

**BOARD OF APPEALS
VILLAGE OF TWIN LAKES
TYMM, William E. for Blanche S. Tyym
August 21, 2007 - 6:30 P.M. - 7:10 P.M.**

tape available indefinitely
minutes transcribed from tape by Cynthia Skrypt

Meeting called to order by Chairman Tom Porps. Roll call: Jooss, Kuhlmeier, Myers, Nathan, Porps. Tim Popanda was also present. Porps announced that the purpose of the meeting was to hear the variance request of William E. Tyym for Blanche S. Tyym, 1308 Second Street, 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, identify themselves and be sworn in. 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.

WILLIAM E. TYMM FOR BLANCHE S. TYMM VARIANCE REQUEST – 1308 SECOND STREET – 86-4-119-322-3005
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 when he was over on Saturday to look at the property with he met with Jim Baxa, the neighbor to the east, and they talked about what Tyym was proposing. Porps was at the site this afternoon and met Mr. Tyym there and walked around the property.

William Tyym, 708 Colony Lane, Frankfort, IL 60423 and 1308 Second Street, Twin Lakes, WI 53181 appeared on behalf of Blanche S. Tyym and was sworn in.

Porps read into the record Tyym's request for a variance: "You are requesting a variance to allow for the construction of a new two story single family home with a total side yard setback of 18.9 feet in place of the required 25 feet, the smaller of the two being 9.3 feet in place of the 10.0 foot requirement." Tyym stated that accurately described the relief he was requesting.

Tyym thanked the Board of Appeals, Popanda and Skrypt for taking time from their busy schedules to participate in this request for a variance from the Twin Lakes 25 Foot Side Yard Setback Ordinance. He has filed a written application including exhibits setting forth background information and the reasons why it is felt the variance request should be granted. Never having requested a variance before, he thought it best to err on the side of providing as much information in the application as he could. That is why he included plans, pictures, surveys, articles, and letters from neighbors. He hoped that did not lead to confusion as the facts surrounding this request are real simple. He proposes to replace his 57 year old one level cottage with a new two level a-frame structure with a second level being a loft. His lot is 50 feet wide and the width of the a-frame at all points along its foundation would be 28 feet consistently. It would never deviate. It would be the same as the present cottage. The a-frame would be built square to Second Street. Under normal circumstances, this would yield a total side yard setback of 22 feet at all points along the foundation resulting in a variance request of three feet. Unfortunately, the side lot lines do not run at a 90 degree angle from Second Street. Why? He does not know. Through no fault of his own, this will result at different side yard setbacks at various points along the foundation. At some point, the setbacks will be more and at other points, they will be less. Measuring the setbacks from the widest point on the east and west sides of the foundation yield a total side yard setback of 25 feet. Measuring the setbacks from the narrowest point on each side yields a total side yard setback of 18.9 feet requiring a variance of 6.1 feet with one side we are totaling 9.3 feet and the other 9.6 feet. In reviewing his application and considering this variance request, he hopes the Board will agree that for the reasons stated in the application – A, unique property limitations exist – B, the public would not be harmed and – C, denial would result in unnecessary hardship to himself and his family. As noted in the application, the side yard setbacks being requested are basically identical and the same as that of the cottage, which setbacks have existed for over 50 years. Thanks you for your consideration and he hopes the Board will grant the variance.

Porps asked the board members if this was one of the most complete packages they have ever received. The Board agreed.

Porps stated it was unbelievable. He thanks Tymmm very much for that. It was very well done and very informative.

Porps asked the Board if they had any questions. Myers asked if an a-frame is deemed a one and a half story structure or is it a two story structure. Popanda stated the Ordinance is really not clear. It makes reference to a one and a half story and a two and two and a half story, but yet the definition does not define that. In the mid 80's the Building Inspectors and Zoning Departments had to come up with a definition and what they used was the State Uniform Dwelling Code for a definition of what a story would be and how this would be determined. If the separation between floor levels is greater than 60 inches, it is a two story. So this would be classified as a two story a-frame. Porps trying to clarify what Popanda said, the separation between floor levels – Popanda stated is greater than 60 inches is a two story. Think of a bilateral, you walk into a platform – it may only be 7.6 by 7.6. From that level to the upper level, if it's greater than 60 inches, it will be counted as a two story. From that level to the lower level, if it's greater than 60 inches, which would be a basement and not part of the first floor. Porps stated he did get out his Ordinance Book when he was writing this and the Village Ordinance is not very clear. Popanda stated it would clear up a lot of problems if there was a specific ordinance or a section referring back to it as far as a definition. What is a one and a half story? What is a two and a half story? It is not very clear. It is very clear in the State Administrative Code and it has always worked well except for Mr. Tymmm here. It's not working too well for him tonight.

