

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATION
WEDNESDAY, AUGUST 4, 2021

A meeting of the Fox Point Board of Appeals was held in Schwerner Hall, 7200 N. Santa Monica Blvd., on Wednesday, August 4, 2021 at 5:00 p.m. The Village Clerk took roll call. Those present included:

Kurt Ostoic, Chairman
Thomas Dunst
Nancy Filsinger
Mark Grady
Larry Shainock, (Alternate 1)

Staff members also present were Village Attorney Anthony Garcia, 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 boards.

Approval of Minutes of June 23, 2021 Meeting and the Findings of Fact, Decision and Order of Case 2021-05: 7736 N Beach Drive

On the motion by Member Mark Grady, seconded by Member Thomas Dunst, and carried unanimously by roll call vote (5-0), the Board of Appeals approved the minutes and the Findings of Fact, Decision and Order of the last meeting, Case No. 2021-05, with the correction to Chairman Kurt Ostoic's last name.¹

Case 2021-06: 7310 N Longacre Rd.

Member Thomas Dunst stated for the record, he used to live on the block and knows at least two of the people who will appear to give testimony.

Village Attorney Anthony Garcia stated we can swear them in individually and asked if that was what the concern was.

Member Mark Grady stated Thomas Dunst has a similar concern; he knows the applicants from membership at Fox Point Lutheran Church. He stated Thomas Dunst is also a member of that church. He stated he is not close friends with them and doesn't believe it will affect him with any bias and he doesn't feel he needs to recuse himself from this Case. He stated if anyone on the Board has questions or concerns, he asked if they would raise it now. He thinks that Thomas Dunst is stating the same thing in addition to being co-members at Fox Point Lutheran Church. He stated Thomas Dunst also know the applicants socially from living on the street and some of the other people who may testify. He stated that he doesn't feels that either one of them would mandate recusal, but they felt disclosure was appropriate in the event anyone has questions or concerns.

Village Attorney Anthony Garcia stated unless anyone has questions or concerns, he doesn't see any need for concern by the Board.

¹ The misspelling of Chair Ostoic's name was on page 11 of the Findings of Fact, Decision and Order and was corrected specifically in that location of the Board of Appeals packet; the error was not located in the June 23, 2021 Board of Appeals Minutes.

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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 2021-06. He noted the applicant is requesting a new garage. So according the Village Code for new garages, the side yard setback should be ten feet. Currently the setback is three feet and the applicant just wanted to expand it and keep it the same three feet. Therefore, Michael Rakow denied the permit because it is a new garage. Also, he has to be 20 feet from the neighbor but that is a separate issue once the Village receives the survey.

Member Kurt Ostoic inquired of Building Inspector Michael Rakow if the ten feet was for easement on each side because that is the minimum.

Building Inspector Michael Rakow stated ten feet is what the setback is and noted it is currently three feet according to the documents.

Member Kurt Ostoic inquired if the garage was built before this Section of the Village Code existed.

Building Inspector Michael Rakow stated he was not aware of that.

Member Mark Grady stated there is a provision, Section 745-4 (C)(2) that talks about nonconforming uses. In one of the provisions, Subsection 2, it notes such structure may be totally rebuilt if such reconstruction is identical in size and shape and use to the original structure. He stated his understanding of that and whether you agree, is if the applicants built the garage to the exact same dimensions, they would not need approval from the Board of Appeals. The Building Inspector could approve under that circumstance.

Building Inspector Michael Rakow stated that is correct.

Member Mark Grady stated the applicants desire to build what is today considered to be a standard garage a couple feet wider, now the footprint is slightly different.

Building Inspector Michael Rakow stated that is correct.

Appellant/Applicant Adam Scheuer, 7310 N Longacre Road, Fox Point

Applicant Adam Scheuer stated his name and was sworn in to provide testimony by the Village Clerk Treasurer.

Applicant Adam Scheuer stated that is absolutely correct. He did manage to find a survey that was older - just for the record.

