MINUTES OF THE VILLAGE OF WIMBERLEY BOARD OF ADJUSTMENT MEETING AND PUBLIC HEARING (VA-03-012)
August 28, 2003

5:30 P.M. The meeting of the Board of Adjustment was called to order by Bob Flocke, Vice Chair. Members present: Bill Cline, Susan Thurber, Mike Stevens, Steve Gartside (alt.), and Bob Flocke. Chair Sue Johnson was out of the country and therefore absent. Mayor Klepfer appointed Steve Gartside to take her place at the meeting. Minutes of the June 26, 2003 Board of Adjustment meeting were unanimously approved on a voice vote on the motion. The meeting for July 25, 2003, 5:30 p.m. was cancelled due to the TxDOT meeting held at the same time. The approved minutes were given to the City Administrator. The Board then met in a workshop session. After a short break, the public hearing was called to order by Vice-Chair Bob Flocke at 6:30 p.m.

Vice Chair Flocke made a roll call. The following were present: Bill Cline, Susan Thurber, Mike Stevens, Steve Gartside (alt), and Bob Flocke... Adelle Turpen, City Secretary acted as Recording Secretary for the public hearing.

Bob Flocke: I have a message that I will give in the minutes from the Mayor appointing Steve Gartside as an alternate for this meeting. The purpose of this panel is to hear and act on a request for variances and certain specific and literal terms of the Wimberley Planning & Zoning Ordinance that are consistent with the general purpose and intent of that ordinance. Tonight we are to hear a case that the city staff will introduce to us and the public hearing is now open. Dr. Harrison, will you introduce the case please?

Steve Harrison: Yes, Chairman of the Board, the case before you tonight is a request for variance. Case Number BA-03-012, is brought to you by Application of Pat Giddiens, 13600 Ranch Road 12, Wimberley. It is a request for a variance from Section 28.4B of the Zoning Code which deals with the maximum height of an accessory building. Maximum allowance is not more than 18 feet and not more than one story, so they are asking for a variance to that section of the ordinance.

Bob Flocke: The Board accepts jurisdiction.

We have opened the public hearing and the staff has introduced the case and the Board has accepted jurisdiction of the case. What we will hear next, the staff will explain the case to us. We will then call on anyone favoring the request—that side has five minutes; and then we will call on anyone opposing the case—that side also has five minutes—and then the applicant will have 2 minutes to rebut, then we'll have questions from the Board. We will close the public hearing. The Board will discuss it and then we will vote on the variance. So, Dr. Harrison if you will present the case.

Let me tell you a little history on the property. The property was zoned by the City Council of the Village of Wimberley on July 3rd, 2002. It was zoned as C-3. Also, it was in the Village Overlay District. On September 17 of 2002, a conceptual plan was submitted and there was a discussion before the Planning & Zoning Commission. No actions were requested. No action was taken. It was in the conceptual stage. On November 12, 2002 an application for a building permit was submitted for requested construction on that property. The building plans that were submitted to the City's building inspector at that time and they included the things the

building inspector would normally look for—what the elevation of the building would be, what the electrical, plumbing and mechanical [would be]. This was a site that was a vacant site. The previous building on site was demolished and moved, this was an entirely new building being constructed. I'll get into it later with those plans, but on November 12 those plans were submitted. On November 18 the site plans were submitted, a separate document which outlines the footprint of the building. It also deals with drainage issues; also deals with placement of the building in terms of the lot and setbacks, deals with an overhead view of parking and the basic footprint the building would have so you could calculate all the impervious cover and things. That had been submitted before that time and given to the City engineer. The City engineer had reviewed that and at Planning & Zoning regular meeting on November 18 that site plan was put before the Planning & Zoning Commission for their approval. They studied the plan and after hearing from the applicant and the City they approved the site plan as submitted. There were a couple of things that still needed some documentation but the P&Z urged the City engineer to coordinate getting those. Those were some drainage issues with TxDOT and those were subsequently gotten, so the site plan was considered approved.

