

VILLAGE OF FOX POINT
BOARD OF APPEALS MEETING
MINUTES AND DETERMINATIONS
APRIL 6, 2017

A meeting of the Fox Point Board of Appeals was held in Schwemer Hall, 7200 N. Santa Monica Blvd., on April 6, 2017 at 5:30 p.m. Chair Margolies informed those present of cases 2017-01 is being heard tonight; roll call was taken. Those present included:

Jon Margolies, Chair
Robert Schley
Don Zien
Nathan Eisenberg-Alternate
Douglas H. Frazer-Alternate

Also present were Building Inspector Scott Miller, Village Attorney Eric Larson and Village Clerk Kelly A. Meyer.

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

Chair Margolies gave a brief explanation on Board of Appeals procedures.

Approval of Minutes – September 19, 2016 Meeting

On the motion of Mr. Schley, seconded by Mr. Zien, and carried unanimously, the Board of Appeals approved the submission of minutes and determinations from the September 19, 2016 meeting.

Case 2017-01: 415 W Bergen Drive.

The applicant is requesting a special exception pertaining to fences, walls, arbors, architectural screening devices, driveway gates and arbors – section 745-7(B)(3) of the Fox Point Village Code. The applicant is proposing to erect a fence that will be forward of the front line of the principal building and will be constructed along the east and north property lines. The special exception is requested pursuant to 745-7(B)(3)(h)(2), and 745-7(B)(3)(j) of the Fox Point Code.

Building Inspector Scott Miller was sworn in to provide testimony.

Building Inspector Mr. Miller noted this is a request for a special exception; on February 2, 2017, he received an application for a building permit to erect a 3 ½ special exception for a building permit to erect a 3 and ½ foot high aluminum fence forward of the frontline of the home at the property located at 415 W. Bergen Drive. Per the sections 745-7(B)(3)(h)(2) of the Village Code, no new fence, wall, architectural screening device, driveway gate or arbor may be erected forward of the frontline of the principle building without a special exception granted by the Board of Appeals. Due to this reason, he is withholding the issuance of a building permit at this time. Per section 745-7(B)(3)(j) of the Village Code, the Board of Appeals may grant a special exception in this matter on finding that this property owner has a legitimate need for the special exception and that granting of the special exception will not adversely affect the health, safety or welfare of the community or immediate area where located and will

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not impede the purpose, spirit or intent of the fence ordinance. Please note that every special exception granted by the Board of Appeals shall be conditioned upon the applicant obtaining the Building Boards approval of the architectural appearance, design, and construction materials for the proposed structure. Also, he recently learned that Angela Johnson who is identified on the building permit application form as being the owner of the property is actually the buyer of the property. She will not own the property until Monday when she closes on the property.

Chair Margolies inquired on whether this is a corner lot; Mr. Miller clarified this is not a corner lot. There are properties on the East and West side of this particular lot. The front of the property is north facing on Bergen Drive only.

There were no other questions for Mr. Miller.

Representative of Applicant Angela Johnston, Brent Crubaugh from A-1 Fence Contractor was sworn in to provide testimony.

Mr. Crubaugh stated Ms. Johnston is concerned about the front of the house for 2 reasons. One reason is safety, being so close to commercial activity being one block away from Best Buy and the whole shopping center there. It is a pretty busy area. The second reason is Ms. Johnston's concern for the safety of her dog who is deaf and blind. This is a rescue dog and she has concerns of the dog darting out the front door and getting into traffic. That's why she would like to build an ornamental fence in the front yard. The Village Code does state she could do this at 3 ½ feet high if she is removed 20 feet from any property line. Aesthetically it wouldn't look that nice. To do that to encompass her front door so she is asking to stay on the property line and extend the proposed fence in the back property to continue forward of the property line, by staying on that same line so it looks like one clean fence line. He referred to the google diagrams with fence sketch on it, provided in the Board of Appeals packet. The diagram shows the fence line and where she would like to go with that.

Mr. Schley inquired if there was already a stockade fence across the backyard. Mr. Crubaugh answered there is a fence across the back neighboring yard and it is old. Ms. Johnston intends to build in front of that fence. The aluminum fence is proposed to be 4 foot high in the back yard and she would be proposing 3 ½ feet high in the front yard.

