

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

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

WEDNESDAY  
JANUARY 24, 2024  
5:00 P.M.

**AGENDA**

- 1. Roll Call**
- 2. Approval of the Minutes and Determinations – November 22, 2023 Meeting**
- 3. Case 2023-12 (As Adjourned from November 22, 2023): 8566 N Regent Rd.**  
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.
- 4. Case 2024-01 7700 N Club Circle.** The applicant is requesting a special exception to install yard fencing in the front yard of a corner lot. The special exception request is made pursuant to 745-7 B.(3)(h)[1, 2 and 5], and 745-7 B.(3)(j) of the Fox Point Code.
- 5. Case 2024-02: 6500 N Lake Drive.** The applicant is requesting a variance pertaining to Section 745-13 B. (3), concerning the A-1 Residence District with regard to the required setback of 15 feet which should be provided for every accessory structure, Section 756-34 B., concerning both the generator unit and HVAC unit setback requirements, and Section 745-7 A. (1), regarding setback requirements for accessory structures. The applicant is proposing to install a generator and HVAC on the north side of the home within the side yard setback.
- 6. 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  
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MINUTES AND DETERMINATION  
WEDNESDAY, NOVEMBER 27, 2023**

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

5  
6 Mark Grady, Board Member  
7 Scott Ratke, Board Member  
8 Lucille Sells, Board Member Alternate 1  
9 Julianna Javor, Board Member Alternate 2  
10 Alan Polan, Board Member Alternate 3

11  
12 Staff members also present were Attorney Luke Martell, Building Inspector Michael Rakow, and  
13 Deputy Clerk-Treasurer Nathan Schafer.

14  
15 Notice of the meeting was provided to the North Shore Now, to all others as required by State  
16 open meetings laws, Village ordinances and posted on the official bulletin board and the village  
17 website.

18  
19 **Selection of Acting Chair**

20  
21 Deputy Clerk Treasurer Nathan Schafer asked for nominations for Office of Chairperson.

22  
23 Scott Radtke nominated Mark Grady as Acting Chairperson. Lucille Sells seconded the  
24 nomination. Hearing no other nominations, nominations were closed.

25  
26 ***Without objection and by unanimous consent Mark Grady was nominated to***  
27 ***Acting Chair and carried by roll call vote (5-0).***

28  
29 **Approval of Minutes of July 26, 2023 Meeting and the Findings of Fact, Decision and**  
30 **Order**

31  
32  
33 ***Roll call vote:***

34		
35	<b>Mark Grady, Board Member</b>	<b>Aye</b>
36	<b>Scott Ratke, Board Member</b>	<b>Aye</b>
37	<b>Lucille Sells (Alt. 1)</b>	<b>Aye</b>
38	<b>Julianna Javor (Alt. 2)</b>	<b>Aye</b>
39	<b>Alan Polan (Alt. 3)</b>	<b>Aye</b>
40		

41 ***Motion carried by roll call vote, 5-0.***

42  
43  
44 **CASE 2023-08: 8330 N REGENT ROAD.**

45 The applicant is requesting a variance pertaining to Section 745-17 B (3), concerning the C  
46 Residence District with regard to the required setback of 10 feet which should be provided for  
47 every building and Section 756-34 B., concerning the air conditioning unit setback  
48 requirements. The applicant is proposing to install an air conditioner on the north side of the

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49 home within the side yard setback.

50

51 Village of Fox Point Building Inspector Michael Rakow

52

53 *Building Inspector Michael Rakow stated his name and was sworn in to provide*  
54 *testimony by the Village Deputy Clerk-Treasurer.*

55

56

57

58 Applicant/Appellant Paul Horvatin

59

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

62

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

66

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

69

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

73

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

80

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

86

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

93

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

96

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97 Acting Chair Mark Grady asked if the air conditioner is the same dimensions as  
98 the old one? Applicant Paul Horvatin stated that it is the same dimensions. He further  
99 stated that the photo of unit is included. The air conditioner unit is just sitting there now.  
100

101 Board Member Lucille Sells asked if there is a further portion of wood fence on  
102 the North side of the property. Applicant Paul Horvatin stated, no there are just bushes  
103 there. Board Member Lucille Sells further inquired if we know the opinion of the  
104 neighbor. Applicant Paul Horvatin stated that he has the signature from neighbors, Matt  
105 and Sarah at the bottom. Applicant Paul Horvatin stated that they have five kids and he  
106 has two kids. Where it used to be, it was always in the way with kids tripping on the unit.  
107

108 Board Member Lucille Sells asked if the gate could still be used. Applicant Paul  
109 Horvatin stated yes.  
110

111 Acting Chair Mark Grady asked Attorney Luke Martell to state the standards that  
112 apply. Attorney Luke Martell stated that for variances, state statutes state that  
113 variances are for an unnecessary hardship due to conditions unique to the property, not  
114 the property owner and it will cause no harm to the public interest. Also note that the  
115 unnecessary hardship cannot be self-created. Acting chair Mark Grady stated that due  
116 to state statute and Supreme Court precedent, variances are rarely to be granted and  
117 they are very unusual. The reason we have setback requirements is to make things  
118 uniform in the village.  
119

120 Acting Chair Mark Grady asked the applicant what makes your physical property  
121 unique from other homeowners. Applicant Paul Horvatin stated that due to the angle of  
122 the home, it makes it hard to put anything in that area. The patio, the French doors and  
123 on the second floor were all areas that were discussed, but the vibrations would make it  
124 difficult. It's really about finding the best spot.  
125

126 Board Member Alan Polan asked the applicant if there are other options in your  
127 backyard to locate the unit. Applicant Paul Horvatin stated that we could possibly fit it to  
128 the left of the French doors. It would jut into the backyard and inhibit the door.  
129

130 Board Member Alan Polan asked the applicant if it were set up next to the doors  
131 would it protrude outside. Applicant Paul Horvatin stated that it would occupy a portion  
132 of the driveway. If it next to the driveway, it wouldn't hang over but it would be two feet  
133 from the driveway.  
134

135 Board member Lucille Sells asked where the mechanical space is located in your  
136 basement. Applicant Paul Horvatin stated that it is in a crawl space under the French  
137 doors, where the air conditioner currently is or eight feet inside. The furnace is basically  
138 where the air conditioner is shown in the picture, approximately eight feet back.  
139

140 Board Member Scott Radtke asked if it could be hooked up where the grill is  
141 located or could the HVAC people run the utilities over there. Applicant Paul Horvatin  
142 stated that it would block the patio; the downspout would have to be moved.  
143

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

149  
150 Acting Chair Mark Grady stated that the code is in the packet and it states that  
151 any air conditioner, refrigerator system, or backup generator outside of the structure has  
152 to be within the setback limits. So thought was put into it by the drafters. Which is why  
153 the applicant is here for a variance.

154  
155 Board Member Alan Polan asked if they were talking about the addition to a  
156 house or if there was a difference with an air conditioner? Acting Chair Mark Grady  
157 replied that the code says that air conditioners have to be treated like an accessory  
158 structure.

159  
160 Board Member Juliana Javor asked how the hardship is articulated. Appellant  
161 Paul Horvatin stated it's the air conditioner unit has floated out there and has always  
162 been a tripping hazard. We couldn't find a suitable spot in the backyard, beside the  
163 chimney and where no one would walk.

164  
165 Acting Chair Mark Grady asked Village Attorney Luke Martell if it could be placed  
166 in the same spot. Attorney Martell stated that it can be placed in the same space if it is  
167 the same size; he wants to move it so he's here for a variance.

168  
169 **Closing of Testimony: Case 2023-08**

170  
171 ***Without objection and by unanimous consent, Acting Chair Mark Grady***  
172 ***closed testimony for Case 2023-08 at 5:20 p.m.***

173  
174 Board Member Lucille Sells commented the hardship is the children tripping over  
175 the air conditioner. It blocks the gate. The downspout location doesn't make it a suitable  
176 location and the driveway location potentially may be hit by a car. Board Member  
177 Lucille Sells commended she looks at it as overcoming physical hardships of the  
178 property.

179  
180 Board Member Scott Radtke noted he doesn't think you're going to create a  
181 bigger problem by moving it.

182  
183 Board Member Alan Polan stated that he thought the ordinance should be  
184 changed.

185  
186 Acting Chair Mark Grady stated, I agree but that is for another day.

187  
188 Board Member Alan Polan stated, when I was younger, everyone had a window  
189 air conditioner but now central air conditioners are the norm; he feels a review of the  
190 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:***

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

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

241  
242 Applicant Chief Operating Officer Matt Miller stated that he has observed cars  
243 passing through and they have cameras. They also have up to 100 cars a day passing  
244 through and their founder was almost hit. We need to find a way to keep the workers  
245 safe. People cannot drive through like it is a regular road.

