

BOARD OF APPEALS

VILLAGE OF TWIN LAKES

WEIMELER, Leo H. & Maria A. & Aniela Szymanski & Mark Wiemeler

September 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: Boone, Jooss, Myers, Nathan, Porps. Tim Popanda was also present. Porps announced that the purpose of the meeting was to hear the variance request of Leo H. & Maria A. Wiemeler & Aniela Szymanski & Mark Wiemeler, 221 W. Park Drive, 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.

LEO H. & MARIA A. WIEMELER & ANIELA SZYMANSKI & MARK WIEMELER VARIANCE REQUEST– 221 W. PARK DRIVE – 86-4-119-283-1115

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.

Joe Anselmo, 1122 Lucille Avenue, Twin Lakes, WI 53181 appeared on behalf of Leo H. & Maria A. Wiemeler & Aniela Szymanski & Mark Wiemeler and was sworn in.

Porps read into the record Wiemeler's request for a variance: Leo H. & Maria A. Wiemeler & Aniela Szymanski & Mark Wiemeler: "You are requesting a variance to allow for a proposed second story addition with a side yard setback of 5.9 feet in place of the required 12 foot side yard, and a total side yard setback of 24.4 feet in place of the required 30 feet." Anselmo stated that accurately described the relief she were requesting.

Anselmo stated this submittal was considerably different than the first set of plans submitted a couple of months ago that was denied by the Board of Appeals. They went back to the drawing board and put in only what is necessary. Nothing is encroaching any more than it already does encroach. Due to technical difficulties, the tape was inaudible. Porps asked if there was a current survey of the property. Anselmo stated it was page 107 of the packet. It was the same survey as the previous survey submitted. It is the survey that shows the existing situation. Porps stated that was Anselmo's drawing. It is not an actual survey from the surveyor. Anselmo stated it was taken exact from the actual survey. Porps stated the application does require a current survey. He believed he saw a date of 1986 and he did not consider that to be current. (Anselmo was inaudible.) Porps asked Popanda about applicants not having current surveys, did he feel that 1986 survey was current for this variance hearing. Popanda stated Anselmo may present into evidence some other surveys that he used to make his site plan. One of the neighboring surveys is more current. Porps stated he had those from the first variance hearing. Popanda stated in this particular instance, he believed the survey was accurate. He did not believe there has been any additions to this structure. Porps agreed with that. Popanda did agree with the Variance Board that a more current survey in most cases is needed. Porps felt a couple of years if there have not been any additions is usually okay. (Anselmo was inaudible.)

Porps asked the Board if they had any questions. Jooss asked what the distance was from the garage to the new addition of the house. Popanda believed that was established at the last variance hearing and he believed it to be 15 feet. Anselmo stated it appears to be 14 ½ feet. Porps stated the garage will not be included in the variance in the actual wording of the variance request. "The existing garage is not included in this variance request." That is one of the conditions that will be along with this variance.

Porps asked if there was anyone in the audience wishing to speak in favor of granting this appeal. Don Kaelber, 225 W. Park

Drive, was in favor of granting this appeal. Porps told Kaelber he was welcome to look at the plans now.

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

Porps asked Popanda if there was anything he would like to discuss. Popanda stated he appreciated the reduction of the encroachment. He believed the architect and the family have made some adjustments and tried to come into compliance with what the Village has asked for and what the ordinance calls for. We're doing the best with what we have. Staff would have no objection to this variance being granted. It has been stated before that the garage not to be included in this variance.

Porps asked the board members if there were any more questions. Jooss stated that Kaelber's house is set back at least 24 feet from the Wiemeler lot line. There is plenty of room on that side. So by keeping that wall there and going up, it would not be a problem.

Public Interest – Porps stated he believed public interest would be upheld. The Board agreed.

Unique Property Limitation – Porps asked there was definitely unique property limitations. It was an old lot and a narrow lot so there are limitations with the property. The Board agreed.

Unnecessary Hardship – Porps stated unnecessary hardship was always a very difficult question to answer. The applicant has shown cooperation in doing what the Board has asked to reduce the additional encroachment. He has valid reasons for using what he has as far as the structure of the building that would be an unnecessary hardship to tear that portion of the building down. Under the new plan, the applicant has proved an unnecessary hardship. The Board agreed. Jooss stated this shows that Anselmo and the applicant and the Variance Board what compromise can do by working together and compromising, we were able to come up with a solution that will work. He believed it was one of those cases where the applicant did not get exactly what they wanted but they have showed to the board they were willing to work with them. He commended them on their efforts.

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.

Porps stated there were only a couple minor changes from last time. We talked about the survey and being the Board typically requests an actual survey to be marked as one of the Exhibits. We will make that one of the conditions. Popanda stated with the permitting process, a survey of the proposed addition will have to be provided at that time. The foundation survey will have to follow that after the foundation is poured. He will share that survey with the Board when he receives it.

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 during the permitting process, the plans presented and the actual statement of the variance requested. The survey when we receive it will be marked as Exhibit A. The plans presented tonight to be marked as Exhibit B. If granted, the variance can only be used with the plans marked as Exhibit B. That is these plans presented today not the previous plans. The existing garage is not included in this variance request. That was acceptable to the Wiemelers. Leo H. & Maria A. Wiemeler & Aniela Szymanski & Mark Wiemeler: "You are requesting a variance to allow for a proposed second story addition with a side yard setback of 5.9 feet in place of the required 12 foot side yard, and a total side yard setback of 24.4 feet in place of the required 30 feet." Wiemelers have agreed to the conditions. 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 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 6/30/09.

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

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

Signed Copy Available at the Village Hall

Cynthia Skrypt
Board of Appeals Clerk

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