

**VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
THURSDAY, MAY 19, 2022**

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on Thursday, May 19, 2022 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Nancy Filsinger, Chairman
Thomas Dunst
Scott Ratke
Lucille Sells (Alternate 1)
Susan Yale (Alternate 2)

Staff members also present were Village Attorney Eric Larson, Member Alan Polan (Alt. 4), Julianna Javor (Alt. 3), Building Inspector Michael Rakow, and Village Clerk Treasurer Kelly Meyer.

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

Board of Appeals Continuing Education

Village Attorney Eric Larson held a continuing education regarding Board of Appeals procedure and open meetings law with Board of Appeals members. No action was taken.

Approval of Minutes of March 2, 2022 Meeting and the Findings of Fact, Decision and Order

Motion by Member Thomas Dunst, Seconded by Member Scott Ratke, and carried by roll call vote (5-1) to approve the March 2, 2022 minutes and the Findings of Fact, Decision and Order of the last meeting, as presented.

Case 2022-04: 940 E Wye Lane

The applicant is requesting a variance pertaining to Section 745-13 B. (3) of the Fox Point Village Code in the A1 Residence District, concerning side yard setback requirements. A side yard setback of not less than 20 feet from the side yard setback shall be provided for each side of every building. The request also pertains to Section 756-34 B., Exterior Structures regarding the installation of a generator. The applicant is proposing to install a generator approximately 17 feet from the property line.

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 Michael Rakow gave background on Case 2022-04, stating the applicant would like a variance concerning side yard setback requirements to install a generator approximately 17 feet from the property line in the A1 district with a side setback of 20 feet. The generator would be in the setback approximately 3 feet. Therefore, it was denied due to noncompliance with the setbacks.

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Owner Kristie Kosobucki's Representative Michael (MJ) Thalman

The Owner's Representative Michael (MJ) Thalman stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Chairman Nancy Filsinger asked representative Michael Thalman to provide comments regarding owner Kristie Kotobuki's case.

Michael Thalman stated that they had moved into the home in late August of 2021 after purchasing the home in late May. There was a huge storm that knocked out the power; our block's power went on and off for approximately four days. There was only one home on the block with a generator. After that experience and considering Kristie's health condition, which required power and refrigerated medication. They began the process of looking into the installation of a generator. They would be installing the same generator as the neighbors on the left side of them. It will be 17 feet instead of 20 feet. In regard to issues with the placement of the generator, there are no other spots available due to the placement of the windows and the placement of the side doors for the backyard. It would have to be in the middle of the back yard. Aesthetically and for noise, it would be on the same side as the neighbors, so theoretically, the two generators would run at the same time. They tried to find a generator that was relatively attractive and small.

Chair Nancy Filsinger inquired if they looked at other locations for the generator. Representative Michael Thalman confirmed they did, but due to the window placement in the back of the home and where the patio door is in the home, it would have to be smack in the middle of the yard. Therefore, that is the only location the company they are working with stated the generator could be located.

Member Dunst inquired if they did not want the generator near a window because of noise; he further noted that if they put it right near the chimney, they would make the three feet needed. Representative Michael Thalman stated they had asked the company if the generator could be located there and they said it could not be by the windows. It is impossible. It would have to be pushed into the actual back yard. Chairperson Nancy Filsinger showed Representative Michael Thalman the rendering submitted to confirm the location. Mr. Thalman stated there have been changes to the home since those designs were submitted to Board of Appeals. A kitchen renovation has been done, which included windows and the door to the back yard being moved. There was a lengthy renovation completed.

Member Scott Ratke inquired if there would be an issue with the combustion if the generator was moved near a window. Representative Michael Thalman stated that is possible, but he is not an expert.

Member Lucille Sells inquired if they had a basement window well there. Representative Michael Thalman stated the basement windows are along the side of the house. That has since been removed because sliding windows have been put in. The door has been put in the side wall in that location. The window well area has been closed off now. The actual door is on the other side.