246  
247 Acting Chair Mark Grady asked why gates are necessary and why there is a  
248 difference from Cardinal Stritch. Applicant Mark Miller replied that there is a difference  
249 between college students vs. four-to-five-year-olds. We need to have some security.

250  
251 Acting Chair Mark Grady asked if anyone will reside on the property. Applicant  
252 Matt Miller stated that the dorms are being demoed.

253  
254 Acting Chair Mark Grady stated we have lots of public and private schools. None  
255 of them have gates. He then inquired why the property needs gates and public and  
256 private schools do not. Applicant Mark Miller replied that they are on the east and don't  
257 have access on both sides.

258  
259 Board Member Scott Radtke inquired if there anyway the applicant could do this  
260 without gates. Applicant Mark Miller commented not without spending a fortune on  
261 security.

262  
263 Board Member Lucille Sells inquired of the applicant if there are gate proposals  
264 on the Glendale or Port Washington Road side. Applicant Mark Miller stated that a  
265 variance is not needed because it set back further from the road.

266  
267 Acting Chair Mark Grady asked if anything else was considered, such as speed  
268 bumps or traffic narrowing devices. Applicant Mark Miller stated that it is difficult  
269 because then it is being acknowledged as a public thoroughfare; we are not okay with  
270 that.

271  
272 Board Member Alan Polan inquired about the size of the school. Applicant Mark  
273 Miller replied it will be K-1; they will start with 330 students in year one and get to 1,500  
274 students.

275  
276 Board Member Juliana Javor asked where people drop off the children.  
277 Applicant Matt Miller replied that we will go through that with the Village but we'll have  
278 multiple access points for drop off and dismissal. That process with our architects  
279 hasn't been fully defined yet.

280  
281 Board Member Alan Polan inquired of the applicant if the thoroughfare could be  
282 changed where there isn't a road for someone to drive through. Matt Miller replied that  
283 neither Fox Point nor Glendale want removal of the road because it removes a place for  
284 us to get people out.

285

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

290  
291 Board Member Scott Radtke asked, if the kids will be in that area and if this is a  
292 safety issue. Applicant Matt Miller replied that this is private property and not a public  
293 road which is what it is being used for.

294  
295  
296 Board Member Scott Radtke asked if the construction on Port Washington Road  
297 could be the reason. Applicant Matt Miller stated that most of the traffic is coming from  
298 Yates Road.

299  
300 Board Member Juliana Javor asked if there would be backups on Yates during  
301 drop-off times. Applicant Matt Miller stated that the gates would open during the  
302 opening and closing of school; security would get everyone out safely.

303  
304 Board Member Lucille Sells asked about the scope of remodeling. Applicant  
305 Matt Miller stated that it is not fully flushed out. Board Member Lucille Sells asked if  
306 these would be the permanent gates. Applicant Matt Miller stated, yes, ideally. Yes,  
307 the drive might change but the access points would not change.

308  
309 Board Member Alan Polan asked about the spirit of the statute. Does it create a  
310 nuisance or effect property values. Building Inspector Michael Rakow replied, no.

311  
312 Board Member Scott Radtke asked if these gates are closed would the entire  
313 property be closed off. Applicant Matt Miller stated if there was an emergency, the  
314 gates pop open.

315  
316 Board Member Alan Polan asked if he approached the gates could he get entry.  
317 Applicant Matt Miller replied if he was going fast enough and blasted his through.  
318 Applicant Matt Miller stated that emergency departments will have a key; we have their  
319 approval.

320  
321 Board Member Scott Radtke asked if there is a concern or reason to protect kids  
322 during the day. Applicant Matt Miller stated that we need to do everything to protect our  
323 kids and having it wide open doesn't do that.

324  
325 Board Member Juliana Javor inquired for the drop off and pick-ups, how do you  
326 ensure who is entering. Applicant Matt Miller replied, on the southside we have eight  
327 security guards and have never had a problem.

328  
329 Acting Chair Mark Grady had a question for Village Attorney Luke Martell. No  
330 one is going to be living there; can students be considered in the same manner as  
331 people that reside on a property. Village Attorney Luke Martell said that this  
332 interpretation applies to all properties and not just residential. It does satisfy that

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333 section of the code.

334  
335 **Closing of Testimony: Case 2023-09**

336  
337 ***Without objection and by unanimous consent, Acting Chair Mark Grady***  
338 ***closed testimony for Case 2023-09 at 5:46 p.m.***

339  
340 Acting Chair Mark Grady stated that he came here with the idea of denying the  
341 gates but has been convinced by the testimony of Applicant Matt Miller. The situation  
342 has changed and the difference is the age of the children. None of the other schools  
343 have that sort of configuration to my knowledge. If Cardinal Stritch had asked for a  
344 gate, maybe the village would have approved it, but they didn't ask. The gate is  
345 reasonably necessary to protect the students and staff. They have a legitimate need.  
346 And it won't adversely affect the people of the community and it won't impede the spirit  
347 of the ordinance.

348  
349 Board Member Scott Radtke stated that they have shown a clear safety need.

350  
351 **Motion: Case 2023-09**

352  
353 ***Motion by Member Grady, to grant. Seconded by Sells.***

354  
355 ***Roll call vote:***

356		
357	<b>Mark Grady, Board Member</b>	<b>Aye</b>
358	<b>Scott Ratke, Board Member</b>	<b>Aye</b>
359	<b>Lucille Sells (Alt. 1)</b>	<b>Aye</b>
360	<b>Julianna Javor (Alt. 2)</b>	<b>Aye</b>
361	<b>Alan Polan (Alt. 3)</b>	<b>Aye</b>
362		

363 ***Motion carried by roll call vote, 5-0.***

364  
365  
366 **CASE 2023-10: 7938 N BEACH DRIVE.** The applicant is requesting a special exception to install  
367 aluminum or steel powder coated swinging driveway gates at the entry piers. The special exception  
368 request is made pursuant to 745-7 B.(3)(h)[2] and 745-7 B.(3)(j) of the Village of Fox Point Code.

369  
370 And

371  
372 **CASE 2023-11: 7944 N BEACH DR.** The applicant is requesting a special exception to install  
373 aluminum or steel powder coated swinging driveway gates at the entry piers. The special exception  
374 request is made pursuant to 745-7 B.(3)(h)[2] and 745-7 B.(3)(j) of the Village of Fox Point Code.

375  
376 ***Without objection and by unanimous consent, Acting Chair Mark Grady stated***  
377 ***both Case 2023-10 and 2023-11 would be taken up together.***

378  
379 **Village of Fox Point Building Inspector Michael Rakow**

380  
381 Building Inspector Michael Rakow stated his name and was sworn in to provide

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382 testimony by the Village Deputy Clerk-Treasurer.

383

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

386

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

390

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

394

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

400

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

418

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

424

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

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

431  
432 Board Member Alan Polan commented, so what your saying is that there is a  
433 concern based on what he does for a living, regarding threats and safety, by figuring out  
434 where he lives. Representative Nick Blavat of Deep River Partners stated he has  
435 clients that run companies with 80,000 people and we work with methods to mitigate the  
436 risks.

437  
438 Board Member Alan Polan asked about specific threats and not potential or  
439 possible threats. Representative Nick Blavat of Deep River Partners stated that he  
440 can't specifically attest to whether anything has happened in the past.

441  
442 Acting Chair Mark Grady asked the representative to speak in regard to 7938 N  
443 Beach Drive. Why is a gate needed at the guest house? Representative Nick Blavat of  
444 Deep River Partners stated aging parents live there and there are concerns of random  
445 people showing up at night.

446  
447 Acting Chair Mark Grady asked Representative Nick Blavat of Deep River  
448 Partners about the driveways not being connected. Representative Nick Blavat of Deep  
449 River Partners stated that since they are separate properties, the parcels they cannot  
450 be combined; there will be a landscape barrier.

451  
452 Acting Chair Mark Grady asked Representative Nick Blavat of Deep River  
453 Partners what would stop someone if one gate is approved and not the other gate.  
454 Representative Nick Blavat of Deep River Partners stated the purpose is to provide a  
455 unified front to stop someone on Beach Drive.

456  
457 Board Member Juliana Javor inquired if Amazon had a package, what would  
458 Amazon do? Representative Nick Blavat of Deep River Partners stated, they currently  
459 drop them on the front porch but we'd give them a code; it would be the same with  
460 police and fire.

461  
462 Board Member Alan Polan asked Building Inspector Michael Rakow if he sees  
463 the gates effecting property values. Building Inspector Michael Rakow stated he does  
464 not.

465  
466 Board Member Alan Polan asked Village Attorney Luke Martell about the spirit of  
467 the statute and why it is necessary to come before a board to get approval to put a gate  
468 up. Village Attorney Luke Martell stated that he believes the intention of the Village  
469 Board was not to have anything impeding the front yards in the Village of Fox Point.  
470 They don't allow fences in the front yard without a special exception; it she same with  
471 driveway gates. I think the intention was to keep it uniform throughout the village.

