

DECISION ON VARIANCE AND SPECIAL EXCEPTION  
BY BAYFIELD COUNTY BOARD OF ADJUSTMENT

Case #1  
February 28, 2008

Mark Holm is requesting a **variance** from the terms of Section 13-1-22(b) and a **special exception** as authorized under the terms of Section 13-1-22(j) of the Bayfield County Zoning Ordinance.

Section 13-1-22(b) requires structural setbacks from town roads shall be sixty-three (63) feet from the centerline, or thirty (30) feet from the right-of-way (whichever is greater) of the street or road.

Section 13-1-22(j) Special Exceptions states: Minimum side and rear yard setbacks (other than shoreline and public road setbacks) and minimum private road setbacks may be reduced, and side and rear yard setbacks (other than shoreline and public road setbacks) in commercial districts may be eliminated, by special exception granted by the Board of Adjustment pursuant to Section 13-1-102(e)(4).

Applicant seeks a variance to construct a 22' x 28' garage at a setback of 51 feet from the centerline of Silverwolf Drive and a special exemption to construct said garage ten (10) feet from the south property line instead of the required 30' as required in Section 13-1-32(b)(1). Property is a 0.97-acre parcel (Legacy ID# 004-1288-04-000) described as Lot No. 40 of the Plat of Mohawk Addition to Potawatomi Estates, Section 18, Township 45 North, Range 9 West, Town of Barnes, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant seeks a variance and special exception to build a 22' x 28' garage 51' from the centerline of Silverwolf Drive and 10' from the south property line.
2. The variance is requested because usually this garage should be 63' from the centerline. Sec. 13-1-22(b) of the ordinance.
3. The special exception is required because normally the applicable setback would be 30'.
4. This is a .97 acre parcel with no garage.
5. The town recommended in favor of this variance. They also mentioned the fact that it met the comprehensive land use plan requirements. Mr. Furtak also indicated that there was no opposition stated at the town meeting where the recommendation was considered.
6. Zoning & Planning Administrator Karl Kastrosky indicated that this subdivision was created in the 1970s and at that time the lot was a conforming lot but it became non-conforming because of changes in the ordinance in the year 2000.
7. Under the present law as a Class 3 lake, there is a side yard setback problem. There has always been a road setback issue.

8. Assistant Zoning Administrator Mike Furtak indicated that due to the slope to the lake there is no other location for the garage without substantial excavation.
9. Mr. Furtak indicated that topography is the basis of the claim of unnecessary hardship.
10. There is another location for the garage but it would be closer to the lake and would violate the 100' setback applicable to this particular Class 3 lake.
11. The applicant, Mr. Holm, presented pictures which were part of Exhibit A-3 that documented a fairly steep slope to the lake.
12. Mr. Holm also indicated that the Lobermeier stormwater management plan was acceptable to him.
13. Mr. John Kudlas is a neighbor on the side where the reduced setback is sought, on the south side. He indicated that he has no objection to the variance.
14. Jim Brakken from the Bayfield County Lakes Forum also appeared in person and indicated that they were not opposing this request.
15. The board finds that this road is in a low traffic area and there would be no safety issues.
16. In determining whether or not there is an unnecessary hardship in this case the board considers whether strict compliance with the letter of the setback restriction in this case would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restriction unnecessarily burdensome.
17. The board finds that there would be an unnecessary hardship if the strict letter of the ordinance needed to be complied with. In reaching that decision the board has considered the following:
  - a. The purpose of the zoning restriction in question which is partly to protect the lake.
  - b. The effect on this property. The board does not feel that it would have any significant negative effect on the subject property.
  - c. The effect of the variance on the neighborhood. The board finds that it would not have any significant ill effect on the neighborhood.
  - d. The board has also considered the larger public interest.

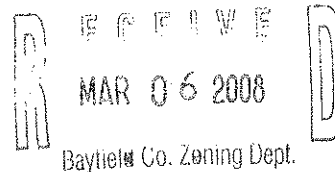
Decision: For all of the above reasons the variance and the special exception are granted with the condition that the applicant comply with the storm water plan for the new garage prepared by Mr. Lobermeier and dated January 15, 2008. The recommendations in that plan have to be followed by not later than October 15, 2008 except that the silt fencing should be installed prior to the start of construction.

Motion made by Compton, seconded by Lupa to grant the variance with the conditions indicated.

MOTION PASSED.

VOTE: Yes 5 No 0

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



*Randy Matis*

Members Present: Richard Compton, Randy Matis, Dennis Rasmussen, Phillip Lupa and Lee Wiesner  
 Also Present: Michael Fauerbach, Attorney for BOA