yes, ideally. Yes, the drive might change but the access points would not change.

Board Member Alan Polan asked about the spirit of the statute. Does it create a nuisance or effect property values. Building Inspector Michael Rakow replied, no.

Board Member Scott Radtke asked if these gates are closed would the entire property be closed off. Applicant Matt Miller stated if there was an emergency, the gates pop open.

Board Member Alan Polan asked if he approached the gates could he get entry. Applicant Matt Miller replied if he was going fast enough and blasted his through. Applicant Matt Miller stated that emergency departments will have a key; we have their approval.

Board Member Scott Radtke asked if there is a concern or reason to protect kids during the day. Applicant Matt Miller stated that we need to do everything to protect our kids and having it wide open doesn't do that.

Board Member Juliana Javor inquired for the drop off and pick-ups, how do you ensure who is entering. Applicant Matt Miller replied, on the southside we have eight security guards and have never had a problem.

Acting Chair Mark Grady had a question for Village Attorney Luke Martell. No one is going to be living there; can students be considered in the same manner as people that reside on a property. Village Attorney Luke Martell said that this interpretation applies to all properties and not just residential. It does satisfy that

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section of the code.

Closing of Testimony: Case 2023-09

Without objection and by unanimous consent, Acting Chair Mark Grady closed testimony for Case 2023-09 at 5:46 p.m.

Acting Chair Mark Grady stated that he came here with the idea of denying the gates but has been convinced by the testimony of Applicant Matt Miller. The situation has changed and the difference is the age of the children. None of the other schools have that sort of configuration to my knowledge. If Cardinal Stritch had asked for a gate, maybe the village would have approved it, but they didn't ask. The gate is reasonably necessary to protect the students and staff. They have a legitimate need. And it won't adversely affect the people of the community and it won't impede the spirit of the ordinance.

Board Member Scott Radtke stated that they have shown a clear safety need.

Motion: Case 2023-09

Motion by Member Grady, to grant. Seconded by Sells.

Roll call vote:

Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye
Lucille Sells (Alt. 1)	Aye
Julianna Javor (Alt. 2)	Aye
Alan Polan (Alt. 3)	Aye

Motion carried by roll call vote, 5-0.

CASE 2023-10: 7938 N BEACH DRIVE. The applicant is requesting a special exception to install aluminum or steel powder coated swinging driveway gates at the entry piers. The special exception request is made pursuant to 745-7 B.(3)(h)[2] and 745-7 B.(3)(j) of the Village of Fox Point Code.

And

CASE 2023-11: 7944 N BEACH DR. The applicant is requesting a special exception to install aluminum or steel powder coated swinging driveway gates at the entry piers. The special exception request is made pursuant to 745-7 B.(3)(h)[2] and 745-7 B.(3)(j) of the Village of Fox Point Code.

Without objection and by unanimous consent, Acting Chair Mark Grady stated both Case 2023-10 and 2023-11 would be taken up together.

Village of Fox Point Building Inspector Michael Rakow

Building Inspector Michael Rakow stated his name and was sworn in to provide

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testimony by the Village Deputy Clerk-Treasurer.

Nick Blavat of Deep River Partners on behalf of Applicant/Appellant Laurie and Byron Vielehr

Nick Blavat of Deep River Partners, 240 N Milwaukee St, Suite 400, Milwaukee, WI on behalf of applicants, Laurie and Byron Vielehr, stated his name and was sworn in to provide testimony by the Village Deputy Clerk-Treasurer.

Building Inspector Michael Rakow stated that the applicant is proposing to put a driveway gate on the North driveway of the residence of 7944 N Beach Drive. The applicant is also requesting a gate at the guest house of 7938 N Beach Drive.

Acting Chair Mark Grady asked how many driveway gates there are on Beach Drive. Building Inspector Michael Rakow stated that he was not sure, but there are quite a few. Acting Chair Mark Grady asked, Building Inspector Michael Rakow if he had anything else to add. Building Inspector Mike Rakow stated, no, only that it must go through Board of Appeals to be approved.

