

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

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

WEDNESDAY
MAY 22, 2024
5:00 P.M.

AGENDA

- 1. Roll Call**
- 2. Approval of Minutes and Determinations – March 27, 2024 Meeting**
- 3. Approval of Minutes and Determinations – April 17, 2024 Meeting**
- 4. Case 2024-04: 8064 N Beach Drive.** The applicant is requesting a special exception to install an entry gate in the drive way off Beach Drive. The special exception request is made pursuant to 745-7 B.(3)(h)[2] of the Fox Point Code.
- 5. Case 2024-05: 8566 N Regent Road.** The applicant is requesting a variance pertaining to Section 745-16 B (2), concerning the B Residence District with regard to the front yard setback of 75ft from the center of Regent Road right-a-way. The applicant is proposing to install a two-car attached garage on the home within the front 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
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 27, 2024**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, March 27, 2024 at 5:00 p.m. Chair Nancy Filsinger called the meeting to order at 5:00 p.m. The Clerk-Treasurer took roll call. Those present included:

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

Staff members also present were Attorney Eric Larson, Building Inspector Michael Rakow, and Clerk-Treasurer Sara Bruckman.

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

Approval of Minutes January 24, 2024 Meeting and the Findings of Fact, Decision and Order

Roll call vote:

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

Motion by Board Member Mark Grady to approve and seconded by Board Member Thomas Dunst. Without objection and by unanimous consent, the January 24, 2024 meeting minutes were approved. ***Motion carried by roll call vote, 4-0.***

Approval of Minutes February 29, 2024 Meeting

Roll call vote:

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

Motion by Board Member Thomas Dunst to approve and seconded by Board Member Mark Grady. Without objection and by unanimous consent, the February 29, 2024 meeting minutes were approved. ***Motion carried by roll call vote, 4-0.***

CASE 2024-02 (As Adjourned from January 24, 2024 and February 27, 2024) 6500 N Lake

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 27, 2024**

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.

Village of Fox Point Building Inspector Michael Rakow

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

Building Inspector Mike Rakow explained the additional information included in the February 29th packet. He further explained he has not done the final inspection yet, but a complaint was filed that the HVAC and generator were in the setback. He explained the original plan was approved at Building Board and noted the Building Board is only looking at the aesthetics. He noted the landscaping plan has changed, but Fox Point does not regulate landscaping. There was also no HVAC or generator included in the original plan; Village code says you need certain things but the plan does not include those. Inspector Rakow reminded the board his job is to follow the building code and they need to focus on the code. Inspector Rakow explained the building permit and plans which is located under property file online. The building permit was issued in 2021 and includes the building code the applicant needs to follow. The Electrical Permit was applied for in 2023 for the generator; the condition reports states that all construction should meet code, which includes the side, rear, and front yard setback.

Attorney Larson noted the Building Inspectors documents are exhibit 1.

Board Member Grady questioned when would Inspector Rakow review if the HVAC or generator would be within or not within a setback. Inspector Rakow stated at final inspection to get occupancy. Member Grady verified with Inspector Rakow that it would not in normal practice to review if the plans were meeting the setback requirements until after it's installed. Inspector Rakow explained he reviews the plans and then does a rough inspection. Member Grady noted the house was constructed one-foot off the side yard setback and questioned if Inspector Rakow at any time reviewing the building permit plans have any idea where the HVAC was going along the north wall? Inspector Rakow stated yes, but it was not in a top view noting it would be in the setback. Member Grady noted the only time this would be caught is in the building permitting process or after installation.

Board Member Dunst questioned if there is any responsibility to let the applicant know it's likely going to be in the setback if placed in the side yard. Inspector Rakow noted it's the applicant's responsibility to meet the proper setback code requirements.

Attorney JJ Rolling noted that Inspector Rakow personally inspected the property onsite. Inspector Rakow noted he had been onsite twice, may have to come back after

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 27, 2024**

the rough. Attorney Rolling questioned if Inspector Rakow had been onsite not doing an inspection. Inspector Rakow noted he went onsite after the HVAC and generator were installed; after the complaint was made.

Applicant/Appellant Mona & Pareg Patel

Applicant/Appellant JJ Rolling with Von Briessen and Rodeny Berenz, passed out exhibit 2 was sworn in to provide testimony by the Village Clerk-Treasurer.