The building plans were submitted on November 12th, on December 11th the plans were approved by the building inspector at that time was Foster, and Foster submitted those plans. I have a copy of the stamped plans here tonight if you need to look at them, and we issued a building permit. Later in the construction process the building inspector, during the time of building inspections, we changed building inspectors, at that time the building inspector was Rich Emerson, and on July 18 of this year, Rich Emerson, the building inspector, measured an accessory building that had been built and was in the framing stages. He actually did not measure it in the framing stages, but measured it at a later time and his notation is that the actual height of the building with the roof on it was 19 ft. 8 in. We had discussions with the applicant and owner of the property, Pat Giddiens, and her contractor, and I explained to them that that was in violation of the height limitation under their C-3 zoning, that requires that an accessory building may be only 18 feet. And, exploring what the remedies might be for that, we explained to them that they would either lower the height of the building or bring it into compliance or ask for a variance and that's what's before you. They submitted that on August 11 of this year and on August 18th of this year a temporary certificate of occupancy was issued by the city which allowed them to open the building and to occupy the building and in fact to use the building as intended as a furniture store and office space. And, that's primarily its intention. The temporary certificate of occupancy also outlines what things need to be cleared up prior to a permanent certificate of occupancy being issued, and that is a resolution of the variance issue as well as some other issues that we continue working on with the property owner including parking, a dumpster and some minor cosmetic issues. So, that's sort of a timeline of this process. I will tell you that in the plans that were submitted for review and were approved by our previous building inspector, the plans show the building in question. On the accessory building, the only detail that shows is the footprint of that building. And, that there has never been any detail in terms of the elevation of that building or how the building was actually to be built or the height of that building. The ordinance has not changed from the time that this began to the current time so it would always state the accessory building would be 18 feet. These plans did not show detail on that and the City did not go back and require additional detail. At that particular time we did approve the building process on the main building and the building continued on the accessory building. There were, during the building time, a number of inspections that did occur. You may know that with a new building from ground up generally there are 9 or 10 inspections from start to finish and those inspections did occur. The applicant did request inspections at the appropriate intervals. The inspector made notations and corrections were made from time to

time until late in this there was no recognition that the building might be built in variance of what the ordinance required. That's basically the facts of the case in terms from the City's side. I do have, by the way, a letter from Pat Giddiens that says, it's dated today's date: "To whom it may concern: Please allow my contractor, Gene Hartman to represent me tonight at the variance hearing. I'm already committed to host a chamber mixer at the store at exactly the same time. I appreciate your understanding concerning this matter. Signed, Pat Giddiens." So, I am giving you due notice of who is representing the applicant.

Bob Flocke: Now, has everyone who wanted to speak signed the list to speak? Okay, now we're going to have any one in favor of this request for variance—the side has 5 minutes.

Steve Harrison: Excuse me, do you normally hear from the applicant first before you do that?

Bob Flocke: They are included in favor of the request. They don't have to put themselves on the stand if they don't want to. So, the people who signed up, I see Mr. Hartman on here, Frank Austin, Mike Oldmixon. Okay, Frank Austin go first.

Frank Austin spoke in favor of the variance being granted. He stated that the accessory building height is an arbitrary figure, and the roof height on the building is not a problem. There are so many variables once construction starts—the amount of caliche, the thickness of the slab, the way trusses are designed—when all put together a slight variance can easily happen. The building is an asset to the Community. He has property adjacent and this building improves his property value. To require Applicant to conform would be to punish for something immaterial and nothing would be accomplished.

Gene Hartman (Builder) spoke in favor of the variance being granted. He questioned the definition of accessory building—separate detached or attached. How is accessory building defined.

Steve Harrison: It's outlined in the subdivision ordinance under Section 45 on accessory building. It goes through several pages and defines what an accessory building is.