472  
473 Acting Chair Mark Grady asked for clarification between artificial structures  
474 versus natural items. Village Attorney Luke Martell agreed the code says fence, wall,  
475 architectural screening device, driveway gate or arbor.

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

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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***

VILLAGE OF FOX POINT  
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570 *gates, seconded by Member Alan Polan.*

571

572

573 *Roll call vote:*

574

575 **Mark Grady, Board Member** **Aye**

576 **Scott Ratke, Board Member** **Aye**

577 **Lucille Sells (Alt. 1)** **Aye**

578 **Julianna Javor (Alt. 2)** **Aye**

579 **Alan Polan (Alt. 3)** **Aye**

580

581 *Motion carried by roll call vote, 5-0.*

582

583

584 **CASE 2023-12: 8566 N REGENT ROAD.** The applicant is requesting a variance pertaining to  
585 Section 745-16 B (3), concerning the B Residence District with regard to the required setback  
586 of 10 feet which should be provided for every building. The applicant is proposing to install a  
587 two-car attached garage on the south side of the home within the side yard setback, six and a  
588 half to seven feet into the required 10-foot setback.

589

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

591

592 Village of Fox Point Building Inspector Michael Rakow

593

594 Building Inspector Michael Rakow stated his name and was sworn in to provide  
595 testimony by the Village Deputy Clerk-Treasurer.

596

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

598

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

601

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

605

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

610

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

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

624  
625 Acting Chair Mark Grady commented, whether you put the garage in the same  
626 space or move it forward, it's still going to be 3 to 3.5 feet within the lot line. Applicant  
627 Elizabeth A. Casmer stated that is correct. Acting Chair Mark Grady suggested moving  
628 it forward; this doesn't put right next to your neighbor's house. it puts it forward of your  
629 neighbor's house. Applicant Elizabeth A. Casmer noted her agreement.

630  
631 Acting Chair Mark Grady inquired what the building is on the eastern part of the  
632 property. He further asked if she considered putting it there. Applicant Elizabeth A.  
633 Casmer stated, there is nothing there currently. Acting Chair Mark Grady asked if she  
634 had considered placing it there. Applicant Elizabeth A. Casmer stated, I did consider it,  
635 but it eliminates any possibility of adding on to the house. I would lose the entire patio  
636 space which I hope to convert into a four-season space to make my home bigger than  
637 900 sq feet and stay in Fox Point.

638  
639 Acting Chair Mark Grady asked, so to build it back there, that would not be ideal?  
640 Applicant Elizabeth A. Casmer stated, I think it would reduce the value of my home and  
641 eliminate future additions; to be honest, I don't think I would install it there.

642  
643 Acting Chair Mark Grady asked about a tandem garage where the cars park end  
644 to end. Applicant Elizabeth A. Casmer stated, the contractor said it would not be ideal  
645 and good for resale. I also looked at another alternative to the left of it but would have  
646 to cut down some trees, a big maple and an apple tree, to do that. Acting Chair Mark  
647 Grady stated, that would reduce your curbside appeal. Applicant Elizabeth A. Casmer  
648 stated, dramatically. Applicant Elizabeth A. Casmer stated, I know you asked someone  
649 about the air conditioner and I've spoken to my neighbors to the south of me. The only  
650 thing we would have to do is put an elbow on their sump pump and their totally fine with  
651 it. When we talked about, he said, he'd been wanting to fix this forever, so it's an  
652 opportunity to dig a drain through the front yard into the ditch.

653  
654 Acting Chair Mark Grady asked if Applicant Elizabeth A. Casmer knew how far it  
655 was from the lot line to their house. Applicant Elizabeth A. Casmer stated, it's about  
656 four feet or so. Board Member Lucille Sells asked, so the Applicant's house is also non-  
657 conforming. Applicant Elizabeth A. Casmer stated, I know that neither of us mind but  
658 that doesn't mean that someone in the future won't. The contractor and I put together  
659 two ideas, thinking that if we did move it forward, at least it wouldn't be right next to the  
660 house. It would be closer to their lot line but it would be the front yard lot line and the  
661 house. Acting Chair Mark Grady stated, it wouldn't impede light into their house.  
662 Applicant Elizabeth A. Casmer stated, so I'm okay with either of the drawings the  
663 contractor did but it might come down to what the Board decides or the costs once I get  
664 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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712 Acting Chair Mark Grady stated, not to sound harsh but when you buy a house,  
713 you know what the lot looks like and what the house looks like. There is no guarantee  
714 that you can add additions, garages, driveway gates, none of that is guaranteed to you.  
715 That's the tough question. You have a homeowner that wants to improve the house  
716 and stay in the village, but they are going to impede the setback more than they already  
717 do. Personally, I am torn.

718  
719 Board Member Scott Ratke asked if there was anything unique about the electric  
720 cars needing to be charged in the garage versus the driveway. Acting Chair Mark  
721 Grady stated, I don't think that is going to be unique. The only uniqueness I find is the  
722 lot size is small with a pre-existing setback that's been there for 80 years. She's already  
723 three feet into the setback and always has been. I bet that ten-foot setback didn't exist  
724 when that house was built. Is that a good enough reason to let someone that is already  
725 three feet into the setback go seven feet into the setback? That for me is the hard  
726 question. Should properties with a pre-existing setback violation or non-conforming  
727 structure variances be granted?

728  
729 Board Member Scott Ratke stated that it's a tough one. It is a unique property. It  
730 is very narrow.

731  
732 Board Member Lucille Sells asked Village Attorney Luke Martell, separating the  
733 financial hardship aspect, to suggest they have to demo the garage and put it into the  
734 back is a physical hardship of the property site. Anything is able to be overcome with  
735 money. Village Attorney Luke Martell stated his issue is we are pushing up on this self-  
736 imposed hardship standard. There is no right to have a garage of a certain size. I think  
737 everyone would like to have a bigger garage. The problem is, and I understand what  
738 you're saying about the financial hardship issue, but there is case (Board Member  
739 Lucille Sells interjected; one is a physical hardship because there is an existing  
740 structure impeding a new driveway to get into the rear to the property as its built).  
741 Village Attorney Luke Martell, stated that she could certainly rebuild the garage where it  
742 stands as-is according to the non-conforming structure ordinances with the village, but if  
743 she wants to expand. It pushes up against the self-imposed standard.

744  
745 Motion: Case 2023-12

746  
747 ***Motion by Member Scott Ratke, Seconded by Member Lucille Sells to***  
748 ***readjourn on January 24<sup>th</sup>. (4-0).***

749  
750  
751 ***Roll call vote:***

752		
753	<b>Mark Grady, Board Member</b>	<b>Aye</b>
754	<b>Scott Ratke, Board Member</b>	<b>Aye</b>
755	<b>Lucille Sells (Alt. 1)</b>	<b>Aye</b>
756	<b>Julianna Javor (Alt. 2)</b>	<b>Aye</b>
757	<b>Alan Polan (Alt. 3)</b>	<b>Recused</b>
758		

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

VILLAGE OF FOX POINT  
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**Adjourn**

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

Respectfully Submitted,

Nathan Schafer  
Village Deputy Clerk-Treasurer

DRAFT



VILLAGE OF FOX POINT
BOARD OF APPEALS

NOTICE OF APPEAL & APPLICATION FOR REVIEW

1. Name of Appellant Elizabeth A. Casmer
Address of Appellant 8566 N. Regent Road
Phone Number Home Work Cell 612-801-0188
E-mail Address bizcasmer@gmail.com

2. Address of Property 8566 N. Regent Road
Present Use of Property home
Proposed Use of Property home
Owner's Name and Address if Different than Above

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

Disposition of Previous Appeal

Date of Decision in Previous Case

4. Date of Decision or Order of Administrative Official from which Appeal is Taken

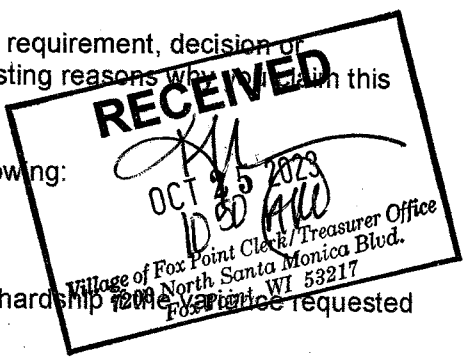
Date of Notice of Such Decision Received by Appellant

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 this order, requirement, decision or determination is erroneous.

[X] 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 is not granted.



Appellant Name: Elizabeth Casmer

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.

