

**BOARD OF APPEALS  
VILLAGE OF TWIN LAKES  
CROTTY, John W. and Margaret M.  
November 15, 2007 - 6:30 P.M. - 7:05 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. Tim Popanda was also present. Porps announced that the purpose of the meeting was to hear the variance request of John W. and Margaret M. Crotty, 423 Waldeck 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.

JOHN W. AND MARGARET M. CROTTY VARIANCE REQUEST- 423 WALDECK AVENUE - 86-4-119-282-2315

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.

Jude Tindall, 500 Tindall's Nest, Twin Lakes, WI 53181 appeared on behalf of John W. and Margaret M. Crotty and was sworn in.

Porps read into the record Crotty's request for a variance: "You are requesting a variance to allow for the construction of a 22 foot by 15 foot three season room, an 18 foot by 20 foot deck with stairs and a five foot by 22 foot deck to your pre-existing non-conforming dwelling, with a total side yard setback of 23.14 feet in place of the 25 foot requirement with the smaller side yard of 1.74 feet in place of the 10 foot requirement." Margaret Crotty stated that was accurate.

Tindall stated the Crotty's called him and wanted to know what they could do with their home. The Crotty's supplied him with a survey of their property. Tindall believed the building looked like it is non-conforming. There are a couple of options. We'll have to tear off a good portion of the house in order for the building to become conforming. The other option is to go and try and get a variance. They are here today to try and get a variance. The lot is a big hardship with the steepness of it. It makes it very tough to even rebuild to start with. Most of the house would have to be torn down. That would be the biggest hardship. Tindall designed it to try and keep everything away from the neighbors. So he believed the public interest would be upheld. They would not affect any views as far as the neighbors to the east or west. The biggest concern and problem is the topography of the property. They have 25 to 30 steps to even get to the house. The Crotty's are getting up in age. They have been in the house for quite some time. They love the area. They love Twin Lakes. The Crotty's want all new windows in their house. They want the home resided. They want a three season room put on and the deck so they can use it without having to constantly do the steps once they are in the house. Margaret Crotty stated they totally enjoy their house. This will be their tenth season there. They have five grandchildren now since they have been there and would really like to enjoy the house more. Especially as they do get older, it will be more difficult to get around. This way they can see more of the lake from the house.

Porps stated when he looked at the survey one of the first things that came out is that every lot has a buildable footprint as you know. The proposed deck increases the non-conformity of the structure. The existing structure is non-conforming but the proposal actually makes it worse. Tindall asked why that was. Porps showed the survey to Tindall stating you need a total of a 25 foot setback. If you have 10 feet here and 15 here this is encroaching into this 15 feet. Tindall believed the deck could be closer than the 15 feet. He believed it was like a five foot difference and that is why he drew it that way. That would be an issue that can be resolved by having a smaller deck. Porps asked Popanda if there was a difference in the side yard setback because it was just a deck. Popanda stated our ordinance requires dwellings to be the sum of the two side yards to be 25 feet and one to be 10 feet. We do allow decks even on non-conforming structures to be 10 feet from side property lines. The variance is really for the building itself and to put the three season on. Porps stated so his concern that there is not a total of 25

feet does not really matter. Popanda stated that was correct. The concern is that the existing building itself is a pre-existing non-conforming building. We assume that at some point in time it was a legal building. This is a pre-existing non-conforming structure that has a 1.74 foot side yard and between the two side yards is short of compliance by .12 feet.

Porps asked the Board if they had any questions. Boone asked if the three season room and the deck were going to be built closer to the lake. Tindall stated that was correct. Boone asked what would be holding the structure up. Tindall stated they would put pier pads in or dig postholes down two feet wide and four feet deep across. Then there will be six by sixes in the design to hold up the structure with headers and joists. That will be braced off. When you get over a certain height of posts you want to brace them off on a diagonal, which is usually about a 10 foot height. Porps stated he was guessing that was about 12 feet up from grade to the bottom of the deck. Tindall stated that was correct. Boone stated he counted and there were 69 steps from the lake up to the parking space. Tindall stated it was right around 70 steps.

Kuhlmeier stated the concern today is just the side yard. Porps stated it was the non-conforming structure. His concern was they were increasing the non-conformity but that was not true. They are only dealing with the existing non-conforming structure.

Porps stated there was a letter opposing this appeal and we will get to that letter in a second. For the time being, the possible sewer manhole – we don't know that it is there for sure or not. Popanda stated our sewer maps do not indicate that it is there. We have on record that it stops at the walkway. However with that level of doubt, we need to have that confirmed. Porps stated if there is a manhole there, how does that affect this? Popanda stated if the variance is granted and there is a manhole underneath that proposed deck and/or the three season, the Building Department would have to refuse the permit again. Porps asked if the Crotty's could sign a waiver indicating they would remove the deck if they should ever have to get at the sewer or manhole. Popanda stated there was a possibility for that but it would have to be recorded on their deed so subsequent owners would understand they may have to remove their deck. He would hope that we would not get into that. Although it is a possibility, he thinks an adjustment should be made to stay away from it if it is there with the severe slopes. The possibility of undermining a structure whether it is a structure on piers or the main structure itself is in a footed slab or foundation. In that type gravel up there any excavation would put their building or addition at risk. Porps stated it was amazing they put that sewer in there at all back then when they did it. The Crotty's believed the manhole is over farther. There is a manhole cover but it's right on the easement as the stairs go down. It is sort of half buried. Popanda stated he believed that. He could see it going down. He's been in that neighborhood. There are quite a few variances that will be coming before you in that particular area. The manhole number 16 which is to the west – they found that and looked back to see if it was the end of the manhole. He has to believe that the depression in that walkway is another manhole. Porps stated the manhole was in their walkway not in the Crotty's yard.

Porps asked what staff had to say about Crotty's proposal? Popanda stated he believed because of the extreme slope of the property 41 feet from the top to where this deck is going to be built, that is the difference in elevations – he has to believe it is their only use of the property is to construct something like this. Staff does not necessarily have a problem with it. The only concern he would like to point out that if the variance is granted, he would like to have something tagged to it that there be nothing building underneath this. This will be used for an elevated platform and a three season room that within the next – whether it is these owners or subsequent owners that they don't think they can just enclose the lower level. Kuhlmeier asked if they could have a brick patio. Popanda stated that would be okay but it would have to remain open, not enclosed. If that were the intended future use of that, then we should not be talking about piers, we should be talking about foundation. That happens quite often.

Popanda stated if you look at the original survey submitted dated July of 2002, you will see that to the corner of the building it is depicted as 80.93 feet to the water's edge. Based on the rendering submitted by the contractor, you might tend to believe that we were encroaching in that 60 feet but if you scale this, it's clear that 60 feet is on the outside of the deck. After measuring it the deck is not imposing based on the scaling of the survey. The proposal was drawn a little out of scale. Porps took the 80 feet subtracted the 20 feet and realized it is on an angle but it had to be real close. Popanda stated that was correct.

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

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. The Clerk read a letter of opposition into the record from Richard and Jill Oscarson. Popanda stated he did not get a chance to see that letter before tonight. He believed this proposal was the least disruptive to the soils there for an addition. We're talking about five or six piers across the face of it. He believed that excavating for a trench wall would definitely undermine the soil conditions and possibly cause a problem. Taking the structure

down leading to the other variances you will be seeing or other structures being removed in a hillside right down the street from this is going to be an issue as it was on Mount Moriah. He believed in this instance it would be nice to see the entire home taken down and taken into compliance but could create quite the problem with a slope as steep as that one. Porps stated and the soil type. Popanda stated the soil type is even worse than what was experienced on Mount Moriah. This is more of a running sand. The least disruption to the surface the better for everyone involved – our sewer system that is somewhere out in that area, the lake, the neighbors, the walkway, the contractor or property owner. Porps brought up the points relative to Oscarson’s letter. The sewer does not appear to be an issue. Financial concerns are never part of making a board’s decision. What they are referring to on Mount Moriah, everyone is well aware of. Part of that problem is poor construction methods. He believed they are going to continue with their home plan eventually anyway on Mount Moriah.

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 – Boone stated based on Popanda’s statements, he believed public interest would be upheld. The Board agreed.

Unique Property Limitation – Porps stated there was no question that there was a unique property limitation, 69 steps from the lake to the road and 25 steps from the house up the top may not be the steepest place in Twin Lakes. The Board agreed.

Unnecessary Hardship – Porps stated he believed the applicant has proven an unnecessary hardship. The slope itself is a hardship and coupling that in with the type of foundation, it’s the least disruptive to the neighborhood. 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 presented tonight to be marked as Exhibit B. Porps told Popanda he has added one thing to the next section. John W. and Margaret M. Crotty: “You are requesting a variance to allow for the construction of a 22 foot by 15 foot three season room, an 18 foot by 20 foot deck with stairs and a five foot by 22 foot deck to your pre-existing non-conforming dwelling, with a total side yard setback of 23.14 feet in place of the 25 foot requirement with the smaller side yard of 1.74 feet in place of the 10 foot requirement. This variance, if granted, is to allow for the construction of the three season room, deck with stairs and deck, but does not remove the pre-existing non-conforming status of the existing dwelling.” Popanda agreed with that. The Board agreed with that as well. Porps stated there would be one more condition which will include Popanda’s request, “You can make no use other than a patio of the area underneath the deck”. Porps asked the Crotty’s to circle yes and notate the conditions would be modified to include that statement. 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 is 9/01/08.

MOTION BY BOONE, KUHLMEY, TO GRANT THE VARIANCE SUBJECT TO CONDITIONS AS STATED BY THE CHAIRMAN. ROLL CALL: BOONE-YES; KUHLMEY-YES; MYERS-YES; NATHAN-YES; PORPS-YES. MOTION CARRIED (5-0). VARIANCE GRANTED.

Motion by Boone, Kuhlme, carried, to approve the minutes of June 13, 2007 – John and Karen Ellis.

Motion by Boone, Kuhlme, carried, to approve the minutes of July 10, 2007 – Thomas E. & Suzanne H. Pabst & Daniel & Esther Ziolo.

Motion by Boone, Kuhlmeier, carried, to approve the minutes of July, 20, 2007 – Leo H. & Maria A. Wiemeler & Aniela Szymanski & Mark Wiemeler.

Motion by Boone, Kuhlmeier, carried, to approve the minutes of July 12, 2007 – Diane Ainsworth.

Motion by Kuhlmeier, Nathan, carried, to approve the minutes of July 18, 2007 – James Tudron Trust.

Motion by Boone, Kuhlmeier, carried, to approve the minutes of August 1, 2007 – Vytautas & Mary Jeanne Barcas.

Motion by Kuhlmeier, Nathan, carried, to approve the minutes of August 21, 2007 – William E. Tymm for Blanche S. Tymm.

Motion by Boone, Kuhlmeier, carried, to approve the minutes of August 23, 2007 – David L. & Joanne Brown.

Motion by Boone, Kuhlmeier, carried, to approve the minutes of September 19, 2007 - Leo H. & Maria A. Wiemeler & Aniela Szymanski & Mark Wiemeler.

Motion by Boone, Nathan, carried, to adjourn @ 7:05 p.m.

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

Cynthia Skrypt  
Board of Appeals Clerk

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