Gene Hartman: Is it primarily attachment to the main building?

Steve Harrison: It's separate building, generally accessory in commercial uses accessory to the general use. In non-residential districts an accessory building is subordinate building the use of which is secondary to and supportive of the main building. Accessory building shall not be permitted without a main building of primary use in existence. Accessory buildings, would whenever possible, should be placed at the rear of the property.

Gene Hartman: It is but is the definition, if the building is attached, would it cease to be an accessory building?

Steve Harrison: It could be.

Gene Hartman: So that may be a resolution if the Board is interested. I was contracted to build the building in approx. Feb. 20 of this year. Obviously, at that time, the building plan checking process had already taken place. Basically I looked over the plans, made judgments as

far as gable heights, etc. We built the primary purpose of the building was for professional offices and a furniture store. What we attempted to do was to make the roof line match the primary building. The building that we're defining at this meeting as the primary building. The inspection process was done on a timely basis. Rich Emerson, who I have the highest respect for, and basically followed up on everything he requested. I wasn't aware of the 18 ft. building height rule. Just a little bit information on that, in order to deliver furniture, it requires a 10 ft. overhead door. Structurally we needed a header over that of 12 feet, in order to make the building to match esthetically to the building the furniture was to be sold out of. By my measurements I believe that it is 18 inches about the 18 feet possible. Once again, I believe the building is esthetically pleasant. I don't know what the motivation is why someone would want to knock 18 inches off, why exactly this is an issue because it is pleasing to the eye. Another factor is that it's not visible from RR 12, only from the side street. We are looking for alternatives as to how we can satisfy the Village of Wimberley.

Bob Flocke: Speak in favor?

Brad Giddiens spoke in favor of the variance being granted. He expressed his concern that there were increased difficulties in building process in Wimberley. He stated that the day the slab was poured the "cops" were called. Truly a nightmare. We are going to attach the building, which will allow us to consider it as one building. He and Applicant had no intention of violating any code. Met every inspection.

Bob Flocke: Mr. Oldmixon, are you speaking in favor?

Mike Oldmixon: Against.

Bob Flocke: Anyone else speaking in favor?

Mike Oldmixon stated that he is the neighbor or the rear yard of the property in question. I have some comments and information that I have typed up that I would like to present if I can. If that's allowed or not. I would like to say to start what that I stipulate with Mr. Hartman and with Mr. Giddiens both that Mr. Hartman has built a beautiful building. I agree wholeheartedly with Mr. Austin that it is an asset to our neighborhood and our properties that are adjacent to it. I agree with that 100%. And, my issues about this variance in particular are that the height of 19.8 is not a subjective number. That it needs to be determined what the actual height is. My understanding from a city official is that the building height is determined by the finished grade measured to the highest point of the building. If that is done, the building is found to be 21 ft and some inches. So that needs to be determined also. I would agree with Mr. Hartman and Mr. Giddiens that they have to have a 10 foot door opening, which requires a 12 ft. plate. The pitch throws it up over 5 feet. If the plate line was set at 12 feet with that pitch there wouldn't be a problem. But, again, it is built up off the ground. The engineer knew what the slope of the property was; otherwise how could they have reviewed the slab and determined that it was properly raised above the necessary slope for drainage, etc. So, as Gene Hartman has indicated, ignorance is bliss. But it's still not a reason that he didn't comply. The drawings are stamped by the city and the document states on the plans that "this set of plans must be kept on the site at all times... And, then it goes on to say "The stamping of this set of plans and specifications shall not be held to permit or to be an approval of a violation of any City or State law." So, my interpretation, you all can determine your own if you like, is that the city is saying that we looked at it and generally it complies, but if you're building it you're responsible that it means all the

