

**BOARD OF APPEALS  
VILLAGE OF TWIN LAKES  
BROWN, David L. and Joanne  
August 23, 2007 - 6:30 P.M. - 7:18 P.M.**

\*tape available indefinitely\*  
\*\*minutes transcribed from tape by Cynthia Skrypt\*\*

Meeting called to order by acting Chairman Robert Jooss. Roll call: Boone, Jooss, Kuhlmeier, Myers, Nathan. Tim Popanda was also present. Jooss announced that the purpose of the meeting was to hear the variance request of David L. and Joanne Brown, 120 Pawley Avenue, Twin Lakes, WI 53181. Jooss 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 may impose special conditions to insure that the public welfare will not be damaged.

DAVID L. AND JOANNE BROWN VARIANCE REQUEST- 120 PAWLEY AVENUE - 85-4-119-214-2350

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.

David L. Brown, 120 Pawley Avenue, Twin Lakes, WI 53181 appeared and was sworn in.

Jooss read into the record Brown's request for a variance: "You are requesting a variance to allow for the construction of a 22 foot by 24 foot detached garage in the front yard, in place of the side or rear yard as required." Brown stated that accurately described the relief he was requesting.

Brown stated where the Village wanted him to put the garage behind their home it will cause them too many problems. They will lose their views from the kitchen and the dining room if the garage were there in the back there. There is also a well in the back yard that he will lose access to. He would like to put the garage on their side yard, which according to the ordinance says it is not their side yard. They would like to put their garage on their side yard that faces Thomas Court. He passed out pictures to show the Board what he was talking about. He has also spoken to his neighbors and no one had any objections to him putting the garage on his side yard. Popanda stated the ordinance is quite clear that an accessory structure shall be in a side rear yard. However, there is one flaw in the ordinance. It does not without having to stretch the imagination officially describe a side yard. There is ordinance here in definition that would describe that as a front yard. Whether the address faces Pawley or Thomas; it is a street yard and it is a front yard. It does not take a rocket scientist to figure out that a street yard and side yard are two different things even though we don't have a definition describing a side yard. In this particular case the Board of Appeals will be determining whether there is a hardship, whether it affects the public and whether this particular piece of property is unique. Popanda stated he personally did not have a problem with the Browns having a variance. If the Board of Appeals grants this variance to allow Brown to build this garage in its location; he would be violating other ordinances in setbacks. The street yard setback for any structure is 25 feet. Brown does not comply with that. If the Board of Appeals did find that the Browns met those three criteria, Popanda would ask that this structure be moved over and back so that it does meet the 25 foot setback from Thomas Court. Kuhlmeier asked if there was also a requirement to be so many feet away from the house. Popanda responded by fire requirements, Brown would need to be five feet away from his house. If the garage were attached to their home, we would not be dealing with a variance tonight. There is a way to do that without granting a variance and without harming the well. If the variance is granted, the garage needs to be moved back and over in order to be 25 feet. You can see it is skewed on an angle so if the garage were squared up with the road versus with the side of the house moved over so that it was five feet from eave to eave and moved back, he would get the required 25 feet. Kuhlmeier asked if it would be okay if there was a breezeway there with a roof. Popanda stated the garage needed to be substantially attached which would be 50% of that wall. So there could be a 12 foot breezeway and then still be 25 feet. Brown applied for a detached accessory structure not an attached. If this garage were attached, the Board of Appeals would be here for the setback of 25 feet from the side street.

Popanda stated the Accessory Structure Ordinance was updated approximately ten years ago. One of the reasons the ordinance was changed was because it did not recognize shore yard property. If you are on a lake, you only need a ten foot setback from the street property line. Popanda stated he was looking at this from a bigger picture. The amount of accessory structures that if the ordinance was changed or if this was an easy thing to grant variances; we would see a lot of accessory structures in the street yards. He believed those accessory structures would harm neighborhoods as far as property values go. It would have an adverse affect on property values.