Attorney Rolling noted he was there on behalf of Mona and Pareg Patel. He noted the home was built according to plans, he noted the HVAC, air conditioning units and generator have been in for some time but not final inspection has been done. He noted there have been multiple visits from the building inspector while those have been installed and was not made aware of the issue until there was a complaint. He noted the location of the HVAC and generator are next to the house in a reasonable location; not located at the rear of the house by Lake Michigan. The purpose to eliminate any negative effects from having these items on the north side of the home with planting abbreviate and plantings which would cause it to be invisible. Other concern are noise but placing them closer to Lake Michigan would be higher noise to the neighbor. He also noted it may require greater mechanical systems to move them closer to Lake Michigan.

Member Grady asked Attorney Rolling to address if the hardship was being self-created. Attorney Rolling noted the lawn and lake having these items and exposed, which is unique hardship. Mr. Berenz noted they would have to move the mechanicals down the line and would need to be larger since they would be further from the house. Member Grady questioned if there a restriction for these units to be next to glass windows along the east wall. Mr. Berenz explained all the landscaping/pavers/patio would have to be ripped out.

Attorney Larson noted the board heard testimony that the interior mechanicals would be impossible to reach the current location and requested to bring something to prove that at the last hearing and explained he is unclear on what the testimony is on that. Mr. Berenz explained mechanical space in the home is very limited and new piping would need to be run internally. Member Grady noted it would be technology possible to move them further east, re-piping inside.

Closing of Testimony: Case 2024-02

Without objection and by unanimous consent, Chair Nancy Filsinger closed testimony for Case 2024-02 at 6:02 p.m.

Attorney Larson reminded the board of the applicable laws and was directed to prepare both a denial and approval decision; there are draft decisions that do not include today's testimony. He noted the property owner bears the burden of proving unnecessary hardship that strict compliance with the zoning ordinance would unreasonably prevent

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 27, 2024**

the property owner from using the property for permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome. In all circumstances the property owner bears the burden of proving the unnecessary hardship is based on conditions unique to the property rather than considerations personal to the property owner and the unnecessary hardship was not created by the property owner.

Attorney Larson suggested the discussion might be appropriate to begin whether the building inspector erred. Attorney Larson stated it was very significant that the building inspector was not given plans showing the locations of these items. He noted the building inspector told them on the HVAC permit, you must comply with the setback and that this cannot be interpreted to be an error by the building inspector.

Member Grady questioned what a person should expect out of a building inspector? If the inspector sees a building plan and knows there has to be HVAC somewhere on the property, seem to logically ask where will the HVAC be placed in the building plans. Attorney Larson stated don't you think the logical conclusion would be they have to comply with the code; it has to be on the property owner to have those details to comply with the code. Attorney Larson stated it is not legally appropriate to say he committed an error when he was never told the location of the HVAC or generator; it's the home owners' responsibility to comply. He also noted there a lot of things not on those plans. He noted the last hearing the board wanted proof of the allegation made by the petitioner that they showed these locations to the building inspector and he approved it and we have learned that is simply not the case.

Member Scott Ratke noted he was giving thought on the hardship was self-created.

Attorney Larson suggested to adjourn the decision to another meeting to allow him to prepare new draft decisions.

Grady agreed and noted there would be no more testimony, solely for deliberation.

Motion by Board Member Grady for to move to adjourn case 2024-02 to a Special Meeting of the Board of Appeals on April 17 at 5:00 p.m. for the purpose of deliberations, seconded by Board Member Dunst.

Roll call vote:

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

Motion carried by roll call vote, 4-0.

CASE 2024-03: 6950 N Barnett Lane.

The applicant is requesting a variance pertaining to Section 745-17 B (3), concerning the C Residence District with regard to the required setback of 10 feet which should be provided for

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 27, 2024**

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

Village of Fox Point Building Inspector Michael Rakow

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

Inspector Rakow explained he caught the air-conditioner in the setback on final inspection.

Member Grady noted there was a drawing submitted in 2020 with ariel view and approved building permit. Member Rakow noted there are no setback drawings.

Attorney Larson asked for a print out of the HVAC permit include in the record.