ordinances. The documents that I've given to Steve, Mr. Harrison, here addresses that the building is 21 feet some inches. There are also 8 other items outlined on there that affect the overall site project. There is a problem with setbacks that are inaccurate by the ordinance and adjoining sections are given. There are off-street parking and loading requirements that are in violation. There are off-street loading spaces that shouldn't be. There's parking requirements that do not meet documents as the ordinances address the documents. There's landscaping which Steve admitted they're still working through some of the stuff. I'm thankful that they're continuing to work through that. There's a storm management drainage study that was supposed to be done. It was done. The engineer indicated that the drainage was 60% more than the unimproved property. The Ordinance clearly says it cannot increase at all. There's no documentation in the file. I've asked for additional information. The city is researching to see if there's any information given back on any of these issues when the engineer requested there's been a pleasure of things where the process has been either woefully neglected or has been incompetently mishandled or overlooked or just errors made. I can't understand how somebody who has no understanding of ordinances or variances or anything else can look through the codes and find this many things, and I'm not educated in this and the people who are that were supposed to make sure these things didn't happen, obviously didn't do any of that. So my concern, I agree with Mr. Austin, anything we do to these guys is a penalty against them. Now there's blame, there's dirty hands in many places. Mr. Hartman says he didn't know, but that doesn't exempt him. Okay. The architect misread or didn't do what he was supposed to do, he has some liability. The City didn't follow up on the records that are in the file, the records they have given me. So, I think there's a problem with the process, and I'd like to see that process remedied, I'd like to see it fixed. That's my intent for being here. My intent is not to punish these people for the efforts they have made to build a beautiful facility. Mine is to make sure that the City's process works in a fair way to accommodate all individuals who will be calling on that process. If this is any indication of how other projects in the city are being handled, this is not the last meeting you guys are going to handle. Anyway, that's kinda what I have.

Bob Flocke: Mr. Hartman, you have 2 minutes for rebuttal, if you'd like.

Gene Hartman gave a rebuttal stating that both adjacent property owners had spoken and that both agreed the project was an asset to the community. He also stated that the variance height was the only item at issue. Even Mr. Oldmixon was in favor of the building in his own way. Building process in Wimberley is interesting. City is new and learning the ropes. It's been interesting and line of communication is always there.

Bob Flocke: Thank you Mr. Hartman. Any further questions from the staff or Board or applicant?

Mike Stevens questioned when the plans for the accessory building were submitted. Why was there not a request for the plans?

Steve Harrison These particular plans were approved in the very last days of the former inspector, and I don't know if that had something to do with it. Mr. Oldmixon is correct in that when plans are approved there is a stamp on them that states that even if the plans are approved as submitted it doesn't alleviate an owner or builder from doing something according to ordinances. So even with the best plan review, some of the detail might not be there that's why you have an inspection process and inspect and the building is supposed to be built according to the plans so I'm looking back even less concerned, I think that what should have happened at

that time, was that the inspector could have come back and said we'll issue a building permit for the front structure, but you're missing this and you can proceed but need to submit the other plans. I don't know if there are plans for the other building, but the building got built without our requirement for an additional plan review. And so that was another opportunity we had, even before the structure started going up or even in the construction phase, so if there was an error on the measurement it could be corrected at a much less expense than after the building was completed.

Bill Cline questioned if the elevations submitted were of the primary building.

Steve Harrison – Yes. Those were submitted and found to be sufficient.

Bill Cline: Is it customary or is it part of the city process to submit plans not only for the primary building but for the accessory building?

Steve Harrison: They are required to submit plans for any structure.

Bill Cline: So that slipped through the crack?

Steve Harrison: Right.

Susan Thurber questioned if checking the height was one of the things the building inspector did in his inspections.

Steve Harrison: Yes, it should be.

Mike Stevens – This question is directed to Mr. Hartman. At any time were you aware no plans were submitted for accessory building?

