

**BOARD OF APPEALS
VILLAGE OF TWIN LAKES
TUDRON, James Trust
July 18, 2007 - 6:30 P.M. - 7:27 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 also present. Porps announced that the purpose of the meeting was to hear the 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. 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 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. Porps stated he was at the site earlier in the day and Tudron and he walked the property together.

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 was sworn in. Tudron stated he was the sole owner of the property.

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 and an addition to the 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.

Tudron stated he has been in the Twin Lakes area for 30 years. He purchased the house in 1974. In 1975, his uncle put an addition on the front, added an attached garage and put a utility room in the back and converted their summer home into a year around house. He put on a new room, windows, central air and heat. The family used the home for decades as it was. Over the years, the house has become very run down. At the present time, the house is too small for their family. Tudron explained the two story addition and the addition to the footprint to the Board. He agreed to comply with any state or local codes necessary.

Porps asked the Board if they had any questions. Myers stated he was looking at the drawing for the front elevation which shows four steps up to the front door. The current front door is not that high. He asked if Tudron intended to completely tear the first floor off. Tudron answered that all floor joists would be replaced on the first floor. The steps would be going up to the deck. All the wood on the deck will be replaced with plastic wood. The deck will be replaced identically the way it is now. Myers still believed the elevation on the first floor would be moved up from where it currently is. Tudron stated the front room is that much higher than the existing floor of the house. The house will be up approximately three inches. Myers stated when he is talking front; he's talking where you enter from the garage. The garage door looks like it is approximately a foot and a half higher. Tudron stated it matches the existing floor of the house.

Porps stated there were obviously some discrepancies on the floor heights inside the building. Tudron stated the old floor when they put the addition on – he doesn't know why – but it's about that much higher. There was excessive water damage and the floors were redone. The existing house will be matching the new floor all the way back. At some point, it will all be the same. Porps stated but currently from the street level, are there any stairs to climb to get into the building? Tudron stated the only steps are the front deck. There are no steps from the street side. Porps stated the elevation shows about four stairs going up. Tudron stated the person who did that used the cad and that is an error. There are no steps in back. Myers stated that is what he was trying to get at.

Jooss asked about the garage, 4.7 feet is where you are now – all the garages down there are fairly close to the road – due to the fact it is a dead end street, have you had any problems with the garage as it is now? Tudron states he has had no problems. Jooss asked where people park when they come to visit. Tudron stated visitors park along the side where you can put two cars, two in the garage and one on the opposite side. Jooss stated the covered porch would be gone, so that could be parking area. Tudron stated that could be as well. Jooss asked Tudron if he had a set of plans drawn with the footprint the same as it is now. Tudron stated it was the same footprint just with the second floor. Jooss asked if the second floor would be cantilevered out. Tudron stated it would not be cantilevered. It would follow the existing footprint.

Porps asked Tudron if he wanted to change his request this evening to a plan that does not include the four foot addition. Tudron stated he would like to change his request. The plans would be identical except there is no four foot wall.

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. James Tudron had a positive response in his possession but not with him this evening.

Porps asked if there was anyone in the audience wishing to express an opposing view to this appeal. Jerry Behounek, 2370 Haerle Avenue, read his letter into the record. John Krause, 2358 Haerle Avenue, did not believe it would be fair to the neighbors. He rebuilt his house 15 years ago in conformity with the codes. He did not know how the traffic would be handled with construction trucks and all the equipment.

Porps asked if there were any letters of opposition. There was one letter of opposition from Jerry Behounek already read into the record.

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

Porps asked Popanda to comment on the stability of the foundation and capacities which were mentioned in Behounek's letter. These are not Board of Appeal issues. Popanda stated that was correct and that is why they have not been brought up or put into the refusal letter. That is a question the Building Department has. If the variance is granted tonight, Tudron must face this before a building permit can be issued. The neighborhood has questionable soils. The opposite side of the street halfway up the block has a clay loam soil. The soils along the channel are terrible. How will a structural engineer design the foundation to withstand the roof load, floor load, ceiling load, masonry and additional drywall?

Porps asked Tudron if he would like to answer some of the questions raised by his neighbors. Tudron stated the foundation is 48 inches deep by 18 inches. There has been no settlement to the house as far as he noticed. There are no cracks or shifting of the cement blocks put in by him. All work previously performed has been done in accordance with current codes. The footprint would stay the same. Porps stated both his neighbors have stated concerns about property access because of the limited side yards. Tudron stated the south is 10 or so feet from the neighbor's property line to his house, which is more than adequate to put scaffolding up. There are approximately five trees on the property that need to come down. He's resided his house twice in 30 years and vinyl siding just does not hold up. So he's thinking about putting up brick because it lasts forever. The home will be built to improve the Village, improve the lake front and the value of everyone's property.

Porps asked the board members if they had any more questions. Jooss asked what if when you tear the house down, you find out the foundation is not able to support the addition that you want to put up there. Would you then want to build the one that you are asking for or would you want to put something else up there? Tudron stated before he did anything – he has an engineer that is working on the structure as far as the ceiling joist. He has a contractor and engineer to look at the foundation. It will be done the proper way according to codes. Jooss stated Tudron did not answer the question. Tudron stated he was not going to tear it down to nothing. The front addition is all two by four's, 16 inches. The whole south wall will be replaced by two by four's, the old cedar log. Those are the only two existing old walls. Those will be identically put in with two by four's. While that is taking out all new floor joists will be put in with engineered lumber. The second floor will also have the engineered lumber. Jooss stated if a variance is granted, you have to build the structure the Board of Appeals gives him tonight. If something happens that you could not build that structure, would you come back to the Board of Appeals because you would need to modify your plans. Tudron stated if the foundation cannot support the second floor, structurally it's not deep enough or wide enough, he would eliminate the second floor and redo the inside the way it is.

Popanda stated the depth is now what supports the structure. The depth is for the frost heave. There is probably no settling there. He has seen probably one-third of the crawl space and it looks true and strong. It's important to note that based on the way the home is constructed now with a bunch of piers, it's distributing the load all over the place. He's taking the north foundation wall currently it is plus or minus 400 pounds per linear foot. Based on the soils down there, it should support that. By adding the type of structure described tonight, full space from outside to outside, there are no point loads throughout the building. They are all to the outside wall. That wall would take a great deal of weight and it brings it up to 1.387 pounds that

without factoring in the masonry. At that weight, there will be 2,000 pounds per square foot. I'm here to tell you those soils are no where near that. They're lucky to be 500 pound per square foot. The masonry is going to require an entire foundation in order to support it. The Building Department would not allow Tudron to scab that onto the side of the existing foundation. It will have to be a true masonry ledge in order to support that – not to say that a person could not use the quarter bricks. He did not want the Board to determine their acceptance or denial of the variance based on that. If the variance is granted tonight, make it a part of the variance that the garage that is attached is not converted to living space, that it remains a garage. If Tudron does take four feet off that south wall or two-thirds of it, it will reduce a bathroom down to about four and a half feet and it will also reduce bedrooms down to 11 foot two inches. A considerable amount of room will be given up on the second floor. If the variance is granted, Tudron has agreed to remove the covered porch. Approximately eight inches will be added to the structure just for the masonry when you consider air space and the brick. Popanda believed the Board of Appeals would be doing Tudron a favor by rejecting his variance. He is rebuilding almost the entire home. He will have extensive work on that foundation. It will be in his best interest. He may not like it now but he will appreciate doing it the right way and saving him money by taking it down and starting over.

Porps asked Tudron after hearing Popanda's recommendations, is that something you would he like to do or do you want to proceed forward. Tudron stated if the brick causes an issue as far as weight and soil and foundation, he will compromise again. When there is major, major undertakings like this, variances have been granted and afterwards have spoken to the people and they have said, "we probably would have been better off taking it down" and start from scratch. It is just something you might want to consider during the rest of the proceedings. At any time you decide you decide you need time to think about this, please point that out to the Board.

Jooss said if you tore the house down and started from scratch with a 47.9 foot lot, you would have to stay 24 feet away from the side yards, you will have a house that is 23 feet wide if you built to code. Popanda stated there was a section in the ordinance that allows a 24 foot wide house. The house is currently about 30.6 feet. The length of the house would be 25 feet off the road and the average of the then existing on either side appears to be about 39. Porps stated it is virtually right where the house is at right now. Popanda stated that was correct less the garage and staying in compliance with the two side yards to make 24 feet. It looks like it would be 24 by 53 feet. Jooss stated it would be 51 x 24 feet.

Porps asked if there was anyone in the audience with a question or comment. Behounek asked if a variance were granted and Tudron finds out he is not able to build it, because the Board of Appeals gave him a variance, could he build a new house to the other footprint or would he have to follow the code. Porps stated it depends on how the variance is worded. Hypothetically if a variance were granted only for this proposed addition, the variance could only be used with this structure. Should that structure ever come down, the new structure on the north, east and west walls would have to be up to code, he would be able to use the offset because the variance was granted. The Board of Appeals will not grant a variance for the encroachment on the north side. In this case, it would be only for the second story. There would be no change to the footprint. Porps stated he believed his question was if this variance was granted, could he tear this building down and build a brand new building on the granted footprint. He stated he could not because the Board of Appeals would not grant the variance worded in that way. The reason for that is because these are old structures and people do want to make them bigger. People have sentimental attachment to their homes. Sometimes there is a need for it and you let them do it, but you don't want to put this in concrete forever if the next owner decides to tear it down 20 years from now, it will have to be built to code. The code could be even more restrictive than it is right now.

Porps asked the board members if they had any more questions. Porps asked Behounek and Krause now that the petitioner has changed the footprint, does that change their opinion at all about his request? Behounek stated he still had great concerns about what was going to happen. Being next door to him, he knows what that soil is and he just anticipates a problem. Porps stated when you talk about soil and stuff, that is not the Board of Appeals' jurisdiction. That deals with the Building Inspector only. The Board of Appeals' concern is the hardship and the property limitations and that's what they have to address.