Applicant/Appellant Guram Nemsadze

Thomas Foly architect and property owner Guran Nemsadze stated his name and was sworn in to provide testimony by the Village Clerk-Treasurer.

Architect Foly met with the Building Board and negotiated a potential location on the north side of the building at this time. He suggested to place the unit on the east side of the garage and the Building Board indicated that was undesirable location. Architect Foly noted it would decrease of efficiency would be 12% if the unit was moved to the north side.

Guram Nemsadze 6950 N Barnett Lane, west side of garage other decisions that would be better. He noted the North neighbor is comfortable with location of the units. The pads are installed.

Closing of Testimony: Case 2024-06

Without objection and by unanimous consent, Chair Nancy Filsinger closed testimony for Case 2024-06 at 6:49 p.m.

Attorney Larson read state standards.

Member Ratke noted if there was hardship because pad was on the drawing at building board.

Member Grady noted the applicant relied on the Building Board instructions to put it on the north side of the house. He noted the hardship would be to move it because it would be place where the building board didn't want it

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, MARCH 27, 2024

Motion: Case 2024-06

Motion by Member Grady, to grant. Seconded by Member Dunst grant the variance to place the HVAC in the setback condition on plating screening be installed in 6 months.

Roll call vote:

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

Motion carried by roll call vote, 4-0.

Adjourn

Without objection and by unanimous consent The Board adjourned at 6:55 p.m.

Respectfully Submitted,

Sara A. Bruckman, WCMC/CMC
Village Clerk-Treasurer

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, APRIL 17, 2024**

A meeting of the Fox Point Special Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, April 17, 2024 at 5:00 p.m. Chair Nancy Filsinger called the meeting to order at 5:00 p.m. The Clerk-Treasurer took roll call. Those present included:

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

Staff members also present were Attorney Eric Larson and Clerk-Treasurer Sara Bruckman.

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

CASE 2024-02 (As Adjourned from January 24, 2024, February 27, 2024 and March 27, 2024) 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.

CLOSED SESSION

Motion made by Nancy Filsinger, seconded by Mark Grady, to convene into closed session regarding agenda item 2, at 5:02 p.m., Pursuant to State Statutes Sections:19.85(1)(a) and/or (g), for deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before the Board of Appeals, more specifically concerning Case 2024-02, 6500 N. Lake Drive.

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

Carried by roll call vote (5-0).

RECONVENE INTO OPEN SESSION

Motion made by Mark Grady, seconded by Thomas Dunst and carried by unanimous consent (5-0), to reconvene into open session at 5:34 p.m.

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, APRIL 17, 2024

Motion by Board Member Mark Grady to deny the application as presented from the facts and findings in closed session, seconded by Board Member Thomas Dunst.

Roll call vote:

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

Motion carried by roll call vote, 5-0.

Adjourn

Without objection and by unanimous consent The Board adjourned at 5:38 p.m.

Respectfully Submitted,

Sara A. Bruckman, WCMC/CMC
Village Clerk-Treasurer



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**

1. Name of Appellant STEVE KEHL Address of Appellant N69W25195 Indian Grass Ln, Sussex, WI 53089
Phone Number (262) 820-2501
E-mail Address skehl@landworkswisconsin.com Home Work Cell

2. Address of Property 8064 N BEACH DRIVE, FOX POINT
Present Use of Property RESIDENTIAL Proposed Use of Property RESIDENTIAL
Owner's Name and Address if Different than Above Craig Karmazin and Kelli Gabel

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.

Steve Kehl

Signature of Appellant

4.17.24

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 _____ Receipt Number for \$200 Filing Fee _____

Case Number _____ Hearing Date _____

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:

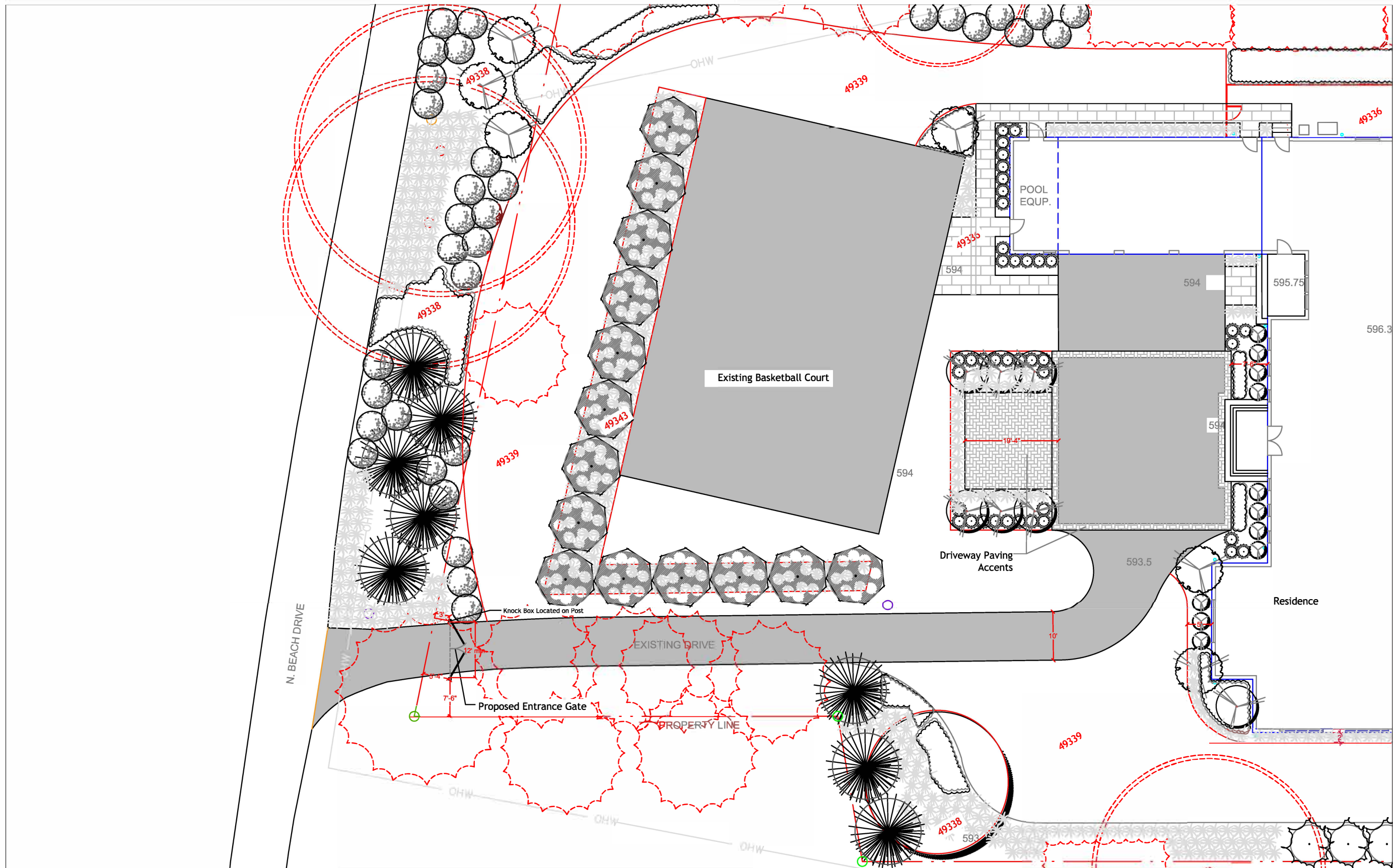
*The Board of Appeals shall have the following powers: ... to authorize upon appeal in specific cases such variance from the terms of the ordinance as will **not be contrary to the public interest**, where, **owing to special conditions**, a literal enforcement of the provisions of the ordinance will 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.)*

