

MINUTES OF THE VILLAGE OF WIMBERLEY BOARD OF ADJUSTMENT MEETING AND
PUBLIC HEARING (BA-03-006)
MAY 22, 2003

5:30 P.M. The meeting of the Board of Adjustment was called to order by S. Johnson. Members present: Susan Thurber, Bill Cline, Steve Gartside (alt.), and Sue Johnson. Bob Flocke arrived at 5:35. Member Mike Stevens was absent due to a conflict of interest and Mayor Klepfer appointed Steve Gartside to take his place at the meeting. Minutes of the April 9 Board of Adjustment meeting were unanimously approved on a voice vote on the motion to approve by Gartside, seconded by Cline. The approved minutes were given to the City Administrator.

An Order of Procedure (attached) was handed to members by the City Administrator. After discussion, Thurber moved and Flocke seconded the adoption of the Order for Board of Adjustment meetings, and by voice vote, the adoption was unanimously approved.

Official Board of Adjustment meetings were moved to the 4th Thursday of the month on a motion by Cline and a second by Thurber and a unanimous voice vote. The resignation of Tevis Grinstead from the Board was noted and the choice of the 4th Thursday may have to be revisited when a new member is appointed by the City Council. The next meeting of the Board of Adjustment is scheduled for June 26 at 5:30 p.m. it was suggested that if the Board has no official business, 72 hours advance notice of cancellation is desirable.

Members discussed the By-Laws and Procedures and adopted the City Attorney-prepared By-Laws and Procedures with the following Amendments (substitution for original text is underlined):

Section B. Paragraph 2, Line 1. The Chair may appoint...

Section I. Paragraph 1, line 1. Voting on variances and appeals shall be by rotating roll-call vote with the Chair always voting last. Voting on administrative matters may be by voice

The motion to adopt the By-Laws and Procedures as amended was made by Cline, seconded by Flocke and unanimously approved by voice vote.

Flocke volunteered to act as Recording Secretary for the public hearing. A short break was taken before the Public Hearing at 6:30 p.m.

6:30 p.m. Public Hearing on Case Number BA-03-006. Allan Kasper, 104 Hub Drive, Planning Area A, Zoning R-2. Variance to Zoning Ordinance 2001-010 requested for Section 16.4(C), Development Regulations--Minimum Setback for Rear Yard, 20 ft. and Section 16.5(A) Special Requirements--Recreational vehicles, travel trailers or motor homes may no be used for on-site dwelling purposes.

The Chair opened the Public Hearing. Johnson described the purpose and procedures of the Board of Adjustment to a rather large audience. Dr. Harrison presented the case as described immediately above. He also noted the presence of the City Building Inspector to answer questions concerning the case. A list of people who had signed up to speak (attached) was given to the Chair.

The Chair asked for the applicant to speak. Mr. Gary Kasper, agent for Allen Kasper, made a five minute presentation supporting the request for a variance. The original residence on the property was vacated in August, 2001 when mold made it uninhabitable. The travel trailer was moved in and an addition to the original house, connected by a breezeway, was begun somewhat later. The addition is 6' from the rear property line, about the same distance as the grandfathered original residence. He noted that the Kasper

family had suffered a number of personal misfortunes over the past year or so. It was argued that the placement of the circular driveway to lend "curb appeal" to the property, the presence of large oak trees, and the desire to continue to use the front yard for enjoyment are factors in favor of the variance.

No other citizens stepped forward to speak in favor of the request.

The Chair called for those who were opposed to the request. Because of the large number of people wishing to speak in opposition to the variance request, speakers were asked to limit their remarks to two minutes each, the total time was to be tallied by the City Administrator in order to give Mr. Kaspar equal time. Speakers were called from the list:

Mr. Hill, whose property abuts the Kaspar property, expressed concern about fire, safety and health issues that result from such close placement of structures so near the property line. He also pointed out that the slab for the addition covered the roots of a very large tree. He stated that the setback encroachment devalued his property.

Mr. Brown, who lives in the subdivision, but was outside of the notice requirement boundaries, drives by the Kaspar property daily. He requested that the variance request, which he objected to, be postponed until other issues, like getting a building permit, were resolved, and that a time limit be placed on the use of the trailer. He suggested that the addition was more like an apartment house and that perhaps the maximum impervious cover limitation for the property had been exceeded.

Ms. Williams, 110 Hub Drive, spoke against the variance. She reiterated that the addition was really a second house on the same lot and questioned why it was begun before being approved by the City.

Mr. Doyle, 202 Hub Drive, argued that there were really two houses there connected by a walkway and that this violated city zoning ordinances and deed restrictions.

Mr. Ursha, an attorney for the Eades family, argued that the original residence was abandoned, and that any future uses to the property needed to conform to zoning regulations. He also cited city ordinances that prohibit expansion of a non-conforming structure.

Mr. M. Hill, 910 Hub Drive, next door to the Kaspar property, noted that this request was a rule of law issue (city enforcement of its ordinances) and that the variances, if granted, would cause an adverse effect on property values in the neighborhood. He also noted the presence of a possible fire hazard and the public safety issue.

Mr. Fore was called, but he was not in the audience.

Ms. Buvens, with the Homeowners Association, pointed out that the Kaspar property was in violation of the deed restrictions and that granting the variance would be detrimental to property values.

Steve Harrison, City Administrator, read three letters from neighbors (Tyner, Tipps and Wilson) who objected to granting the variance (attached). Harrison clarified for the audience that the building permit and other zoning issues were separate matters from the variance request before the Board. He noted again presence of the City Building Inspector to answer any questions from the Board on the facts of the case.

Mr. Kaspar was given additional time to speak as measured by the amount of time taken by those against the variance request. Kaspar argued that there are "special circumstances" involving the recent misfortunes of the Kaspar family that should be taken into account by the Board to grant this variance. He acknowledged that there was no building permit and that the building was half-formed

Mr. Lipinsky, who was asked to sign the register of citizens speaking, spoke to the building of the addition which he was responsible for and said it could all be finished in three months.

Mr. Kaspar argued that the addition and the walkway were technically a single family residence.

Messrs. Doyle, Hill, Brown, Ursha reiterated their opposition to the variances as did Ms. Haldwell (asked to sign the register).

Mr. Kaspar briefly reiterated his argument in rebuttal.

The Chair asked the Board members if they had any questions. Mr. Gartside asked Mr. Emerson, the building inspector, to explain his actions in the case. Mr. Emerson had issued a verbal stop-work order on the basis of a citizen complaint about construction happening without a permit and it seemed to be accepted by Mr. Lipinsky. An incomplete application for a building permit was filed. Work continued on the addition though no permit could be issued without a resolution of the variances on the travel trailer and the setback issues by the Board of Adjustment. An official stop-work order was issued, to be covered up later as the work continued on the addition, and continuing citizen complaints about the lack of a permit. Mr. Emerson noted the illegality of continuing construction without a building permit.

The Public Hearing was closed and the Chair asked for a motion concerning the variances. After discussion of the 10 findings of fact which Board must address individually in order to grant or deny a variance request, the informal consensus was that on 9 of the 10, there could be no finding to justify the variance. The official motion by Thurber, with Flocke seconding for denial of the variances follows.

Susan Thurber moved that the Board of Adjustment deny the request for variances to Zoning Ordinance 2001-010 (Sec. 16.4(C) and Sec. 16.5A) based on the following facts:

1. That there are no 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
2. That the variance is not necessary for the preservation and enjoyment of a substantial property right of the applicant; and
3. That the granting of the variance will be detrimental to the public health, safety or welfare, or injurious to other property within the area by creating safety and fire hazards; and
4. That the granting of the variance will prevent the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance; and
5. That the land involved is not in compliance with other applicable Village regulations (minimum impervious cover requirements; building code violations; failure to secure appropriate permits, multiple dwellings); and
6. The evidence presented during the hearing indicates that the situation causing the hardship or difficulty is self imposed; and
7. The relief sought will injure the permitted use of adjacent conforming property through encroachment on the set back distances and negative impact on property values; and

8. The granting of the variance will not be in harmony with the spirit and purpose of these regulations;
and
9. The denial of a variance is based on the specific facts related to this application and does not render the applicable Zoning Ordinance provisions meaningless.

Bob Flocke seconded the motion.

There being no discussion, the Chair polled the members of the board with the following results:

Steve Gartside	Yes to the motion
Bill Cline	Yes to the motion
Susan Thurber	Yes to the motion
Bob Flocke	Yes to the motion
Sue Johnson (Chair)	Yes to the motion

The motion denying the variance carried, and the meeting was adjourned at 8:15 p.m.

Respectfully Submitted by Sue Johnson, Chair
May 27, 2003

*Approved 6/26/03
Sue Johnson*

**WORK SHEET FOR
ORDER GRANTING/DENYING ZONING VARIANCE**

File No.: BA-03-006 Date: 5/22/03
 Applicant: Cellan Kaspar Address: 104 Hub Drive

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 |
|---|-----|----|
| 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
<u>No special circumstances found.</u> | ✓ | |
| 2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
<u>No variance needed for substantial property right</u> | ✓ | |
| 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
<u>not detrimental; safety and fire hazards</u> | ✓ | |
| 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
<u>would prevent orderly use of neighboring land</u> | ✓ | |
| 5. That the land involved is otherwise in compliance with other applicable Village regulations; and
<u>is not in compliance with other regulations</u> | ✓ | |
| 6. Literal enforcement of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property;
<u>does present a practical difficulty but not a hardship</u> | ✓ | |
| 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
<u>The difficulty is already self-imposed</u> | ✓ | |
| 8. The relief sought will not injure the permitted use of adjacent conforming property; and
<u>would have a negative effect on adjacent property (encroachment)</u> | ✓ | |
| 9. The granting of a variance will be in harmony with the spirit and purpose of these regulations; and
<u>Not in harmony w/ regulations</u> | ✓ | |
| 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.
<u>denial is based on specific facts in the case.</u> | ✓ | |

Special Circumstances:

N/A

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:

N/A

Terms of Variance:

The specific terms of the variance shall be as follows:

N/A

Denial of Variance

~~PASSED AND APPROVED~~ this 22 day of May 2003 by the Board of Adjustment of the Village of Wimberley, Texas, by a vote of:

AYE(S): 5 NO(S): 0 ABSTENTION(S): 0

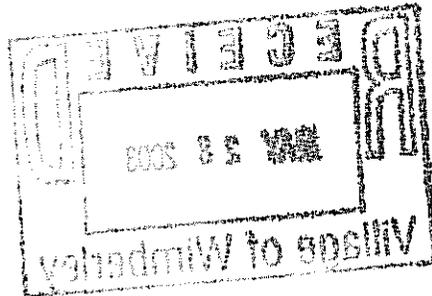
**VILLAGE OF THE WIMBERLEY
Board of Adjustment**

By: *Sue Johnson*
Sue Johnson, Chair

ATTEST:

Adelle Turpen
Adelle Turpen, City Secretary

Stephen J. Harrison
Stephen J. Harrison, City Administrator



APPROVED AS TO FORM:

Patty Akers, City Attorney