Member Susan Yale inquired if there were any other units like a Central Air unit. Representative Michael Thalman stated they have an AC unit. It is located on the side of the home.

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Member Susan Yale inquired if the generator could be installed in the same area. Representative Michael Thalman stated that is where it would be – along the same wall. He further stated that it may not be showing in the rendering the Board has. Representative Michael Thalman stated he apologizes, he wasn't sure when the pictures were submitted. The photos may not be the updated photos of the current home design.

Member Scott Ratke inquired if that is the neighbor's garage that is facing the generator. Representative Michael Thalman noted it was not the neighbor's garage. Their garage is actually on the other side of the home. The photo you are looking at is the side the neighbor's generator is installed. Representative Michael Thalman noted that would be the same side that they would hope to install the generator as well. Both the neighbor's generator and their generator would be on the same side, together. From a noise perspective, if the neighbor's is on, theirs would also be on at the same time. The neighbor's stated they have no issue with the generator being placed near the same location as their generator.

Member Lucille Sells inquired if there are clearances necessary for the piece of equipment that are being taken into account for those three feet it is encroaching into. Meaning exhaust or airflow that might come out of this unit that permits a certain distance from the home. Representative Michael Thalman stated he believes there is not any additional space needed. Also, it seems like there is a lot of space behind the garage. Member Lucille Sells inquired if there is a reason, looking at the site, with the functionality of the equipment why it could not be placed somewhere in another area. Representative Michael Thalman stated the company came out, they looked at the property, and stated there is literally only one place for the location of the generator. Representative Michael Thalman commented it can be by the windows, but not on the side of the home because of the trees on their property. There are underground wires for the telephone company near the garage area as well.

Ratke inquired if the electrical panel is right there where it is coming into the home. Representative Michael Thalman commented the electrical is in the middle of the basement. The contractors moved the electrical panel.

Attorney Eric Larson stated to be clear for the record, the Village Board of Appeals received an application from Kristie Kosobucki who made the request. The application included the photos being referred to. There is a photo marked with the proposed location of the generator, and a second photo from another angle that has the same identification as the proposed location of the generator. It also includes a site plan/lot survey showing the generator right in front of the fireplace chimney. The Board is currently referring to those documents, as provided with the application and included in the packet tonight. Also included is the description of the Generac generator that is proposed.

Village Attorney Eric Larson inquired of the applicant the other location the installer said would work, which he understands the applicant and representative feels would not be good. It is unclear to Attorney Larson when looking at the survey what the representative means by "the back yard".

Representative Michael Thalman responded that it is his understanding from the company he pushed back a number of feet – although he is unsure of the exact number of feet. It would be right in the middle of the back yard.

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Village Attorney Eric Larson stated the site plan shows what looks like quite a big back yard. It looks like the top of a ravine line back there. Representative Michael Thalman stated there is a ravine. The ravine is slowly eroding and they are losing footage. The neighbors have lost several feet over the last couple of years. He further noted that is also the reason for the placement of the generator where it is requested, because there is a ravine that backs up to it.

Village Attorney Eric Larson inquired if he knew where the generator would be placed in the back yard. Representative Michael Thalman stated he wasn't there meeting with the company so he is unclear where they would propose the generator be located in the back yard. From what he was told, it would have to be right in the middle of the back yard.

The Board of Appeals members noted they felt there was a lack of information regarding Case 2022-04, 940 E Wye Lane.

Chairperson Nancy Filsinger asked for clarification on the survey provided, inquiring if the home looks different now then the portrayal in the packet survey. Representative Michael Thalman reiterated there was a door that led out to the back yard, which has now been cemented and closed up. The door is now coming from the side of the home. The windows that were in the back of the home were closed in and re-located to different areas of the home. The whole layout has been changed.

Village Attorney Eric Larson clarified that apparently what the Board has in their packet is not accurate. The photos are not accurate and site plan is not accurate. Much of the testimony is based on someone who is not here. Both the property owner and installer are not present. One option would be to give them a chance to re-group and come back with a complete case. Another option would be to just decide the case on just what the Board has before them.

