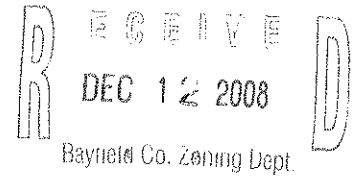


DECISION ON AFTER THE FACT VARIANCE
BY BAYFIELD COUNTY BOARD OF ADJUSTMENT



Case #1
December 4, 2008

Erin English has requested an **after-the-fact variance** from the terms of Section 13-1-26(d) of the Bayfield County Zoning Ordinance. This section states: Common Ownership. If a substandard lot is in common ownership with abutting lands, the contiguous lots shall be considered a single parcel under the terms of this ordinance, and such substandard lots shall not be transferable unless re-divided to conform to the provisions of this ordinance and the Bayfield County Subdivision Control Ordinance, provided that this provision shall not apply to lots described in subsection (b) above in common ownership of record with abutting lands prior to December 12, 2000.

Applicant seeks variance to allow future development and repairs to the parcel she retained after splitting the two lots in 2005.

Property is a 1.43-acre parcel (ID# 04-010-2-50-06-21-1-05-003-06000), located in the W ½ W ½ of par #8 in V. 740 P 207, in Gov't Lot 3, Section 21, Township 50 N, Range 6 W, Town of Bell, Bayfield County, WI.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant, Erin English, seeks an after the fact variance to allow for development or redevelopment of a substandard lot of record.
2. The parcel was part of a larger parcel transferred from Ervil Jackson to Wilbur and Marion Barker in 1973.
3. Mrs. Marion Barker, in turn, transferred this parcel to Erin English on July 14, 1998. At that point the parcel became fused with a larger parcel to the east.
4. These two parcels had separate tax ID numbers even after they came into common ownership by Erin English.
5. The common ownership continued until August 25, 2005 when Ms. English transferred part of the fused parcels to John W. Higney Jr.
6. All the information submitted to the board was considered, including Exhibits A1 through A5. However, that material is somewhat confusing and contradictory regarding the size of the smaller parcel that the applicant seeks to redevelop. The Board finds that while the area is uncertain it is less than one acre and more than 30,000 sq. ft.
7. The land value of the smaller parcel under consideration is \$11,100 and improvements are valued for tax purposes at \$7,400.
8. Since the property came under split ownership in 2005 there have been no improvements to either parcel.
9. The Town Board recommended in favor of the variance because the lot was previously a separate entity.
10. Sec. 13-1-26(D) provides that if a substandard lot of record is in common ownership with abutting lands then the contiguous land will be considered to be one lot in common

- ownership.
11. There was testimony from Zoning & Planning Administrator Karl Kastrosky that this provision started out as a shoreland provision promoted by the Wisconsin DNR. However, this issue is in the general provisions Article B of the Bayfield County Ordinance. That section applies to all land. This particular parcel is in a shoreland area within 1,000 ft. of water but it is not, itself, on water or riparian.
 12. The applicant, Erin English, testified as follows:
 - A. She bought the two properties separately but they came into her common ownership in 1998.
 - B. In 2005 she sold what she thought was 2.8 acres to John Higney. She believed she had 1.4 acres left, although she was apparently wrong about what she retained.
 - C. She thought she owned the 2.8 acres and then purchased the smaller entity later, but it now appears that what she did purchase was included in the 2.8 acres.
 - D. She feels the main reason there is an unnecessary hardship is economic because she would not be able to develop the lot and repair the building on the lot which is sagging and very much in need of repair.
 - E. She was not aware of the fusion part of the ordinance. She had consulted with attorneys prior to the other transfers.
 13. The Board finds that the applicant acted in good faith in this matter and was not aware of the effect of the ordinance in question when she made the transfer to Mr. Higney or before.
 14. Mr. Kastrosky indicated that in his opinion if there could be no development on these parcels it would be a hardship in and of itself. The Board agrees because it is questionable whether the applicant could even replace the building without some type of variance.
 15. In deciding this case the Board has considered the unnecessary hardship issue and whether denial of a variance in this situation would unreasonably prevent the owner from using the property for a permitted purpose and would render conformity with such restriction unnecessarily burdensome. The Board has also considered the purpose of the restriction in question which started out applying to areas near water and is most important in those areas.
 16. The Board has also considered the effect of a variance on the property and the Board feels that if this building cannot be replaced or significantly rehabilitated it will become an eyesore which would have a detrimental effect on the neighborhood in general and the larger public interest.

Decision: For all of the above reasons the Board grants a variance in this case, to allow the applicant relief from the effects of the fusion ordinance, Sec. 13-1-26(D). The Board also specifically determines that in accordance with this variance the applicant shall have the right to use this parcel for any lawful purpose that it could have been used for at the time it was a separately owned, pre-existing, non-conforming lot.

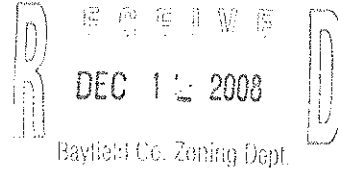
The Board also recommends, but does not make it a condition of this variance, that the applicant either obtain a survey or, at the very least, get someone from a surveying company out to the site to precisely locate the boundaries prior to the time any construction occurs.

Motion made by Steve Collins, seconded by Richard Compton, to grant the variance.

MOTION PASSED.

VOTE: Yes 5 No 0

Dated: 10 December 2008



Randy G. Matis

Members Present: Steve Collins, Richard Compton, Randy Matis, Phil Lupa, Lee Wiesner

Also Present: Michael Fauerbach, Attorney for BOA