Acting Chair Mark Grady asked Representative Nick Blavat of Deep River Partners if he was familiar with the standards of the process that apply to driveway gates, such as safety. Representative Nick Blavat of Deep River Partners stated that he was aware and that there are five gates on Beach Drive. The original property was purchased many years ago. Deep River Partners helped them remodel that about ten years ago. He stated that at the time the applicant was a very prominent person in our city. He does a lot of traveling for work and his family lives here when he is not around so safety is quite a concern. He always needed a gate due to the work he does and the thousands of people he manages. A new garage should alleviate some of the problems. A gate does not fully solve the problem but it stops vehicles from driving right in. Pedestrians go right through, what is private land, to see the lake. They've had numerous people that they've had to kick out. It is dark out and it is a very dark road. He lives in New York and the wife and son live in the house. We have lighting and security measures. I don't want to say that he deserves special treatment but he lives on a special road where other people have similar concerns and have had their gate granted in the past due to the nature of what they do for a living and to guard what is theirs and not have unwanted people accessing the house.

Board member Scott Radtke asked if there have been real specific incidents that were a problem because what your saying is real vague other than someone just walking down the road. Representative Nick Blavat of Deep River Partners stated that his client would problem know better than he. They've had ten years of these experiences.

Acting Chair Mark Grady stated that Representative Nick Blavat of Deep River Partners said the applicant was an important person and that he had never heard of him. Representative Nick Blavat of Deep River Partners stated that his client was number two for Fiserv and that he was the Vice President for Apollo Insurance and

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Fidelity Mutual Funds. He is based out of New York so he manages peoples' finances and securities and that is very sensitive and could go very south, very quickly.

Board Member Alan Polan commented, so what your saying is that there is a concern based on what he does for a living, regarding threats and safety, by figuring out where he lives. Representative Nick Blavat of Deep River Partners stated he has clients that run companies with 80,000 people and we work with methods to mitigate the risks.

Board Member Alan Polan asked about specific threats and not potential or possible threats. Representative Nick Blavat of Deep River Partners stated that he can't specifically attest to whether anything has happened in the past.

Acting Chair Mark Grady asked the representative to speak in regard to 7938 N Beach Drive. Why is a gate needed at the guest house? Representative Nick Blavat of Deep River Partners stated aging parents live there and there are concerns of random people showing up at night.

Acting Chair Mark Grady asked Representative Nick Blavat of Deep River Partners about the driveways not being connected. Representative Nick Blavat of Deep River Partners stated that since they are separate properties, the parcels they cannot be combined; there will be a landscape barrier.

Acting Chair Mark Grady asked Representative Nick Blavat of Deep River Partners what would stop someone if one gate is approved and not the other gate. Representative Nick Blavat of Deep River Partners stated the purpose is to provide a unified front to stop someone on Beach Drive.

Board Member Juliana Javor inquired if Amazon had a package, what would Amazon do? Representative Nick Blavat of Deep River Partners stated, they currently drop them on the front porch but we'd give them a code; it would be the same with police and fire.

Board Member Alan Polan asked Building Inspector Michael Rakow if he sees the gates effecting property values. Building Inspector Michael Rakow stated he does not.

Board Member Alan Polan asked Village Attorney Luke Martell about the spirit of the statute and why it is necessary to come before a board to get approval to put a gate up. Village Attorney Luke Martell stated that he believes the intention of the Village Board was not to have anything impeding the front yards in the Village of Fox Point. They don't allow fences in the front yard without a special exception; it she same with driveway gates. I think the intention was to keep it uniform throughout the village.

Acting Chair Mark Grady asked for clarification between artificial structures versus natural items. Village Attorney Luke Martell agreed the code says fence, wall, architectural screening device, driveway gate or arbor.

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Board Member Juliana Javor inquired what would happen if a person or animal passed through the gates. Representative Nick Blavat of Deep River Partners stated that the alarms are not in place yet. Artificial Intelligence (AI) is able to recognize a person versus an animal.

Board Member Polan inquired if he is walking down Beach Drive with his dog, he can see through the gate? Representative Nick Blavat of Deep River Partners stated, yes, it is black gate. It doesn't inhibit the view. It is the same as what is already on the road.

Board Member Lucille Sells asked the Village Attorney Luke Martell if the Board is allowed to use the precedent of other properties that have been granted in the past. Village Attorney Luke Martell stated that he doesn't know the history of the other gates; each case is its own instance, based on its own merits.

Acting Chair Mark Grady stated that each case is separate. Each owner needs to justify that it is necessary to protect the people. Those are always going to be different. He asked if the special exception would affect the values. We all know that Beach Drive is unique. It's isolated and has some of the most expensive homes. Not to say that more expensive homes get additional things less expensive homes do not get, but it makes the expensive homes more of a target. I do think the immediate area is something you can consider.