Member Susan Yale asked if they would consider asking another company/installer for their opinion on the placement of the generator. Michael stated that he trusts the company's opinion and the company has installed for two other properties already.

Member Scott Ratke inquired if there were any obstacles to placing it in the back yard, like utilities. Representative Michael Thalman stated he is unsure. He would love to have the company clarify this.

One of the Board members asked where the gas line comes in. Representative Michael Thalman stated he is not positive where the gas line comes in.

Member Thomas Dunst stated he would like to see more accurate images and an explanation from the installer as to precisely why.

Village Attorney Eric Larson stated the Board should adjourn the matter to the next meeting date, although there is not a next meeting date scheduled at this time. Therefore, this Case 2022-04 will need to be re-noticed.

Adjournment of Case 2022-04 to the next Board of Appeals meeting

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Motion by Member Scott Ratke, seconded by Member Thomas Dunst, and carried unanimously at 5:39 p.m. (5-0), to adjourn Case 2022-04 to the next meeting of the Board of Appeals for the consideration and allow the applicant to present additional evidence.

Case 2022-05: 6936 N Barnett Ln.

The applicant is requesting a variance pertaining to Section 756-34 of the Fox Point Village Code in the A-1 Residence District, concerning side yard setback requirements. Section 745-13, A-1 Residence District states a side-yard of not less than 20 feet shall be provided for on each side of every building, which applies to this generator per Section 756-34 B. of the Village code. The applicant is proposing to install a generator located approximately +/- 4 feet into the setback area.

Village of Fox Point Building Inspector Michael Rakow

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

Building Inspector Michael Rakow gave background on Case 2022-05. The property is located in the A-1 District. The applicant would like a variance concerning side yard setback requirements to install a generator located approximately +/- 4 feet into the setback area.

Chairperson Nancy Filsinger communicated that Case 2022-05 is the property owned by a doctor that she recently received care from; she stated she believes she can be fair and impartial and has no conflict of interest with regard to Case 2022-05.

One of the Board members inquired if the generator was already installed. Michael Rakow stated it is installed already.

Owners Alan and Betsy Kimmel's Representative Electro-Tronics, LLC Dan Claas and Commercial Realty Advisors, LLC Ryan Persitza.

The Owner's Representative Electro-Tronics, LLC., Dan Claas stated his name and Commercial Realty Advisors, LLC, Ryan Persitza were sworn in to provide testimony by the Village Clerk Treasurer.

Chairman Nancy Filsinger asked the representatives to provide testimony regarding owner Alan and Betsy Kimmel's case.

Electro-Tronics, LLC., Dan Claas stated he is the owner of Electro-Tronics, LLC. He was contracted to install the generator. Electro-Tronics installed the generator as they have done dozens of times in the past. Electro-Tronics installed the generator on the side of the home where all the utilities are located. The gas meter is there; the electric meter is there. There are multiple AC units on that side of the building. Typically, they look for all of the utilities to place the unit. It is usually best to be in a certain proximity to the gas meter to feed the generator and the purpose in an emergency when there is not power. There are limitations on how far you can install from that gas meter without oversizing the gas pipe to an extreme measure and also feeding back to the main electrical service. There is also an 18-inch set-back from the building for clearance to access the area around the unit.

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A Board member asked if that was state code and Mr. Claas replied it was and is also the recommendation of Generac.

Representative Electro-Tronics, LLC, Dan Claas also stated that in likeness to the prior case, regarding the proximity to the windows, they have a five-foot setback from any window that opens for combustion and exhaust fumes. They review those setbacks in addition to where they are going to place the unit for installation. In this particular circumstance, the whole back of the property is all glass windows, doors, patio and deck; going around the corner on that same side working from the rear of the building, east to west are all windows that open. They pushed as far to the street away from all those windows that open and it then falls into what is the backside of the garage. With that, Electro-Tronics felt they had the perfect placement for the generator until they found out about the 20-foot setback. He has installed dozens of generators in multiple municipalities and he has never run across a 20-foot setback on the property line, which is the issue on the installation of this generator. This is why it was installed before hand and did not get caught ahead of time.