Elizabeth Casmer  
Signature of Appellant

10/25/23  
Date

<b>For Office Use Only:</b>	
Date Application Received <u>10/25/2023 @ 10:50 am</u>	Receipt Number for \$200 Filing Fee <u>1.059647</u>
Case Number <u>Case 2023-12</u>	Hearing Date <u>11/22/2023</u>
Disposition _____	

10/23/23

Dear Village of Fox Point Board of Appeals,

I am writing this letter to explain my request to convert my single car stall garage to a double stall. I live in one of the older, non-conforming properties in our village, giving me very little room on both my north and south side-yards.

The current side yard set-backs for the B Residence District (745-16-3) is not less than 10 feet. Currently my single stall garage is non-conforming at 7.1 feet on the south side of my house. I am requesting to double my garage stall and go within 3-3.5 feet of the lot line. (See attached image) This would give me enough space to build a standard double stall garage of 18-20 feet wide.

This is an unused side of my neighbors home and is currently only used by me to store a garbage bin and access my side gate. With a new double garage stall I would remove the side gate and access my back yard from the new garage service door. Permission to build closer to their home can be obtained from my neighbors to the south, Ryan & Abby Hinkle. - 262.744.4133

Regarding the "Open air requirement": The gross area of my lot (see attached survey) is 8062.50 feet and the requirement is that the open air land cannot be less than 30%, and in my case no less than 2418.75. My home size is currently just under 1000 square feet. With the potential doubling of my garage stall my house footprint will still be well within the villages open air requirement.

Please consider this request to move forward with a permit application to convert my single stall garage into a double, making an exception of the existing side yard setback rule.

If you have any additional questions or need any additional information/images, please do not hesitate to ask. I have a contractor ready to help with this project if it is approved. I have not paid an architect to draft a plan/design because I didn't want to spend the money if the village wouldn't approve the potential project. If this exception is approved and you need more detailed plans with my permit, I am happy to provide.

I love my home and want to stay here! Having an enclosed garage with space for both me and my partner will make my home more appealing for a long-term stay! Thank you for your time and consideration.

Elizabeth Casmer  
8566 North Regent Road  
612.801.0188



N89°22'29"E  
NORTH LINE NW 1/4 SECTION 9-8-22

NW 1/4  
9-8-22

500°35'42"E

1460.066'

N. REGENT ROAD

POINT OF COMMENCEMENT

LOT 29 FOX POINT MANORS

(WEST)  
S89°22'29"W

161.25'

45.00'

500°35'42"E  
(SOUTH)

50.00'

45.00'

N89°22'29"E  
(EAST)

161.25'

(NORTH)  
500°35'42"W  
50.00'

WEST LINE NW 1/4  
SECTION 9-8-22

*Proposed  
new garage  
area - garage  
18' x 20'  
increasing to  
room 13' x 9' to  
back  
making a garage  
with new garage  
and  
neighbors lot line.*

I certify that I have surveyed the above described property and the above map is a correct representation thereof and of its size and location of the property, its exterior boundaries, location of all visible structures and dimensions of all principal thereon, boundary fences, apparent easements, roadways, encroachments, if any.

This survey is made for the use of the present owners of the property, and who purchase mortgage or guarantee the title thereto within from date hereof.

LEGEND

- FOUND IRON PIPE
- SET IRON ROD
- ( ) RECORDED AS

SCALE: 1" = 50'

PROPERTY LAND SURVEYING

789 CHICORY ROAD  
BURLINGTON, WISCONSIN 53105  
(262)210-7260 (262)767-8786

THIS  
THE

8576 N. Regent Road : Garage Proposal



proposed  
new garage on driveway.  
utility line

235  
ft

## Design Option #2.

Should the first design presented not be ideal, my contractor suggested we also include a second design option (see image).

Design option #2 would be to build an all new 2 car garage structure in front of my existing garage. This second design would include the same request of the board to approve building within 3-3.5 feet of my southern side yard lot line. No additional requests.

It would build towards Regent Road, but would be well within the 30 foot setback from the street. This would be a brand new build and would require remodeling of the old garage, but might be more appealing since the new structure would be in front of my neighbors home with open yard space to the south, versus design option #1 which would be building right next to their dwelling.

My contractor and I are comfortable with both design options. Including both designs in the event one looks more feasible and/or appealing to the Village of Fox Point.

Thanks again for considering both design options and this request to improve the quality of living for a family with 2 cars (and lots of bikes!) at 8566 North Regent Road!

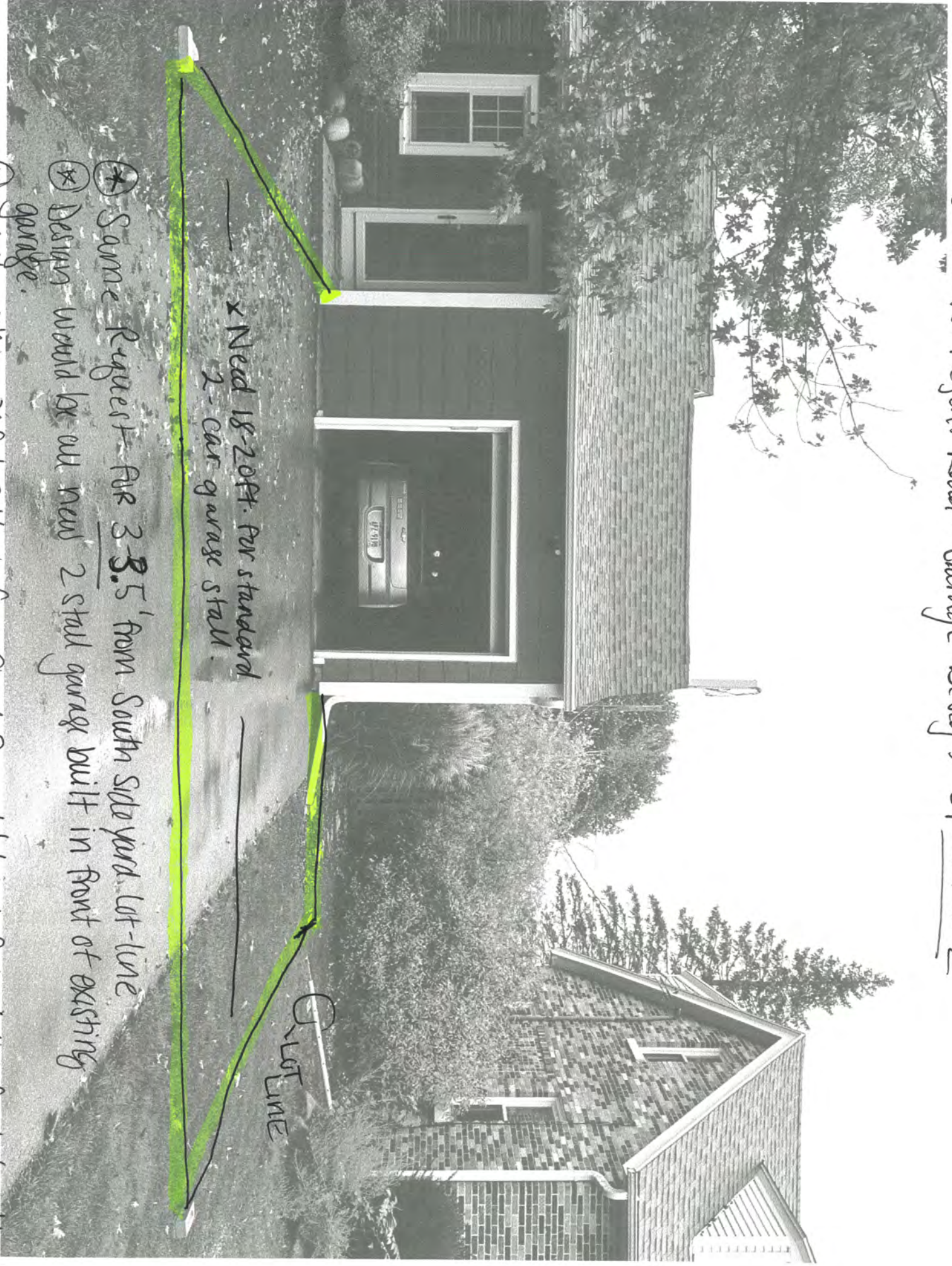
Elizabeth Casmer  
8566 North Regent Road  
[bizcasmer@gmail.com](mailto:bizcasmer@gmail.com)  
612.801.0188

8566 N. Regent Road: Garage Design Option #2

\* Need 18-20ft. for standard  
2-car garage stall.

DRIVE  
LOT LINE

- \* Same Request - For 3-3.5' from South side yard lot-line
- \* Design would be all new 2 stall garage built in front of existing garage.
- \* Well within 30 foot setback from Street. Same lot-line to South, well in front of neighbors home.



## § 745-16

### B Residence District.

A.

Uses. In a B Residence District, no building or premises, unless otherwise provided in this chapter, shall be erected or used except for dwelling, together with accessory uses incident to the permitted use; provided always the accessory use does not constitute or become a public or private nuisance.