Gene Hartman said that he wasn't involved in checking plans. I was a builder in San Antonio. I wasn't involved in the approval process. When I was given the plans I believe March 20th, 2003 I found a set of plans not signed by any inspector. Had no notes on them. Even where stamped had no signature. Which led me to believe it was kind of silver spooned through the process. Let me make one comment, even though we've approved these you have to be in compliance with the Universal or International building code. That is critical on fire and safety, but building height isn't real critical. I do look at it for compliance with fire, electrical code, and various different items, but height is low on priority.

Mike Stevens Main structure I would take issue. We're looking at an accessory building that's adjacent to the primary building.

Gene Hartman I don't mean to belittle, but as a contractor I look at other issues

Mike Stevens: But it's difficult to look at those issues if you don't have an elevation or a plan.

Gene Hartman: Once again, what we did, we, the city of Wimberley is a lovely town, we were coming up here for many years having been born and raised in San Antonio. We were attempting to make an aesthetically appealing secondary building, and I'm still not convinced it's

a secondary building, but I'll call it a secondary building, that it would be pleasing and tie into the primary building and also tie into the rest of the neighborhood. And the building does look nice; I wouldn't want anyone to come up to me saying, oh, you built a lousy building. I doubt if that would happen but most of the feedback I've gotten, most of the people like the building.

Steve Gartside: Do you know the height of the primary building?

Gene Hartman: I don't know, I'm just guessing—32 to 34 feet.

Bob Flocke: It's significantly higher?

Gene Hartman: Yes, it's significantly higher. Greater pitch.

Bob Flocke: Steve what was the stage you said in your presentation that on July 18th that the accessory building was framed and then you said "beyond that . . ." What was the stage of construction when that notification was given? That it might be a little tall.

Steve Harrison – Well, July 18th is the day that the building inspector measured the building at 19 feet 18 inches. And that was after several days becoming aware that it might be taller than 18 feet. So that's the actual date.

Bob Flocke: Do you know what stage of construction it was in then? Was it finished?

Steve Harrison: It was finished.

Bob Flocke: Any other questions?

Steve Harrison: He was doing this in response to issues that maybe this building was too tall so we went to check on it.

Bob Flocke: So, at that point there wasn't anything they could do about it.

Steve Harrison: Other than if they wanted to bring it into compliance at that time or to ask for a variance.

Susan Thurber: I have two questions. Mr. Hartman did you say that the pitch on the accessory building was different than the pitch on the main building?

Gene Hartman: In part of the roof, the area.

Susan Thurber: This wasn't built to the same pitch to match the pitch of ...

Gene Hartman: It was built to basically phase into the rest of the building. The pitch on the primary building is various pitches.

Susan Thurber: And the other thing, this is probably a question for you, Dr. Harrison, only because part of our process is knowing or not whether the land involved is otherwise in compliance with other applicable Village regulations is something that we need to be aware of in order to make a determination on this case.

Steve Harrison: Okay, not to be cute on the answer, as I mentioned before, we issued a temporary certificate of occupancy because there are a few issues that we're still working on. One of them, and I think we're fairly complete on is the number of parking spaces that are available, the issue in terms of setback, the building on the site plan, the overlay district ordinance calls for a six foot setback from the 2 streets. It's silent in that particular section in terms of what the setbacks should be on the back and on the side....

Mike Oldmixon: That's in error Steve...

