

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
APRIL 10, 2019

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Wednesday, April 10, 2019 at 5:00 p.m. Chair Don Zien noted a quorum is present. Roll call was taken. Those present included:

Don Zien, Chair
Sara Bowen
Kurt Ostoic
Jeff Davis (Alternate 1)
Bob Cory (Alternate 4)

Also, staff members present were Village Attorney Eric Larson, Building Inspector Michael Rakow, and Village Clerk Treasurer Kelly Meyer.

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

Approval of Minutes – February 13, 2019 Meeting

On the motion by Sara Bowen, seconded by Kurt Ostoic, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the February 13, 2019 meeting, as presented.

Case 2019-03: 6936 N Yates Road

The applicant is requesting a special exception to erect a fence and driveway gate that would be installed on a corner lot. The fence would abut more than one public road and would be forward of the front line of the home. The special exception request is made pursuant to 745-7(B)(3)(h)[1] and [2] and 745-7(B)(3)(j) of the Fox Point Code.

Village of Fox Point Building Inspector Michael Rakow

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

Jeff Davis arrived at 5:02 p.m.

Village Building Inspector Michael Rakow stated the applicant would like to install a fence which would be in the front yard and a gate which will be installed over the driveway. Therefore, pertaining to code 745-7(B)(3)(h)[2], it is necessary that the property owner go before Board of Appeals for a special exception. That is why Board of Appeals is here today.

Building Inspector Michael Rakow following up on a Board of Appeals question stated the type of fence that is illustrated in the packet is permitted in the Village of Fox Point.

Applicant/Appellant Brett Koeller, 6936 North Yates Road

Applicant Brett Koeller each stated his name and was sworn to provide testimony by the Village Clerk Treasurer.

Chair Don Zien asked for clarification from the property owner on whether the highlighted lines are the proposed location of the fence installation on the survey provided in the packet. Applicant Brett Koeller did clarify the highlighted lines on the survey map is the intended fence installation site.

Applicant/Appellant Brett Koeller, 6936 North Yates Road

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
APRIL 10, 2019

Applicant/owner Brett Koeller noted the three and a half foot tall fence aesthetically would be the most appealing where it is indicated on the survey. Each post would be cedar; visually it will be very appealing and unobtrusive. They will be able to enjoy their yard unimpeded. Being a corner lot on Yates and Green Tree, that is a busy intersection, the fence and gate would allow them to spend a lot of time in their yard. The purpose of the fence is to keep their dog safe and unleashed; the fence will be low enough it would not impair the visibility for traffic. Brett Koeller stated, personally he feels the fence and gate would look better than an open air lot.

Chair Don Zien asked Village Attorney Eric Larson to elaborate on the considerations, standards, and guidelines.

Village Attorney Eric Larson commented there are two issues to consider; one is the fence and one is the driveway gate. The driveway gate has a substantially higher burden. Pertaining to the driveway gate refer to the middle paragraph or 745-7(B)(3)(h)[2]. Under this subsection, the gate may only be granted a special exception if it finds that the 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). The other findings that are applicable to the rest of the fence on the corner lot can be referred to on the first paragraph or 745-7(B)(3)(h)[1], in considering where the front, the side or the rear yards are and consider the least obtrusive alternative, and any other criteria as set forth in the provisions of this chapter which service to balance the interests of the applicant with the interests of the surrounding property owners. The last paragraph or 745-7(B)(3)(j) also applies to consider whether 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.

Village Attorney Eric Larson suggested considering the driveway gate first and then follow with the consideration of the fence. Attorney Larson asked if the applicant understood there is a higher standard for the driveway gate. Applicant Brett Koeller said he understood. Attorney Larson asked if the Board of Appeals did not grant the driveway gate, does the applicant still want to install the rest of the fence.

Consideration of Special Exception for Driveway Gate

Applicant and owner Brett Koeller clarified his alternative if the gate was not there would be to cut the fence at the mailbox and essentially go over to the corner of the house, thereby going from the other side of the house also next to the garage. The whole point is to enclose something. Brett Koeller stated he always looks at the most appealing method of enclosing with fence. He also noted that both the Police Department and Fire Department had no issues with the fence. The gate would be manual and not key controlled. Aesthetically, to have a chopped up fence on pieces of the property due to how the home sits would appear less appealing. The home is very oddly shaped on the lot, so there are no easy comparisons. It will cost significantly more to install the fence with gate, but visually this will look the best. Applicant Brett Koeller stated if the gate was not granted, the fence configuration for installation would have to be different. Brett Koeller drew in green, the new configuration on a hardcopy survey to show the delineation of the fence.

