

**BOARD OF APPEALS
VILLAGE OF TWIN LAKES
JUSKIEWICZ, Michael and Mary
August 20, 2008 - 6:30 P.M. - 6:52 P.M.**

tape available indefinitely
minutes transcribed from tape by Cynthia Skrypt

Meeting called to order by Chairman Tom Porps. Roll call: Jooss, Kuhlmeier, Nathan, Porps. Boone absent. Porps announced that the purpose of the meeting was to hear the variance request of Michael and Mary Juskiewicz, 140 W. King Arthur Court, Palatine, IL 60067 and 813 Bay View Avenue, Twin Lakes, WI 53181. Porps gave the following instructions: This board meeting and public hearing to be considered today are open to the public. Anyone wishing to speak may do so providing they stand up, be sworn in and identify themselves. A tape recording is being made of these proceedings, therefore it is important that you state your name and address before addressing the Board. The purpose of this public hearing is to take evidence in this case. This Board is interested in hearing all of the evidence and will make a decision based on the evidence. Variances are not granted routinely. The applicant for a variance must clearly show the Board the three statutory standards that govern granting a variance will be met. The three standards are unnecessary hardship, unique property limitation, and protection of the public interest. For a dimensional variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Whether this standard is met depends upon a consideration of the purpose of the zoning restrictions in question, its effect on the property, and the effect of a variance on the neighborhood and the larger public interest. Unique property limitation - unique physical characteristics of the property must prevent the applicant from developing in compliance with the zoning ordinance. Protection of the public interest - granting of a variance must neither harm the public interest nor undermine the purpose of the ordinance. The public interest includes the interests of the public at large, not just that of nearby property owners. Conditions may be attached to a variance to protect adjoining properties and to preserve the essential character of the neighborhood. A variance should include only the minimum relief necessary to allow reasonable use of a property. In granting a variance, this Board has the power to and will impose special conditions to insure that the public welfare will not be damaged.

MICHAEL AND MARY JUSKIEWICZ VARIANCE REQUEST- 813 BAY VIEW AVENUE - 85-4-119-213-2650

Board of Appeals Clerk advised the news media, general public, applicant and property owners had been notified of this public hearing. Board members stated they reviewed the variance request and inspected the property in person. On site inspections, when conducted are in accordance with the Wisconsin Open Meeting Law. During the inspection process, no additional evidence was uncovered. Jooss stated during his on site inspection he was able to speak to the contractor.

Michael Juskiewicz, 140 W. King Arthur Court, Palatine, IL 60067 and 813 Bay View Avenue, Twin Lakes, WI 53181 appeared and was sworn in. Porps explained that the Board of Appeals is five members and by state law they can operate with as few as three members - you have the right to have five - even though we have a right to go with three - the Board has always acted to give you the opportunity to have five - you can call for a continuance or you can just go ahead. Under the old rules, it had to be a four-fifths majority. Right now it is a simple majority. A tie is a loss. The ball is in your court. Juskiewicz stated he assumed if it was a tie and a loss, we could not come back again next month. Porps stated that was correct, he would have to start over. Juskiewicz stated well we're here, let's do it. Porps stated okay.

Porps read into the record Juskiewicz's request for a variance: "You are requesting a variance to allow for the construction of a three season room addition with a side yard setback of 5.96 feet and 6.56 feet in place of the 10 foot and 15 foot requirement. This variance, if granted, is for the three season room only and cannot be used to increase the size of the existing home." Juskiewicz stated that accurately described the relief they were requesting. Porps stated the reason for the last line is if the Board agrees to grant them a three season room - the variances stick with that piece of property forever. The idea is that you do not come back and make an addition on the building using that footprint. It is for a three season room and that is all. Juskiewicz stated that was. Porps asked Juskiewicz to tell the Board about their project and how they start out with a deck and want to change it for a three season room.