Jooss asked Brown if he understood what Popanda was talking about moving the garage to meet setbacks. Brown stated he was trying to figure out where he could go with that. (*Popanda scaled out a drawing for Brown and the Board of Appeals to see.*) If the Board of Appeals decided to go with the new location, the survey would have to be amended before any permits were issued. Nathan stated the only reason Brown would be before the Board of Appeals would be because of Thomas Court being a street. Popanda stated that was correct; Thomas Court not being a side yard but a street yard.

Jooss asked the Board if they had any questions. There were none.

Jooss asked if there was anyone in the audience wishing to speak in favor of granting this appeal; which would be the new placement of the garage. Donald Amborn, 111 Thomas Court, stated he had a concern where Brown was first proposing his garage and now the garage is being moved on the side of the house. The garage will be 30 feet from the lot line. He did not object to the original placement of the garage but did not like the placement of the new proposed garage as it would affect his view. Jack Staudemeyer, 111 Pawley Avenue, stated he has known the Browns for approximately 20 years and their house was his cousin's house. It is a unique piece of property where it borders two streets. He knows Amborn is now concerned because the garage would be closer to his property. He asked if the meeting could be postponed so Brown could have his property staked out so Amborn could see where the garage would be located in relationship to his property. That would hopefully relieve some of Amborn's concerns. Staudemeyer stated he was a neighbor down the street and did not see a problem with the garage. Obviously the next door neighbor has some concerns. He hoped the Board would see that and take that into consideration.

Jooss asked the Board if they had any feelings on granting a continuance on this matter. Boone believed Brown would have to ask for a continuance. Brown did not believe they wanted a continuance because it would not be coming back until December or January. Amborn questioned if the Browns attached the garage to their house; then there would not be any problem. Jooss deferred that question to Popanda. Popanda stated it would not be a problem for code. He believed it would meet the 25 foot setback. The bottom is not shown but he believes that is greater than 11.67 feet. Popanda stated his suggestion to move the garage back is in no way is a design. The garage must meet the 25 foot setback.

Erv Hintz, 121 Pawley Avenue, stated he lived directly across the street from the Browns. He would like the Browns be able to build a garage comfortably and enjoy the neighborhood. They need a garage and there's plenty of room there. He thought the original garage design between the trees was a pretty good move. He believed the corner people really get clobbered twice with the 25 foot setback. He did not believe that was correct. The Browns are maintaining their 25 feet across their front yard which is Pawley Avenue. This garage is facing a side street. He didn't know why the Board couldn't just follow the 12.5 feet or whatever is code, this garage would work out fine because it is 13.54 feet the way it is drawn. The way it is drawn does not affect Amborn or anyone else. The Browns keep their house up very well. The garage would look good. The garage will help everybody. It is not going to hurt anybody. Hintz was all for the garage.

Popanda commented on the 12.5 street yard that Hintz referred to. This is a built in modification in our ordinances for lots that are less than 60 feet in width. This lot is nowhere near that. On a corner lot that is less than 60 feet in width, you can have a reduction in a street yard – one of the two street yards to half the required rear yard, which would be 12.5 feet. That does not apply here. It seems as the spirit here is this variance will probably be granted. He has done his part. That is his job. He cannot see this garage from his house. The neighbors seem to be content with it. If this variance is granted it would be for two variances – one for the setback off the street – the other one is for the fact that it is in a street yard. Popanda stated he was not telling the Board of Appeals their business but so this does not come back repeatedly, if this is recognized that it is very easy to get this variance. The Board of Appeals will be seeing a lot of variances. Some neighborhoods it may not be as conducive to this one being a side street, a dead end street which is congested already. It may not be a problem but he believed it would be on East Lake Shore Drive, Wilmot Avenue, Lance Drive where he could have accessory structures pushed all the way out to the street may affect property values. Popanda is merely asking the Board to make sure that Brown proves hardship. This is another way that this man can build a garage.