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.

Unique Property Limitation – Porps stated the Board of Appeals has literally heard dozens of variance requests for lakefront parcels like this. There are certainly restrictions that the owner has to comply with to build on these parcels with the channel being right behind this building, the lakefront and the size of the lot. There is no question that Tudron has a unique property limitation. The Board agreed. Jooss stated in looking at the survey, Tudron is on half of Lot 8 and half of Lot 9 and the same with his neighbors being on half of Lot 9 and half of Lot 10. Usually people are on a lot. Tudron stated it was definitely unusual.

Public Interest – Porps stated there were concerns from the neighbors but the neighbors' concerns to him appeared to be more concerned with construction details than with harm to the public interest. He did not believe there was a public interest problem here. The Board agreed.

Unnecessary Hardship – Porps stated unnecessary hardship was always a very difficult question to answer. Tudron stated he has built the home and used it for many years. One of the things says the State says if you enjoy the use of your home, you have to prove this hardship issue. Tudron wishes to make this his retirement home and needs a little bit more room for the grandkids. Disability issues are not reasons for granting a variance such as the elevator Tudron stated he was putting in the house. Enjoyment of your property is a reason for granting a variance. It's your property and you have the right to enjoy it. That certainly is part of a hardship. By definition an unnecessary hardship talks about restrictions being unnecessarily burdensome. Tudron has agreed not to expand the existing footprint. Tudron does not want to tear the building down because he has a lot of sentimental attachment to it. Tudron further stated if the structure does not meet code, he will keep it at a single story building. Porps believes the applicant has a hardship here. Part of the motion in granting a variance would be the garage cannot be converted to living space and the covered porch will have to be removed. Tudron stated those were acceptable. Porps believed Tudron had some problems and he was willing to make some compromises to get his plan to work. The Board agreed.

Meyers stated Tudron has agreed to change his plan; the Board has not seen that new plan. Porps stated they would deal with that. Jooss stated he had a problem if it did not hold the second story, would your option then be you'd rather build it on the same footprint on one story that you know it would support or would your option be that you still want to go on the same footprint or a different footprint to put the second story on. Tudron stated if the existing foundation could not support a second floor with this footprint originally, he will not put a second floor on it. He would just redo the first floor. Jooss asked if Tudron would be willing if the Board of Appeals would make that as part of the motion, then you would be willing to abide by that. Tudron stated he would be. After he has the foundation tested and if it's okay for the second floor, then he will do it. If it is physically cost not effective, he will leave the structure as it is right now, a one story.

Variations 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. "James Tudron Trust: You are requesting a variance to allow for the construction of a two story addition utilizing the existing building footprint." Is that correct? Tudron stated that was correct. "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." Those are what you requested and your neighbors have asked if this variance was granted, would you be able to build on the footprint the Board of Appeals is granting you. That has been a concern over the years. It will be necessary for you to come back before the Board of Appeals again. I know that is not your plan. The survey needs to be updated to show you are planning on using the existing footprint. The plans will need to be updated as well. Although you have presented the plans to the Board of Appeals tonight and you are making the building smaller, the public has the right to inspect those plans. When you come back, this will be written in such a manner to allow you provided the foundation is sound to put the second floor on. Should you or any future owner tear it down, it would have to be built within the building footprint at that time. Included in that will be wording dealing with the garage and removal of the covered porch.

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. The variance is for the existing structure only not for the addition. (Variations "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.

Porps asked the Board how they felt about granting Tudron a continuance on this because we really can't deal with the issues tonight with the change in the survey and the change in the plans. Rewording the variance and adding verbiage for the garage. We could proceed ahead. That is also an option you have. You can call for a vote tonight. He does not know what is going to happen. Tudron can either go for a continuance or resubmit or go for a vote and see what happens. Tudron asked if he could submit these floor plans in substitution of the other ones. Porps stated if Tudron called for a vote and should perhaps lose, then you would have to start from scratch and pay all the fees. If you go for a continuance, you only have to pay the fees required to continue the hearing. Tudron stated he would like to continue the matter.

MOTION BY KUHLMEY, MYERS, TO GRANT A CONTINUANCE BASED ON THE CHANGES NECESSARY. ROLL CALL: JOOSS-YES; KUHLMEY-YES; MYERS-YES; NATHAN-YES; PORPS-YES. MOTION CARRIED (5-0). CONTINUANCE GRANTED.

Porps stated he really hates to grant continuances because the Board of Appeals is really backed up. Continuances just put us very far behind. But by the same token, the public has a right to see the changed plans. When you get the modifications in, get a hold of Cindy and she will get you on the schedule.

Motion by Jooss, KuhlmeY, carried, to adjourn @ 7:27 p.m.

Signed Copy Available at the Village Hall

Cynthia Skrypt
Board of Appeals Clerk

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