

Decision on Variance  
By Bayfield County Board of Adjustment

Case No.2  
May 31, 2007

**Philip C. Rasmussen, Nicole E. Rasmussen, Erik C. Rasmussen with Philip A. Rasmussen, agent** are requesting a special hearing before the board and have requested a variance from the terms of Section 13-1-32(b)(1) of the Bayfield County Zoning Ordinance. This section requires buildings and structures be setback 75' from the ordinary high water mark of a Class 1 lake.

Applicants' 1-story (1,500 sq. ft) structure; which was 11' from the ordinary high water mark burned to the ground on April 26, 2007. Applicants' seek to construct a new 2-story (1500 sq. ft. footprint) structure with an overall (2,200 sq. ft of space) which will include a 2-car garage 40' from the ordinary high water mark. This variance is requested because the 75' setback can not be met due to property constraints.

The property is a .80-acre parcel (ID# 034-1082-03-000) located in Gov't Lot 1, Section 21, Township 43 N, Range 6 W, Town of Namakagon, Bayfield County, WI.

**Findings of Fact and Conclusions of Law:**

1. Applicant had a 1,668 sq. ft. structure 11 feet from the ordinary high water mark of Lake Namakagon which burned to the ground on April 26, 2007.
2. Applicant seeks to reconstruct on a slightly different site 40 feet away from the ordinary high water mark a two story structure with 2,200 sq. ft., of space, including a 2 car garage.
3. Based upon the Bayfield County Zoning Ordinance Section 13-1-40(c)(6), Wisconsin Administrative Code NR115 and Wisconsin Act 112 enacting statute 59.69(10m) a person on the applicant's situation is allowed to reconstruct a nonconforming shoreland structure that has been destroyed by a number of natural causes, including fire.
4. There was evidence in this case that the structure in question was destroyed by fire and not by any intentional act of the owner.
5. The evidence was uncontradicted that there is no suitable building location outside of the 75 foot setback, but that a building would fit on the site 40 feet from the lakeshore.
6. The applicant is requesting a 2 story building with a tuck-under garage that would not exceed 1,500 sq. ft. footprint. The total square footage would be 2,200 sq. ft., and it would not be greater than 26 feet in height.
7. To move the building back from 11 feet to 40 feet would further the protection of the natural resource (here, the lake) and would also serve the purposes of good aesthetics.
8. The board has considered all of the testimony of the witnesses and also the written evidence in Exhibit C1, the information packet.
9. The board has also considered the decision of the Town of Namakagon to recommend approval. The town board also noted that this was consistent with the land use plan.
10. Mr. Philip Rasmussen testified and indicated that he was agreeable to a number of conditions that will be set forth below.

11. Mr. Furtak testified that not only could the building be rebuilt 11 feet from the water without a variance but if that was done no mitigation such as the conditions below would be required for the rebuilding.
12. In deciding whether or not to grant a variance in this case the board has considered the unnecessary hardship which in this case is best explained by whether compliance with the strict letter of the restriction would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restriction unnecessarily burdensome.
13. The board finds that to deny a variance in this situation and given these conditions, would render conformity with the restriction unnecessarily burdensome. In coming to that conclusion the board has considered at length the purpose of the zoning restriction in question, particularly Section 13-1-3 of the ordinance. Those purposes include protecting public health and safety, preventing water pollution, protecting spawning grounds of fish and aquatic life and controlling building sites and the placement of structures to prevent the overcrowding of natural resources such as a lake.
14. The board finds that with the conditions set forth below a variance in this case would meet the purpose of the ordinance, and to allow the rebuilding at 40 feet rather than 11 feet from the water with all of these conditions would directly serve those purposes.
15. The board has also considered the effect of the granting of the variance and the rebuilding on this property and the neighborhood in general. As to both, the board finds that they would be beneficial and serve the purposes of the ordinance.
16. The board has also considered the larger public interest in this situation and finds that that public interest would be served by the reconstruction of the building at the increased setback with the conditions below that could not be imposed if the building was rebuilt on the same site.

**Decision:** For all of the above reasons the board decides that the variance should be granted with the following conditions:

1. Any remains of the former cabin will be demolished and the materials from the demolition will be placed in a licensed construction landfill.
2. The building materials will be designed to blend in with the natural environment.
3. The lighting on the shore will comply with the county shoreland lighting ordinance.
4. There will be a storm water management plan adopted for the site that is acceptable to the Land Conservation Department.
5. A 25 foot vegetative buffer zone will be created, with an allowance for a 30 foot wide access to the water.
6. There will be no further additions nor variances allowed on this site at any time, ever.
7. Construction will be limited to a 1,500 sq. ft., footprint, including a garage and decks, and a total square footage of 2,200 sq. ft., with a height not to exceed 26 feet.
8. All of the above conditions will be complied with not later than July 1, 2008 but permits may be issued and construction started now.

Motion made by Lupa, seconded by Wiesner, to grant the variance with the conditions as stated.  
MOTION PASSED.

VOTE: Yes 3 No 0

Dated: June 6, 2007

R E C E I V E D  
JUN 07 2007  
Bayfield Co. Zoning Dept.

*Randy Matis*

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Members Present: Phil Lupa, Randy Matis and Lee Wiesner

Also Present: Michael Fauerbach, Attorney for BOA