Steve Harrison: Excuse me. So it's silent in the particular overlay section. In the front of all of the overlay sections there's a one paragraph phrase that says that if any section in the particular overlay is silent, it can revert back to the base district. In this particular case in the case district there's a different setback for the back and for the side. Once that was determined that there had been, both the city engineer and the Planning & Zoning on their review, that was never caught. And, as you know, the Planning & Zoning are primarily architects of actually writing the ordinance, but that wasn't caught for whatever reason. And, in fact there was discussion at that time as to why that was silent on that particular point and everybody believed that in this center city overlay district that the intention was that there would be smaller setbacks so like for instance on the square where there's zero setbacks at the side of the buildings, where they actually touch each other, that is what the intent of the ordinance was. It wasn't until later that two pages before that, people again read that and said now we know why it was silent. So there was an error on the city's part in terms of the site plan. Both the city engineer, who met with the applicants and then did the whole site plan review, that particular point allowed the 6 foot setbacks on each side and the P&Z concurred with that so that, if fact, is not in violation of an ordinance right now, because it's been approved and it's not a matter that's before you tonight. A little more on that, once we became aware of that, then sitting down with the applicant, we looked at it and they agreed to move it in to the required setback where they could. From Mr. Oldmixon's property they were not able to do that on the side next to Mr. Austin's property because now it started encroaching on the number of parking spaces that are absolutely necessary. So on those... Some of the other issues raised tonight, we will continue to look into those. Those are not matters before you. Many of those matters have not been adjudicated and have been incorrectly positioned before you, but are not here for your contemplation this evening.

Bob Flocke: Any other questions from the Board? That being the case, the public hearing is closed. At this point the Board will discuss the case.

Mike Oldmixon: May I make an apology, Sir? Steve, I'm sorry, it's a touchy issue for me also. I apologize.

Steve Harrison: Thank you.

Steve Gartside: I guess as I sit here and look at all of this, if the owners of the building had come to me as a member before all of this started, and let me know that the height comes out to be this high, it's a little higher than the statutes, rules, and we'd like a variance, I would be much inclined to grant a variance at that point because of the overall appearance of the buildings and the way they come together. Certainly there's no harm done having the roof a foot and a half higher. It's well blocked and from RR 12 you don't even know the building is there and

even walking back there the main building so dominates the view, that I see no harm being done to anybody by having the roof line higher than 18 ft. It seems there is some communication problem. Some things happened in this process that maybe they shouldn't have happened, but they did. But I see no harm done. I would have voted for the variance if they had come in ahead of time with it, and I don't think the owners should be penalized under these circumstances.

Mike Stevens: I would confirm. If you look at the issues in the zoning ordinance and the situation, and go back to the beginning, the City was very lax in not requiring plans for the accessory building and then to go through the inspection process, even to the extent allowing it to continue without ever saying "stop here" before you pour the accessory building—"We don't have a plan"" submit those back and get approval on it, but to allow it to go through the whole process and finish the building and say we're at this point x number of feet above and you look at our ordinance as far as granting or denying the variance on the 9 issues, there's only one that pops up. I go through these and you can answer yes on every one of them that it would not impact of affect the surrounding properties. It's not harmful. It's not dangerous, it's not injurious. It's not going to be visible. It's not going to cause anyone any difficulty. It's not going to injure anyone. It's in harmony and spirit... You've heard everybody comment on the integrity of the building. The only concern that has been raised is number 5, which has been brought out...The question is, "Is the property in compliance with other Village regulations?" I guess the question as far as the occupancy; they've allowed the occupancy of it so those issues so they are moving forward to work those issues out. I don't see how the height relates to the drainage issues. I don't see how the height relates to the setback. I would hate to see this Board reach a point where you hold someone hostage and penalize them for other issues to get to this one. I'm not sure that's the direction we want to go.

Susan Thurber: I'm interested in it from the legal standpoint. The legality of what the Board does. Our attorney is not here, so I feel we're at a little disadvantage, so I just don't know the answer to that.

Steve Gartside I'm sorry...

Susan Thurber: I also agree that the height doesn't have anything to do with the drainage or the parking spaces or anything else, but it is one of the questions that we are required to respond to positively in order to grant the variance, and I still don't know the answer to the question.

Mike Stevens: I have a suggestion. It has down here, conditions for variance. We have the authority; we can discuss granting the variance subject to the compliance with the regulations and compliance with number 5.

Bill Cline: I think that would be a good solution.

Susan Thurber: I agree with that.

Bob Flocke Bill, you haven't said anything.

Bill Cline: No, I don't have anything further to add. That we grant it with the condition that the other issues are satisfied, and then we could put that condition.