[Amended 11-11-2014 by Ord. No. 2014-08]

B.

Areas and yards. In a B Residence District, no building may be erected, enlarged or altered except in conformity with the following:

(1)

The open area of a lot on which a dwelling is erected, or proposed to be erected, shall not be reduced to less than 15,000 square feet for each family. No building not erected for a dwelling shall occupy more than 20% of the gross area of the lot or exceed a height of 25 feet.

(2)

A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for corner lots from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; 15 feet when width of lot is 70 feet or less; provided, however, that no setback will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.

(3) ~~(3)~~

A side yard of not less than 10 feet shall be provided for on each side of every building.

(4)

A rear yard of not less than 20 feet shall be provided for every building, except one of not less than 10 feet shall be provided for a building used for or classified as an accessory use.

(5)

Every lot on which a building is erected shall have a minimum width of 80 feet.

(6)

No single-family residence built or existing in this district shall have a height greater than 40 feet from the grade abutting the structure on the front side of the structure. For purposes of this subsection, the

VILLAGE OF FOX POINT

7200 N. SANTA MONICA BLVD

FOX POINT WI 53217

414-351-8900

Receipt No: 1.059643

Oct 25, 2023

Elizabeth Casmer-8566 N Regent BOA

Previous Balance: .00

LICENSES & PERMITS - LIQUOR/BEER/CIGARETTE  
LICENSE 200.00

10-44120 LIQUOR/TOBACCO LICENSES

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Total: 200.00

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CHECK Check No: 192 200.00

Payor: Elizabeth Casmer-8566 N Regent BOA

Total Applied: 200.00

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Change Tendered: .00

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Duplicate Copy

10/25/2023 10:50 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 VARIANCE**

PLEASE TAKE NOTICE that the Fox Point Board of Appeals will meet in Schwemer Hall, 7200 N. Santa Monica Blvd, Fox Point, WI, on Wednesday, November 22, 2023, at 5:00 p.m. to hear the following appeal for a variance:

1. **Case 2023-12: 8566 N Regent Rd.** 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.

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: [October 27, 2023]  
Posted: [October 27, 2023]



Village of Fox Point GIS

8566 N REGENT RD /  
VARIANCE-GARAGE

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: 10/25/2023

**§ 745-16. B Residence District.**

- A. Uses. In a B Residence District, no building or premises, unless otherwise provided in this chapter, shall be erected or used except for dwelling, together with accessory uses incident to the permitted use; provided always the accessory use does not constitute or become a public or private nuisance. **[Amended 11-11-2014 by Ord. No. 2014-08]**
- B. Areas and yards. In a B Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot on which a dwelling is erected, or proposed to be erected, shall not be reduced to less than 15,000 square feet for each family. No building not erected for a dwelling shall occupy more than 20% of the gross area of the lot or exceed a height of 25 feet.
  - (2) A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for corner lots from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; 15 feet when width of lot is 70 feet or less; provided, however, that no setback will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes.
  - (3) A side yard of not less than 10 feet shall be provided for on each side of every building.
  - (4) A rear yard of not less than 20 feet shall be provided for every building, except one of not less than 10 feet shall be provided for a building used for or classified as an accessory use.
  - (5) Every lot on which a building is erected shall have a minimum width of 80 feet.
  - (6) No single-family residence built or existing in this district shall have a height greater than 40 feet from the grade abutting the structure on the front side of the structure. For purposes of this subsection, the height of the building shall include the highest roof point of any interior portion of the structure which can be occupied, including, but not limited to, attic and storage structures and observatories which accommodate entry or occupancy by a person, but shall not include roof attachments such as chimneys, antennas or decorative cupolas. **[Amended 2-9-2021 by Ord. No. 2021-01]**

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(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.
4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
7.
  - a. In this subdivision, " area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

- b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
  - c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
  - d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.
  - e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
  - f. A variance granted under this subdivision runs with the land.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
- 10.
- a. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
  - b. Notwithstanding subd. 10. a., a decision of the board of appeals on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.
14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.
15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

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2021-22 Wisconsin Statutes updated through 2023 Wis. Act 50 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on January 9, 2024. Published and certified under s. 35.18. Changes effective after January 9, 2024, are designated by NOTES. (Published 1-9-24)

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

62.23 (7) (e) 7. a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

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

62.23 (7) (e) 7. d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

2024-01



VILLAGE OF FOX POINT  
MILWAUKEE COUNTY  
WISCONSIN

VILLAGE HALL  
7200 N. SANTA MONICA BLVD. FOX  
POINT WI 53217-3505  
414-351-8900  
FAX 414-351-8909

BOARD OF APPEALS  
APPLICATION

- Name of Appellant Terri + John Olin Address of Appellant 7700 N. Club Cr.  
 Phone Number 414-698-8854 (cell) —  
 E-mail Address olinfamily5@wi.rr.com <sup>Home</sup> — <sup>Work</sup> — <sup>Cell</sup> —
- Address of Property 7700 N. Club Cr. Fox Point WI 53217  
 Present Use of Property residential Proposed Use of Property residential  
 Owner's Name and Address if Different than Above —
- Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?  
 Yes  No  If Yes, State the Nature of Previous Appeal or Application \_\_\_\_\_  
 Disposition of Previous Appeal \_\_\_\_\_  
 Date of Decision in Previous Case \_\_\_\_\_
- Date of Decision or Order of Administrative Official from which Appeal is Taken \_\_\_\_\_  
 Date of Notice of Such Decision Received by Appellant \_\_\_\_\_
- Purpose of Grounds of Appeal or Application. Check Below the Relief Requested by This Appeal or Application:
  - A. "Appeal Administrative Decision." Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official.
    - 1. I have read and I understand Attachment A: Yes
    - 2. I have fully answered the questions in Attachment A and have attached additional explanations as necessary. Yes
  - B. "Request Variance." State Law Empowers the Board of Appeals to Grant a Variance to the Otherwise Applicable Requirements of the Zoning Code in Limited Circumstances.
    - 1. I have read and I understand Attachment B: Yes
    - 2. I have fully answered the questions in Attachment B and have attached additional explanations as necessary. Yes
  - C. "Request Special Exception." The Village Code Specifies Situations When a Special Exception May be Granted.
    - 1. I have read and I understand Attachment C: Yes
    - 2. I have fully answered the questions in Attachment C and have attached additional explanations as necessary. Yes
- Each 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.

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. I also hereby swear and acknowledge that I have read this application and all attachments in its entirety, including the standards applicable to my application.

[Signature]

Signature of Appellant

12/20/23

Date

**For Office Use Only:**

Application, and related Attachment, is Fully and Properly Completed with attachments Yes / No (If "No" reject the application and await a completed application.)

Date Application Received 12-21-2023 Receipt Number for \$200 Filing Fee 1.059778

Case Number 2024-01 Hearing Date 1-24-2024

Disposition \_\_\_\_\_



# Attachment B

## Variance Authority

The applicant has the burden to prove a sufficient basis for a variance to be granted. The applicable standards have been described in Wisconsin Statutes Section 62.23(7)(e)7., and in decisions of Wisconsin courts, and is summarized as follows:

- I. **Area Variance.** An area variance means a modification to a dimensional, physical or locational requirement, such as setback, frontage, height, bulk, or density.

The applicant bears the burden to prove sufficient cause for a variance. State law imposes the following requirements, with relevant terms highlighted:

*The Board of Appeals shall have the following powers: ... to authorize upon appeal in specific cases such variance from the terms of the ordinance as will **not be contrary to the public interest**, where, **owing to special conditions**, a literal enforcement of the provisions of the ordinance will result in **practical difficulty or unnecessary hardship**, so that **the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.** (62.23(7)(e)7.b., Wisconsin Statutes.)*

State law also provides:

*A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome... **In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.** (62.23(7)(e)7.d., Wisconsin Statutes.)*

These laws require the following. (Applicant: Check each box to acknowledge you have read and understand these requirements):

- a) **The hardship must be peculiar to the zoning parcel in question and different from that of other parcels, not one which affects all parcels similarly.** Generally, hardship arises because of some unique property limitation or feature of a parcel, or because the property was created before the passage of the zoning ordinance and will not accommodate a structure of reasonable design for a permitted use, if all area, yard and setback requirements are observed.
- b) **Loss of profit or pecuniary (financial) hardship and/or additional expense incurred to comply with the zoning ordinance is not sufficient grounds for a variance.**
- c) **Self-imposed hardship** is not grounds for a variance. Reductions resulting from the sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, or deed restrictions imposed by the owner's predecessor in title are examples of self-imposed hardships.
- d) Circumstances of Applicant. Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances.
- e) Nearby violations. Nearby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance.
- f) Previous variance requests. Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOR.
- g) **The hardship cannot be one that would have existed in the absence of a zoning ordinance.** Some properties may not be buildable because of the physical nature of the property. For example, the entire parcel might consist of steep slopes or wetlands. In such cases, the property would not be suitable for development whether or not there was a zoning ordinance regulating development.
- h) **Protection of the Public Interest.** Granting of a variance must not harm the public interest. The public interest includes the interests of the public at large, not just that of nearby property owners. Lack of local opposition does not in itself mean that a variance will not harm the public interest. The spirit of the ordinance must be observed.