Applicant Adam Scheuer stated they had a choice to either reside the old garage (19' x 21') that was falling apart or raze the garage itself and replace it with a garage that was slightly larger (22' x 24'). It would be no closer to the neighbors to the north of them than it currently

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is. The primary structure (home) will still be ten feet away from the proposed garage. It is coming a little bit closer to the street and a little bit closer to their home on the south side. But the garage will remain in the same spot. The applicants did review other locations on the property for the garage without being infringing on the setbacks. They do have periodic flooding that happens in their back yard. It has never reached the current garage. Therefore, it does not make sense to place the garage further back on the property as that would put it in danger of flooding. That is why the property owners are trying to keep the garage in the current location towards their home, rather than towards the neighbor's home.

Member Mark Grady inquired if they considered the possibility of turning the garage approximately 90 degrees and putting next to your proposed addition and have the driveway curve into it.

Applicant Adam Scheuer stated they had considered it. They haven't done a detailed analysis of that, but the actual back of the home has a bump out with a bay view window. The owners would have to do a massive renovation with substantial costs. Given the budget they have, this route is much more feasible.

Member Mark Grady asked that the applicant talk a little bit about why you don't feel it is feasible to rebuild it to the exact same dimensions.

Applicant Adam Scheuer today when they use the garage, it has been very difficult to open the doors to the vehicles with the current space. Having the extra space would allow for open car doors and would allow for storage of the children's bicycles.

Member Mark Grady stated the applicant talked about the current size of 19' x 22' being non-standard on the application.

Applicant Adam Scheuer stated that is a term he uses. He does not know what the actual definition of standard garage is, but he is assuming that when you have a larger family like he does, having a larger garage is a bit more standard today. The reason he mentioned the standard size is that the contractor who proposed this size garage stated that is the standard size that they build currently.

Robert Fetherston, 7320 N Longacre Rd:

Robert Fetherston is the applicant's neighbor on the north side and has lived there since 1984; the garage was there when they moved in. The Fetherston's have no objection to placing the proposed garage in the same location, as it is the same distance from the lot line as it is currently. Mr. Fetherston further noted the comment on turning the garage sideways and pulling into the garage with a car would be nearly impossible. The Fetherston's are in support of the proposed garage and feel this would be a big improvement.

Chairman Kurt Ostoic inquired if anyone else would like to address the Board of Appeals; there were no other inquiries.

Village Attorney Anthony Garcia went through the standards before closing for determination. For the Board to authorize variances, pursuant to WI State Stats, Section

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62.23(7)(e)(7)(b), the Board should consider whether the variance is 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 the substantial justice done. Pursuant to WI State Stats, Section 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. 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.

Chairman Kurt Ostoic asked if there were any other questions; there were no other questions.

Motion by Member Mark Grady, seconded by Member Nancy Filsinger and carried to close testimony at 5:17 p.m.

Chairman Kurt Ostoic stated he is typically a stickler on setbacks. However, he doesn't feel this is the applicant's fault.

Member Mark Grady stated his answer is the same. If they weren't expanding the size of the garage, it would be completely legal to rebuild the garage in the same location. The only reason the Board is here is because the applicant is going to put an extra foot or two towards the street and a couple feet towards their house. Nothing is being placed closer to the neighbor's property. He noted he asked a few questions about locating the garage behind the home and it was agreed that was not really a feasible alternative.

Chairman Kurt Ostoic also stated it appears the back yard gets very wet.

Member Mark Grady stated the only real questions is – is it consistent with the Board's duty and obligation under the statute to allow and grant a variance here. He stated he is in agreement with Chairman Kurt Ostoic that the Board knows that variances are not favored; variances are supposed to be the exception and not the rule. This is a situation where the option fits. For the reasons the applicants have laid out in their application, there are good reasons to grant this variance.

Motion by Member Mark Grady, seconded by Member Thomas Dunst, to grant the variance for the reasons set forth in the application and the reasons given at the testimony today.

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|------------------------|------------|
| <u>Thomas Dunst</u> | <u>Aye</u> |
| <u>Nancy Filsinger</u> | <u>Aye</u> |
| <u>Mark Grady</u> | <u>Aye</u> |
| <u>Larry Shainock</u> | <u>Aye</u> |
| <u>Kurt Ostoic</u> | <u>Aye</u> |

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Motion carried unanimously by roll call vote (5-0).

Adjourn

On the motion by Member Mark Grady, seconded by Member Nancy Filsinger, and carried the Board adjourned at 5:20 p.m.

Respectfully Submitted,



Kelly A. Meyer, CMC/WCMC
Village Clerk Treasurer