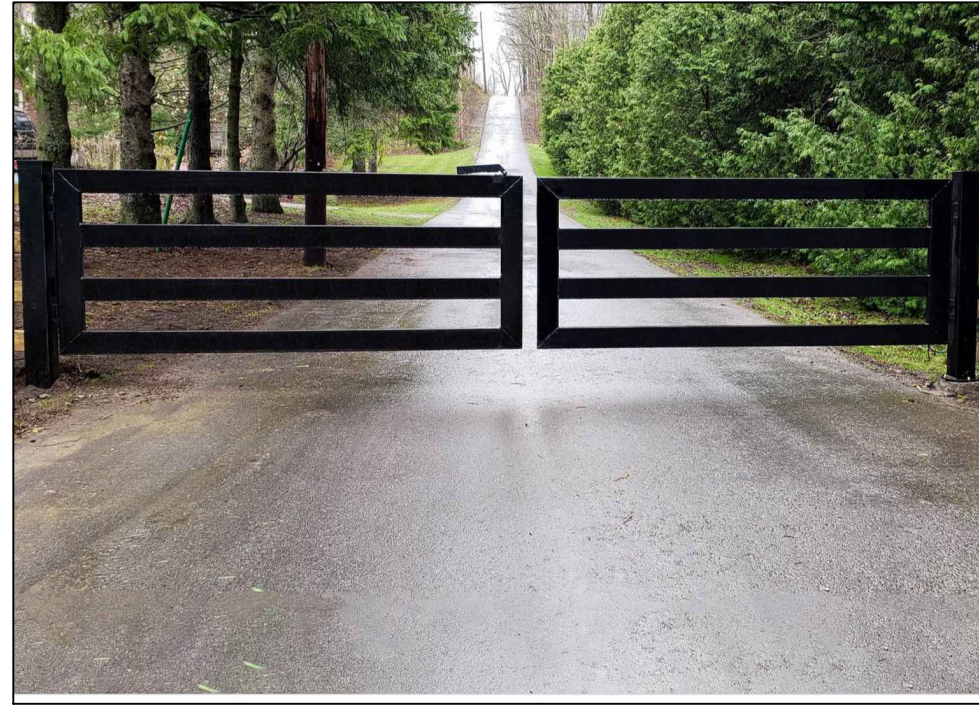
These laws require the following (Applicant: Check each box to acknowledge you have read and understand these requirements):

- 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.