Representative Commercial Realty Advisors, LLC, Ryan Persitza stated there is also a bump out on the structure of the home that caused the contractors to be requesting a 4-foot variance, again 16 feet from the property line, as opposed to 17, which is one foot. These new units do not run a full capacity. They can be set to run at 50 percent. Older models run at 100 percent once a week. The newer models can run at 50 percent twice a month. They are able to schedule the time that the newer models run during the two times a month. They are aware that they received some communication from a neighbor. They would be able to schedule the generator to run at the same time as the neighbor's generator.

Chairperson Nancy Filsinger inquired if they had a permit.

Representative Electro-Tronics, LLC, Dan Claas stated they did get a permit. With that permit the setback was noted. He said the only thing they can say about the setback note is almost every municipality that Electro-Tronics has dealt with has given them a copy or emailed a copy of the permit directly to them. Village of Fox Point does not do that; you have to go to the website and to the property address and print out that permit. He did not take that step. That was his mis-step.

Member Lucille Sells asked for clarification on the need to run the generator. Representative Electro-Tronics, LLC, Dan Claas stated the generator basically runs every two weeks to make sure it operates properly when needed. It runs through a certain number of tests to make sure that all electronics and everything is functioning properly. It gets the oil flowing, especially in an environment where there are different changes in temperature. In the winter months with the colder temperature, the oil can get thicker.

Member Lucille Sells inquired how long the generator cycle would run. Representative Electro-Tronics, LLC, Dan Claas stated it runs for a 10-minute period. The newer model is set to run twice a month at only 50 percent power for a 10-minute period each time. It is a little bit quieter than it would be in an actual emergency situation.

Representative Commercial Realty Advisors, LLC, Ryan Persitza possibly part of the reason for the letter from the neighbor is the 10:00 schedule on Saturdays. They were able to set that to a Tuesday at 11:00 or any day of the week. They normally ask the homeowner when they will be home

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to run the generator so they know it is running properly. If they can hear it run once every two weeks, they know it is functioning properly. If they don't hear it start up when they normally would hear it run, then they know there is an issue with it. In hind-sight, in probably wasn't the best time to have the generator running at 10:00 a.m. on a Saturday. She has agreed that she will go with whenever the neighbor would like it to run or coordinate a time with the neighbor's generator because they do have a very similar generator.

Member Lucille Sells stated that Representative Electro-Tronics, LLC, Dan Claas talked about sizing the gas lines if you had to install it elsewhere. She commented that would also be assumably buried gas lines. Representative Electro-Tronics, LLC, Dan Claas in this circumstance, the gas line is run on the exterior of the building. They have done buried gas lines, but it leads to a lot of other issues, such as other utility lines and special gas pipe which adds to the cost of the project. A lot of people don't like to do that. In this circumstance with all the other utilities and piping on the house, there was really no need or reason to go underground with it at that point. Plus, there are other obstructions like cement pads and an old vault in the basement where the old well pump was located. Access would be difficult.

Member Lucille Sells inquired if Representative Electro-Tronics, LLC, Dan Claas knew the age of the AC units. He stated he did not know the age. Just from looking at the units, the units may be less than 10 years old.

Member Susan Yale inquired if the AC units required a variance because the units looked as if they are in the same spot. Representative Electro-Tronics, LLC, Dan Claas stated they are in the same area; Building Inspector Michael Rakow may be able to speak on the matter.

Building Inspector Michael Rakow stated they are in the same area and fall under the same code, but the AC unit installations would have been completed prior to his employ. He further stated they may have been placed there without a permit; it was before his time.

Member Lucille Sells stated one of the owners talked about the generator being an eyesore. She inquired if the owner talked about their willingness to obscure the view.

