

**BOARD OF APPEALS
VILLAGE OF TWIN LAKES
TUDRON, James Trust Continuance
December 19, 2007 - 6:30 P.M. - 6:55 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. Porps announced that the purpose of the meeting was to hear the continuance variance request of James Tudron Trust, 2366 Haerle 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, 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. Unnecessary hardship – what constitutes an unnecessary hardship is a matter to be determined from the fact and circumstances of each individual appeal. In applying the statutory standards, the Board must abide by court established principles. A self imposed hardship is not grounds for a variance. Loss of profit is not in and of itself grounds for a variance. An unnecessary hardship is a situation wherein the absence of a variance, an owner can make no feasible use of a property or strict conformity is unnecessarily burdensome. 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.

JAMES TUDRON TRUST CONTINUANCE VARIANCE REQUEST – 2366 HAERLE AVENUE – PARCEL # 86-4-119-322-1090

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.

James Tudron, 4854 N. Mason Avenue, Chicago, IL 60630-3153 and 2366 Haerle Avenue, Twin Lakes, WI 53181 appeared on behalf of James Tudron Trust and is still under oath.

Porps read into the record Tudron's request for a variance: "You are requesting a variance to allow for the construction of a two story addition utilizing the existing building footprint. Variance # 1 – A total side yard setback of 15.75 feet in place of the required 23.99 feet, the smaller of the two being 5.61 feet in place of the 9.58 foot requirement. Variance # 2 – A front lot line setback of 4.70 feet, in place of the 25 foot requirement." Tudron stated that accurately described the relief he were requesting. Porps explained to the board members that this was a change from the first set of plans. The addition on the south side of the building has been removed.

Tudron stated since the first hearing, Jerry Behounek did not want the additional space on the south side and he agreed to not go with the four foot extension of the building on the south wall to meet the existing front part of the building. So he will be keeping on the existing footprint. The concern was if the foundation would take the second story. Giles Engineering Associates went out there and took their soil samples and they determined it would not take a second floor with the soil on the existing foundation as it is. He contacted Midwest Drilled Foundations & Engineering Company and they went out and looked it over with the testing and findings from Giles Engineering and they are going to put helical pier supports 15 or 16 on the north and south walls. That will be sufficient for the second story addition.

Porps asked the Board if they had any questions. Myers asked Tudron to explain how they would be putting in the reinforcements. Porps stated Tudron was more than welcome to answer that question but that is not up to the Board of Appeals' concern. We have no jurisdiction over that. You certainly can be interested but it has no bearing on the granting of the variance. Myers stated he would explain the reason he was asking. He would like to know where they will be placed because in the previous meeting Tudron stated he did not want to tear down the house. Tudron stated they would be installed on the exterior next to the foundation they dig down, expose the bottom of the foundation to the spot where they are going to put that pier in and drill down, secure it, slide a plate under the foundation, open it and it rests on the foundation. Myers stated when he read the report it sounded like it had to be put inside the crawl space. Tudron stated that was incorrect. All of them would be outside the building. There is a new footprint of the building showing where they will be putting the new piers in. Myers stated

his question was how would it be installed inside the crawl space, almost the entire building would have to be demolished. Tudron stated it would be outside of the foundation eight feet on center on the north and south wall. Myers stated that was his reason for asking.

Jooss asked by drilling on the outside, would that affect the neighbor to the south. Tudron stated there was plenty of room. Jooss stated kind of like a well driller. Tudron stated it looked like a big screw that they dig down with that as he explained before. He stated as far as noise wise it is a very small apparatus. It is a very simple operation. All of them could be done in two to three days tops.

Jooss asked on the garage being so close to the roadway, there is room in the front of the house to move it forward but if you do that then you would obstruct the view of your neighbors. Tudron stated when his neighbor built his house; he went up to the front of his. Jooss stated if he went 20 feet ahead to give you 25 foot of driveway to build it as the code would be; you would be obstructing the neighbor's view from both sides. That would not be towards the public interest to have you move the building forward. Nathan stated he was not able to go forward by code. He is less than 65 feet. Jooss stated most of the houses in that area are two stories in height going down Haerle. So that would fit into the houses that are currently there. Some of the houses there are very big houses on small lots.