Juskiewicz stated basically they just mentioned it, mosquitoes. We would like to have a protected area to enjoy our deck early evening into the evening as the mosquitoes come out and without worrying about that. That is really their primary use for it. Porps stated he read the three criteria that govern granting a variance and as Board members we certainly all understand that sometimes it is very difficult to explain why this is an unnecessary hardship. He asked Juskiewicz to touch on the hardship issue, why his property is unique and why you do not feel your project is not going to harm the public interest. Juskiewicz read over his letter to the Board of Appeals. "My wife and I believe the existing building was constructed in compliance with valid building permits and its existing side yards do not comply with current requirements. Full compliance would require demolition of substantial portions of the existing building which would be a severe and unreasonable hardship. We proposed to begin the screened porch and deck one foot from the south building line and extend it 18 feet in a westerly direction and 25 feet in a northerly direction and back to the building another 18 feet in an easterly direction. We propose no work on the front of the building. Any other solution for our screened porch and deck is impractical and unnecessarily burdensome. Unique property limitations -- the property is unique in that the Village has created an Ordinance with side yard setbacks that assume new lots much greater in width than existing lots in older subdivisions and make no provisions for smaller lots with approved existing building placement within the more recent yard setback requirements. Protection of the public interest -- approval of the

requested variance will cause no harm to the public welfare. The proposed screened porch and deck would not increase the existing south side encroachment and the north side encroachment and would not significantly affect the views or enjoyment of the property of any neighbor.”

Porps asked the Board members if they had any questions. Jooss stated you are asking for a three season room. Juskiewicz stated that was correct. Jooss stated a three season room he interprets as a room that you can use it with glass windows and here you keep saying screened porch. He asked if it was a screened porch or is it something you are going to add next year or the year after glass windows on and use it through the year. Juskiewicz stated they are looking at having a roof built off the existing roof and then it is all screened with no glass. Jooss stated so this is a screened porch. Juskiewicz stated by that interpretation then, yes. Porps stated but he has asked for a three season room. So from his point of view, he is going to look at it from that prospective. That is what he has asked for and that is how I interpret it. Jooss stated okay. Nathan and Kuhlmeier thought it was pretty straight forward to them.

Porps asked if there was anyone in the audience wishing to speak in favor of granting this appeal. Don Borecki, 1186 Cypress Point, stated he was just clarifying a statement. This is not a three season room. It is a screened in porch. There are no knee walls. The existing railings are going to stay and it is a screened type system that they use that covers the whole face of the screen – all the way down to the bottom of the deck and the deck itself is open except it has got nylon screen underneath it so the bugs can't get to the deck. That is all I had to say. Porps thanked Don Borecki. Rob Borecki, 1935 Esch Road, stated the deck itself is a foot away from the existing house. He did not see any reason why that would interfere with anything. He can understand what the Ordinance is all about – the 12 and the 13 obviously – but right there there's a space that is set by two buildings and if you want to get something down there, you can. If it is too big, then you are not going to be able to. You've got a house and a house and that is set. You cannot change that at all. Porps thanked Rob Borecki.

Porps asked if there were any letters to be read into the record in support of the variance. There were none.

Porps asked if there was anyone in the audience wishing to express an opposing view to this appeal. There were none.

Porps asked if there were any letters of opposition. There were none.

Porps asked if there were any letters of support. There were none.

Lack of opposition is not a reason for granting a variance.

Porps asked the Board if they had any other questions. Jooss asked if Juskiewicz was granted a building permit for the deck. Porps stated that was correct. Jooss asked what the criteria was for the deck. How far does it have to be from the neighbor's property? Porps stated he did not know that off the top off his head. He has the permit right here. When Popanda issued it, he obviously felt there was no problem. Jooss stated he just did not know what the criteria was – how far the deck had to be from the neighbor's yard. Porps stated he did not know. Jooss stated so theoretically you would be building a screened in porch on top of a pre-existing structure. Juskiewicz stated that was correct. Porps stated but only about half of the deck. Juskiewicz stated it would be more like two-thirds. Porps stated from the channel side facing on the right hand half. Juskiewicz stated yes that was correct, looking from the channel on the right hand half.

Porps continued, the Board's action cannot be based upon its attitude toward the applicant or the proposed use. The Board's decision must be based upon the Zoning Ordinance and the facts presented at this hearing.

Public Interest – Nathan believed that public interest would be upheld. Porps agreed with that. He did not see any harm. It is not blocking anything. The house has been there a long time. It is open. It is airy. The Board agreed.

Unique Property Limitation – Porps stated the existing building like he said was built with a building permit when it was constructed. Five feet was probably the required setback at the time. It is on the channel. It is on a steep grade – driving in and out of there is sometimes probably a little difficult. The contractors stated it definitely was a difficult driveway especially in the rain. The Board agreed.