Board Member Alan Polan asked the Building Inspector Michael Rakow if there are more incidents on Beach Drive such as homes that are burglarized. Building Inspector Michael Rakow stated he assumes so, but he is not privy to that info.

Closing of Testimony: Case 2023-10 and Case 2023-11

Without objection and by unanimous consent, Acting Chair Grady closed testimony for Case 2023-10 at 6:13 p.m.

Board Member Scott Radtke stated that nothing was presented regarding any specific incidents. The homeowner is not a public figure and it's not much different than any property on Beach Drive so I am having a tough time justifying a gate. Board Member Lucille Sells argued that just because you have not heard of him does not mean that he does not have notoriety. Acting Chair Mark Grady stated that he isn't a public figure like an athlete or a politician, but rather due to his prominence and responsibilities in business, it gives him a great need for protection.

Board Member Alan Polan commented that he is not at the home, but his wife is. I think they've made prima facie with the statute.

Board Member Lucille Sells stated, on the flipside, there has been instances of people wandering up the driveway; this shows a need for some sort of deterrent, showing this is something you are not allowed to do.

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Board Member Alan Polan commented this is different than if I showed up here to a request a gate; that won't be happening because there is a difference.

Acting Chair Mark Grady stated, I do feel the Beach Drive community is different. On the other hand, I don't want to sit here and say that I am going to give every house on Beach Drive a driveway gate. It is supposed to be an individualized consideration and I don't want to put a driveway gate at the top of Beach Drive because there is public lakeshore down there; the lakeshore can legitimately be used by citizens. Driveway gates are not like a variance. The standards are different and it's really discretionary with the Board; its reasonably necessary for safety and whether the Board think it fits within the community. It doesn't harm the community and for me, driveway gates are not that big of a deal - not that I want one on every driveway in the village.

Board Member Lucille Sells noted she would argue we also do have aesthetic barriers to cross so we don't have a super ugly gate with transparency and not an eye sore; the Board has checks and balances.

Board Member Alan Polan stated, it doesn't appear to be blocking sight lines and adversely affecting the neighborhood.

Acting Chair Mark Grady stated, a driveway gate is a little bit different than a full perimeter fence. I find those a little more difficult. Driveways provide easy access for someone to do something illegal, whether its to burglarize the house or something else, like threatening a resident. It's quick and easy access. Once you put a gate up, they still have access, but putting a fence up is more visually intrusive and changes the nature of the neighborhood.

Board Member Juliana Javor stated, the main argument is location and it's desolate because anyone could be a target. You don't have to be a senior executive. You could be the target of a hate crime, an ex; etcetera.

Board Member Lucille Sells stated, for this case specifically that the target is the clear affluence and role that this person plays with greater susceptibility of potential crime against them which I think is just a reality of people having money. Board Member Juliana Javor replied, that would be everyone on Beach Drive right because the homes are of significant value? Board Member Lucille Sells stated, sure, but we'll take each case at a time.

Acting Chair Mark Grady stated, some homeowners may not want a gate because it impedes first responders. The letter from the Police and Fire Chiefs stated that it is going to create a delay. In any event, we are dealing with this case. Do I have a motion from anyone?

Motion: Case 2023-10 and Case 2023-11

Motion by Member Lucille Sells, to grant the special exception for both

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gates, seconded by Member Alan Polan.

Roll call vote:

Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye
Lucille Sells (Alt. 1)	Aye
Julianna Javor (Alt. 2)	Aye
Alan Polan (Alt. 3)	Aye

Motion carried by roll call vote, 5-0.

CASE 2023-12: 8566 N REGENT ROAD. The applicant is requesting a variance pertaining to Section 745-16 B (3), concerning the B 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 two-car attached garage on the south side of the home within the side yard setback, six and a half to seven feet into the required 10-foot setback.

Board Member Alan Polan recused himself due to his acquaintance with 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.

Applicant/Appellant Elizabeth A. Casmer, 8566 N Regent Road

Applicant Elizabeth A. Casmer, 8566 N Regent Road was sworn in to provide testimony by the Village Clerk-Treasurer.

Building Inspector Michael Rakow stated, the applicant is requesting the construction of a garage which would encroach in the 10-foot setback, so the Board will need to make the decision.

