

DECISION ON VARIANCE  
BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case #3  
February 28, 2008

**Bill Van Sant, owner and Robert A. Mick, agent** have requested a **variance** from the terms of Section 13-1-32(d) of the Bayfield County Zoning Ordinance. This section requires: (d) Lots on Rivers and Streams. Lots adjoining or including rivers or streams shall meet the following minimum requirements (provided that if an applicable zoning district dimensional requirement in Section 13-1-60 is more restrictive, it shall apply instead).

Lot Area	120,000 sq. ft.
Shoreline Frontage	300 ft.
Shoreline Setback	100 ft.
Buildable Core	3,000 ft.
Rear Yard Setback	30 ft.
Side Yard Setback	30' min/ 60' total
Shoreline Vegetation Protection Area	75 ft.
View Corridor	30 ft.

Applicant(s) seek a variance to remove an existing home and reconstruct a new 87' x 69' (6,003 sq. ft.) residence (4,000 sq. ft) with attached porch (450 sq. ft), deck (450 sq. ft) and garage (1,080 sq. ft). The variance request is for a reduced setback of 10' from North property line instead of the required 30', and a 75' reduced setback from the ordinary high water mark of a navigable stream instead of the required 100'.

The Property is a 1.54-acre parcel (ID# 04006250041440500212100) described as the Lot 1 of CSM 1600, Section 14, Township 50 N, Range 4 W, Town of Bayfield, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant seeks a variance to remove an existing home and reconstruct a new one.
2. The variance is needed because the ordinance requires that the structure be 100' from a navigable stream, and that is requested to be reduced to 75'. There is also a request for a variance to be 10' rather than the required 30' from the north property line.
3. The town board has recommended approval of this variance request.
4. This is a 1.5 acre lot.
5. The claim of unnecessary hardship relates to the physical features of the lot.
6. To the south of the proposed building site there is a very steep dropoff to an intermittent stream.
7. The site is also fairly close to the City of Bayfield and it is a more developed area.

8. Zoning & Planning Administrator Karl Kastrosky referenced the fact in his testimony that this was one-quarter mile from the City of Bayfield. He also indicated that the problems that required a variance related to ordinance changes in the year 2000 whereby proximity to this unnamed stream was important. Mr. Kastrosky was of the opinion that while the DNR feels this stream is navigable it is certainly a very intermittent type of stream and mostly just serves as drainage from Highway 13. Mr. Kastrosky did question whether or not the stream was, in fact, navigable.
9. The requested building zone would be under the 15% of impervious surface that is allowed in the ordinance without a stormwater management plan, and there is a stormwater management plan in this case.
10. The neighbors, the Gaberts, objected to the reduced 10' setback on the north side based upon drainage issues.
11. Surveyor Bob Mick testified as the agent for the applicant. Mr. Mick indicated that DNR representative Mr. Spangberg had classified this stream as navigable, despite the fact that it is apparently a very intermittent stream without water in it much of the year.
12. At the hearing Mr. Mick presented an additional Exhibit C-2 which showed certain topographical features and a proposed building area.
13. Mr. Mick indicated that the applicant was willing to go to some significant expense to remove debris and replace a bridge on the walking trail that goes through the area.
14. Mr. Mick also indicated his opinion that there was no formal easement for the walking trail in this area.
15. Mr. Mick also felt that the drainage for this project would not really affect the Gabert house and that the drainage between the Gabert and Van Sant sites was an artificial, man-made ditch.
16. It was Mr. Mick's position that, if possible, the applicant would like to be able to use the entire building zone as set forth on Exhibit C-2. That building zone would have included approximately 6,000 sq. ft., of area.
17. Mr. Mick indicated that the following conditions were acceptable to the applicant:
  - A. The conditions set forth in the Lobermeier report dated February 26, 2008.
  - B. All of the work referenced in the yellow highlighted items on Exhibit C-2 subject to DNR approval of exactly how those items would be done.
  - C. That the applicant would hook up to the Pike's Bay sanitary system if Pike's Bay would approve. If they would not approve there would have to be a code compliant sanitary system.
  - D. That the walking trail would be left open.
  - E. That the footbridge would be reconstructed and all debris removed.
18. Arnold Carver testified related to the hiking trail and a number of other issues, as follows:
  - A. The temporary fix of the flatbed trailer being installed on the walking trail was put in because there were two masonry culverts that were breaking down. One was entirely blocked and the other is almost full.
  - B. It was Mr. Carver's opinion that if the trash in the area of the footbridge is not cleaned out it is likely to end up in the lake and additional erosion has already occurred and will be increased if this problem is not solved.