Kuhlmeier asked if Tymmm had a side door on his a-frame and he steps out onto a sidewalk, he wondered if that would be encroaching. Popanda stated no, the sidewalk is not an encroachment. If it were a concrete stoop, they have always viewed concrete within reason. They view a concrete stoop or a small concrete pad associated with an exit as being part of natural thing. You have to have it for exit purposes. From time to time, individuals will try to get over that by saying – if you allow me to have a concrete pad of four by five or four by four – then I'll raise it up eight inches or higher above grade and put railings around it and it will look just like a deck. That is not the case here. It is a sidewalk. It is not a covered structure. Kuhlmeier asked if the front and rear setbacks were okay. Popanda stated front and rear setbacks were fine. If Tymmm were putting a deck on the front, he could go as close as 25 feet to the front property line. A deck on the back would need to be 34.9 feet for the rear property line.

Porps asked Popanda if Tymmm decided to put a garage on his property what would his options be. Popanda stated his option is a 13.1 attached garage or a detached garage that would be 10 feet off the front property line and five feet off the side property line and then five feet from eave of the house to eave of the garage for fire separation.

Jooss asked Popanda why this variance did not fall under the Shoreland Zoning Protection Overlay the 60 feet. Popanda stated it does and Tymmm is within that. There is 40.1 and 47.2 – he's at 43. Jooss asked if Tymmm would have to put the buffer in. Popanda stated Tymmm is aware that he needs to put a buffer in. That is something that is handled at the permitting process. Tymmm stated he will comply with the 15 foot buffer.

Porps asked Tymmm if a garage was something in the future he was going to consider. Tymmm did not believe so. He has not had one in 50 years. He likes some grass and an open area. They have been parking on the street for all these years. He will not be coming back tomorrow to build a garage. Porps asked if Tymmm has considered his driveway – when he was there today, there is no real hard surface. Tymmm stated there was no hard surface. He would leave it just like that. He said he has to have some grass to cut. Popanda stated unfortunately Tymmm will have to have off street parking spots whether he likes it or not. It is the Village's Ordinance. You have to have a driveway. You have to have two off street parking spaces for a new home. Porps told Tymmm when he thought of a driveway to think of a surface that will allow water to penetrate rather than paving everything, use either gravel or paving stones, some type of pervious surface so the water can penetrate.

Porps asked what minor changes in the plans presented today Tymmm was talking about. Will the physical footprint of the survey presented be identical to the finished product? Tymmm stated yes, it would be 28 feet wide and 52 feet long. The footprint will remain the same. Tymmm stated there was a prow in the front. With that point being average size of their neighbors, he wondered if it would matter if he made it straight right across and eliminate the prow. Porps stated the difference comes that the survey given to the Board of Appeals has to be the survey he is going to use. If that is something you are considering, then the Board is going to have to weigh it and discuss whether they are going to discuss that possible change or not. Tymmm stated it did not affect the side yard setbacks. He likes the prow and he says we're going to keep the prow. That was one of the nuances here. He's talked to two builders. They said well, get your variance first so we know what we are dealing with. We've got our plans here and then we'll go from there. That's mainly on the inside. Jooss stated the prow is on the outside. The little prow on the front is not shown on the certified survey. Tymmm stated the prow shows on an angle. Jooss stated the certified survey does not show the fireplace. Tymmm stated that was correct. Porps stated the bottom line is the Board of Appeals is dealing with the footprint and even though the fireplace does not encroach in the side yard setback. Tymmm stated the normal points of the house will not exceed that side yard. Porps stated the other thing you talked about was the placement of the door; it may be on the east or on the west side of the building. Tymmm stated that was correct. This plan shows the door being on the east side. He submitted an application in May and had a set of blueprints at that time and that has been changed. Those blueprints showed a covered entrance porch, which obviously would affect the side yard setback. That has been eliminated. The side entrance will just have a step up and will be flush with the house. It will not impact the side yard setback.

There's a question whether they want the entrance on the east side or the west side. Right now the plans show the entrance on the east side and that is where my wife would like it to be because the entrance, you have the kitchen on the opposite side. As he showed the Board on the property and he will only know when the builder gets in there, there's a well and electricity on that side so they may be forced to put the entrance on the other side. That does not affect the side yard setbacks. Porps stated to the Board whether they approve this variance or not, the Board does not technically have a finished set of plans. The placement of the door even though it's a minor change is not decided tonight. Does anybody have a problem with that? Does anybody want to say something about that? Kuhlmeier stated he did not have a problem with it because if Tymmm put a sidewalk in instead of a stoop, then he is still in compliance. Nathan stated he didn't have a problem as long as Tymmm is staying within the footprint here. Jooss stated he didn't have a problem. Myers stated he did not have a problem either. Myers had a question about the fireplace footprint. Does that need to be included on the survey or not? Porps stated he would have liked to have seen it on the survey but in reality it's not the question the Board of Appeals is here for. They are dealing with the side yard setbacks. It would have been nice to see the fireplace in the survey so they had a completed survey. Popanda did not believe it should be a problem because it is not a setback issue. The other thing is if there were not a deck there, then it would have had to been shown. The deck that projects eight feet out is the footprint. He believed it was in there and was covered. It's the area of ground being covered by this structure.

