

# ***Village of Wimberley***

**City Hall, 13210 Ranch Road 12  
Wimberley, Texas**

## **Minutes, Board of Adjustment Public Hearing Thursday, March 25, 2004 – 6:30 p.m.**

Chair Sue Johnson called the meeting to order at 6:30 p.m.

Members present were Sue Johnson, Bob Flocke, Bill Cline, Susan Thurber and Mike Stevens. Barbara Vansant was absent.

The following variance request was presented for the Board's consideration.

APPLICATION NO. BA-04-013

APPLICANT: RICK BURLERSON

LOCATION: 216 SUMMIT LOOP (Lots 9 and 10, Little Ranches) WIMBERLEY, TX.

Variance to the Village of Wimberley Zoning Ordinance No. 2001-010 Requested as follows:

- Sec. 47.8.d – Building Site Slope
- Sec. 47.8.e – Cut Limits
- Sec. 47.8.f – Fill Limits
- Sec. 15.4.c – Development Regulations—Setback.

Steve Harrison, City Administrator briefly presented applicant's request for a variance for property located with a steep driveway, requiring access to two lots (Lots 9 and 10, Little Ranches) There were existing cuts and fills on the subject property which were in violation of the Zoning Ordinance. The development of this site had been properly platted with Hays County.

Sue Johnson stated that jurisdiction has been established. The public hearing was opened.

Steve Harrison advised the Board that the initial platting of the property indicated that access would be off Hooters Holler, which was never developed. The initial owner of the property made a driveway for access to the two lots and Mr. Burlerson purchased the subject property subject to the approval of the variance. He stated that the steep slope was the most severe problem and that access should be defined. The cuts on the property were already done.

Rick Burlerson stated that the property was platted in the mid 60's and the present improvements were done in 1996. There is a pond on Lot 9, a retaining wall, and two cuts on Lot 10. It is his intent to build a residence on Lot 10 and perhaps build a residence at a later date on Lot 9 to sell. The lower plateau may have an accessory building at a later date. He will re-surface the driveway.

Sue Johnson called for question.

Susan Thurber asked if the applicant had talked with a geologist or architectural engineer.

Mr. Burlerson stated that the former owner did some testing and that the wall was finished in 1997 and that there were only a few cracks in the wall, which was not uncommon. Leslie Kirkham, a previous owner, contacted a structural engineer who went over the construction for strength and that the wall was "probably overbuilt." It was done under the guidance of a structural engineer.

Bob Flocke questioned as to how much fill was behind the wall.

Mr. Burleson stated that the only portion filled is approximately 20 feet adjoining the wall and it was filled with smaller fill for drainage. The new structure will not be on fill.

He was questioned as to the size of the lots—Lot 10, 3.5 acres; Lot 9, 2.5 acres. He also stated that no location had been established for construction on Lot 9. He is considering a house similar to the house next door which is an upside down house. There is one area with less than a 25% slope (above the pond). The lot would require site preparation.

City Attorney Patty Akers stated that there was no request for a variance on Lot 9.

Bill Cline inquired concerning the existing septic.

Mr. Burleson stated that there is an existing septic, certified by the County on August 1, 1997. There is a well on the site (on the property line between Lots 9 and 10). The pipes on the top of the land are irrigation pipes.

Susan Thurber felt there should be some certification regarding the cuts by geologist and/or engineer.

Bob Flocke stated that the cut at the rear was done 7 years ago and “doesn’t move.”

Mr. Burleson stated that the house would not be reliant on the retaining wall.

Mr. Harrison asked if anything would be done with the back cut.

Mr. Burleson: No, unless a problem became apparent.

Mr. Harrison commented that the building permit required an engineer’s site approval. An additional variance would be needed to allow the land owner to expand or modify the facility—widen or lengthen the road. It was also stated that proposed setback was a zoning issue, and inquired if this would need to be presented to the Planning and Zoning Commission as well.

Mr. Flocke commented that the owner has experience with structure fill and retaining walls. Setback for residence 15-25’; interior side and rear 15% of lot width—25’.

Mr. Harrison commented that there was no other access to Lot 9 than the shared driveway, which is not allowed. However, Hooter Hollow access is not feasible.

Public Hearing was closed:

The Board of adjustment then considered the five separate requests for variances:

- (1) Acceptance of the existing driveway that exceeds 15% slope and is located within a side yard setback (47.8.f, 15.4.c) Reason: Construction of a flatter driveway would require demolition of the existing drive and adjacent stone embankment and cutting into the hill—this is impractical, because the current drive is well-built and useable. Relocation of the driveway out of the side-yard setback would push it onto steeper terrain. The current driveway provides the most practical access to the buildable area of both lots.
- (2) Acceptance of the existing driveway as access to both lots. Reason: Even though both lots have frontage on Hooters Holler, it is infeasible to access building pads on both lots from that road because of the terrain. The existing driveway accesses both lots from Summit Loop. Common driveway allowable in the Subdivision Ordinance (34021.A).
- (3) Acceptance of existing unfilled cuts of various heights in their present condition (47.8.e). There are

three unfilled cuts that exceed 5' in depth and are not revetted. Reason: All three cuts have been in place for 7 years and appear to be stable. Also, they are not visible to adjacent lots. Filling or revetting of these cuts seems to be unnecessary and would not serve any practical purpose.

- (4) Acceptance of a filled retaining wall exceeding 10' in height and 60' in length (47.8.f). Reason: This is a well-built stone wall. There is no practical way to reduce the height or length.
- (5) Grant a variance to the 25% building site slope rule (47.8.d) to allow construction of a residence on Lot 9. Reason: this variance is necessary to allow use of a legally platted lot. A very nice home next door on Lot 8 was built on a similar slope. We don't intend to build our home on this lot, but want to maintain the option to build on it at a future date.

**ORDER GRANTING ZONING VARIANCE**

**Request No. 1**

**Conditions Required for a Variance** (Wimberley Zoning Ordinance No. 2001-010, Section 10) No variance shall be granted without first giving public notice and conducting a public hearing on the variance request in accordance with Section 10.8, and unless the Board of Adjustment makes specific, written findings of fact as follows:

	<u>YES</u>	<u>NO</u>
1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of the reasonable use of his/her land; and	Y	
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and	Y	
3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and	Y	
4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance; and	Y	
5. That the land involved is otherwise in compliance with other applicable Village regulations; and	Y	
6. Literal enforcement of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property;	Y	
7. The situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and	Y	
8. The relief sought will not injure the permitted use of adjacent conforming property.	Y	

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|---|---|
| 9. The granting of a variance will be in harmony with the spirit and purpose of these regulations.  | Y |
| <hr/>   |   |
| 10. The granting of a variance is based on the specific facts related to this application and does not render the applicable Zoning Ordinance provisions meaningless. | Y |

Special Circumstances: None

Additional Findings:

1. The nature of the proposed use of the land is consistent with neighboring properties and existing uses of land in the vicinity; and
2. The proposed structures are residential in nature and are not expected to generate more than negligible traffic and noise once constructed, thus the variance will have little or no impact upon traffic conditions and upon the public health, safety, convenience and welfare of the community; and
3. The variance is not granted based solely upon economic gain or loss; and
4. The variance does not permit any person the privilege of developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district; and
5. The meeting at which this variance was approved was open to the public and public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, and Chapter 211 of the Texas Local Government Code.

Conditions for Variance Approval: None

**Motion by Bob Flocke:** I move that a variance be granted accepting the existing driveway that exceeds 15% slope and is located within a side yard setback (47.8.f, 15.4.c)

Motion Seconded by Susan Turber.

Sue Johnson called for a vote: Bill Cline "Yes"; Susan Thurber "Yes"; Mike Stevens "Yes"; Bob Flocke "Yes"; Chair, Sue Johnson "Yes."

**ORDER GRANTING ZONING VARIANCE**

**Request No. 2**

**Conditions Required for a Variance** (Wimberley Zoning Ordinance No. 2001-010, Section 10) No variance shall be granted without first giving public notice and conducting a public hearing on the variance request in accordance with Section 10.8, and unless the Board of Adjustment makes specific, written findings of fact as follows:

- |   | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| 1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of the reasonable use of his/her land; and | Y          |           |
| <hr/>   |            |           |
| 2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and  | Y          |           |

3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and	Y
4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance; and	Y
5. That the land involved is otherwise in compliance with other applicable Village regulations; and	Y
6. Literal enforcement of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property;	Y
7. The situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and	Y
8. The relief sought will not injure the permitted use of adjacent conforming property.	Y
9. The granting of a variance will be in harmony with the spirit and purpose of these regulations.	Y
10. The granting of a variance is based on the specific facts related to this application and does not render the applicable Zoning Ordinance provisions meaningless.	Y

Special Circumstances: None

**Additional Findings:**

1. The nature of the proposed use of the land is consistent with neighboring properties and existing uses of land in the vicinity; and
2. The proposed structures are residential in nature and are not expected to generate more than negligible traffic and noise once constructed, thus the variance will have little or no impact upon traffic conditions and upon the public health, safety, convenience and welfare of the community; and
3. The variance is not granted based solely upon economic gain or loss; and
4. The variance does not permit any person the privilege of developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district; and
5. The meeting at which this variance was approved was open to the public and public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, and Chapter 211 of the Texas Local Government Code.

Conditions for Variance Approval: None

**Motion by Mike Stevens:** I move that a variance be granted accepting the existing driveway as access to both lots in that all 10 requirements may be answered "Yes."

Motion Seconded by Bob Flocke.

Sue Johnson called for a vote: Bill Cline "Yes"; Susan Thurber "Yes"; Mike Stevens "Yes"; Bob Flocke "Yes"; Chair, Sue Johnson "Yes."

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**ORDER GRANTING ZONING VARIANCE**

**Request No. 3**

**Conditions Required for a Variance** (Wimberley Zoning Ordinance No. 2001-010, Section 10) No variance shall be granted without first giving public notice and conducting a public hearing on the variance request in accordance with Section 10.8, and unless the Board of Adjustment makes specific, written findings of fact as follows:

YES    NO

3. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of the reasonable use of his/her land; and Y

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4. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and Y

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3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and Y

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4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance; and Y

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5. That the land involved is otherwise in compliance with other applicable Village regulations; and Y

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6. Literal enforcement of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property; Y

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7. The situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and Y

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8. The relief sought will not injure the permitted use of adjacent conforming property. Y

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9. The granting of a variance will be in harmony with the spirit and purpose of these regulations. Y

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10. The granting of a variance is based on the specific facts related to this application and does not render the applicable Zoning Ordinance provisions meaningless. Y

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Special Circumstances: None

Additional Findings:

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1. The nature of the proposed use of the land is consistent with neighboring properties and existing uses of land in the vicinity; and
2. The proposed structures are residential in nature and are not expected to generate more than negligible traffic and noise once constructed, thus the variance will have little or no impact upon traffic conditions and upon the public health, safety, convenience and welfare of the community; and
3. The variance is not granted based solely upon economic gain or loss; and
4. The variance does not permit any person the privilege of developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district; and
5. The meeting at which this variance was approved was open to the public and public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, and Chapter 211 of the Texas Local Government Code

Conditions for Variance Approval: None

**Motion by Bill Cline:** I move that a variance be granted accepting the existing unfilled cuts of various heights in their present condition (47.8.e), including three unfilled cuts that exceed 5' in depth and are not reverted.

Motion Seconded by Susan Thurber.

Sue Johnson called for a vote: Bill Cline "Yes"; Susan Thurber "Yes"; Mike Stevens "Yes"; Bob Flocke "Yes"; Chair, Sue Johnson "Yes."

### ORDER GRANTING ZONING VARIANCE

**Request No. 4**

**Conditions Required for a Variance** (Wimberley Zoning Ordinance No. 2001-010, Section 10) No variance shall be granted without first giving public notice and conducting a public hearing on the variance request in accordance with Section 10.8, and unless the Board of Adjustment makes specific, written findings of fact as follows:

	<u>YES</u>	<u>NO</u>
1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of the reasonable use of his/her land; and	Y	
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and	Y	
3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and	Y	
4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance; and	Y	

5. That the land involved is otherwise in compliance with other applicable Village regulations; and	Y
6. Literal enforcement of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property;	Y
7. The situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and	Y
8. The relief sought will not injure the permitted use of adjacent conforming property.	Y
9. The granting of a variance will be in harmony with the spirit and purpose of these regulations.	Y
10. The granting of a variance is based on the specific facts related to this application and does not render the applicable Zoning Ordinance provisions meaningless.	Y

Special Circumstances: None

Additional Findings:

1. The nature of the proposed use of the land is consistent with neighboring properties and existing uses of land in the vicinity; and
2. The proposed structures are residential in nature and are not expected to generate more than negligible traffic and noise once constructed, thus the variance will have little or no impact upon traffic conditions and upon the public health, safety, convenience and welfare of the community; and
3. The variance is not granted based solely upon economic gain or loss; and
4. The variance does not permit any person the privilege of developing a parcel of land not permitted by this Ordinance to other parcels of land in the particular zoning district; and
5. The meeting at which this variance was approved was open to the public and public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code, and Chapter 211 of the Texas Local Government Code

Conditions for Variance Approval: None

**Motion by Mike Stevens:** I move that a variance be granted accepting the filled retaining wall exceeding 10' in height and 60' in length (47.8.f).

Motion Seconded by Bill Cline.

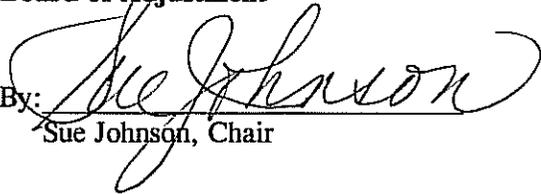
Sue Johnson called for a vote: Bill Cline "Yes"; Susan Thurber "Yes"; Mike Stevens "Yes"; Bob Flocke "Yes"; Chair, Sue Johnson "Yes."

**Request No. 5 – Withdrawn by Applicant.**

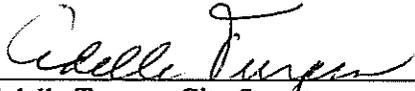
**Meeting Adjourned at 8:55 p.m.**

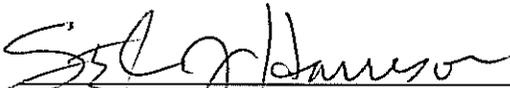
Variance Requests for Items 1 through 4 were unanimously PASSED AND APPROVED by the Board of Adjustment of the Village of Wimberley on the 25<sup>th</sup> day of March, 2004.

**VILLAGE OF WIMBERLEY  
Board of Adjustment**

By:   
Sue Johnson, Chair

**ATTEST:**

  
Adelle Turpen, City Secretary

  
Stephen J. Harrison, City Administrator

**APPROVED AS TO FORM:**

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Patty Akers, City Attorney

The meeting adjourned at 8:55 p.m.

Respectfully submitted,

Adelle Turpen