- C. It was Mr. Carver's testimony that if this plan were approved it would not only improve this particular property but would be good for the entire neighborhood that he lives in, and would improve property values.
19. James Brakken testified on behalf of the Bayfield County Lakes Forum and read a letter from Mr. Dreher. The gist of the letter was that they felt the public had not received enough details from the file in this case to be able to make an informed decision, and that more needed to be known about the details of the location of various types of buildings or other impervious surface.
  20. The board feels that to adequately protect the neighbors, the lake and the environment in general it would be acceptable to have the building site go up to within 75' of the intermittent stream but the 30' setback from the Gaberts should be maintained and that size of that building area would provide enough room for a very large house.
  21. The board finds that it would be an unnecessary hardship if a variance to allow building within 75' of the intermittent stream were not granted. In determining whether or not this is an unnecessary hardship the board has considered whether strict compliance with the letter of the ordinance would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome.
  22. In applying this standard the board has considered the purpose of the zoning restriction in question. Here the most important issue is the protection of Lake Superior. The stream is also significant, but it is intermittent and less important than protection of the lake.
  23. The board has considered the effect on this property and if all conditions were met the effect on the property would be beneficial.
  24. The board also feels that the granting of the variance, assuming these conditions, would benefit the neighborhood as a whole and it would benefit the larger public interest by maintaining the walking trail and minimizing the pollution and runoff into Lake Superior.

Decision: For all of the above reasons, the variance is granted with the following conditions:

1. There will be no building closer than 75' from the intermittent stream to the south of the building site.
2. The 30' setback from the north property line to any buildings will be maintained.
3. All of the conditions in the Lobermeier report dated February 26, 2008 will be complied with.
4. All of the items highlighted in yellow and referred to in Exhibit C-2 will be complied with, subject to DNR approval.
5. The applicant's sanitary system will be hooked up to the Pike's Bay sanitary system unless Pike's Bay does not allow that. If they do not allow it there will be a code compliant on-site sanitary system.
6. The walking trail will be left open.
7. The footbridge on the walking trail will be reconstructed and all debris will be removed.
8. Compliance with all conditions will be subject to DNR permits and recommendations.
9. These conditions will also be subject to further review by Mr. Lobermeier once the final building plan is completed.

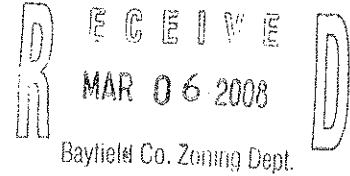
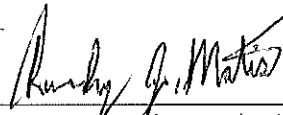
10. The time deadline for these conditions will be that they will all be completed prior to the time that construction starts, unless Mr. Lobermeier determines that a particular condition would be impractical to complete prior to the start of construction.
11. The time deadline for the highlighted items in Exhibit C-2 would also be subject to approval by the DNR, that is, whether they occur prior to the start of construction.

Motion made by Matis, seconded by Wiesner to grant the variance with the conditions indicated.

MOTION PASSED.

VOTE: Yes 5 No 0

Dated: MARCH 4<sup>th</sup>, 2008



Members Present: Richard Compton, Randy Matis, Dennis Rasmussen, Phillip Lupa and Lee Wiesner

Also Present: Michael Fauerbach, Attorney for BOA