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

414-351-8900

Receipt No: 1.059778

Dec 14, 2023

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

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Total:	200.00
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CHECK	Check No: 8332	200.00
Payor: John & Terri Olin		

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Total Applied:	200.00
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Change Tendered:	.00
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12/14/2023 3:56 PM



VILLAGE OF FOX POINT  
MILWAUKEE COUNTY  
WISCONSIN

BOARD OF APPEALS  
APPLICATION

VILLAGE HALL  
7200 N. SANTA MONICA BLVD. FOX  
POINT WI 53217-3505  
414-351-8900  
FAX 414-351-8909

1. Name of Appellant Terri and John Olin Address of Appellant 7700 North Club Circle Fox Point WI

Phone Number 414 - 698- 8854

E-mail Address olinfamily5@wi.rr.com Work \_\_\_\_\_ Cell \_\_\_\_\_

2. Address of Property 7700 North Club Circle Fox Point WI

Present Use of Property Residential Proposed Use of Property Residential

Owner's Name and Address if Different than Above \_\_\_\_\_

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

Disposition of Previous Appeal \_\_\_\_\_

Date of Decision in Previous Case \_\_\_\_\_

4. Date of Decision or Order of Administrative Official from which Appeal \_\_\_\_\_

Date of Notice of Such Decision Received by Appellant \_\_\_\_\_

5. Purpose of Grounds of Appeal or Application. Check Below the Relief Sought \_\_\_\_\_

A. "Appeal Administrative Decision." Request for interpretation or determination of administrative official.

1. I have read and I understand Attachment A: Yes  No

2. I have fully answered the questions in Attachment A: Yes  No

B. "Request Variance." State Law Empowers the Board of Appeals to Grant a Variance from the Zoning Code in Limited Circumstances.

1. I have read and I understand Attachment B: Yes  No

2. I have fully answered the questions in Attachment B: Yes  No

C. "Request Special Exception." The Village Code Specifies the Standards for a Special Exception.

1. I have read and I understand Attachment C: Yes  No

2. I have fully answered the questions in Attachment C and have attached additional explanations as necessary. Yes  No

6. Each 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.

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. I also hereby swear and acknowledge that I have read this application and all attachments in its entirety, including the standards applicable to my application.

*Terri Olin*

Signature of Appellant

12/4/23

Date

For Office Use Only:

Application, and related Attachment, is Fully and Properly Completed with attachments Yes / No (If "No" reject the application and await a completed application.)

Date Application Received 12/13/2023 Receipt Number for \$200 Filing Fee 1,059,778

Case Number 2024-02 Hearing Date 1/24/24

Disposition \_\_\_\_\_

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, January 24, 2024 at 5:00 p.m. to hear the following appeal for a special exception:

- 1. Case 2024-01 7700 N Club Circle.** The applicant is requesting a special exception to install yard fencing in the front yard of a corner lot. The special exception request is made pursuant to 745-7 B.(3)(h)[1, 2 and 5], 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.

A handwritten signature in black ink, appearing to read "Kelly A. Meyer".

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

Notice Sent: [January 2, 2024]  
Posted: [January 2, 2024]



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. Residential accessory building and detached garage limitations. The following limitations apply to all lots in a residence district and also on all lots where the principal use is residential and the principal building is a single-family or two-family dwelling. **[Amended 4-12-2022 by Ord. No. 2022-01 ]**

- (1) Definitions.

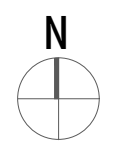
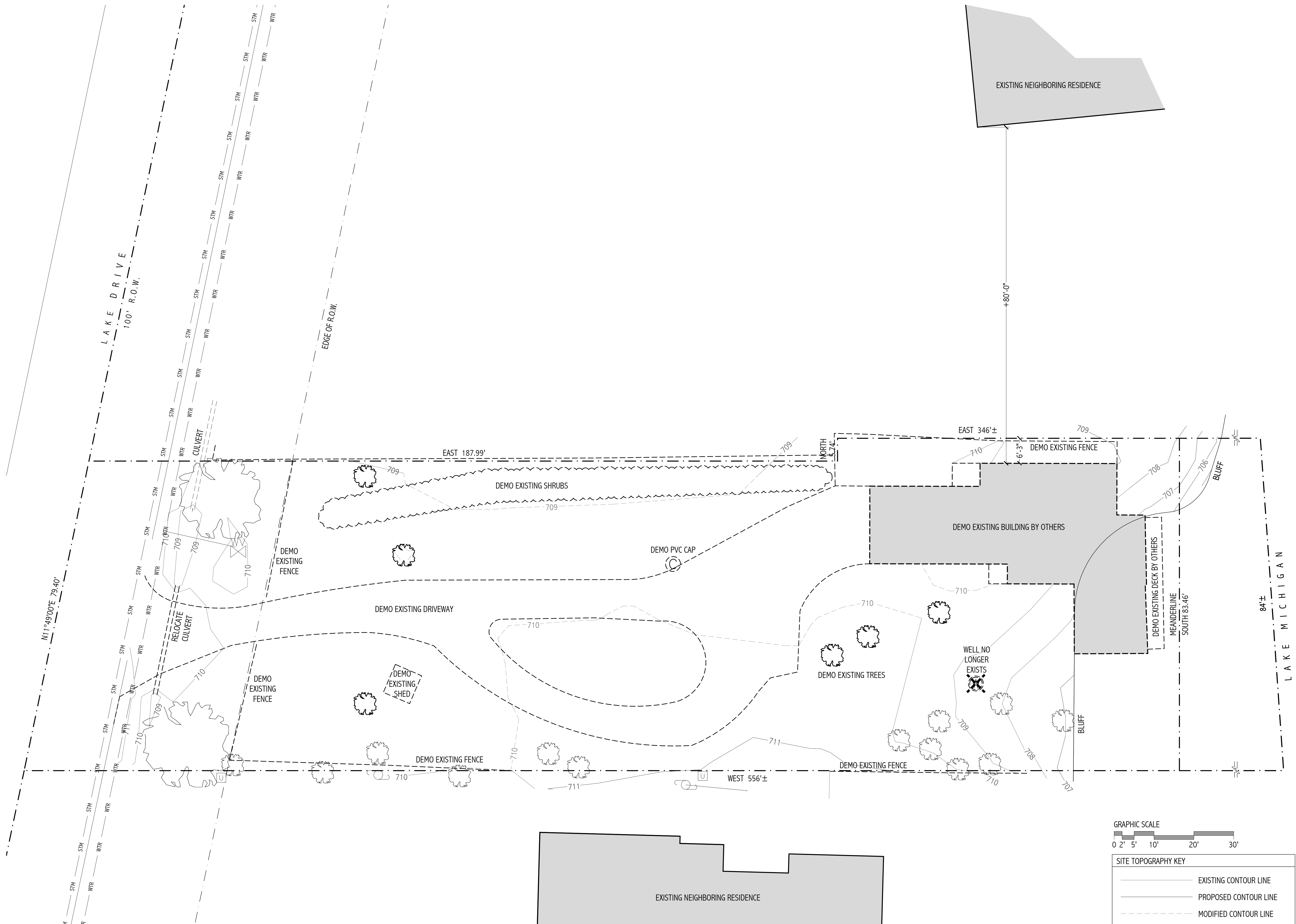
**ACCESSORY BUILDING** — For purposes of this section, the term "accessory building" shall mean an accessory building as defined in § 745-2 of this Code, that is not a detached garage as defined herein.

**DETACHED GARAGE** — For purposes of this section, the term "detached garage" shall mean an accessory structure designed primarily to be used for parking passenger vehicles.

