

ORDER GRANTING ZONING VARIANCE

Case Number BA-02-003
 Applicant: Lewandowski, Ray

Date: August 14, 2002
 Address: 785 Sunset Drive

Conditions Required for a Variance (Wimberley Zoning Ordinance, 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;	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:

The applicant purchased the tract approximately eleven years ago (nine years before the Village was incorporated). The land was subdivided prior to the Village's incorporation. The Paradise Hills subdivision currently features several homes along the ridge in proximity to the applicant's tract. Design work began on the project about eight years ago. The City Engineer has concluded that the proposed development would require the requested variances from the sections of the Zoning Ordinance regardless of where constructed on the site.

Strict enforcement of the Zoning Ordinance will adversely impact the value of the applicant's land and severely limit any development on the entire tract.

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.

Terms of Variance:

The specific terms of the variance shall be as follows:

- | | |
|--------------------|---|
| Section 14.4(E) | Accessory Building Height:
The primary residential building shall be no greater than forty (40) feet in height. |
| Section 45.2(C)(2) | Accessory Building Height
A variance is not required under this provision based on the applicant's representations at this hearing that the main residence and guest house will actually be joined (i.e., physically linked), thus constituting a single structure. |
| Section 47.8(C) | Steep Slope (Density Limitations)
A variance is granted from this section, thus subjecting the applicant's project to the standards set out in Chapter 14 (RA) of the Zoning Ordinance. |

Section 47.8(G) Ridge Development (Vegetation)
 A variance is granted from this section in its entirety with the understanding that the applicant will install such landscaping as is reasonably possible.
 While not specifically limiting the project to any particular design materials, the applicant has represented that he is committed to constructing the buildings of white stone, installing tinted glass windows, and making the roof green, bronze or brown (specifically not gray galvanized).

Section 47.8(H) Private Roads and Driveways (Slope)
 The grade (i.e., slope) for the driveway will remain in approximately the current condition.

Section 47.13 Impervious Covers
 A variance is granted from this section, thus subjecting the applicant's project to the standards set out in Chapter 14 (RA) of the Zoning Ordinance.

PASSED AND APPROVED this 14th day of August 2002, by the Zoning 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
Zoning Board of Adjustment**

by: Tony McGee
Tony McGee, Chair

ATTEST:

Adelle Turpen
Adelle Turpen, City Secretary

APPROVED AS TO FORM:

Alan J. Bojorquez, City Attorney

VILLAGE OF WIMBERLEY
MINUTES OF ZONING BOARD OF ADJUSTMENT MEETING

City Hall, 14500 RR 12, Suite 22
Wednesday, August 14, 2002, 7:00 p.m. --

Case No. BA-02-003
Applicant: Ray Lewandowski
Address: 785 Sunset Drive, Paradise Hills

I. Board Chairman Tony McGee called Board to order at 7:00 p.m.
Present were: Board Chairman McGee, Board members Steve Klepfer, Martha Knies, Matt Manis, and Carolyn Nichols. Board member John Graddy was excused.

II. City Administrator Steve Harrison presented the case for Board consideration. He said City Engineer and City Attorney had visited the site. Mr. Lewandowski said he bought the property almost nine years ago and has been consulting with architect Gary Brim on designing a home for the property for several years and briefly described his building plans.

Board chairman McGee asked Mr. Brim if he is satisfied that the variances requested in his letter, and those variances noted by the City Engineer, are the ones he and applicant are asking for, and that there is nothing else that needs to be asked for. Mr. Brim answered there is nothing he is aware of in reading the Ordinance that he needs to request. He noted there has not been a Site Plan Review yet.

City Engineer Joel Wilkinson identified four items for variance consideration:

1. Structures: Under the RA zoning district, the accessory structure identifies as a guest house Mr. Lewandowski proposes qualifies as an accessory building, not a secondary residential structure. In that classification of structure, it has limitations on height and number of storeys. There is therefore a need for a variance for this structure in regard to these two elements.

2. Slope requirements: The average slope on the site is well in excess of the 15% limit in the Ordinance. Limitations on density and impervious cover have to be considered for variance.

3. Ridge development: The amount of setback from the ridge and the angle of sight from surrounding properties require a variance.

4. Slope of the access drive: The slope of the private road on the property is such that a variance is required.

City Attorney Alan Bojorquez said he reviewed the engineering report from a legal standpoint. Preservation of scenic vistas and lines of sight, and protection against erosion, water runoff and the destruction of vegetation are all legitimate government interests which the City has a right to be concerned about and can chose to regulate. The City's Zoning Ordinance covers these issues well and provides a legal basis for consideration of a variance. He referred Board members to a proposed "Order Granting Zoning Variance" which he prepared with ten points for Board consideration. He said Board members need to look at the individual property owner and the impact of the regulations on that property owner and what the expectations of the owner were at the time the property was platted and purchased.

