

**Village of Wimberley**  
City Hall, 12111 Ranch Road 12, Wimberley, Texas  
**Minutes of Board of Adjustment Meeting**  
Monday, September 24, 2007 at 6:30 p.m.

The meeting was called to order at 6:30 p.m. by Chair Jason Aldridge. Board Members present were Vice Chair Ron Freeman, Steve Gartside (Alternate), Barry Tyler, and Chuck Bursiel.

Board Member absent: Bill Cline.

Staff Members present were City Administrator Don Ferguson, City Attorney Cindy Crosby, and City Secretary Cara McPartland.

**Consent Agenda**

Approval of minutes of the August 27, 2007 meeting of the Board of Adjustment.

Vice Chair Freeman moved to approve minutes as submitted. Board Member Tyler seconded. Board Member Bursiel abstained due to his absence on August 27, 2007. Motion carried on a vote of 4-0.

**1. Public Hearing and Possible Action**

Public hearing and consider possible action on Case No. BA-07-007, a request for a variance to the Village of Wimberley Zoning Code, Section 155.037 (D)(3)(a) regarding the dominant street setback for property located at 401 Cypress Creek Lane, Wimberley, Texas (*John Blais, Applicant, this item was continued from August 27, 2007 meeting*)

City Administrator Ferguson reviewed this case (continued from the Board's August 27, 2007 meeting) to allow the applicant adequate time to provide supplemental information. Mr. Ferguson summarized the applicant's request for a variance allowing a twenty (20) foot encroachment into the dominant street setback for septic system installation. He noted that setback requirements prohibit any type of construction within the setback area, including septic system construction.

Mr. Ferguson advised that after review of the supplemental information received from the applicant, staff recommends denial of the variance in absence of an "unnecessary hardship," definable by ordinance as "not based solely on economic gain or loss." He concluded by pointing out that both the original application and supplement refer in large part to higher costs of alternative septic systems, which as discussed at length at the Board's last meeting, does not meet the criteria for granting the variance.

Chairman Aldridge reminded that jurisdiction over Case BA-07-007 was accepted unanimously at the previous Board of Adjustment meeting on August 27, 2007 and re-opened the public hearing at this time. He called on the applicant, John Blais, for his presentation in favor of granting this variance.

Property owner, John Blais, spoke in favor of granting the variance to encroach into the dominant street setback based on reasons set forth in the attached written statement. In summary, Mr. Blais cited the desire to install a standard gravity flow system that is less costly to install and maintain and to retain more trees for environmental/privacy reasons.

Registered Sanitarian and septic system designer, Dora Fogle, outlined her background and qualifications and spoke in favor of granting the variance based on her reasoning that building line setback requirements are for structures above the natural grade, not for below grade structures. Ms. Fogle conveyed her understanding of various types of property line setback requirements and easements, stressing the applicant's request as compliant due to the underground nature of the construction with nothing visible or obstructing above ground. She called attention to her report, adding that her personal inspection of the property indicated the presence of only eighteen (18) inches of topsoil in the back of the property acting as a hindrance to installation of a standard gravity flow system. Addressing questions relating to Hays County's interlocal agreement with the Village of Wimberley and the Board's role, Ms. Fogle was advised that Hays County does not deal with setback issues, except for setbacks on the property line and that the Board's duty is to decide on the variance requested.

Board members discussed with staff and applicant issues such as:

- Feasibility of acquiring septic permitting from Hays County for a standard gravity flow system
- Comparison of policies regarding setbacks in surrounding jurisdictions
- Verified existence of rock ledge on property per Dora Fogle
- Higher costs to install/maintain an aerobic system (with annual maintenance contract)
- Clarification by City Attorney Crosby that setback requirements have consistently been applied to underground construction of septic systems, which are not specifically excluded
- Specific exclusions to setback requirements that exist for utility easements
- Lack of precedent in granting a variance when circumstances dictate alternative options for applicant such as different septic designs/types

No one spoke in opposition to the variance request and the public hearing was closed. General consensus arrived at the lack of criteria allowing for approval of the requested variance, based on adherence to Village of Wimberley Ordinance No. 2001-010, Section 10, requiring that the Board of Adjustment makes specific, written findings that include:

- That there are special circumstances of conditions affecting the property involved such that the strict application of the provisions of this Ordinance

would (a) deprive the applicant of the reasonable use of the property; and (b) create an unnecessary hardship in the development of the property; and

- That such circumstances of conditions are (a) not self-imposed; (b) not based solely on economic gain or loss; and (c) do not generally affect most properties in the vicinity of the property

In absence of such special circumstances, Chairman Aldridge entertained a motion. Vice Chair Freeman moved for denial. Board Member Gartside seconded. Chairman Aldridge requested the motion include the specific, written findings listed above per City Attorney Crosby. Vice Chair Freeman amended the motion to include said specific, written findings. Board Member Gartside seconded the amended motion. Chairman Aldridge asked for a roll call vote as follows: Board Member Gartside, aye; Vice Chair Freeman, aye; Chairman Aldridge, aye; Board Member Tyler, aye; Board Member Bursiel, nay. Motion carried on vote of 4-1.

## **2. Announcements and Future Agenda Items.**

No announcements or future agenda items were heard.

## **Adjournment**

Chairman Aldridge called for a motion to adjourn. Board Member Freeman moved to adjourn. Board Member Tyler seconded. Motion carried on a vote of 5-0.

## **Adjourn at 7:05 p.m.**

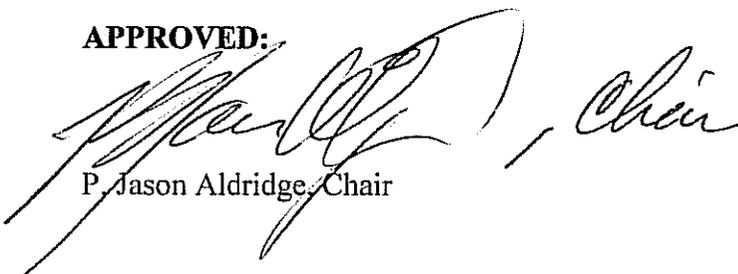
Recorded by:



Cara McPartland

These minutes approved on the 25<sup>th</sup> day of February, 2008.

**APPROVED:**



P. Jason Aldridge, Chair

JOHN BLAIS STATEMENT

September 24, 2007

We are here to request that the set back at the front of our lot on 401 Cypress Creek Lane be reduced from 40' to 20'. In order to put a standard gravity flow system in this area. Nancy and I purchased this lot in 2001. The set back in the deed restriction is 10' on all sides. We have a permit from the City of Wimberley to build a 3 bedroom 2 bath house on this lot. We have room to put the septic system in the back of the lot but we prefer to put it in the front for the following reasons:

There are out cropping of rock and many trees on the back of the lot which could make the instillation of a septic system impractical.

This is an inventory of the trees in the back of the lot:

Oak Trees ; 2 -4" 3-5", 2-6", 4-8", 2-10", 1-13"

Cedar Trees: 3-6" 2-7" 5-8" 3-10" 5-12" 3-16"

We prefer not to remove these trees for environmental and privacy reasons.

Two 8" Cedar trees were removed to accommodate the house

There are fewer and much smaller trees in the front.

The septic installer, David Smith has dug two 5' holes in this area. The east hole is 22' from the street and 27' from the east line. The west hole is 25' from the street and 30' from the west line. At approximately 50' from the street and approximately parallel to it there is a rock ledge. The strip of land from 20' to 45' would allow David Smith to install a leach field large enough for the proposed standard gravity flow system.

As Mr. Ronson instructed us we provided him with the name and addresses of all the people within 200 feet of our property. We talked with 8 out of 10 of these owners. We showed them a plat and explained our request and none of these were opposed. We were not able to contact two of the owners, however they received the letter from the city and no one has objected. Our neighbors homes range

from 2 to 30 years old and all are on a Standard Gravity Flow System.

Our proposed change to the set back would effect 1600 sq. feet and would be completely underground.

This area would be covered with soil and seeded with grass and would become part of our front yard.

We hope that this change will meet with your approval. Thank you for your attention to this matter.