- (2) Size. Accessory buildings and detached garages shall be no larger than permitted by the

**PATEL RESIDENCE**

6500 North Lake Drive  
Fox Point, Wisconsin 53217



**ISSUANCE AND REVISIONS**

12.20.2023 ISSUED FOR VARIANCE

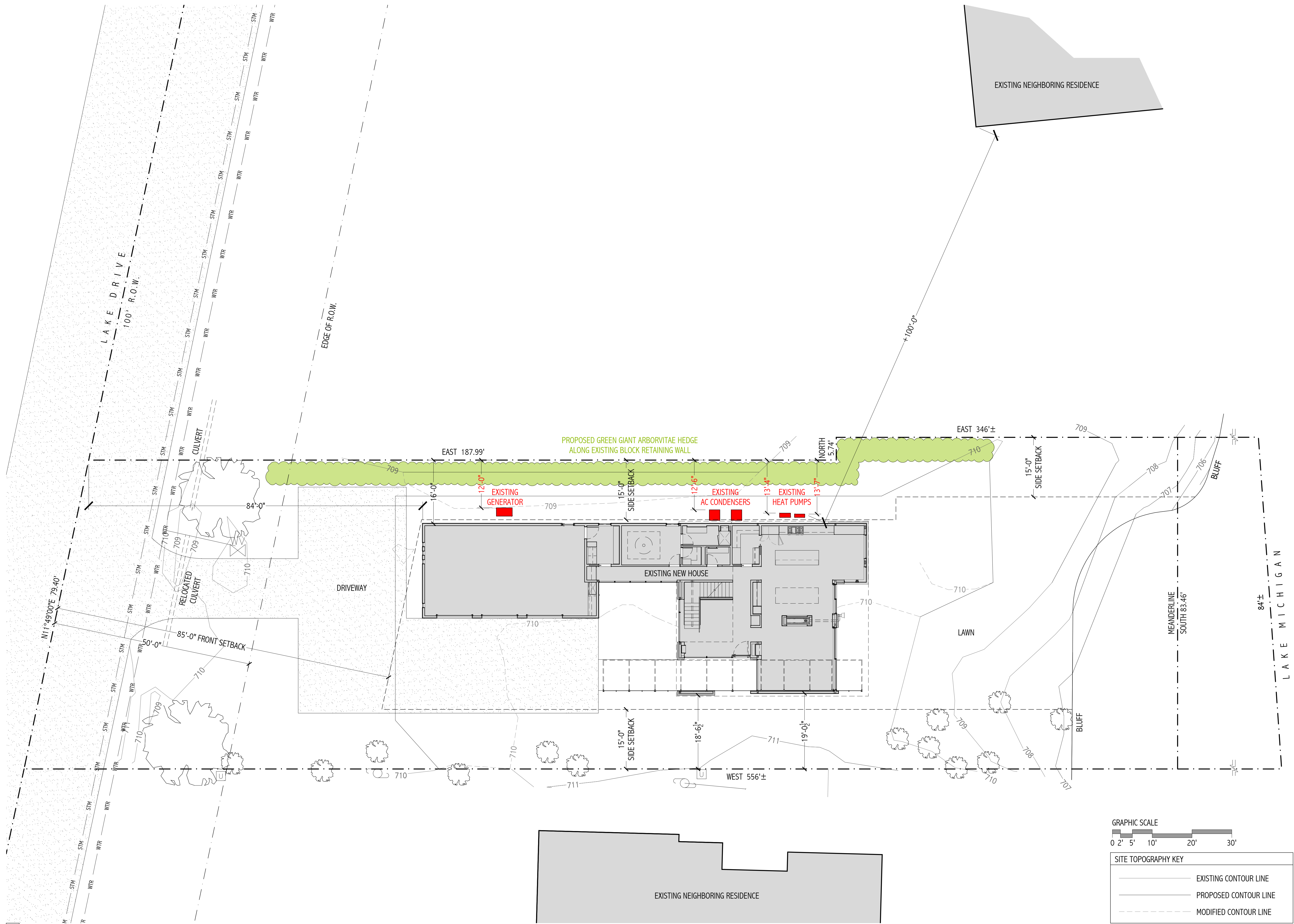
DATE: 12.20.2023

PRECONSTRUCTION / DEMOLITION  
SITE PLAN

**AS.00**

**PATEL RESIDENCE**

6500 North Lake Drive  
Fox Point, Wisconsin 53217



**ISSUANCE AND REVISIONS**

12.20.2023 ISSUED FOR VARIANCE

DATE: 12.20.2023

CURRENT / PROPOSED SITE PLAN

**AS.01**



VILLAGE OF FOX POINT  
MILWAUKEE COUNTY  
WISCONSIN

2024-02  
VILLAGE HALL  
7200 N. SANTA MONICA BLVD, FOX  
POINT WI 53217-3505  
414-351-8900  
FAX 414-351-8909

BOARD OF APPEALS  
APPLICATION

1. Name of Appellant Monica & Parag Patel Address of Appellant 913 E. Reservoir Ave., Milwaukee, WI 53212

Phone Number 847.530.1079

E-mail Address paragpatelmd@gmail.com

2. Address of Property 6500 N. Lake Dr., Fox Point, WI 53217

Present Use of Property Residential Proposed Use of Property Residential

Owner's Name and Address if Different than Above \_\_\_\_\_

3. Has a Previous Appeal or Application Been Made to the Board of Appeals with Respect to This Property?

Yes  No  If Yes, State the Nature of Previous Appeal or Application: \_\_\_\_\_

Disposition of Previous Appeal \_\_\_\_\_

Date of Decision in Previous Case \_\_\_\_\_

4. Date of Decision or Order of Administrative Official from which Appeal is Taken \_\_\_\_\_

Date of Notice of Such Decision Received by Appellant \_\_\_\_\_

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

A. "Appeal Administrative Decision." Request for interpretation of Zoning Code and reversal of order, requirement, decision or determination of administrative official.

1. I have read and I understand Attachment A: Yes

2. I have fully answered the questions in Attachment A and have attached additional explanations as necessary. Yes

B. "Request Variance." State Law Empowers the Board of Appeals to Grant a Variance to the Otherwise Applicable Requirements of the Zoning Code in Limited Circumstances.

1. I have read and I understand Attachment B: Yes

2. I have fully answered the questions in Attachment B and have attached additional explanations as necessary. Yes

C. "Request Special Exception." The Village Code Specifies Situations When a Special Exception May be Granted

1. I have read and I understand Attachment C: Yes

2. I have fully answered the questions in Attachment C and have attached additional explanations as necessary. Yes

6. Each 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.

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. I also hereby swear and acknowledge that I have read this application and all attachments in its entirety, including the standards applicable to my application.

Parag Patel  
Signature of Appellant

12/26/23  
Date

For Office Use Only:

Application, and related Attachment, is Fully and Properly Completed with attachments Yes / No (If "No" reject the application and await a completed application.)

Date Application Received 12/27/2023 Receipt Number for \$200 Filing Fee 1059788

Case Number 2024-02 Hearing Date 1/24/24

Disposition \_\_\_\_\_



# Attachment B

## Variance Authority

The applicant has the burden to prove a sufficient basis for a variance to be granted. The applicable standards have been described in Wisconsin Statutes Section 62.23(7)(e)7., and in decisions of Wisconsin courts, and is summarized as follows:

- I. **Area Variance.** An area variance means a modification to a dimensional, physical or locational requirement, such as setback, frontage, height, bulk, or density.

The applicant bears the burden to prove sufficient cause for a variance. State law imposes the following requirements, with relevant terms highlighted:

*The Board of Appeals shall have the following powers: ... to authorize upon appeal in specific cases such variance from the terms of the ordinance as will **not be contrary to the public interest**, where, **owing to special conditions**, a literal enforcement of the provisions of the ordinance will result in **practical difficulty or unnecessary hardship**, so that **the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.** (62.23(7)(e)7.b., Wisconsin Statutes.)*

State law also provides:

*A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome... **In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.** (62.23(7)(e)7.d., Wisconsin Statutes.)*

These laws require the following (Applicant: Check each box to acknowledge you have read and understand these requirements):

- a) **The hardship must be peculiar to the zoning parcel in question and different from that of other parcels, not one which affects all parcels similarly.** Generally, hardship arises because of some unique property limitation or feature of a parcel, or because the property was created before the passage of the zoning ordinance and will not accommodate a structure of reasonable design for a permitted use, if all area, yard and setback requirements are observed.
- b) **Loss of profit or pecuniary (financial) hardship and/or additional expense incurred to comply with the zoning ordinance is not sufficient grounds for a variance.**
- c) **Self-imposed hardship** is not grounds for a variance. Reductions resulting from the sale of portions of a property that reduce the remainder below buildable size or cut off existing access to a public highway, or deed restrictions imposed by the owner's predecessor in title are examples of self-imposed hardships.
- d) Circumstances of Applicant. Specific circumstances of the applicant, such as a growing family or desire for a larger garage are not a factor in deciding variances.
- e) Nearby violations. Nerby ordinance violations, even if similar to the requested variance, do not provide grounds for granting a variance.
- f) Previous variance requests. Previously granted or denied variances, even if similar to the requested variance, cannot be used in deciding a variance. The decision must be based on the facts of the individual case before the BOR.
- g) **The hardship cannot be one that would have existed in the absence of a zoning ordinance.** Some properties may not be buildable because of the physical nature of the property. For example, the entire parcel might consist of steep slopes or wetlands. In such cases, the property would not be suitable for development whether or not there was a zoning ordinance regulating development.
- h) **Protection of the Public Interest.** Granting of a variance must not harm the public interest. The public interest includes the interests of the public at large, not just that of nearby property owners. Lack of local opposition does not in itself mean that a variance will not harm the public interest. The spirit of the ordinance must be observed.