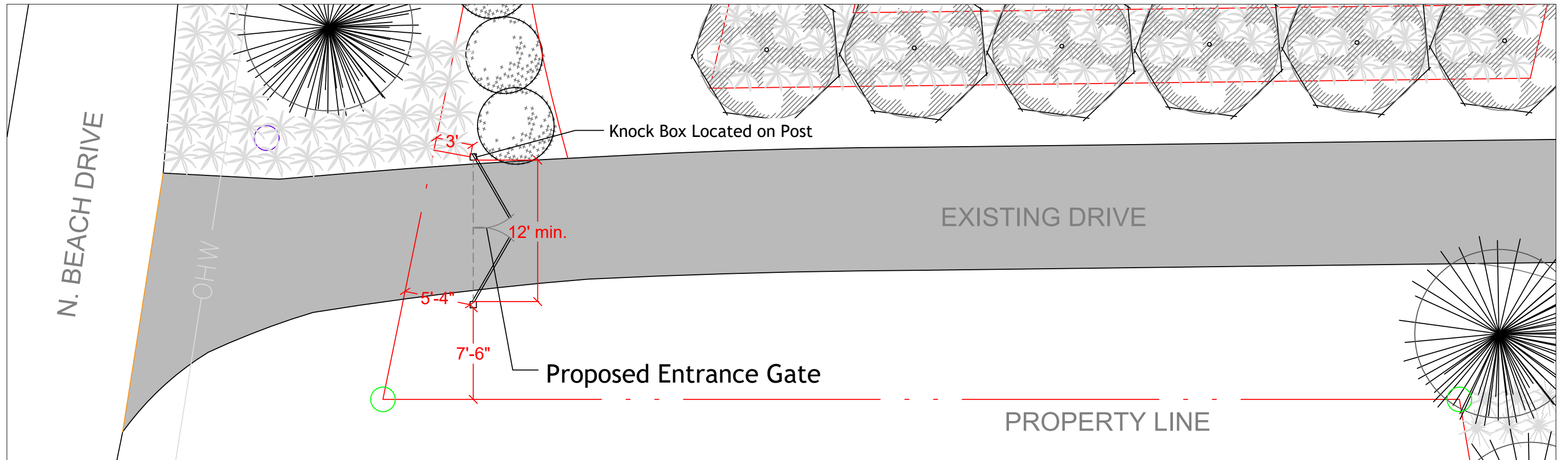




GATE CONCEPT- BLACK METAL WITH KNOCK BOX ATTACHED TO POST



DOUBLE SWING GATE, 12' SPAN BETWEEN POSTS





KFP Residence
8064 N Beach Dr.
Fox Point, WI



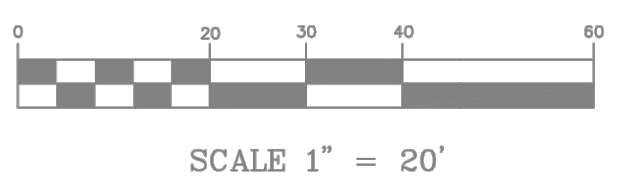
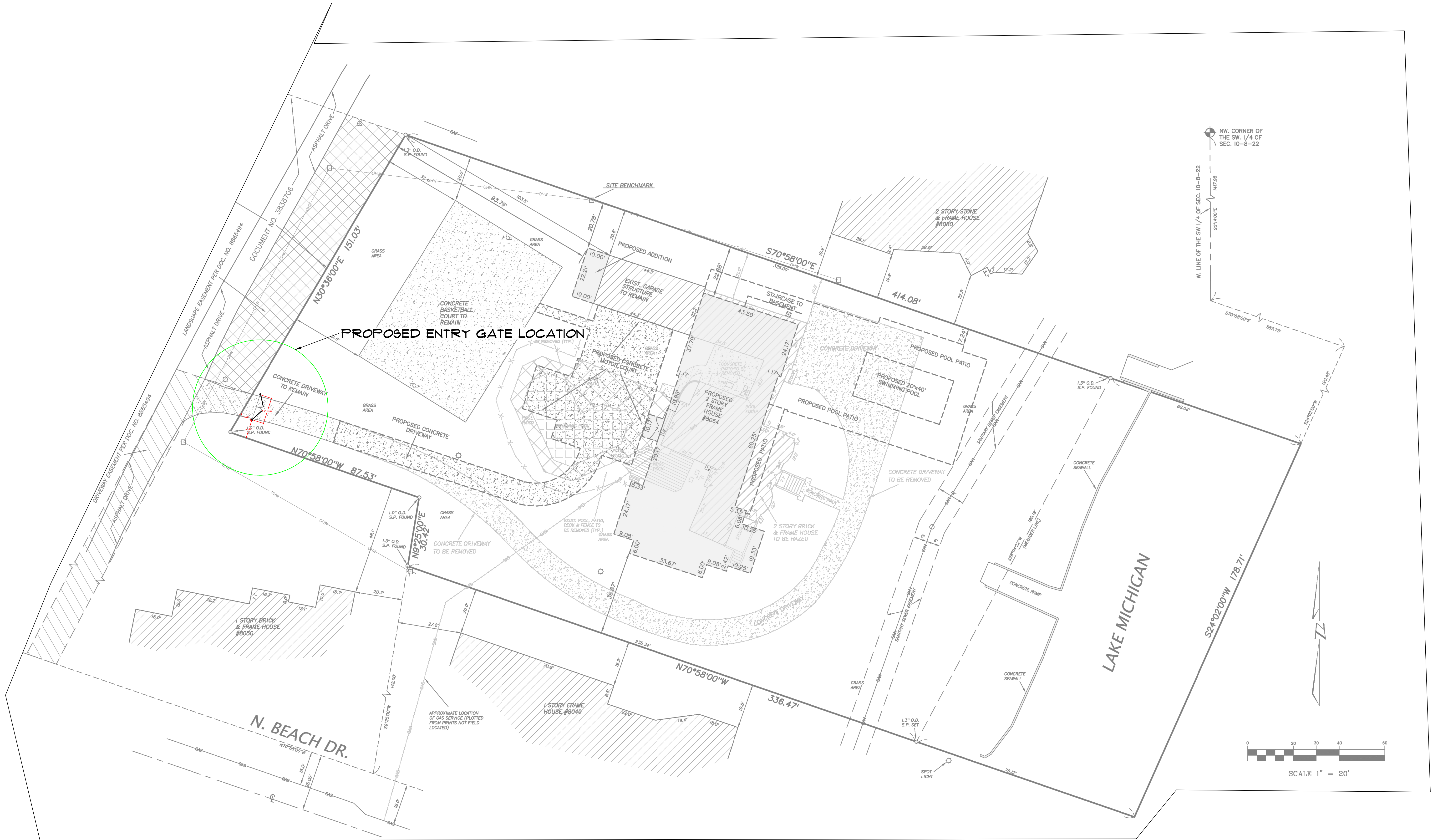
Location of Gate on Survey

Steve Kehl, PLA

Revisions:

Sheet Number: 1 / 1

Date: 3 / 2024





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

1. Name of Appellant Elizabeth A. Casmer Address of Appellant 8566 N. Regent Road
Phone Number 602-801-0188
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 [X] No [] If Yes, State the Nature of Previous Appeal or Application In Nov.'23/Jan'24 appealed south property line setback variance.
Disposition of Previous Appeal Approved
Date of Decision in Previous Case Jan. 2024 (& Nov. 2023)

4. Date of Decision or Order of Administrative Official from which Appeal is Taken Jan. 24, 2024
Date of Notice of Such Decision Received by Appellant Jan. 24, 2024

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

Signature of Appellant (Handwritten signature)

Date 4/23/24

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 Receipt Number for \$200 Filing Fee
Case Number Hearing Date
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.

- 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):

I have previously presented to the BOA and received approval for a 3.5-foot variance on the south side of my property to build a 2-car garage. My property is an older Fox Point home (1938) and is already non-conforming and very limited from a width perspective given that it is a 50-foot-wide lot vs. the standard zoned 80 feet.

With the help of my design professionals, I was made aware of the fact that my front yard setback was physically much closer to the front face of my house than I had previously thought. A standard depth garage would not fit on the front of my house.

I am coming to the BOA requesting a 5-foot variance on my front yard setback. The front yard setback is currently zoned at 30' feet. I am asking that my new garage be allowed to encroach 5' into that setback, having the face of the structure fall approximately 25' from my west property line (the Regent Road R.O.W. line).

See the attached diagram

My rationale is in consideration of the following points:

- My house was built on a lot that was allowed or "standard" for the time – 1938.
- Families in '38 were more apt to be single car users. Multi-car families were rare.
- Families today are much more apt to be two car users.
- The hardship I'm facing is that I have a lot that was an acceptable standard, or allowed in '38, that would typically not be acceptable today.
- My desire is to bring my house & garage up to today's acceptable norms or standards on a non-conforming lot.

The unnecessary hardship that brings me before the BOA has to do with the existing placement of my house with respect to my front yard setback coupled with the fact that my property width is only 50' vs. the conventional 80'. My wish is to simply be able to construct a new attached 2 car garage to replace my existing attached single car garage.

In order to construct a new attached garage to my house with sufficient depth to actually be able to park a car, I feel I have two choices:

1) try to conform to my existing 30' front setback and have the garage cut into my living space, or 2) secure a 5 foot front yard setback variance and negate the need to cut into my living space. Cutting into my existing living space is not a realistic option. The current footprint of occupiable space is very snug at <1,000 sf., and the cost & logistics of cutting into the living space would exceed the value of the garage.

If my lot were the conventional width, I wouldn't have an issue as one can see in Diagram A1.11

If my house was situated just 5' further back on my lot I wouldn't have an issue.

I believe that my request if granted, will have no detrimental effect at all on the Public Interest. On the contrary, I feel it will enhance property values in my immediate neighborhood and beyond.



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RENOVATION FOR
ELIZABETH (BIZ) CASMER
8566 NORTH REGENT
FOX POINT, WI

AUTHORIZATION SIGNATURE _____ DATE _____

I, the undersigned, being the duly authorized owner of the above described premises, hereby authorize the preparation and execution of the foregoing plans and specifications and the carrying out thereof in accordance therewith.

OWNERSHIP AND USE OF DOCUMENTS

The drawings, specifications and other documents furnished by the Architect are to be used only for the project and site for which they are prepared. They are not to be used for any other project, in whole or in part, without the written consent of the Architect. The Architect shall not be responsible for any errors or omissions in any documents prepared by the owner or other parties, for whom the Architect is not responsible, based on a duplication of documents for use on other projects. The Architect's responsibility is limited to the project and site for which they are prepared. The Architect shall not be responsible for any errors or omissions in any documents prepared by the owner or other parties, for whom the Architect is not responsible, based on a duplication of documents for use on other projects. The Architect's responsibility is limited to the project and site for which they are prepared.