III. In Public Hearing, Rosemary Barta said she is a neighbor, and everyone she has spoken to in Paradise Hills believes the proposed development will be good for Wimberley. Linda Hudson,

treasurer of the Paradise Hills property owners' association, said all POA board members support the project and think it will be an asset. Clint Frankmann said he seconded this opinion.

IV. Mr. Brim and Mr. Lewandowski indicated on a site plan the likely locations of buildings. Mr. Lewandowski described the buildings as a primary residence, a guest house, a caretaker's residence, and a garage. Board members discussed at length with Mr. Lewandowski the fact that he identified more buildings than those named in the variance request, and asserted they can approve only what is in that document. They discussed possible subdivision of the property with Mr. Lewandowski, who said he would not undertake now not to subdivide.

Board members discussed with Mr. Brim, Mr. Lewandowski, and Mr. Wilkinson each of the Terms of Variance in the "Order Granting Zoning Variance" prepared by Mr. Bojorquez. Board chairman McGee asked for language to define limits for each of the Terms. Mr. Wilkinson suggested the wording "Not to a slope greater than presently exists" as the limitation for slope on the entry driveway. He said the impervious cover limit allowed in the RA zoning district meets both the provisions of the code and the intent of the applicant. He said the same applies to the variance for density limitations; if granted, the variance will be to the limit allowed in the RA zoning classification if the site did not come under Steep Slope regulations. Mr. Brim said he needs a five-foot variance on height limitation, to 40 feet, to provide a margin in calculation of the base of the pier. He said he could not estimate the percentage of vegetative cover that could be maintained on the slope, because of the steepness of the slope and the lack of soil.

Board members discussed with Mr. Lewandowski and Mr. Brim the feasibility of connecting the primary residence with the accessory building/guest house by a covered walkway to satisfy provisions of the Zoning Ordinance for RA district. Mr. Lewandowski agreed to do so.

Board member Carolyn Nichols said the Interim Comprehensive Plan has several major principles that govern development:

- "Respect for what is already here;
- Retention of the 'village' character of Wimberley;
- Compatibility of land uses in a given area;
- Planning for managed growth in the Village;
- Maintenance of the 'mixed-use' nature of the central village;
- Respect for critical landforms and waterways; and
- Maintenance of rural character and scale of development."

She asked Mr. Brim if he could abide by these principles; Mr. Brim said he sees no conflict in what he is proposing with these.

V. Board chairman McGee referred to the paragraph "Conditions for Variance Approval" in the Order Granting Zoning Variance. After discussion with City Attorney Alan Bojorquez, Board members agreed unanimously to delete the entire paragraph.

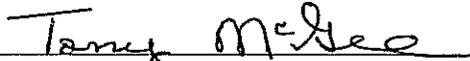
Mr. Bojorquez said the Board can find the variance request on accessory building height [Section 14.4(E) and Section 45.2(C)(2)] is not required because based on the representations made by applicant at this Board meeting, he will be joining the two structures thus taking it out of those provisions of the Ordinance. The only variance Board needs to grant is for the height of the primary building to the requested limit of 40 feet. Board members concurred that he and

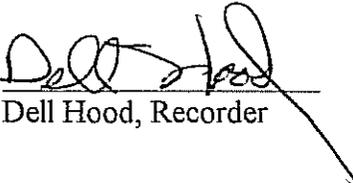
Chairman McGee can write language for this term of the variance. Chairman McGee proposed the following for other terms of the variance:

1. For Section 47.8(C), Steep Slope (Density Limitations), variance is granted to the limits provided in the RA zone.
2. For Section 47.8(G), Ridge Development (Vegetation), variance is granted.
3. For Section 47.8(H), Private Roads and Driveways (Slope), variance is granted to a slope not greater than that of the driveway as presently laid.
4. For Section 47.9.1, Impervious Cover, variance is granted to the limits provided in the RA zone.

Board member Klepfer moved that the Order Granting Zoning Variance as presented to the Board of Adjustment, with the amendments by Chairman McGee as stated above, be adopted. Board member Manis seconded. By roll call vote, Board approved the motion 5-0.

Board adjourned at 8:50 p.m.


Tony McGee, Board Chairman


Dell Hood, Recorder