Porps stated he always takes a copy of the survey and label the proper exhibits and stuff. To the south the only thing that is encroaching is the 16 foot by four foot addition on the south side and on the north side you are encroaching by about four feet. From the lake depending on taking the 60 feet from the water's edge back; a small triangular piece encroaches. If you take the existing residence; you are absolutely in line with the rest of the neighbors. As far as the garage is concerned, your garage is about three-quarters in the 25 foot setback. The neighbor to the north is probably a little less than 50%. The neighbor to the south is about 50%. You have complied with the Board's wishes to not increase the footprint of the building. He has a signed letter from Tudron stating he would not be converting the garage into living space. Included in that letter Tudron stated that he would remove the covered porch. It appears to him that Tudron has complied with everything the Board has asked for.

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 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. Jerry Behounek, 2370 Haerle Avenue, wanted to clarify that there was no addition to the footprint because according to the notice it does state addition to the footprint. Porps stated there would be no addition to the footprint. It has been removed. (Porps showed Behounek the plans.) Behounek asked Tudron what he was putting on the exterior of the building. Tudron stated he was putting overbrick on it. The overbrick goes on like siding. You put up four by fours and screw them on. There is no mortar line or no mortar brick lip. That is all taken into consideration in the engineer's report for the weight. Behounek stated at the last meeting Popanda had a problem with the strength of the existing foundation. Popanda will review the engineer's report. Porps stated the Board of Appeals' authority lies strictly in the dimensions between the lot line and the structure. The applicant's use is not the Board of Appeals' concern. The Board of Appeals has no authority or no jurisdiction whatsoever. Whatever Tudron wants to do inside his building is his business. The structural integrity is between the Building Inspector and the applicant. The Board of Appeals deals strictly with the physical dimensions of the building and its placement on the lot. That is where it ends.

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

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

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.

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

Public Interest – Porps stated the applicant has truthfully answered every question they previously had asked him. He has complied with what the Board asked him to do. As Jooss pointed out, the building could be moved out forward but would not serve much of a purpose. In turn if he moved his forward at some point down the road the neighbors could use his averaging to bring their building forward. That would be counterproductive. Porps believed the public interest would be upheld utilizing the existing footprint. The Board agreed.

Unique Property Limitation – Porps stated this was a lakefront property in Twin Lakes that is 48 feet wide. They are narrow existing lots. The building has been there for a long time. Porps believed the lot does have some limitations because right now he is getting into reinforcing the foundation of an existing structure. There are some characteristics there that make that

property unique. The Board agreed.

Unnecessary Hardship – Porps stated to be very honest, he would probably tear the house down. He has seen projects like this before. In the end he believed Tudron would be better off. Porps did not have any sentimental attachment to that building. For that reason whatever that reason is for Tudron, he wants to hold onto it and that is his business. Would it be a hardship? Obviously Tudron is willing to spend the money on fixing the foundation and putting the second story on it. Porps believed Tudron had some hardships there that he is stuck with. Jooss believed Tudron went to a lot of trouble to get all the studies necessary to make sure that his present foundation can hold the house that he wants to build. 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 C. The first floor plan option 2 is to be marked as Exhibit D. The remainder of the plans option 2 to be marked as Exhibit E. “James Tudron Trust: You are requesting a variance to allow for the construction of a two story addition utilizing the existing building footprint. Variance #1 – a total side yard setback of 15.75 feet in place of the required 23.99 feet, the smaller of the two being 5.61 feet in place of the 9.58 foot requirement. Variance #2 – a front lot line setback of 4.70 feet, in place of the 25 foot requirement. Additional requirements: Garage to remain a garage and not be converted into living space. Existing covered porch to be removed and not be replaced.” If you believe that is what you are asking for, please circle and initial it.

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 applicants’ responsibility. The Building Inspector or the Board of Appeals will verify the amendment prior to issuing a building permit. Contemplated completion date of the project is 9/30/08. Tudron signed the conditions.

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.

Porps stated Tudron had to wait 30 days in case someone wished to appeal which is standard.

Motion by Jooss, KuhlmeY, carried, to adjourn @ 6:55 p.m.

Signed Copy Available at the Village Hall

Cynthia Skrypt
Board of Appeals Clerk

G:\COMMON\WPDOCS\CINDY\Board of Appeals\tudron2.app.doc

<u>DISTRIBUTION</u>		
Board of Appeals (7)	Village Board (7)	Building Inspector
Village Administrator	Village Hall	Post Office
Library		