SHEET TITLE _____

REVISIONS _____

PROJECT DATA _____

Date: _____ 4-7-2024

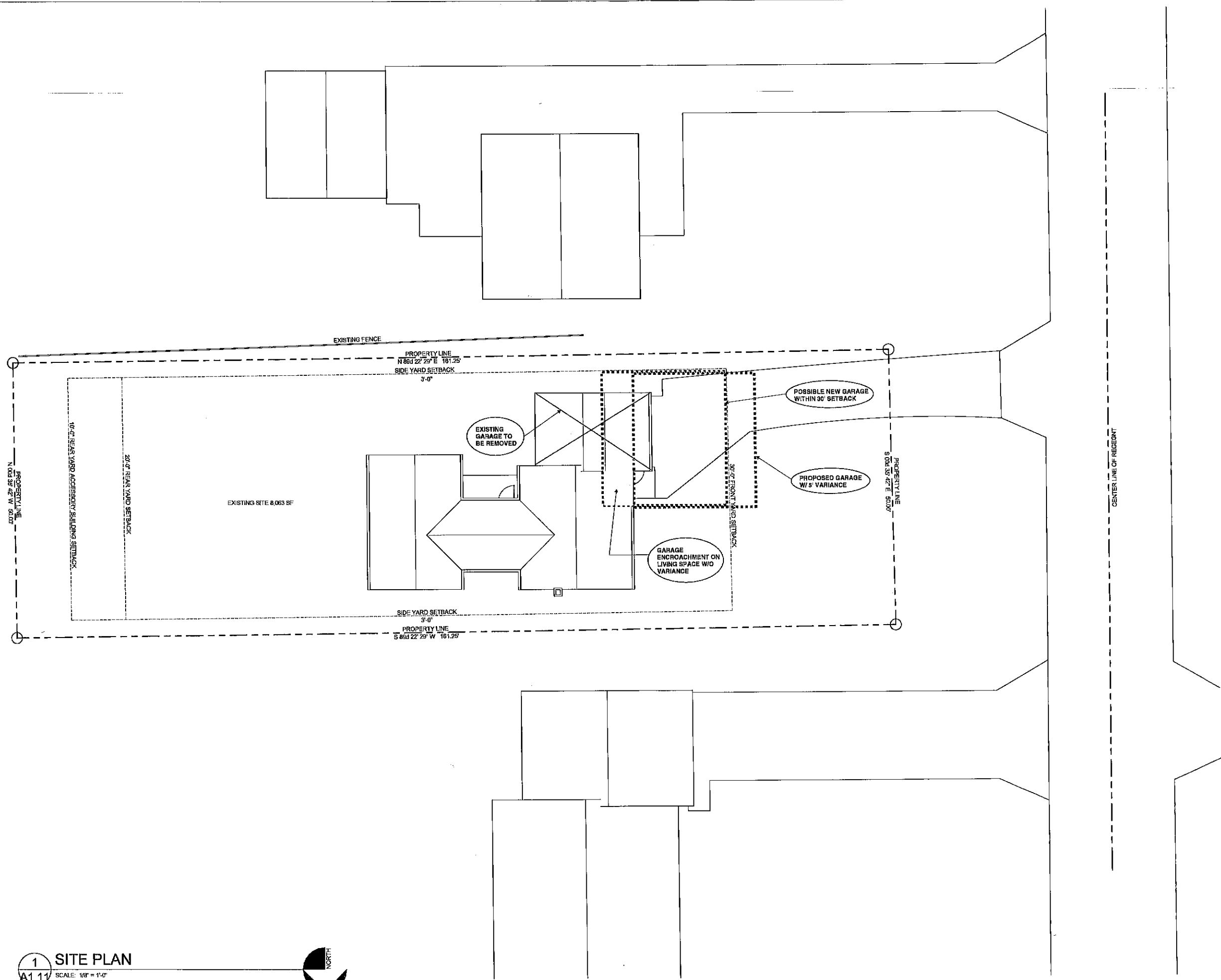
Job No: _____ 24101

Drawn By: _____ JCF

SHEET NO. _____

PRELIMINARY BUDGET - NOT FOR CONSTRUCTION

A1.11



1 SITE PLAN
A1.11 SCALE: 1/8" = 1'-0"
NORTH