Porps asked if there was anyone in the audience wishing to speak in favor of granting this appeal. There were none.

Porps asked if there were any letters of support. The Clerk read two letters of support into the record.

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 was none.

Porps asked the board members if they had any more questions. There were none.

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

Porps asked if there was anyone in the audience with a question or comment. There were none.

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 – Porps stated he believed public interest would be upheld. He did not see the new building as being a detriment of any sort to the neighborhood. There have been no objections from the neighbors. The Board agreed. Jooss stated he believed because Tymmm was staying on the same footprint, he was not obstructing anybody's view from the road or anything of that nature.

Unique Property Limitation – Porps stated just about every lake front lot in Twin Lakes has unique characteristics. Their width by today's standards is much smaller. This one is bordered by a channel on one side. The Board of Appeals has had other variances on the same channel. Tymmm is certainly limited as to what he can do on his property because of the street, the channel and the level of the land. The Board agreed.

Unnecessary Hardship – Porps stated he believed Tymmm's hardship was his existing structure is 50 years old. He would like to basically use the same width he had and make the building a little bit longer to accommodate his family and current needs. Tymmm is not increasing the encroachment of the home that has been there. To make the building five feet or so narrower would be an unnecessary burden on Tymmm. The Board agreed. Jooss stated he believed the plans were laid out so that it is not overly big. They haven't put a lot of extra stuff in. It's basically a compact package. Even though the home has been lengthened, it is a reasonable lengthening. Porps stated Tymmm is staying back even with his neighbors and has agreed to put in the vegetative buffer and stay a reasonable distance from the street. Popanda stated Tymmm took a lot that is very small and put a modest home on it and asked for a relief of four feet. He took into account his neighbors, the lake, and the roads. Staff would support this variance to be approved.

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. William E. Tymmm for Blanche S. Tymmm: "You are requesting a variance to allow for the construction of a new two story single family home with a total side yard setback of 18.9 feet in place of the required 25 feet, the smaller of the two being 9.3 feet in place of the 10.0 foot requirement." This variance, if granted, is for the footprint of the proposed building and does not continue past the end of the building in any direction. Porps asked Tymmm if he understood what he is referring to. Tymmm stated it was for the footprint being 28 feet by 52 feet and does not continue past the end in any direction. Popanda stated that 52 feet was the building proper. There's 8.3 feet of deck. He wondered if they wanted to include the 52 feet of the building proper and 8.3 feet of the deck in that second dimension. Porps stated because we are going to use the survey as Exhibit A, that does show the deck on there. Tymmm asked by a deck, you mean the same as it could also be a patio. It is not a wood deck per se. It is an extension of the house where you put a patio table. Porps stated if it was an at grade patio, it would not even have to be considered. Popanda stated that was correct. Porps stated if Tymmm was talking about a brick patio that is basically at grade, it would not need to be considered. Tymmm stated he did not like decks that much. There's a lot of maintenance involved. This is just an extension they were thinking of putting a patio there. Porps stated what he was getting at with the extension at any direction, it does not continue toward the channel or toward the road. Tymmm cannot come back and say he wants to put a 10 foot addition on the back of my house. I have been granted a variance for a nine foot wide yard. Tymmm stated he understood. Porps stated you have not. You have been granted a variance for this footprint not an addition onto your building. Tymmm stated that was fine. William Tymmm stated that described the relief he was requesting and circled yes on the form.

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 that will be 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 is 12/31/08.

MOTION BY JOOSS, KUHLMEY, TO GRANT THE VARIANCE. ROLL CALL: JOOSS-YES; KUHLMEY-YES; MYERS-YES; NATHAN-YES; PORPS-YES. MOTION CARRIED (5-0). VARIANCE GRANTED.

Motion by Nathan, Kuhlmeiy, carried, to approve the minutes of February 25, 2006 – Kenneth & Cathleen Zamazal.

Motion by Myers, Kuhlmeiy, carried, to approve the minutes of March 25, 2006 – Kenneth & Cathleen Zamazal.

Motion by Kuhlmeiy, Nathan, carried, to approve the minutes of March 25, 2006 – Gary A. Nelson.

Motion by Nathan, Kuhlmeiy, carried, to adjourn @ 7:10 p.m.

Signed Copy Available at the Village Hall

Cynthia Skrypt
Board of Appeals Clerk

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