

**BOARD OF APPEALS  
VILLAGE OF TWIN LAKES**

**RATAY, Wayne T.**

**December 3, 2008 - 6:30 P.M. - 7:08 P.M.**

\*tape available indefinitely\*

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

Meeting called to order by Chairman Tom Porps. Roll call: Boone, Kuhlmeier, Myers, Nathan, Porps. Porps announced that the purpose of the meeting was to hear the variance request of Wayne T. Ratay, 2800 Lake Shore Way, 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.

**WAYNE T. RATAY REVOCABLE TRUST VARIANCE REQUEST- 2800 LAKE SHORE WAY - 86-4-119-322-3300**

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.

Wayne T. Ratay, 6 Equestrian Way, Lemont, IL 60439 and 2800 E. Lake Shore Way, Twin Lakes, WI 53181 appeared and was sworn in. Porps read into the record Ratay's request for a variance: "You are requesting a variance to allow for the construction of a two story addition to your existing home with a side yard setback of 7.7 feet in place of the 12 foot requirement. The setback is for the existing home and proposed addition only, and does not continue past the structure or to the corner of the lot." Ratay stated he did not believe that was accurate because his survey and his plan are six feet longer than the existing house towards the lake. Porps stated he understood that, no problem. Ratay stated then your question is correct. He answers correct. Porps stated Ratay could tell the Board a little about his project and then Boone has a question to start with. It is your turn to give us a little idea of what you are doing.

Ratay stated he has been a part time resident since '46 and over the years the house was remodeled as you see in the drawing that you have. He has some other drawings that he could hand out if the Board would like to see them. Porps stated sure. Ratay continued the existing building as it sits and as you gentlemen saw is in yellow. The two side yards well over the years the additions were built to permit and to current setback requirements however today for that 50 foot lot there are different setbacks. He was told by the Building Inspector that in order to do what I'd like to do on his home he would first have to attach the two lots - number 12 and 11 and he did that. Therefore he has got lots of room going to the south and 190 feet to the lake. He would like to build his proposed addition as drawn in the green and it doesn't affect at all the existing setbacks that were awarded to him over the years or that he got. To the north he is not going to move any at all towards that way and he is not going to move any way toward the west. He is only going to go where he has room now and it is okay to do according to the current setbacks and that is to the south the green and towards the lake which is towards the lake which is to the east. He was told he had to come before the Board of Appeals any time any building is out of compliance and ask for your approval. His existing yellow building as it sits is currently out of compliance and he is asking for the Board to allow him to build the green addition. He wrote a letter which he thought addressed all three points. It would be very expensive for him to move this existing building. As you see he intends to keep the yellow and incorporate it into a very nice structure and in order to move this to the center of these two lots would require moving utilities, destroying a good foundation, a good building, a good garage, rebuilding all of that, running new sewers, running all new asphalt driveway, very expensive so it would be a financial hardship if the Board turned him down and he hopes they do not and to anyone else that comes and wants to build on this property. The existing structure is rendered useless if he can't touch it to me or anybody else so that is why he asking the Board's approval. Porps stated that was as honest as he could be. Ratay stated there will be nobody if you saw the house the way it is set up nobody would be affected negatively and he intends to make it very nice to improve the building, improve the neighborhood and improve the view from the lake. Are there any other questions? Porps stated there would be. Boone has one right off the bat, go ahead.

Boone stated this was a technical question. He is trying to understand the documents that the Board gets and one of the things that they got was the survey and the other thing we got was from Kenosha County on the property. Do you get a copy of that? The Clerk stated that Ratay did not get a copy of that. She makes that for the Board's convenience. Boone stated this from Kenosha County just refers to Lot 12, is that correct? The Clerk stated the lots were just combined that is why. Boone stated that is why we do not have anything from Lot 11. The Clerk stated that was correct. Boone stated and then it talks about down here parcels involved three parcels – that is what he doesn't understand. Porps asked Ratay in 2002 did he refinance or purchase some additional land or do anything in December of 2002. Ratay stated that might have been when they added the garage. Porps stated in 2002 something happened if you were the owner and the current owner something you initiated revolving the three parcels. Ratay stated it could have been when he put the land in trust. Porps stated that could be. Ratay stated that is the only thing that has been done. Boone stated so that is why this says three parcels. Porps stated he did not know why there are three. Ratay stated there are three parcels. Porps asked if the front half of the lake was that designated as separate. Ratay stated no there are three parcels. There is Parcel 12 which the building is on today. There is Lot 11 which is the one to the south. Boone stated that is the one that you have combined. Ratay stated yes sir. And then there's the third parcel which today is unimproved and it is the one farthest to the south which the sewer pipe goes through. Porps asked if that was his land. Ratay stated it was. Porps asked if there was a tax number that goes with that parcel. Ratay stated yes there is. Porps stated then there must be an easement for that sewer then to run through. Ratay stated there was.