Unnecessary Hardship – Porps believed this was always a difficult question to answer because the Juskiewiczzes are living there. A lot of people live without screen porches. But the other side of the coin is by preventing you from having it, are they being unnecessarily burdensome in the fact that it meets the other criteria and he does not see that it is going to do any harm anywhere. The Board agreed. Jooss stated if you build it 10 feet from the property line, you would only have about a two and half foot area from the side of the building to the railing of the deck which would basically be unable to be used for anything. It would be just something that would catch leaves and things of that nature. He believed they were actually cleaning it up by building it over to the end. Porps stated it would not serve any purpose to slide it over.

Variances are not precedent setting. Each case is judged on its own merit. Likewise, similar existing cases or past practices are not reasons for granting a variance.

In granting a variance, the Board of Appeals overrules one or more Village Ordinances. If a variance is granted today, any aggrieved party will have 30 days to appeal the decision to the circuit court.

In addition to meeting the statutory requirements, the following conditions are required. The motion to grant or deny the variance is based on the survey presented at this time, the plans presented and the actual statement of the variance requested. The survey is to be marked as Exhibit A. The plans are to be marked as Exhibit B. Michael and Mary Juskiewicz: "You are requesting a variance to allow for the construction of a three season room addition with a side yard setback of 5.96 feet and 6.56 feet in place of the 10 and 15 foot requirements. This variance, if granted, is for the three season room only and cannot be used to increase the size of the existing home." Michael Juskiewicz circled yes and initialed that the conditions described the relief he was requesting. After the motion to grant or deny the variance has been made, seconded, discussion held, if any, and voted upon, the matter is closed. If you are not satisfied with the results, and you can present substantial new evidence, you may reapply and pay the associated fees. You may also appeal the Boards' decision to the circuit court. The variance is based on the survey as presented, and the actual placement must substantially conform to the survey as presented. This variance, if granted, is conditional upon the owner having the title amended to include the variance. (Variances "run with the land", this will protect you or any future owner should any question ever arise over the encroachment in the setback area.) Any and all fees, legal, recording etc. are the applicant's responsibility. The Building Inspector or the Board of Appeals will verify the amendment prior to issuing a building permit.

The contemplated completion date of the project 10/31/08.

Juskiewicz stated he had a quick question. We talked about the screen porch versus the three season room – assuming we would go ahead with just the screened in portion, should he still go ahead and put yes here? Porps stated what Juskiewicz has asked for is a three season room. That is what you were turned down for. Porps did not know what the Building Inspector would have done if Juskiewicz had applied for just screens – he did not know what his reaction would have been. He is inclined to say leave it as a three season room. Juskiewicz stated okay. Porps asked if anyone disagreed with him on this. Nathan and Kuhlmeier stated they agreed. Jooss stated in his opinion, he would approve it for a three season room but put a stipulation that it would never be enclosed. Nathan stated that is not what he is asking for. Jooss stated in all his paperwork, he has asked for a screened porch. It is very easy five years from now if you have a three season room to start closing it in. Next thing you have it heated and the next thing you have an addition onto the house. Porps stated the addition part would kind of cover it. It is for a three season room only. It cannot be used to increase the size of the existing structure or existing home. Juskiewicz has agreed to that. So that most likely will not happen. When Porps was talking about the hardship and the other stuff, he was thinking whether he chooses to glaze in the sides at some future point – he's not sure that it would matter to him. Jooss stated it would matter to him, yes. Kuhlmeier did not see any difficulty whether it had glass or a screen.

MOTION BY KUHLMY, NATHAN, TO GRANT THE VARIANCE. ROLL CALL: JOOSS-YES; KUHLMY-YES; NATHAN-YES; PORPS-YES. MOTION CARRIED (4-0). VARIANCE GRANTED.

Motion by Kuhlmeier, Nathan, carried, to approve the minutes of April 2, 2008 – James and Karin Flynn.

Motion by Kuhlmeier, Nathan, carried, to approve the minutes of April 30, 2008 – Donald and Patricia Nelson.

Motion by Kuhlmeier, Nathan, carried, to approve the minutes of June 4, 2008 – Tomasz, Kristina and Stanislaw Iwaniec.

Motion by Kuhlmeier, Nathan, carried, to approve the minutes of July 16, 2008 -- Timothy G. and Sharyn Ormiston.

Motion by Jooss, Kuhlmeier, carried, to adjourn @ 6:52 p.m.

Signed Copy Available at the Village Hall

Cynthia Skrypt
Board of Appeals Clerk

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Exhibit A

**“Michael and Mary Juskiewicz Plat of Survey”
Dated March 14, 2008**

Exhibit B

**“Michael and Mary Juskiewicz Plans”
No Date**