Representative Electro-Tronics, LLC, Dan Claas stated he was actually contracted from Nelson's Landscaping Service for the project because they do all the landscaping needs for the Kimmel's. It was actually contracted into the same proposal. There was going to be shrubbery and bushes all around the generator. You can see the side view of it from the street and the homeowner to the north who has objected has their generator in the front of the home, which is what they were trying to avoid for the installation. It is contracted to have front and side landscaping shrubbery which should obscure the view of it and also muffle some of the sound.

Member Lucille Sells inquired where the generator would be placed, in the event it would have to move.

Representative Electro-Tronics, LLC, Dan Claas stated where it is currently located now is the north wall. The only location they could move it to would be the front yard; it would be on the front face of the garage, staying on the north side, continuing the gas pipe and electric on that side of the home. They would have to go the additional five feet to make that setback. So it would be placed

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more on the center of that wall. It would not have to be away from the window area of the garage because it is a garage window.

Building Inspector Michael Rakow stated he believes it would meet the setbacks in that particular area on the front face area of the garage, but he would have to check for certain.

Closing of Testimony

Without objection and by unanimous consent, Chairperson Nancy Filsinger closed testimony at 5:56 p.m.

Village Attorney Eric Larson read for review, the variance standards that the Board should consider regarding Case 2022-05. After reading the standards, Village Attorney Eric Larson did reiterate that they did hear from one neighbor who is opposed to the installation of the generator. He stated the determination is the Boards.

Member Lucille Sells asked the Village Attorney Eric Larson for clarification on grandfathering the AC units.

Village Attorney Eric Larson responded the testimony is closed; the testimony could be re-opened. Village Attorney Eric Larson stated the Boards jurisdiction today is to consider what the applicants have applied for which is the generator.

Member Thomas Dunst stated the primary difficulty seems to be the gas line or appearances.

Member Scott Ratke stated they mentioned all the hook-ups – the electrical and the gas line; this was the most feasible spot to place the generator unit.

Member Lucille Sells commented the practicality of the two locations mentioned with the second potential location being in the front yard. When talking about public interest, other residents are not going to want to view the generator. It could be encased in a bush, but that can also be done on the side of the home. In terms of its practical location, a front yard setting seems odd between the two potential locations.

Member Scott Ratke stated it seems to be in the appropriate place in regard to aesthetics and in the most practical place for the utility hook-ups.

Member Lucille Sells stated she appreciates the willingness when noting the noise issue and being willing to work with that issue to prevent further public harm.

Village Attorney Eric Larson commented that he is gathering from the Boards discussion, not stated, that the Board believes it is reasonable and appropriate that the owners should be entitled to have a generator.

Motion by Member Scott Ratke, Seconded by Member Lucille Sells to grant the variance for the generator in terms of the practicality of placing it where the owners are installing it and there seems to be no better spot and there is not much public harm from

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it and they are doing everything than can do in terms of keeping the noise down in terms of cycling it twice a month at half power.

With no further discussion, the roll was called.

<u>Thomas Dunst</u>	<u>Aye</u>
<u>Scott Ratke</u>	<u>Aye</u>
<u>Lucille Sells</u>	<u>Aye</u>
<u>Susan Yale</u>	<u>Aye</u>
<u>Nancy Filsinger</u>	<u>Aye</u>

The variance was granted by roll call vote, 5-0.

Consideration of Board Rules Concerning Meetings

The Board held a discussion regarding Section 2(b) of the Rules of Procedure of the Fox Point Board of Appeals, which says the meetings are held at the call of the Chair or at the call of any two members. Board of Appeals considered, whether to act to adopt an amendment to their Rules of Procedure to establish a regular monthly or bi-monthly meeting schedule for Board of Appeals meetings.

Motion by Member Scott Ratke, Seconded by Member Thomas Dunst, and carried unanimously to amend the Board of Appeals Rules of Procedures Section 2. (a), Meetings to be held every other month on the fourth Wednesday of the month, beginning in July.

Adjourn

Motion by Member Scott Ratke, Seconded by Member Lucille Sells, and carried by roll call vote (5-0) or unanimously, to adjourn the meeting at 6:23 p.m.

Respectfully Submitted,



Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer