

DECISION ON VARIANCE  
 BY BAYFIELD COUNTY BOARD OF ADJUSTMENT  
 VARIANCE DENIED

Case #2  
 March 27, 2008

**Pollock Lake LLC, owner and Sara Haakenson, Peggy Kman, agents** are seeking a **variance** from the terms of Section 13-1-26(c) & 13-1-22(b) Row 3 of the Bayfield County Zoning Ordinance. This section requires: (c) Other Substandard Lots. A building permit for the improvement of a lot having lesser dimensions than those described in subsections (a) and (b) above shall be issued only after the granting of a variance by the Board of Adjustment.

Applicant's lot is a substandard lot of record measuring 50.77' at the ordinary high water mark.

Applicant requests placement of residence with attached garage at 10' from right-of-way, and 35' from the centerline of Walters Road, a private easement road.

In addition applicant seeks a **special exception** from the terms of Section 13-1-60(a), Row 3, Column 4. This section requires:

(a) Subject to subsections (b) through (h), Zoning District Dimensional Requirements for lots shall be as follows (provided that for lots with lake frontage or adjoining or including river or streams, any more restrictive applicable requirements in Sec. 13-1-32 shall apply instead):

Zoning District	Minimum Area	Minimum Average Width for		
		Non-Shoreland Lots Only	Principal Building	Minimum Side & Rear Yards Accessory Building
R-RB, R-1	30,000 sq. ft.	150'	10'	10'
F-1, R-2, A-1	4½ acres	300'	75'	30'
R-3	2 acres	200'	20'	20'
F-2, A-2	35 acres	1,200'	75'	30'
I, C*	20,000 sq. ft.	100'	5'	5'
R-4				
(a) Sewer/water	10,000 sq. ft.	75'	10'	10'
(b) Sewer only	15,000 sq. ft.	75'	10'	10'
(c) Water only	20,000 sq. ft.	100'	10'	10'

Applicant requests a reduced setback to 10' from both side yard lot lines.

Property is described as a 1.10-acre parcel (ID# 004-1064-07), located in Gov't Lot 1, Section 5, Township 44 N, Range 9 W, Town of Barnes, Bayfield County, WI.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant seeks a variance from Sec. 13-1-26(c) of the ordinance. That section requires a variance for an improvement on a lot having lesser dimensions than described in Sec. 13-1-26(a) or (b).
2. This lot does not meet the dimensional requirement of 65' of width at the water line, as required by Sec. 13-1-26(a). This lot is 50.77' wide at the ordinary high water mark of the lake.
3. The applicant also seeks a special exception for reduced setbacks of 10' for each side yard setback. The normal requirement is a 20' setback. Sec. 13-1-60(a) Row 3, Col. 4.
4. Though the case was originally noticed for a variance related to the setback from the centerline of a public highway, the road in question is actually a private road and, therefore, a special exception is sought for the setback from the centerline of that private road.
5. This completely undeveloped lot is 1.14 acres.
6. The applicant requests a variance to build a 24' x 36' (864 sq. ft.) residence with a 20' x 20' (400 sq. ft.) attached garage. There would also be a 24' x 8' (192 sq. ft.) deck.
7. This parcel involves a Class 2 lake with R-3 zoning.
8. The town board recommended disapproval on a 3 to 2 vote, due to density and concerns regarding the effect on adjoining lands.
9. The information packet identified as Exhibit A-1 has been considered by the members of the board. Included in that packet are approximately 27 or 28 letters opposing the variance due to the small size of the lot, and concerns about the effect of the development on Pickerel Lake. There are also potential problems cited in these objectors' letters with locating a building, a well and a septic system on such a small piece of property.
10. Many objecting landowners, in their letters, point out that they paid for larger lots and they want their property investment protected.
11. There were also 2 letters that supported the requested variance.
12. Zoning & Planning Administrator Karl Kastrosky offered Exhibit A-2 which is an aerial photo of a zoning map showing that the area contained a number of small lots along the north shore of Pickerel Lake where the subject property is located.
13. Assistant Zoning Administrator Michael Furtak indicated that with the small size of this lot it is doubtful that you could put even an RV or camper on the property without a variance, although he allowed that if it was a very narrow camper you might be able to do so. Mr. Furtak indicated that you could pitch a tent on the property without a variance.
14. Mr. Furtak confirmed that this was not a town road but a private easement road, so the applicable setback is 40' and this problem could be solved with a special exception for reduced setback.
15. Mr. Furtak indicated that the lots on either side are approximately 100' and 200' in width.
16. According to Mr. Furtak, development in the area included many substandard lots with very few meeting the 200' width requirement and with most less than 150'. Many of these substandard lots did not meet the side yard setback or setback from the road.
17. Mr. Furtak indicated that this lot has been in existence since 1963 and this was a substandard lot of record prior to changes in zoning that required wider lots.
18. Sara Haakenson testified as the agent for the applicant. Ms. Haakenson is a realtor who has a buyer from Indiana who wishes to purchase the property but they would do so only if a

- variance is granted to allow development of the lot.
19. Ms. Haakenson indicated that she attended the meeting of the town plan commission and the town board, both of which voted to recommend no variance for this lot.
  20. Ms. Haakenson indicated that the land is assessed for property taxes in the amount of \$70,000.
  21. In terms of the marketing of the lot, Ms. Haakenson indicated as follows:
    - a. When this lot was purchased by its present owner the owner knew that this was a substandard lot of record. He was therefore aware of the regulation that might make the lot impossible to develop.
    - b. The property is presently listed for sale for \$64,000 and the purchase price is less than the assessed value.
    - c. The property has been on the market for approximately 18 to 24 months.
    - d. The lot is owned by Pollock Lake, LLC.
    - e. The majority of the lots in this subdivision are substandard lots of record.
  22. Chris Lane testified as an adjoining property owner who lives in Duluth. He indicated that he was not opposed to the development but there are other lots on the lake that could be developed. When he purchased his property he spent 2 months researching what he could do with the property under the existing zoning code and he felt that the person who purchased the subject property should have done the same research and be held to the same guidelines.
  23. Jim Brakken testified as President of the Bayfield County Lakes Forum and indicated that the forum supports orderly development but does not support this particular request for a variance. He indicated that the hardship that would need to be shown for a variance was self-created because the present owners of the lot purchased it as a substandard lot of record because it was too small.
  24. Allison Cochrane has land on Pickerel Lake that has been in her family for 47 years. She pointed out that Pickerel Lake is a landlocked, spring fed lake that is particularly environmentally sensitive.
  25. She indicated that her property is one of the adjoining lots and she tried unsuccessfully to purchase the subject property.
  26. She indicated that she feels this property still has uses without the variance because it could be used for camping.
  27. It was Ms. Cochrane's opinion that there are smaller, substandard lots in the area but they are 65' in width.
  28. Mr. Foss offered Exhibit A-4 which is a map of the area. It was his contention that the buildable portion of the lot is, in reality, only .31 acres based upon the Bayfield County land mapping system. The map presented as Exhibit A-4 was not a survey.
  29. Mr. Foss indicated that as an adjoining property owner he offered to buy the subject property in July 2005 from a Judith Kasten who then owned the property. Ms. Kasten wanted \$40,000 for the property and he offered only \$20,000 plus the payment of several years of back taxes at approximately \$445 per year.
  30. Mr. Foss indicated that he knows of no other property on this lake that has less than 65' of lake frontage.
  31. Mr. Foss is concerned about this planned well and septic system on this property and how the variance from required setbacks would affect his property.

32. Shelby Woodard is another property owner and a full time resident of Pickerel Lake. She has investigated and determined that there are 65 lots on the lake, 51 of which have improvements. She has talked to almost all of the owners and they are opposed to this variance.
33. Ms. Woodard also attended the Barnes Planning Commission and the Barnes Town Board meeting and indicated that she did not feel that the result of either of the meetings was preordained but they listened to arguments from both sides before recommending against the variance.
34. Ms. Woodard also referenced page 20 of a Bayfield County brochure which refers to substandard lots of record. That brochure was marked as Exhibit 6A. It was published in June 2004 and seemed to indicate that at least in certain situations substandard lots of record could not be developed.
35. Connie Balcom has lived on Jones Road on Pickerel Lake since 1980. She presented Exhibit A7 which is a map of Pickerel Lake which showed that the north side of the lake is densely populated.
36. She indicated that no other lake in the Barnes area has such an intense level of development as the north side of Pickerel Lake.
37. Pickerel Lake has 12 unimproved lots remaining, 4 of which are close to 50' in width and would present the same issue as is presented here. There are 3 other undeveloped lots that are 65' in width but less than 1 acre and would, likewise, require a variance.
38. Ms. Balcom indicated that she is concerned that this case would present a bad precedent for those other situations.
39. David Masterjohn testified as a rebuttal witness favoring the variance. He indicated that Eric Finstad who was involved in Pollock Lake, LLC does not hold a realtor's license and purchased the property for an investment.
40. Mr. Masterjohn indicated that it would be appropriate to go by the survey and not the information on the county websites for purposes of determining the size of the lot.
41. Karl Kastrosky pointed out that while there may be wastewater concerns here, Bayfield County and the State of Wisconsin have very strong wastewater treatment program.
42. Mr. Kastrosky also indicated that there is a stormwater management plan in the form of a report from Mr. Lobermeier that is part of Exhibit A-1.
43. Board member Compton pointed out that Mr. Lobermeier made it clear in his report that this was a marginal piece of land for development, even if the stormwater management plan was followed.
44. Mr. Furtak was questioned toward the end of the hearing and asked again specifically what uses this land could be put to without a variance. He indicated the following:
  - a. Tent camping would be permissible.
  - b. It might be possible to put an RV on the premises but it would have to be a maximum of 10' in width and it could only be there for a maximum of 4 months per year.
  - c. There could also be a pier installed subject to DNR regulations.
  - d. The owner could do birdwatching or other on-foot recreational activities.
45. Mr. Foss pointed out that this whole plan on Mr. Finstad's part was to make a profit.
46. In rebuttal Mr. Foss also pointed out that the total footprint for development with the deck and the garage would be close to 1,500 sq. ft.
47. Also in rebuttal Ms. Haakenson indicated that the applicant would agree with the stormwater

- management plan, but not agree to a condition of no well or septic system.
48. The board has considered whether or not this matter constitutes an unnecessary hardship which is the applicable standard for a variance. The unnecessary hardship standard is best explained as whether compliance with the strict letter of the restriction governing minimal lot dimensions, including frontage on the lake, would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restriction unnecessarily burdensome. In applying that standard the board has considered the purpose of the zoning restriction in question, and this restriction, is designed to protect lakes such as Pickerel lake.
  49. Pickerel Lake is already a rather densely developed lake with small lots on this side of the lake. The board has some concern that if this lot, which is even smaller than the great majority of the lots, was developed it would adversely affect the quality of Pickerel Lake and the neighborhood in general.
  50. The board has also considered the fact that two adjoining landowners have attempted to purchase the property. While they did not offer what the seller was asking, one adjoining did offer in excess of \$21,000.
  51. The board has considered the purpose of the zoning restriction in question related not only to the protection of Pickerel Lake but to how this is going to affect adjoining property owners in the neighborhood, in general. It is certainly the opinion of the many objecting adjoining landowners that it is going to have a fairly negative impact on the adjoining owners.
  52. The board, in determining whether or not this is an unnecessary hardship, must consider issues of the larger public interest. There is a larger public interest in having orderly development of lakeshore areas and protecting Bayfield County lakes. The Bayfield County Board has determined, in passing this ordinance, that the normal width for a lot to be developed on this type of lake should be 200'. As a substandard lot of record, this lot is less than 1/3 of the required width.
  53. If a variance is denied and no building could be put up on this lot, a question arises whether that would constitute a "regulatory taking".
  54. The board understands that if a landowner is deprived of all or substantially all of the practical uses to which he could put this property he may have a claim of regulatory taking for which compensation is required.
  55. In evaluating this situation the board also considered the fact that Mr. Finstad knew or should have known exactly what the limitations for development were when he purchased this property.
  56. The board also made an effort to see if this could be worked out somehow without a variance and tabled this matter for 60 days to give the existing owner an opportunity to sell the land to either of the two adjoining neighbors who previously apparently expressed an interest in it. There was a prior offer to purchase without a variance for over \$21,000, which suggests that denying a variance will not deprive the owner of all or substantially all uses of his property. He bought the property to resell it and it has a resale value although perhaps not as much as he would have liked.
  57. In tabling the matter for 60 days the board made no decision ahead of time about how they would rule on the variance nor did they give any indication of their probable decision.
  58. Ultimately, the board feels that it is difficult to show that there has been unnecessary hardship when the only unnecessary hardship relates to the very small nature of the lot and

- the fact that it is so much smaller than what is presently required for construction of a building.
59. The board considers that the evidence appears to be uncontradicted that you could not put any kind of building on this lot without a variance. You could do tent camping, birdwatching or sitting and looking at the lake. However, if you even wanted to camp with an RV, the maximum width of the RV would be 10' and you could not leave it there more than 4 months of the year. You could also sell the property and that was the owner's plan.
  60. It is the board's opinion that while these uses are limited they do not mean that the present owner would lose all or substantially all of his uses of the land. This lot has been in existence since 1963 and for the last 45 years has never been used for a developed purpose.
  61. In determining whether the property owner would lose all or practically all of the economically beneficial uses to which the property could be put, the board notes that the present owner bought the property for resale and there was an offer for the property without a variance in 2005 for something in excess of \$21,000. Because the applicant's agent refused to divulge the actual purchase price in 2008, we can't say exactly what percentage of the value of the property might be lost if there is no variance. If the purchase price was the 2005 asking price of \$40,000, the reduction in value would be less than 50%. If the proposed purchase price was \$60,000, the reduction in value would be less than 66%.
  62. Before the present owner purchased the property he had the obligation of every prospective property owner to see what the lot could be used for. If that investigation had been conducted he would have learned that the lot might not be buildable. Despite that fact, the denial of a variance in this case would not deprive the owner of all or practically all economic benefit of the property.

Decision: Because the variance is denied there is no reason for a special exception and the 2 special exceptions are denied.  
 For all of the above reasons the variance is denied.

Motion made by Compton, seconded by Wiesner, to deny the variance and the special exception with the conditions indicated.

MOTION PASSED.  
 VOTE: Yes 3 No 0

Dated: 5/29/08

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

RECEIVED  
 MAY 29 2008  
 Bayfield Co. Zoning Dept.

Also Present: Michael Fauerbach, Attorney for BOA