Bob Flocke: I agree with everything that's said. There are a couple courses of action—Grant the variance with conditions –we don't have the authority to tell the City that because of them it happened so the City has to pay to make it right. I don't think the City wants to do that anyway. So, it seems to be the only way out. Sounds like...Do we have a motion:

Steve Gartside: I move that the variance be granted.

Bob Flocke: Do I have a second? No second. Do I have another motion?

Susan Thurber: I move that variance file No. BA-03-012 [VA-03-012] the variance be granted contingent on satisfaction of the land to comply with all other applicable Village regulations.

Bob Flocke: The motion is that the motion be granted contingent upon satisfaction, do you what to change that to contingent upon satisfactory compliance with all other Village regulations?

Susan Thurber: Yes.

Bob Flocke: Second. Motion dies for lack of second.

Mike Stevens: I'm going to tell you what we need to do, We need to go through these findings of fact and answer yes or no, and once we finish, then the conditions would be that we make the motion that the variance be granted subject to the land [being brought into compliance] with the Village regulations in stipulation to Item No. 5.

Bill Cline: Well, Mike, it would seem to me that if he makes that motion and we vote in favor of it we have said yes to everything.

Mike Stevens: Okay. But I think that needs to be in the form of, in part of the motion that we affirm that as far as the findings of fact that all questions as submitted to the Board of Adjustment are hereby approved...are answered yes, except for Question No. 5 that the land involved was in compliance with other applicable Village regulations, to which we would have to answer no, and that our motion is based upon granting the variance at such time, or subject to and contingent upon, as you said, their bringing the property into compliance with the other regulations.

Susan Thurber: So you think it's time for the motion to just go down the list, or we actually have to ...

Mike Stevens: I don't see that you have to go down the list; I think you have to refer back to this.

Susan Thurber: Okay.

Bill Cline: The answer would be yes to all the questions except for Question No. 5 which would be that we grant the variance on the condition that they bring the land into compliance with other regulations.

Susan Thurber: Would you like to state the motion?

Mike Stevens: I move that the request for variance submitted to the Board of Adjustment (No. BA-03-012), [be granted and] that the findings of fact as presented under--Items 1, 2, 3, 4, 6, 7, 8 9 and 10--that they would cause no hardship or difficulty and we should find that the variance should be granted on those bases, except for Item 5 there are still some issues still to be resolved, and that as to Question No. 5 we find the land, there are some regulations that have not been completely resolved, and on that basis we move that the variance be granted contingent on the property owner bringing the land into compliance with the other applicable Village regulations.

Bill Cline: I'll second the motion.

Bob Flocke: Discussion.

Mike Stevens: Let me ask a question about that, or make a comment. Suppose that another issue comes up that they can't agree--the City and Owner can't agree on how to solve the problem, so then the owner would have to come to us for a variance request on that issue, and then we could address that issue, outside of the roof issue. At this point, if we said you have to do this, does that mean that they would have to do the roof also? It seems to me that if we're dealing with the roof problem, and we granted a variance on that, if these others can't be resolved they would have to come and ask for a variance on those.

Bob Flocke: It would seem like that if that would happens and the variance is granted that that falls into the compliance, the variance would be a form of compliance; however, if the variance is denied, then that would fall back to this one.

Mike Stevens: We have not denied this one again because of a problem with a parking lot.

Bob Flocke: Yes.

Susan Thurber: But, yes, legally I think we have to. As I read, that's my question.

Bob Flocke: She's right, our hands are tied.

Mike Stevens: Our hands are tied because of No. 5. There are other issues still to be resolved. And that is what ...

Bill Cline: They have to be resolved anyway.

Mike Stevens: When they resolve them the variance is granted.

Bob Flocke: ... this can be considered a step along the way. If they are resolved without any further requirements for variance then we're done with it. However, if they are not resolved and another request for variance is involved, then this hinges on what we decide.