Acting Chair Mark Grady asked if the existing structure is currently less than ten feet from the lot line. Building Inspector Michael Rakow replied, yes. Acting Chair Mark Grady asked if she is requesting to move even further into the setback. Building Inspector Michael Rakow replied, that is correct.

Acting Chair Mark Grady asked the applicant for a background. Applicant Elizabeth A. Casmer stated, I live at 8566 N Regent Road, in one of the older homes in the Village built in 1938; it is pretty close to my neighbors. A lot of the newer conceptual builds have more room to move. I have a lot of movement from the single stall garage. I live with my partner and it's a tandem game of moving cars. We want to stay and not move and with a double car garage we could stay there and not move. So, it's an interesting case and I don't have much space. My neighbors to the south are totally fine

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with it. It's an unused side of my house that I would be moving it into. The contractor said we can do a standard double with the existing garage that is there but go over three to three and half feet; the other idea is to move it forward into the driveway space and use the existing garage stall as a remodel within my home but have the same double garage stall. I have one of the smaller homes, 900 sq feet so I'm trying to utilize the lot size to add to my space, so I can stay here.

Acting Chair Mark Grady commented, whether you put the garage in the same space or move it forward, it's still going to be 3 to 3.5 feet within the lot line. Applicant Elizabeth A. Casmer stated that is correct. Acting Chair Mark Grady suggested moving it forward; this doesn't put right next to your neighbor's house. it puts it forward of your neighbor's house. Applicant Elizabeth A. Casmer noted her agreement.

Acting Chair Mark Grady inquired what the building is on the eastern part of the property. He further asked if she considered putting it there. Applicant Elizabeth A. Casmer stated, there is nothing there currently. Acting Chair Mark Grady asked if she had considered placing it there. Applicant Elizabeth A. Casmer stated, I did consider it, but it eliminates any possibility of adding on to the house. I would lose the entire patio space which I hope to convert into a four-season space to make my home bigger than 900 sq feet and stay in Fox Point.

Acting Chair Mark Grady asked, so to build it back there, that would not be ideal? Applicant Elizabeth A. Casmer stated, I think it would reduce the value of my home and eliminate future additions; to be honest, I don't think I would install it there.

Acting Chair Mark Grady asked about a tandem garage where the cars park end to end. Applicant Elizabeth A. Casmer stated, the contractor said it would not be ideal and good for resale. I also looked at another alternative to the left of it but would have to cut down some trees, a big maple and an apple tree, to do that. Acting Chair Mark Grady stated, that would reduce your curbside appeal. Applicant Elizabeth A. Casmer stated, dramatically. Applicant Elizabeth A. Casmer stated, I know you asked someone about the air conditioner and I've spoken to my neighbors to the south of me. The only thing we would have to do is put an elbow on their sump pump and their totally fine with it. When we talked about, he said, he'd been wanting to fix this forever, so it's an opportunity to dig a drain through the front yard into the ditch.

Acting Chair Mark Grady asked if Applicant Elizabeth A. Casmer knew how far it was from the lot line to their house. Applicant Elizabeth A. Casmer stated, it's about four feet or so. Board Member Lucille Sells asked, so the Applicant's house is also non-conforming. Applicant Elizabeth A. Casmer stated, I know that neither of us mind but that doesn't mean that someone in the future won't. The contractor and I put together two ideas, thinking that if we did move it forward, at least it wouldn't be right next to the house. It would be closer to their lot line but it would be the front yard lot line and the house. Acting Chair Mark Grady stated, it wouldn't impede light into their house. Applicant Elizabeth A. Casmer stated, so I'm okay with either of the drawings the contractor did but it might come down to what the Board decides or the costs once I get the architect to draft that.

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Acting Chair Mark Grady asked what makes your property unique from other properties in the village and not only your interest in it. Applicant Elizabeth A. Casmer stated, the age with it being built in 1938. It exists on a smaller size lot that has a lot of space, front to back, but not right to left, which can deter a lot of people in the future from even looking at a house that doesn't have a two-car garage. For me, I love the house and I want to try to honor the house in its original state and improve it.

Acting Chair Mark Grady asked, I know this isn't the same as a garage, but have you considered widening the driveway? Applicant Elizabeth A. Casmer stated, I have, but we are electric automobile drivers so we need plug-ins on the interior. I currently have a 220 for me to plug into. My partner also has one but it's kind of a mess and it's hard to plug into the exterior.