Jooss stated one of the reasons the garage was declined was in the Village Notice was the 25 foot setback. That is something that is new here tonight. Popanda stated that was correct. He said it was a street yard and it is a structure so the 25 foot does apply. It was not written in the letter. That was his mistake. He doesn't know what to do with it at that point. If the Board of

Appeals can grant the variance for that 25 feet or grant the variance for what you can, and Popanda refuses the permit again. Then Brown comes back with a 25 foot setback. He did not know what the avenue was for that. Listening to the readings of what the variances can be for, the Board is capable of putting conditions on and changing things, he has a feeling with that being said, they make the variance for that as well.

Jooss stated variances are not precedent setting. And just because we do it for this case does not mean that somebody comes in next week and wants the same thing, the Board of Appeals would automatically grant the variance. The cases are looked at individually and act on those individually. That's how the Board will look at this one.

Jooss asked the Board if they had any more questions. Meyers asked Brown if he has considered moving the garage and moving the shed. It looks like the garage could be put behind the home and still have access to your well and then we would not be here. Brown did not know if he had enough room to drive his vehicle in there with the 25 foot setback.

Boone asked where the well was. Brown stated the well is behind the shed and there is a big rock (not real) that covers his well. Jooss stated the well was not on the certified survey.

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

Jooss 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 – Jooss stated the Board was discussing the original survey and placement of the garage that was submitted for this variance. He felt the protection of public interest is because having the entrance off Tom's Court is certainly better because of decreased traffic than if you would have it off of Pawley Avenue. He also felt the original placement of the garage is kind of nice because the garage is hidden between the two big trees and not standing out in the open yard. He believed the public interest would be upheld. The Board agreed.

Unique Property Limitation – Jooss asked if there was anything unique about the property that would make it so he could not have it there or have it anyplace that would meet the ordinance. Nathan stated the only thing that was unique was that there are two streets. The lot is plenty big for placement of the garage. Jooss stated if you can build something without a variance then a variance should not be granted. The Board agreed.

Unnecessary Hardship – Boone stated he was still thinking that Brown could put the garage in a different location so he did not believe it was a hardship. Jooss stated there are plenty of places in the yard the garage could be located. Until you put the stakes out and put the ropes around to see how it is going to look and see where it is going to fit. That is not what the Board is concerned about now. The Board is concerned about the garage that he proposed. Jooss asked Brown after hearing this discussion would he like to ask for a continuance to stake out something else. What the Board will be voting on now is what you brought forth and that is the original proposal. Brown stated he wanted to continue with the original proposal. Popanda apologized for even trying to help by putting the garage on the drawing. He did not propose that. He just said this was a possibility and here is how compliance could be reached with only one variance. Jooss stated we were at the proposal that was first submitted. There has been enough discussion on other things but we are acting on the original one that Brown has brought forth and that is what will be voted on. The Board agreed.

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. David L. and Joanne Brown: "You are requesting a variance to allow for the construction of a 22 foot by 24 foot detached garage in the front yard in place of the side or rear yard as required." Brown stated this accurately described the relief they were 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 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 into 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 8/31/08.

MOTION BY NATHAN, MYERS, TO DENY THE VARIANCE BASED UPON THE ORIGINAL PROPOSAL SUBMITTED. ROLL CALL: BOONE-YES; KUHLMEY-YES; MYERS-YES; NATHAN-YES; JOOSS-YES. MOTION DENIED (5-0). VARIANCE DENIED.

Jooss told Brown he should probably get together with his neighbors and talk to them about replacing the garage somewhere else on the property. The Board of Appeals has denied placing the garage where the original proposal was.

Motion by Boone, Nathan, carried, to adjourn @ 7:18 p.m.

***Signed copy Available at the Village Hall***

Cynthia Skrypt  
Board of Appeals Clerk

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