



**CITY OF WAUWATOSA**  
7725 WEST NORTH AVENUE  
WAUWATOSA, WISCONSIN 53213  
Telephone: (414) 479-8917  
Fax: (414) 479-8989  
Web Site: www.wauwatosa.net

**MINUTES**  
**MEETING OF THE BOARD OF EXAMINERS & APPEALS**  
**Friday, January 8, 2010**  
**Committee Room #2**

PRESENT: S. Jung, C. Millman, R Ornst, R. Bachman, J. Price, R. Lex, P. Nook, D. Wheaton - 8

ALSO PRESENT: Fred Knapp, Building Inspector

Mr. Ornst as Chair called the meeting to order at 9:02 a.m.

**2117 N. 71<sup>st</sup> Street**

Mr. Ray Fischenich, homeowner, has requested an administrative interpretation and variance to construct a second floor bathroom with approximately 65 inches of headroom over the bathtub, whereas 80 inches is required. Reference WMC 15.04.040.C.1 Reference UBC Ch.VII.VII.B.4

Present in favor: Ray Fischenich, 2117 N. 71<sup>st</sup> Street

No one present in opposition.

Mr. Fischenich asked for clarification on the correct code height for their project. He asked the board for approval to use a 65" height for his bathtub on the second floor of their home. Mr. Fischenich explained that he purchased this home over a year ago that had room for a bathroom in the unfinished attic. As shown in the photo there is a slope in the ceiling which is why this request is being made.

Mr. Fischenich reported that he was initially told by the plumbing inspector that the code required a minimum of 70" from the base of the inside of the tub to ceiling. This is how the initial floor plan was laid out and construction started. Mr. Fischenich followed up to see if any height flexibility was allowed. The building inspector made a site visit and gave his interpretation of the code.

Mr. Knapp, the Building Inspector, advised that an 80" height was required and Mr. Fischenich stopped work on the bathroom. Mr. Fischenich read from the code, Section VII B. 4 – ceiling height - All habitable rooms shall have a minimum ceiling height of 6' 8" for a minimum of 50% of the floor area. Mr. Fischenich feels that he is in compliance. He noted that there is a full bathroom on the first floor of the home.

After viewing the photos Mr. Ornst asked why he reinforced the roof rafters. Mr. Fischenich reported that this was done to satisfy a depth requirement needed for R30 insulation. He said the floor was reinforced below to hold the weight of the tub.

The Board asked Mr. Knapp for his code interpretation. Mr. Knapp replied that at the plan review the Fishenich's were told that the plumbing code modification was 70" instead of the building code height of 80". Mr. Knapp explained that the 70" number was given incorrectly. Mr. Knapp reported there is no problem with the head room in the shower area.

Mr. Fischenich noted that there is a skylight over the tub which allows for additional clearance. He said if he had originally been told the code was 80” he would have cut a hole in the floor to set the tub and changed the rafters. The bathroom layout could have been changed if the correct information were given.

Mr. Fischenich felt that a variance should be granted if the board substantiates that the was given the incorrect information.

Mr. Nook noted that the building code height requirement of 6’ 8” would be the correct code. He felt that the applicant meets the code requirement that a minimum of 50% of the floor area is 80” in height.

Mr. Wheaton commented that there are two questions to be answered and voted on.

Moved by Mr. Nook, seconded by Mr. Lex to accept the building inspectors interpretation of the code.

Roll call vote taken. Ayes: 8

Moved by Mr. Nook, seconded by Mr. Bachman  
The board finds that: 1) a manifest injustice exists and that granting the Variance will be in keeping with the spirit of the code; 2) the Variance will not create special detriment to the overall character of the neighborhood nor adversely affect property values; and 3) the hardship or practical difficulty was not created by the property owner; it exists due to the construction of the second floor with limited space area. Based upon these findings I move that the variance be granted for 65” as measured from the base of the inside of the bathtub to the ceiling. There is another tub that has the proper clearance with a second shower.

Roll call vote taken. Ayes: 8

The meeting adjourned at 9:30 a.m.

---

David M. Wheaton, Secretary

mks