Porps stated on a separate issue the Lake District has been working for a very long time on trying to make some improvements upstream of that to either eliminate or minimize the amount of water going through that pipe. Ratay stated yes. Porps stated he hoped they get it done. Ratay stated he was all for it. Porps stated he was too. Ratay stated the amount of water that is polluted that comes in is really bad. Porps stated he was by one of the neighbors Kosatka which is a couple doors away from Ratay's. Ratay stated she complains more than anybody because of where she lives and he hasn't complained once. Porps stated he was aware of that. Ratay stated in fact they had to pump that out. Porps stated he took some pictures. He was by her house one year almost at a time like this and there had been about an inch of snow on the lake so the lake was perfectly white and just this big plume of mud and leaves and debris. It is really nasty and unrelated here.

Porps stated good or bad I hate to say but I disagree with some of the things that you said maybe in a good way I guess. The letter you sent to us here – what I believe what you are calling the side is really the back. Parcels on the lake the lake is the front of the building. Ratay stated okay. Porps stated it was just a technical issue but it kind of changes your letter a little bit. The side is obviously the north and south and the back is opposite of the front. Ratay stated yes.

Don Smitz asked Porps if he could make a comment. Porps stated sure. Smitz stated when he put those first additions on that was the side lot line. Porps asked which was the side? Smitz stated the nine feet on the north side. Porps stated yeah he would say that was the side. Smitz stated now you are calling it the back lot. Porps stated no. Ratay explained to Smitz that he said the side and the side and the lake front is the front and the back is to the alley. Smitz stated okay then we are fine. Ratay stated you are right sir and I also made a mistake in my letter I think on the third paragraph where it says Lot 11 paren to the south. Porps stated yeah. Ratay stated he would like to change his letter after we are done. Porps stated just change it and initial it that's all.

Porps stated the next thing is that he did the appeal on your property on February 19, 2000 and he went through his paperwork and stuff. So when you say your house is non-conforming as is, it is not. You were granted a variance and your house is just fine. Ratay stated really. Porps stated yes he reread his documentation from 2000 and it is fine. You are here for one reason though your six foot addition because now you are adding. You are basically in effect increasing the non-conformity. You are adding 24 square feet six by four – you're 7.7 and you have to be 12 – so roughly 24 – 32 square feet right in that area there. It is a very small chunk you are adding. Porps asked if everyone was aware that there was a variance granted on this in 2000. The Board was not aware. Boone stated he did not understand what you are saying that the variance gave him conformity – it is conforming now – Porps stated he is asking to change it. Boone stated he is asking to change the variance. Porps stated no he is asking for another variance for that little red square that is why we are here. Nathan asked if that was really true because he is putting a second story on. Porps stated the second story is the 12 foot because the existing structure was – Nathan stated was a single story structure. So then the setback would only be 10 feet. Porps stated it would have been 10 but the original variance called for 12. Ratay stated there is a second story on it today on the house. Porps stated that was the original request. Ratay stated you made this perfectly clear now. You are right. Porps stated you were granted a variance for the garage that included the – Ratay stated so he is in compliance today. It's just that little piece there. You are right sir.

Porps asked the Board members if they had any questions. Boone stated this thing that we got from Cindy tonight has to do with the previous -- Porps stated yes that deals with the one we were here two weeks ago for where he was actually going to revoke the first one and go for basically a totally different one. The Clerk stated that's the one that was continued not this one. Porps stated this one here is basically just adding – like I said it is between 24 and 32 square foot piece that he just didn't see being a problem. The Board had no further questions.

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. There were none.

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 decision must be based upon the Zoning Ordinance and the facts presented at this hearing.

Public Interest – Porps stated Mr. Ratay has combined Lots 11 and 12 which eliminates any question about the total side yard setbacks. I'm sure you have all seen it. It's a beautiful parcel. He is not going to interfere with any of his neighbors. He did not see any problem at all with the public interest question. The Board agreed.