Mike Stevens: But, this variance ever comes back into play.... No, because that variance has to be looked on at its own face. If we, and there could be some conditions where they

said...they already said, that they may have to tie it in to resolve the other things... they know that this variance would not be granted. It's a condition that's created because of the ordinance itself in terms of the findings of fact that we have find in order to approve the variance.

Bill Cline: It would be a lot easier for us if we had to do was to decide this one point because the ordinance doesn't really read that way and allow us to do that.

Mike Stevens: What it really says is that you can't grant a variance until the job is complete to know that everything else is brought into compliance.

Steve Gartside: Any job, any construction site.

Bill Cline: Well, like everyone says. Ignorance is bliss. If we hadn't been told that we wouldn't know it. But in this case we know there is a problem and we have to deal with it or recognize it.

Mike Stevens: Some things that we've discussed.

Bill Cline: If we hadn't been told that...but now we know it.

Steve Gartside: I'm not completely comfortable with the language, but ...

Bob Flocke: We'll have a roll call vote so we'll have a record of it.

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| Steve Gartside | Yes |
| Bill Cline | Yes |
| Susan Thurber | Yes |
| Mike Stevens | Yes |
| Chair, Bob Flocke | Yes |

Bob Flocke: The vote was 5-0 in favor of granting the variance contingent upon compliance with the other applicable Village regulations.

Bill Cline: I move that we adjourn.

Bob Flocke: The meeting is adjourned.

Adjourned 7:40 p.m.

Adelle Turpen

Adelle Turpen, City Secretary.

# ORDER GRANTING/DENYING ZONING VARIANCE
# WORK SHEET

**File No.: BA-03-012**
**Date of Hearing: August 28, 2003**
**Applicant: Pat Giddiens**
**Address: 13600 RR 12, Wimberley, TX**

Conditions Required for a Variance (Wimberley 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 | X | |
| 2.That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and | X | |
| 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 | X | |
| 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 | X | |
| 5.That the land involved is otherwise in compliance with other applicable Village regulations; and | | X |
| 6.Literal enforcement of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property; and | X | |
| 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 | X | |
| 8.The relief sought will not injure the permitted use of adjacent conforming property; and | X | |
| 9.The granting of a variance will be in harmony with the spirit and purpose of these regulations; and | X | |
| 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. | X | |

Special Circumstances: Pat Giddiens (Applicant), has made application for a variance to the height requirement set out in the Village of Wimberley Zoning Ordinance No. 2001-010, Section 28.4(B) Maximum Building Height.

1. Primary buildings: Not more than two stories and not more than twenty-eight (28) feet with flat roof...or thirty-five (35) feet with pitched roof.
2. Accessory buildings: Not more than eighteen (18) feet and not more than one story.

Ms. Giddiens requests that she be granted a height variance for her accessory building. This property is located at 13600 RR 12, in Wimberley, Texas.

**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.

**Board Action: Grant** __X__ **Deny** _____ **Grant with Conditions** _____

Conditions of Variance:

**Variance Granted contingent upon Applicant's compliance with other applicable Village regulations.**

**Motion : "I move that the request for variance submitted to the Board of Adjustment (No. BA-03-012), [be granted and] that the findings of fact as presented—Items 1, 2, 3, 4, 6, 7, 8, 9 and 10—that they would cause no hardship or difficulty and we should find that the variance be granted on those bases, except for Item 5. There are some issues to be resolved, and that as to Question No. 5 we find there are some regulations that have not been completely resolved, and on that basis we move that the variance be granted contingent on the property owner bringing the land into compliance with the other applicable Village regulations."**

**PASSED AND APPROVED** this 28th day of August 2003, by the Board of Adjustment of the Village of Wimberley, Texas, by a vote of: 5 (Ayes); 0 (Nays); 0 (Abstain).

VILLAGE OF THE WIMBERLEY
Board of Adjustment

By: Robert Flocke
Bob Flocke, Vice-Chair