II. **Use Variance.** A use variance means an authorization for the use of land for a purpose that is otherwise not allowed or is prohibited by the zoning ordinance. An applicant for a use variance must meet the general standards described above for an area variance, but also must meet a much higher burden of proof than applies to an area variance. State law states the following:

*A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with **no reasonable use of the property in the absence of a variance.** (62.23(7)(e)7.d., Wisconsin Statutes.)*

If the property owner has any reasonable use of the property in the absence of a variance, a use variance cannot be granted.

**Applicant to Complete the following:** Describe the reasons why you believe your situation qualifies for a variance, based on these applicable laws (attach additional sheets as necessary):

We are respectfully requesting a variance for the generator and HVAC equipment side-yard setback noted in the HVAC Permit issued on July 7, 2022 given the following items, which are explained in further detail below.

- The Fox Point zoning code lacks specific language to support the stated setback in the HVAC building permit.
- The intended location of HVAC equipment was indicated in the drawings originally submitted, and approved, for a building permit. In addition, 756-34-A (3)(d) of the Fox Point Code requires the contractor to provide the "location of unit on premises, including distance to lot lines for exterior apparatus," as a precondition for a permit. The supposed setback violation of the HVAC equipment in question should have been obvious when the permit application was processed.
- The new house and equipment is set back significantly further from the northern property line than the demolished residence that it replaces.
- The condensers and generator are more than 100 feet from adjacent neighbor's house to the North.
- Equipment will be shielded with forthcoming vegetation per Landscape Architect; additional screening devices can be added to minimize visual and noise impact.

1. The issued HVAC Building Permit lists the HVAC equipment side-yard setback at 16-feet. The 16-foot side-yard setback for HVAC equipment is not defined in the zoning code. In addition, the stipulated 16-foot setback would exceed the 15-foot side-yard setback for the house itself, making the requirement implausible.
2. 756-34-B of the Village of Fox Point Zoning Code states that "AC Condensers and Generators shall comply with the setback requirements for Accessory Structures per Chapter 745 where any unit of an air-conditioning or refrigeration system or backup generator installation is located outside of the structure, and said location shall be subject to approval of the Building Inspector. Said location shall not, by noise or sight, be detrimental to adjoining property."
  - Note that our AC condensers and generator are located outside of the house structure, so the Accessory Structure setbacks apply per Section 745-7.
  - Also, the AC condensers and generator are more than 100-feet from the adjacent residence to the North and will be shielded by vegetation and additional screening as required to minimize detrimental visual or acoustic impact on the adjoining property.
3. 745-7 for Accessory Structure setbacks does not specifically define the setbacks for AC Condensers and Generators that are detached from the house and not roofed/enclosed, but the "detached and unroofed accessory structures" listed can be built tight up-to or 3-feet from the side property line. Our AC condensers and generator are well beyond these minimal accessory structure setbacks.

4. Additional comments:

about possible setback violations.

- The house that was demolished and replaced with the new construction was located 6'-3" from the North property line, so the distance of new house and equipment has significantly increased from previous existing conditions.
- Equipment location is adjacent to the mechanical room; relocation of the equipment would be technically infeasible.



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

414-351-8900

Receipt No: 1.059788

Dec 27, 2023

6500 N Lake Drive - BOA

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

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Total:	200.00
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CHECK	Check No: 1069	200.00
Payor: Parag J. Patel		

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Total Applied:	200.00
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Change Tendered:	.00
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12/27/2023 8:42 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 VARIANCE**

PLEASE TAKE NOTICE that the Fox Point Board of Appeals will meet in Schwemer Hall, 7200 N. Santa Monica Blvd, Fox Point, WI, on Wednesday, January 24, 2024, at 5:00 p.m. to hear the following appeal for a variance:

1. **Case 2024-02: 6500 N Lake Drive.** The applicant is requesting a variance pertaining to Section 745-13 B. (3), concerning the A-1 Residence District with regard to the required setback of 15 feet which should be provided for every accessory structure, Section 756-34 B., concerning both the generator unit and HVAC unit setback requirements, and Section 745-7 A. (1), regarding setback requirements for accessory structures. The applicant is proposing to install a generator and HVAC on the north side of the home within the side yard setback.

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: [January 2, 2024]  
Posted: [January 2, 2024]



### Village of Fox Point GIS

Case 2024-02 6500 N Lake Dr Variance Req



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

DISCLAIMER: The Village of Fox Point Does not guarantee the accuracy of the material contained here in and is not responsible for any misuse or misrepresentation of this information or its derivatives.

SCALE: 1" = 188'

Print Date: 1/2/2024

**§ 745-13. A-1 Residence District.**

- A. Uses. In an A-1 Residence District, no building or premises, unless otherwise provided in this chapter, shall be erected or used except for dwelling, together with accessory uses incident to the permitted use, provided always accessory use does not constitute or become a public or private nuisance.
- B. Areas and yards. In an A-1 Residence District, no building may be erected, enlarged or altered except in conformity with the following:
- (1) The open area of a lot on which a dwelling is erected or proposed to be erected, together with the area of abutting land reserved for highway purposes, whether private or public, to the center line thereof, shall not be reduced to less than 40,000 square feet for each family. No building not erected for a dwelling shall occupy more than 10% of the gross area of the lot or exceed a height of 25 feet.
  - (2) A front yard of not less than 30 feet shall be provided for every building on a lot for which a setback is not hereinafter provided for. Every building shall be set back from the center line of each adjoining street or area reserved for highway purposes, or any extension or separated portion thereof hereafter established, not less than the street setback specified upon the Official Zoning Map, except that the following reductions may be made for corner lots from the setbacks specified on the Official Zoning Map: five feet when width of lot is more than 80 feet but less than 90 feet; 10 feet when width of lot is more than 70 feet but less than 80 feet; and 15 feet when the width of lot is 70 feet or less; provided, however, that no setback will be less than 15 feet plus 1/2 the width of the abutting road or area reserved for highway purposes. **[Amended 9-11-2012 by Ord. No. 2012-11 ]**
  - (3) A side yard of not less than 20 feet shall be provided for on each side of every building, except that in the case of lots existing as of May 6, 1958, and less than 100 feet in width measured at the narrowest place adjacent to the location of the dwelling, the side yard may be reduced by 1/4 of the difference between said width and 100 feet; provided, however, that the side yard shall in no event be less than 15 feet.
  - (4) A rear yard of not less than 20 feet shall be provided for every building.
  - (5) Every lot on which a building is erected shall have a minimum width of 120 feet.
  - (6) No single-family residence built or existing in this district shall have a height greater than 40 feet from the grade abutting the structure on the front side of the structure, with the exception in that, upon application to the Board of Appeals, the Board of Appeals may grant a special exception on a lot of not less than 80,000 square feet in total area upon the following criteria: **[Amended 2-9-2021 by Ord. No. 2021-01 ]**
    - (a) Special exceptions to the height limitations as hereinbefore set forth may be granted by the Board of Appeals upon consideration of the following:
      - [1] Reasonable compatibility with the character of the immediate neighborhood.
      - [2] Whether there will be unreasonable interference with the aesthetics and scenic

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

**A. Permit requirements.**

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

**B. Exterior structures.** Where any unit of an air-conditioning or refrigeration system or backup generator installation is located outside of the structure, said unit shall comply with setback requirements for accessory structures as set forth in the Chapter 745, Zoning, and said location shall be subject to approval of the Building Inspector. Said location shall not, by noise or sight, be detrimental to adjoining property. As an exception to the requirements of this subsection, however, the Village Manager may authorize a temporary backup generator installation to be located anywhere on a lot if the Village Manager finds that the generator serves a public purpose and will be removed no later than 12 months from the date of the approval, subject to the temporary structure approval procedure described in § 745-7D of this Code. **[Amended 2-12-2010 by Ord. No. 2010-02 ]**

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

## § 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.<sup>1</sup>
- (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

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

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(e) *Board of appeals.*

1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
- 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.
4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
7.
  - a. In this subdivision, " area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

- b. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
  - c. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
  - d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.
  - e. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012.
  - f. A variance granted under this subdivision runs with the land.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
10.
    - a. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.
    - b. Notwithstanding subd. 10. a., a decision of the board of appeals on an application for an approval, as defined in s. 781.10 (1) (a), is subject to review under the procedures contained in s. 781.10.
14. Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.
  15. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

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2021-22 Wisconsin Statutes updated through 2023 Wis. Act 50 and through all Supreme Court and Controlled Substances Board Orders filed before and in effect on January 9, 2024. Published and certified under s. 35.18. Changes effective after January 9, 2024, are designated by NOTES. (Published 1-9-24)

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

62.23 (7) (e) 7. a. In this subdivision, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subdivision, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.

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

62.23 (7) (e) 7. d. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.