Unique Property Limitation – Porps stated it was a large parcel. It is a hard thing to answer is there a property limitation? I think it is a little bit unusual in the fact that the original – I'm guessing the original entrance to the property was the alley in back and that how now kind of fallen to disuse. In 2000 you stated it hadn't been used in about 20 years except for your garbage cans. Is that still true? Ratay stated that's exactly what we use it for. Porps stated so he thinks there is possibly some uniqueness to that parcel. Boone asked if that was public property. Is that a drive? Porps stated no, Mr. Ratay stated that he owns that parcel the Lot 10. Ratay stated it was unplatted. They have a description. He pays taxes on Lot 12, Lot 11 and this unplatted land. Porps stated he did not look at the Kenosha County website. If you get a tax bill for it – it certainly will show up there. And really from our perspective it's not involved with anything for us anyway. It doesn't matter. The Board agreed.

Unnecessary Hardship – Porps stated to tear down an entire building he thinks certainly would be burdensome. That would make no sense at all. And to offset that four foot by six foot piece on the front certainly would not add to the appearance of the structure and he certainly thinks that would be a hardship there to do that. Boone stated he already got a variance on all that. Porps stated it was approved years ago, the structure is there and it has been there and to just redraw the plans to eliminate that little corner it does not make any sense. 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.

Ratay asked if he should make any changes to his letter. Porps stated he certainly could. The record will reflect that Ratay will be updating the wording of his letter to reflect the front and back and east and west for clarifications. You can bring it to Cindy tomorrow.

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, which you are going to correct the actual statement there. The survey is to be marked as Exhibit A. The plans are to be marked as Exhibit B. Wayne T. Ratay: "You are requesting a variance to allow for the construction of a two story addition to your existing home with a side yard setback of 7.7 feet in place of the 12 foot requirements. The setback is for the existing home and proposed addition only and does not continue past the structure or to the corner of the lot." Wayne Ratay 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 8/01/09.

Ratay asked a question for clarification. The last sentence in the bold print, the setback is for the existing home and the proposed additional only and does not continue past the structure – that is the additional structure, okay. Porps stated the reason

we put that in there is this here your addition here no one has a problem with it, that's fine. But if we granted you the variance for the seven foot setback along the entire north property line all the way to the lake it would prevent you from tomorrow changing your plans and extending it 30 feet towards the lake. Ratay stated that was not going to happen. Porps stated this is what you are asking for. Everyone seems to not have a problem with it and that's fine but it's just that you don't change this now and make it a 30 foot addition. Ratay stated he understood.

Bob Jooss stated he was first alternate on the Board of Appeals and had a question. Also the second part the nine foot setback in the rear yard which you have not addressed. I think it should be because it was not according to code. Porps stated the variance was granted for that nine foot setback. It is not a question. Jooss stated well the Building Inspector just to clarify and clean it up it might make something there because that was granted before with it, that's not a problem. Porps stated he deliberately did not mention it in his request. The original variance was granted. Mr. Ratay, You are requesting a variance for 7.3 foot side yard setback in place of the required 12 foot setback and an 8.6 foot rear yard setback in place of the required 25 foot setback and it was voted unanimously. Jooss stated he understood what he was saying but that does not address it in the minutes of today's meeting you brought that up so he doesn't apparently know that was granted in the last variance. Jooss stated he was only asking as a question, that's all. Porps stated he thinks we talked during the meeting that a variance had been granted for this house and it was existing. I know other times either now or when Tim was here that we disagreed on what was being asked for. We can just add it to the minutes that a variance has been granted on this parcel on February 19<sup>th</sup> of 2000 and the rear yard setback had been addressed and was granted on that date. Jooss believed that would clean it up a lot. Porps stated we could put it in there.

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

Motion by Boone, Nathan, carried, to approve the minutes of October 29, 2008 – Carlo and Tamsen DiCarlo.

Motion by Kuhlmeiy, Myers, carried, to adjourn @ 7:08 p.m.

***Signed Copy Available at the Village Hall***

Cynthia Skrypt  
Board of Appeals Clerk

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**Exhibit A**

**“Wayne T. Ratay Plat of Survey”  
Dated October 14, 2008**

**Exhibit B**

**“Wayne T. Ratay Plans”  
Dated September 16, 2008**