

Decision on Variance
By Bayfield County Board of Adjustment

Case No. 2

Robert F. White has requested a **variance** from the terms of Section 13-1-32(e)(1), Row A, Column 1 and Section 13-1-32(e)(1) Row E, Column 1 of the Bayfield County Zoning Ordinance. Section 13-1-32(e)(1), Row A, Column 1 requires: multiple unit developments providing shoreline access to navigable waters shall be subject to the following minimum requirements for a Class 1 Lake; specifically, 600 ft. of minimum shoreline frontage. Applicant currently owns approximately 825 ft. of frontage on Lake Namakagon and is requesting a variance to sell off Lots 44 & 45, creating an existing MUD to become non-conforming.

Section 13-1-32(e)(1), Row E, Column 1 requires buildings and structures be setback 200 ft. from the ordinary high water mark. Applicant seeks a reduced setback to 115 ft. from the ordinary high water mark of Lake Namakagon due to a limited building site because County Hwy D crosses property and wetlands impact buildable core areas. Applicant wishes to have the old 26' x 45' (1,170 sq. ft.) residence replaced with a new 28' x 56' residence (1,568 sq. ft.) including a 10' x 28' (280 sq. ft.) deck for an overall total of (1,848 sq. ft.); with no increase in dwelling units.

The property is a 6.9-acre parcel (ID# 034-1114-01), located in Lots 42-45, Namakagon Lakeshore Subdivision, Section 14, Township 43 N, Range 6 W, Town of Namakagon, Bayfield County, WI.

Findings of Fact and Conclusions of Law

1. Applicant seeks a variance from that portion of the code that requires a multiple unit development that provides shoreland access to navigable waters on a Class 1 lake have a minimum of 600' of frontage.
2. Applicant currently owns approximately 825' of frontage on Lake Namakagon and is requesting a variance to sell off Lots 44 and 45, creating an existing M.U.D. that would be non-conforming regarding the amount of frontage.
3. Applicant also seeks a reduced setback of 115' rather than the normal setback for an M.U.D. of 200' due to a limited building site because Hwy. D and wetlands impact the buildable core. This reduced setback of 115' is sought for a new residence.
4. Applicant wishes to have the old 26' x 45' residence replaced by a 28' x 56' residence with a 10' x 28' deck for an overall total area of 1,848 sq. ft.
5. The requested variances would not result in an increase in dwelling units.
6. The town board recommended approval of the variances.
7. The cabin units identified as #1 and #2 have been rehabilitated and are in good shape.

8. According to the plan set forth, cabin #3 would be torn down once the new residence was constructed.

9. The building of the new house at the site of the former house would make use of the existing infrastructure, it would be built in a code compliant manner and compared to the existing home, which is in a state of disrepair and not code compliant, would constitute a beneficial effect or improvement on the neighborhood.

10. This is a case where the setback requirements are not based upon DNR jurisdiction, but rather, based upon specific restrictions from the Bayfield County Zoning Ordinance.

11. Zoning & Planning Administrator Karl Kastrosky testified that presently there would be five units on the land, including a house, three cabins, a bar and other outbuildings (a pump house / bait station).

12. The number of units would be reduced somewhat if the variance was granted because there would be a bar, two rental cabins and the new home.

13. Mr. Kastrosky also testified that the owners could do what they are attempting to do or have a greater level of development without a variance. This could be done by condominiumizing the M.U.D., increasing the number of units on the existing M.U.D., or selling off Lots 44 and 45 which could be done by either the use of condominiumization or otherwise, without a variance.

14. Mr. Furtak indicated that if the variances were granted there would be no increase in the density of this M.U.D. which is on the shore of Lake Namakagon. He also felt that overall, with the appropriate mitigation and conditions, the granting of the variances could result in a net gain for the environment.

15. Assistant Zoning Administrator Furtak suggested that as a condition it would be good to require that the buildings that were torn down be hauled to a certified construction landfill.

16. The applicant testified, indicating that he was in agreement with a number of possible conditions, including the following:

- a. The remediation plan in the Robert D. Lobermeier letter of November 27, 2007.
- b. That there be no further development on the remaining parcel.
- c. Lots 44 and 45 would be fused and further development on those lots would be limited.
- d. The remaining lots would stay in one ownership.

17. Mr. Kastrosky was of the opinion that the granting of the variances would bring about a better result than the condominiums because there would be less density along the lakeshore. Mr. Kastrosky also pointed out that the purpose of the multiple unit development ordinance was never intended to make the reduction of shoreland development more difficult, and that this plan would cause a reduction in shoreland development.

18. Mr. Kastrosky also indicated that he felt that the variances requested would meet the purpose of the ordinance.

19. The board finds that to deny the variances would be an unnecessary hardship. In making that determination the board has considered whether compliance with the strict letter of the restriction governing setback would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome.

20. In making that determination the board has considered the purpose of the zoning restriction in question as set forth above.

21. The board has considered the effect on the property and have found that it would limit density close to the lake and benefit the property overall.

22. The board has also considered the effect of the variance on the neighborhood, which it believes would be positive overall if a new house were constructed instead of the existing home and development in this area was limited.

23. The board also feels that the larger public interest would be met by reducing possible development on this property which is so close to Lake Namakagon and contains wetlands.

Decision: For all of the above reasons the variances requested by the applicant are granted with the following conditions:

1. The remediation plan and other requirements set forth in the Robert D. Lobermeier letter of November 27, 2007 will be met.

2. Lots 44 and 45 may be sold but they must remain fused in one ownership and the development on Lots 44 and 45 will be limited to one single-family residence set back from the ordinary high water mark of Lake Namakagon as far as possible, up to 200' if possible. The setback to wetland and other applicable setbacks will be respected.

3. There will be no further development on the remaining land after Lots 44 and 45 are sold and the remaining land will permanently stay in a single ownership .

4. Any buildings or outbuildings that are removed will be disposed of in a certified construction landfill.

5. Cabin #3 will be removed as soon as the new house is completed.

Motion made by Compton, seconded by Lupa to grant the variances.

Motion by Lupa, seconded by Compton to modify the decision to provide that all of the remediation

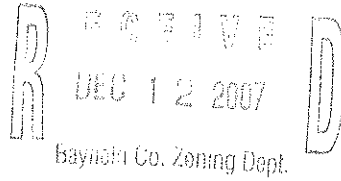
conditions would be complied with not later than October 1, 2008.

BOTH MOTIONS PASSED.

VOTE: Yes 5 No 0

Dated: Dec 12, 2007

Randy Matis



Members Present: Randy Matis, Phil Lupa, Lee Wiesner, Richard Compton, Kerry Tetzner

Also Present: Michael Fauerbach, Attorney for BOA