Mr. Douglas Frazer asked if this application is not approved, what the plan is for the applicant. Mr. Crubaugh the applicant would put a fence in the back yard and the side yard; he is not really sure what the next step would be and if she would want to put one in the front. It will not look as nice as it could and would be a small rectangular fence area.

Mr. Douglas Frazer asked to approach the representative to ask Mr. Crubaugh to draw what the fence would look like if this application is not approved by the Board of Appeals. Mr. Frazer noted, the witness, Mr. Crubaugh drew what he believes the fence line would look like in the front without the Board of Appeals approval.

Chair Margolies noted that they typically like to see the applicant at the Board of

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Appeals meeting to convey to the applicant what the Board of Appeals thoughts are and also so the applicant is made aware that they are a board of relatively limited jurisdiction. The Board of Appeals does not write the code and they are charged with making sure that its spirit is maintained. They need to find a reason why there is a legitimate need to be outside the code or ordinance. So it is always good for the applicant to hear that. We are not making the determination of what the ordinance should be, we are deciding whether this is a very rare circumstance where someone gets the exception.

Chair Margolies asked if he was correct that there is a fairly large back yard for the dog to run around in. Mr. Crubaugh did answer yes. Mr. Margolies did note this is an odd circumstance and he doesn't remember another case where someone is just moving into the house. Best Buy, Port Washington Road and this ordinance were all there when Ms. Johnston bought the property. The Chair inquired if there was some reason the dog needs more than this ample backyard to run around in.

Chair noted they prefer the applicant is present. The board is charged with making sure the spirit is maintained. He wanted the applicant to hear that. He noted this is a rare circumstance that the property has not yet been purchased. Mr. Crubaugh noted it is simply a concern that the dog is deaf and blind and concerns with people trespassing. Chair noted that the Village Board had made the decision years ago that they did not want the fence forward of the front line of the home. Mr. Crubaugh noted it was more in regard to the dog's safety and what could happen.

Mr. Frazer inquired whether the applicants interpretation of the ordinance consistent with Mr. Miller's interpretation. Mr. Miller noted he believed that it was correct. Mr. Miller read 745-7(B)(3) (h)[4] of the Village Code.

Village Attorney Eric Larson read the definition of Ornamental Fence and the definition of a Fence.

Mr. Miller also read 745-7(B)(3)(h)[6] and noted this may also be considered.

Chair Margolies noted a few comments. Because the applicant is not the current owner, technically there is not standing but we can agree that if we do grant a special exception here, it can be subject to the closing of the property. Second, he noted he did receive a letter from Patricia Lake, 8525 North Port Washington Road, that there is a discrepancy with the property survey and there will be an inquiry into the matter; this technically is hearsay, as representative did not show up to explain it.

Current property owner, James Keegan, 415 W Bergen Drive was sworn in to provide testimony.

Mr. Keegan noted in regards to this property survey, we received notice of the same letter from Patricia Lake. He noted he did check with the Milwaukee County Register of Deeds Office and this survey is indeed the most recent survey for the property. The owner also stated he has no reason to believe the property line has changed since the survey on file at the Register of Deeds office. The title from when he bought the property matches the current survey on file. He also noted he did not sell bits of his lot to the neighbor.

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Chair Margolies noted his last comment is more in regard to the topic. It seems to be that, especially given this property was just purchased, knowing where it was and what the conditions were and that the back yard seems sufficiently large it doesn't seem that the requirements of the special exception have been met. The safety of the dog can be maintained by both a back yard fence and either securing the front door or the exceptions that Mr. Miller explained to the Board. It seems the high standard of special exception has not been met here.

Chair Margolies opened discussion to the Board.

Village Attorney Eric Larson noted in the ordinance, it says it is reasonably necessary to protect the safety of "people" residing on the property.

On the motion of Mr. Zien, seconded by Mr. Eisenberg to deny Case 2017-01, 415 W Bergen, requesting a special exception pertaining to fences as well as arbors, architectural screen devices, driveway gates and arbors of the Fox Point village code. With all members voting aye, the motion carries by roll call vote.

Adjourn

On the motion of Chair Margolies, seconded by Mr. Zien, and carried unanimously, the Board adjourned at 5:58 p.m. Motion carried.

Respectfully Submitted,
Kelly A. Meyer, WCMC


Village Clerk/Treasurer