Jeff Davis addressed Village Attorney Eric Larson and inquired if the Board of Appeals should find that the driveway gate is reasonably necessary to protect the safety of people residing on the property to grant the gate.

The Village Attorney Eric Larson commented that is the standard for a driveway gate.

Jeff Davis asked if there was any recourse for the applicant if the Board of Appeals cannot find that.

Village Attorney Eric Larson noted the applicant could apply for a variance which would come before

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
APRIL 10, 2019

this body but with different standards, although it would be difficult. The Village Board has written this code because they do not want driveway gates in the Village of Fox Point. Another option for the applicant could be to potentially apply to ask the Village Board to amend the code.

Jeff Davis stated he was not sure if he preferred driveway gates or not, but he felt there should be a little more leeway in the village code than that standard, but Board of Appeals is bound by that standard.

Village Attorney Eric Larson stated he remembers the discussions with the Village Board at the time and the Village Board was adamant that they did not want gates in the village or a gated community look. That is what the village board decided and that is what the law in Fox Point is.

Applicant Brett Koeller noted that the yard is fully enclosed with a gate and without that, there is free access to half of their lot or a little less than half of their lot. Again, Brett Koeller mentioned this is an atypical lot. A fully enclosed lot is a safer lot than an unenclosed lot. This is a unique lot in one of the busiest intersections in Fox Point.

Bob Cory stated he understands that the Fire Chief and Police Chief have both approved the gate. He stated the gate is 14 feet wide, allowing enough room for a fire truck to pass through. Bob Cory asked for clarity in potential denial of the gate.

Village Attorney Eric Larson stated the Village Board created this strict standard and asked that the Board of Appeals just focus on the standard for the gate. He stated the Board of Appeals has to find that the 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). If the Board of Appeals cannot find that, the gate cannot be approved.

Applicant Brett Koeller noted they are on a very unique lot and people do drive into the driveway. It is a bit of a vague and subjective standard and he appreciates the input on what the Village Boards intention was when the village code was created.

Bob Cory inquired on the intent for the gate use. Applicant Brett Koeller has an 8 month old puppy and the fencing would keep the puppy in the yard on the week-ends when he is in the yard doing yardwork. Applicant Mr. Koeller stated it would provide a safety feature, but the main reason is not for safety.

Chair Don Zien asked for clarity on why this driveway gate is a special exception and not a variance. Village Attorney Eric Larson stated a variance standard is such that it is almost impossible to grant a variance many times. A special exception is set up to focus in on particular questions that the Board of Appeals or the Village Board may think might arise. This sets up standards when the use might be permitted without having to go into the variance standard.

The hearing was closed on the subject of the driveway gate at 5:28 p.m.

Jeff Davis read 745-7(B)(3)(j), the standards. It was noted that both 745-7(B)(3)(j) and 745-7(B)(3)(h)[2] apply to the driveway gate.

Jeff Davis stated he is sympathetic and he doesn't necessarily agree with the standard, but it is the Board of Appeals job to apply the standard. Jeff Davis stated on record he would like to see the standard change.

On the motion by Sara Bowen, seconded by Jeff Davis, and passed by roll call vote, the Board of Appeals denied the special exception for driveway gate at the location of 6936 North Yates Road finding that the gate does not meet the standard of 745-7(B)(3)(h)[2] that it is reasonably

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
APRIL 10, 2019

necessary to protect the safety of the people residing on the property. Motion passed 3-2 (Nay- Kurt Ostoic, Robert Cory).

Jeff Davis, Kurt Ostoic and Sara Bowen all stated this standard is way too strict and should be amended.

Consideration of Special Exception for Fence

Village Attorney Eric Larson stated the next step is to consider the special exception for the fence and is aware that the applicant, Mr. Koeller does not want to keep the gate as shown on your plan, but if the Board is going to consider the fence, the Board needs to know where the fence will be now.

Applicant Mr. Koeller described the new area the fence is proposed to be installed without a gate. Mr. Koeller followed up with marking the outline of the fence as installed without the gate on a Plat of Survey specific to 6936 Yates Road [**Exhibit A**].

Chairman Don Zien closed the testimony at 5:44 p.m. for the Board of Appeals to make a determination.

On the motion by Kurt Ostoic, seconded by Jeff Davis, and carried by roll call vote, the Board of Appeals granted the fence special exception for 6936 North Yates Road, as presented here at the meeting tonight.

Adjourn

On the motion by Kurt Ostoic, seconded by Jeff Davis, and carried unanimously, the Board adjourned at 5:47 p.m.

Respectfully Submitted,



Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer