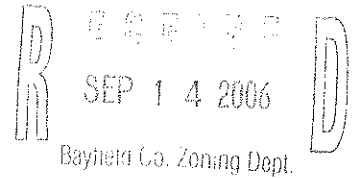


**Decision on Variance**

**By Bayfield County Board of Adjustment**



**Case No. 1**

**September 7, 2006**

**Randy Carson, owner, Jack Frels, agent** are requesting a **variance** from the terms of Section 13-1-40(c)(3)d of the Bayfield County Zoning Ordinance. Section 13-1-40(c)(3)d states, "The structure may not be substantially reconstructed by replacement of exterior walls constituting more than twenty-five percent (25%) of the perimeter of the structure over the life of the structure. The owner shall provide documentation of the perimeter of the structure at the time this provision took effect and any reconstruction shall be documented by recorded affidavit."

Applicant has exceeded the 25% threshold of replacement due to the deteriorated condition and load-bearing capacity of original structure and needed to replace 100% of the exterior walls.

Property is described as a 4.0-acre parcel (ID# 021-1013-01) further described as the West 150' of the East 300' of Gov't Lot One (1) in Section 19, Township 44 N, Range 5 W, Town of Grand View, Bayfield County, Wisconsin.

**Findings of Fact:**

1. This was a nonconforming structure of 600 or more feet that would have required a variance for substantial reconstruction or more than 25% of the linear perimeter of the structure.
2. The Zoning Department did issue a permit for an addition but after that, the builder determined that the bearing walls were deteriorated and needed to be replaced.
3. In effect the entire structure, except the interior floor, has been rebuilt in its original location, 44 feet from the shore of Atkins Lake.
4. For this total reconstruction to be permitted, it would require an after-the-fact variance for virtually a new building 44 feet from the lake shore.
5. The contractor never contacted the Zoning Department after finding the claimed problems with the walls until the structure was rebuilt and all of the demolition materials were removed.
6. The reconstruction of the building is not same size as the original building but is increased by more than 100%.
7. The main issue here is whether it would create an unnecessary hardship to require moving the building back beyond the 75-foot setback from the lake.

8. The contractor, Mr. Frels, claimed that when he tore into the wall, the sill plates were rotted, as were the exterior wall studs and some of the perimeter floor joists.
9. Mr. Frels knew that he was not allowed under the ordinance to reconstruct more than 25% of the exterior walls.
10. Despite these circumstances, Mr. Frels never recontacted the Zoning Department and reconstructed the building entirely.
11. The Zoning Department found out about this situation from a citizen complaint. The contractor feels that all such complaints should be in writing, suggesting little regard for zoning code compliance.
12. There was some evidence at the public hearing of carpenter ants and rotted wood, but no pictures or physical evidence of any kind were submitted.
13. A neighbor, Mr. Reynolds, indicated that he was at the building during 95% of the construction and saw ants in only one wall.
14. Mr. Frels himself admitted that one wall had no carpenter ants and that wall was replaced.
15. There was no evidence that all of the walls that were replaced were destroyed by carpenter ants or anything else.
16. The Board has considered and discussed Section 13-1-40(6) of the ordinance, which allows for reconstruction of nonconforming structures destroyed due to natural events. The rotting and deterioration of the walls under some circumstances could be considered a natural event. However, that ordinance does not apply in this case, because 13-1-40(6)(c) makes clear that the right of reconstruction is limited only to that part of the structure which has been actually damaged. In this case the amount and parts of the building that were in such bad shape as to be considered destroyed was unclear. It was uncontradicted that parts of the exterior wall that were undamaged were, in fact, replaced anyway.
17. The Board has also considered amendments to the State Zoning Statute, including 59.692(1-s)(a), but that statute only applies to reconstruction of the same size unless otherwise required by applicable state or Federal requirements.
18. Assistant Zoning Administrator Furtak indicated that he was not aware of any state or Federal requirements which would have required this degree of reconstruction and there was no evidence from any other source that would have explained why this degree of reconstruction is required by any state or Federal regulation.
19. To require that this building be moved beyond the 75-foot setback may well create a hardship in financial terms, but it is not an unnecessary hardship. The Board finds it is a self-imposed hardship because the Zoning Department was not recontacted with the new information regarding the condition of the old building and reconstruction went ahead anyway.
20. In making this decision, the Board has considered the purpose of the Zoning ordinance, including the location of buildings near lakes and the preservation of safe and healthful conditions generally.

21. The Board has also considered that this is a four-acre parcel with a code compliant location, more than 75 feet away from the shore.
22. The Board has also considered that the Department of Natural Resources, according to Mr. Kastrosky, has objected to approval of the variance in this case.
23. The Board has considered the effect on the neighborhood and the general welfare related to this requested variance and particularly the recommendation of the Town Board, which was a recommendation to approve.
24. The Board finds that there will be no unnecessary hardship to require this building be moved to a code-compliant site.

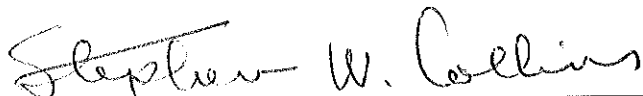
**Decision:**

For all of the above reasons, the request for variance is denied.

Motion made by Leroy Wiesner; seconded by Phillip Lupa.

VOTE: 5 Yes; 0 No.

DATED: SEPTEMBER, 13, 2006.



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Members Present: Stephen Collins, Chairman; Richard Compton; Phillip Lupa; Randy Matis; Leroy Wiesner.

Also Present: Michael Fauerbach, Attorney for BOA; Karl Kastrosky, Director of Planning and Zoning; Mike Furtak, Assistant Zoning Administrator for the Southern Half of Bayfield County.