Board Member Juliana Javor asked, if the house on the right, is where the living room is located. Applicant Elizabeth A. Casmer stated, yes.

Board Member Lucille Sells asked, I keep having this feeling that if it's this configuration could the whole thing be shifted a little bit. I'm also noticing that line is the crown of your maple, so is there talk that the line would encroach or would be detrimental to the maple? The idea being that any foundation work could run into the root system. Applicant Elizabeth A. Casmer stated I have not thought about that. Board Member Lucille Sells stated, that's a consideration; if the crown of a tree is equal to its root base, it could cause detriment to the tree. That should be investigated. Applicant Elizabeth A. Casmer stated, that it probably would cause damage based on the size of the tree, if I moved farther over, but it would also encroach on her tiny living room. Board Member Lucille Sells noted she believes there is a correlation to mature trees on a property and property value. The Board suggesting you lose that, would cause a detriment to the property.

Closing of Testimony: Case 2023-12

Without objection and by unanimous consent, Acting Chair Grady closed testimony for Case 2023-12 at 6:40 p.m.

Village Attorney Luke Martell stated, just as a reminder, we have moved away from special exceptions and back to variances. The standard for variance is an unnecessary hardship due to conditions unique to the property and may cause no harm to the public interest. I just want to mention one thing, there is a case I recently read about, taking place in Winnebago. The applicable test is not whether something would maximize economic value or be the least expensive option for the applicant. Financial hardship isn't something that can be considered when reviewing variances.

Board Member Juliana Javor asked what the hardship is other than having a one car garage. Village Attorney Luke Martell noted he did look at the code and there is nothing in the code that gives village residents the right to have a two-car garage.

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Acting Chair Mark Grady stated, not to sound harsh but when you buy a house, you know what the lot looks like and what the house looks like. There is no guarantee that you can add additions, garages, driveway gates, none of that is guaranteed to you. That's the tough question. You have a homeowner that wants to improve the house and stay in the village, but they are going to impede the setback more than they already do. Personally, I am torn.

Board Member Scott Ratke asked if there was anything unique about the electric cars needing to be charged in the garage versus the driveway. Acting Chair Mark Grady stated, I don't think that is going to be unique. The only uniqueness I find is the lot size is small with a pre-existing setback that's been there for 80 years. She's already three feet into the setback and always has been. I bet that ten-foot setback didn't exist when that house was built. Is that a good enough reason to let someone that is already three feet into the setback go seven feet into the setback? That for me is the hard question. Should properties with a pre-existing setback violation or non-conforming structure variances be granted?

Board Member Scott Ratke stated that it's a tough one. It is a unique property. It is very narrow.

Board Member Lucille Sells asked Village Attorney Luke Martell, separating the financial hardship aspect, to suggest they have to demo the garage and put it into the back is a physical hardship of the property site. Anything is able to be overcome with money. Village Attorney Luke Martell stated his issue is we are pushing up on this self-imposed hardship standard. There is no right to have a garage of a certain size. I think everyone would like to have a bigger garage. The problem is, and I understand what you're saying about the financial hardship issue, but there is case (Board Member Lucille Sells interjected; one is a physical hardship because there is an existing structure impeding a new driveway to get into the rear to the property as its built). Village Attorney Luke Martell, stated that she could certainly rebuild the garage where it stands as-is according to the non-conforming structure ordinances with the village, but if she wants to expand. It pushes up against the self-imposed standard.

Motion: Case 2023-12

Motion by Member Scott Ratke, Seconded by Member Lucille Sells to readjourn on January 24th. (4-0).

Roll call vote:

Mark Grady, Board Member	Aye
Scott Ratke, Board Member	Aye
Lucille Sells (Alt. 1)	Aye
Julianna Javor (Alt. 2)	Aye
Alan Polan (Alt. 3)	Recused

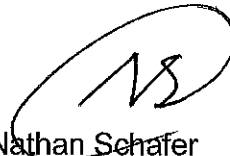
Motion carried by roll call vote, (4-0).

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Adjourn

Without objection and by unanimous consent The Board adjourned at 5:50 p.m.

Respectfully Submitted,

A handwritten signature in black ink, consisting of the letters 'NS' inside a large, loopy oval shape.

Nathan Schafer
Village Deputy Clerk-Treasurer